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 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION - PERSONNEL ADMINISTRATION

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R2-5-201	Amend
R2-5-202	Amend
R2-5-203	Amend
R2-5-204	Amend
R2-5-205	Amend
R2-5-206	Amend
R2-5-207	Amend
R2-5-208	New Section
R2-5-210	Repeal
R2-5-211	Amend
R2-5-213	Amend
Article 6	Repeal
R2-5-601	Repeal
R2-5-602	Repeal
R2-5-603	Repeal
R2-5-604	Repeal
R2-5-605	Repeal

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

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

Implementing statutes: A.R.S. §§ 38-492; and 41-783(2,4-13,18,19,23)

3. The effective date of the rules:

November 13, 2000

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

Notice of Proposed Rulemaking: 6 A.A.R. 2352, June 30, 2000

Notice of Rulemaking Docket Opening: 6 A.A.R 2490, June 30, 2000

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

Name: Thomas Michael
Human Resources Generalist

Address: 1831 West Jefferson, Rm 137
Phoenix, Arizona 85007

Telephone: (602) 542-4897

Fax: (602) 542-2796

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

The proposed rulemaking is to amend Article 2, repeal Article 6 and incorporate the provisions of Article 6 in Article 2 because they are directly related to employment. The proposed rules contain changes to the employment provisions that integrate the current methodology to attract, employ, and retain competent personnel in the state service. The rules are also being amended to identify the knowledge, skills, and abilities in the class specification or position description questionnaire as the qualifications necessary for appointment to a position. Further, the amendments include statutory changes to residency requirements, granting of preference to qualified applicants, establishing time periods for original and promotional probation, and providing agency reimbursement of reasonable relocation expenses to a current employee for a management-initiated geographical transfer of more than 50 miles. The changes to these rules also reflect the work of the Personnel Rules Review Committee (PRRC) and include clarification and stylistic changes.

7. A reference to any study that the agency relied 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:

Not applicable

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 rules directly affect state service employees and candidates for state service through procedures that provide employment. The result would have an economic impact by providing discretionary income to employees and could impact consumers based upon the quality of services that are provided. The extent of the impact as measured in financial terms cannot be projected due to the unknown amount of funds that could be allocated for state service positions. Small business will not be impacted.

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

A focus group of employees representing state agencies suggested several minor grammatical changes to clarify the rules that were made. Suggested changes made by agency personnel managers relating to clarification were made by modifying a word or sentence. The GRRC staff reviewed the rules and recommended changes in style and format that were incorporated. No substantive changes were made.

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

Two public hearings were held, however the three persons who attended did not comment.

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

Not applicable

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

Not applicable

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

No

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION - PERSONNEL ADMINISTRATION

ARTICLE 2. EMPLOYMENT

R2-5-201. ~~Employment~~ Hiring Process
R2-5-202. Recruitment
R2-5-203. ~~Examinations~~ Applicant Assessment and Evaluation
R2-5-204. ~~Register~~s Human Resources Employment Database
R2-5-205. ~~Certification and selection~~ Identification and Selection of Candidates
R2-5-206. Appointment
R2-5-207. Employment of ~~relatives~~ Relatives
R2-5-208. ~~Reserved~~ Changes in Assignment
R2-5-210. ~~Student employment~~ Repealed
R2-5-211. Clerical ~~placement~~ Placement
R2-5-213. Probation

~~ARTICLE 6. CHANGES IN ASSIGNMENT~~ REPEALED

~~R2-5-601.~~ ~~Promotion~~ Repealed
~~R2-5-602.~~ ~~Transfer~~ Repealed
~~R2-5-603.~~ ~~Detail to special duty~~ Repealed
~~R2-5-604.~~ ~~Mobility assignments~~ Repealed
~~R2-5-605.~~ ~~Voluntary grade decrease~~ Repealed

ARTICLE 2. EMPLOYMENT

R2-5-201. ~~Employment~~ Hiring Process

A. General. The state of Arizona employment process shall ensure open competitive practices in recruitment, selection, and placement of qualified candidates based on the merit of the candidate's:
1. Knowledge, skills, and abilities;
2. Overall qualifications; and
3. Overall fitness for employment with the state.

~~A~~B. Waiver of rules. ~~If the Director determines that essential public services are being hampered by critical employment needs for a specific class or classes, the Director may implement appropriate temporary procedures to satisfy those needs. Such procedures may include waiving or revising provisions of Article 2 of these rules but shall ensure that employees are selected on the basis of merit and fitness.~~
1. The Director may:
   a. Waive any rule under Article 2 if the Director determines that essential public services are being hampered by critical employment needs for a specific class or classes; and
   b. Implement temporary procedures.
2. The Director shall ensure that employees hired under temporary procedures are selected on the basis of the criteria in R2-5-201(A).

~~B.~~ ~~Duration. Temporary procedures authorized by this rule may be implemented for an initial period of not more than six months. The Director may approve an extension not to exceed an additional 12 months. The initial period and any extensions shall not exceed a total of 18 months.~~

R2-5-202. Recruitment

A. Filling of vacancies. ~~All vacancies in the state service, which are not filled~~
1. Except as otherwise provided ~~in~~ by these rules, vacancies in state service shall be filled through open competitive recruiting.
2. Arizona residency is not required for state service.
3. Vacancies for positions governed by state service personnel rules shall be filled through:
   a. The use of the Human Resources Employment Database, or
   b. An alternative procedure based on the uniqueness of the operation or critical employment need.
4. The Director may refuse to evaluate or test anyone who cannot be located by mail sent to the last known address, telephone call to the last known number or by message sent to the last known electronic address.

B. ~~Public notice. Open competitive vacancies shall be announced publicly for not less than five calendar days prior to closing, with an opening and closing date. Public notice shall consist of posting announcements at the Personnel Division offices and by providing information on vacancies to agencies and the Department of Economic Security.~~ Reemployment. An agency shall consider for appointment a reemployment candidate who meets the criteria in R2-5-201(A). before implementing other recruitment actions. A reemployment candidate is eligible to fill a vacancy in any state agency.

C. ~~Content of announcement. The public announcement of vacancies shall specify the official title, salary, typical duties to be performed or where this information may be obtained, minimum qualifications, any special qualifications, the final date for receipt of applications or a statement of open continuous application, the method of application, the type of examination, the examination dates, and the expiration date of the register.~~ Vacancy announcements.
1. The Director shall establish a procedure for announcing open competitive vacancies in state service employment.
2. The Director may authorize the use of resumes, applications, or alternative forms that provide the information for analyzing an applicant based on the criteria in R2-5-201(A).

D. ~~Applications.~~
1. ~~All applications shall be on Standard Form 500, Employment Application, incorporated by reference herein and on file in the Office of the Secretary of State. Applications must be filed at the Personnel Division offices or as otherwise designated in the announcement on or before the filing date specified in the announcement or postmarked by midnight on that date. Applications for open continuous position vacancies may be filed at any time.~~

2. ~~Applications shall be confidential and may be reviewed only by the applicant, an individual who has written authorization from the applicant, state officials in the normal line of duty, or officials acting in response to court orders or subpoenas.~~ Administration. The Director shall establish procedures for maintaining and keeping confidential all resumes, applications, tests, test results, records, correspondence, and other documents used to seek employment in state service. The procedures shall restrict the review of any application material to the applicant, an individual who has written authorization from the applicant, state officials in the normal line of duty, or officials acting in response to court orders or subpoenas.

~~E.~~ ~~Promotional announcements. Promotional announcements shall meet the time and content requirements of subsections (B) and (C) and shall be distributed to or within agencies as appropriate.~~

R2-5-203. ~~Examinations~~ Applicant Evaluation

A. ~~General. The Director shall conduct open competitive examinations for entrance into the state service for applicants who meet the qualifications for examinations~~. Competitive evaluations. The Director shall establish open competitive evaluation procedures to be used for entrance into state service.

B. ~~Qualifications. Applicants must meet the minimum qualifications in the class specifications and the examination announcements. Provisions for the substitution of related experience, education, or other qualifications for specific education and/or experience requirements may be made in specific announcements for particular positions even though these provisions are not part of the class specification. Applicants must be residents of the state of Arizona unless residency is waived by the Director, or except as otherwise provided by law. All applicants must possess good character and physical and mental ability to perform successfully the duties of the position.~~ Criteria for evaluation. The basis for evaluation of an applicant shall be the knowledge, skills, and abilities required for the position as identified in the class specification or the position description questionnaire. The same criteria shall be used to evaluate all applicants for a position. The Director may authorize the use of related knowledge, skills, and abilities for a particular position even though these provisions are not part of the class specification. ~~Applicants~~ When necessary to make a complete evaluation, an applicant ~~may be required to~~ shall furnish, at ~~their~~ the applicant's own expense, evidence of character, education, physical condition, or other ~~qualifications~~ qualification ~~that are job related~~.

C. ~~Conditional eligibility. Any applicant who does not meet the educational requirements for a position, but who will meet these requirements as a result of the completion of further education for which the applicant is scheduled for the then current school term, shall be allowed to take the examination. The name of a successful applicant taking the examination under this provision shall be entered on the register in the same manner as other successful applicants, and the applicant may be certified for appointment. If appointed, the applicant must furnish the Director acceptable evidence of qualifications before the effective date of the appointment. Failure to complete the required educational work will cause the removal of the applicant's name from the register or the cancellation of the appointment.~~ Evaluations. The Director shall establish an evaluation procedure to determine a person's ability to perform the duties and responsibilities of the position or classification for which the person is being considered for employment. An agency shall not administer any ~~examination~~ evaluation technique or any combination of techniques other than job-related selection interviews without prior written approval from the Director. ~~Any deviation from this provision shall require prior approval from the Director.~~

~~D.~~ ~~Types and content of examinations.~~

1. ~~Examinations shall be designed to reveal the ability to perform the particular type of work for which the applicant has applied.~~
2. ~~An agency shall not administer any examination other than job related selection interviews without prior written approval from the Director.~~

~~E.~~D.~~Notice of examination results.~~ Written and performance test results.

1. The Director shall send written notice of ~~examination~~ written and performance test results to each applicant after the ~~rating~~ grading ~~has been~~ is ~~completed~~ complete.

~~F.~~ ~~Inspection of examination.~~

2. An ~~applicants~~ applicant may inspect ~~tests or evaluation papers in order to determine if~~ the applicant's answers for any written test to determine whether the applicant's answers are the same as the answers shown on the ~~scoring~~ grading key for that test, if the applicant requests ~~for this an~~ the inspection ~~must be made~~ in writing within ~~one~~ 1 month after notice of the score ~~has been~~ is sent to the applicant. Only the applicant or the applicant's representative ~~The authority to~~ may inspect the test answers ~~applies only to the applicant or the applicant's representative~~. An applicant's representative ~~must~~ shall ~~have~~ provide written authorization from the applicant to inspect the test answers.
3. An applicant may retake a performance test. An applicant may not retake a written test for 2 months after the last test. An applicant's most recent test score shall be used for employment evaluation.
4. Tests are not required for reinstatement or reemployment unless the Director determines that the requirements of the class have changed or are different from the class from which the applicant separated.

~~G.~~ ~~Adjustment of errors. The Director shall correct any manifest error in the rating of an examination; provided, however, that any such correction shall not invalidate any certification or appointment of any other applicant previously made.~~

~~H.~~ ~~Retaking examinations.~~

1. ~~Performance examinations or tests of skills may be retaken within reasonable limits of scheduling.~~

2. ~~Upon written request of an applicant, the applicant's training and experience shall be reevaluated and a score adjusted if warranted.~~
3. ~~Written tests may not be retaken for a period of two months after the last examination. In each case of a repeated written test, the most recent test score shall be used. If the applicant or the applicant's representative has inspected the written test, the test may not be retaken for a period of two months after the inspection.~~

~~I.~~**E.** ~~Preference points~~ Preferences. Preference points authorized by A.R.S. § 38-492 ~~will~~ shall be added to ~~any~~ an applicant's ~~score~~ grade on any assessment or evaluation that results in a numeric grade after the final ~~rating~~ grade is determined, ~~provided that~~ if a passing grade ~~or rating~~ is earned without the addition of ~~such~~ preference points. ~~Such preference~~ Preference points shall not be applied to promotional examinations. If an evaluation does not result in a numeric grade, preference shall be given by granting applicable preference codes to qualified applicants.

~~J.~~ ~~Testing for reinstatement or reemployment. Tests are not required for reinstatement or reemployment unless the Director determines that the qualifications in the class specifications are substantially different from the class from which the applicant separated.~~

R2-5-204. ~~Registers~~ Human Resources Employment Database

~~A.~~ ~~Responsibility. The Director shall establish and maintain registers as required to fill vacancies.~~

~~B.~~ ~~Content of registers. After each examination, the Director shall prepare a register, or merge the names of new candidates with those on an existing register, in the order of the final scores of each candidate.~~

~~C.~~ ~~Duration of register. A register shall expire as provided in the official announcement and notice of examination unless the register is specifically extended or abolished by the Director. An expired or abolished register may be reactivated to resolve recruitment problems when in the best interests of the state service.~~

~~D.~~ ~~Related registers. If a vacancy exists in a class for which there is no register, the Director may prepare a register for the class from one or more existing related registers.~~

~~E.~~ ~~Repromotion registers.~~

1. ~~An employee with permanent status who has been reduced in grade as a result of a reduction in force is entitled to be placed on a repromotion register within the agency for the class in which permanent status was held immediately prior to the reduction in grade or any intervening class. The name of the employee shall remain on the repromotion register for two years from the effective date of the reduction of the employee.~~
2. ~~An employee on the repromotion register shall be offered a vacant position in the class from which reduced or in any intervening class. An employee who accepts a position in an intervening class shall remain on the repromotion register for the balance of the two years. The name of an employee who fails to accept a repromotion to the class from which reduced shall be removed from the repromotion register.~~
3. ~~If more than one employee is eligible for repromotion to a class, the vacancy shall be offered to the employee with the highest number of retention points at the time the repromotion is offered.~~

~~F.~~ ~~Reemployment registers. An employee with permanent status who has been separated as a result of a reduction in force is entitled, upon written application, to be placed on the reemployment register for classes for which qualified at the same or lower grade as that in which permanent status was held within one year immediately preceding the separation. The name of the employee shall remain on the reemployment register for two years from the effective date of the separation of the employee.~~

~~G.~~ ~~Promotion registers. Applicants who have obtained permanent status, meet the necessary minimum requirements, and have passed the appropriately announced promotional examination, if any, will be placed on a promotional register in the order of their relative ratings.~~

~~H.~~ ~~Reinstatement registers.~~

1. ~~An employee with permanent status who has resigned or been separated in good standing is entitled, upon written application, to be placed on a reinstatement register for referral for classifications for which qualified in the same or lower grade as that in which permanent status was held within one year immediately preceding the separation. The name of the employee shall remain on the reinstatement register for two years from the effective date of the separation of the employee.~~
2. ~~A former employee eligible for reinstatement may accept any type of appointment to a position of a lower grade than the employee's permanent grade without jeopardizing reinstatement rights to the permanent grade.~~
3. ~~A former employee eligible for reinstatement may accept a seasonal, temporary, clerical pool, or limited appointment to a position at the same grade as, or at a higher grade than, the employee's permanent grade without jeopardizing reinstatement rights to the permanent grade.~~

~~I.~~ ~~Order of use of registers. In filling vacancies in the state service from a register, the following order of preference shall be used:~~

1. ~~The Repromotion Register.~~
2. ~~The Reemployment Register.~~
3. ~~The Promotional Register.~~
4. ~~Either the Reinstatement Register or a combination of the Reinstatement Register and the Open Competitive Register.~~

~~**J.** Removal of names from registers. In addition to the reasons cited in A.R.S. § 41-769, the Director shall refuse to examine or certify as eligible anyone who:~~

~~1. Accepts a probationary appointment to a position in the state service, provided, however, that the name of the applicant shall not be removed from any other register with a higher salary grade.~~

~~2. Refuses or rejects an offer of probationary employment to the class for which the register was established.~~

~~3. Has twice declined to be considered for classifications for which qualified at the same class in the same agency.~~

~~4. Has been considered by an agency and has been found to be unsuitable for employment in that class within the agency for job-related reasons.~~

~~5. Cannot be located despite reasonable efforts by the agency or the Department.~~

~~**K.** Notification of removal from or abolishment of registers. When a register is abolished or any candidate is removed from a register in accordance with subsection (J) above, all candidates removed shall be notified of such abolishment or removal.~~

The Director shall establish and maintain the Human Resources Employment Database to fill state service vacancies. Agencies shall use the database as the primary source for applicant tracking and candidate identification. The Director may approve other methods for applicant tracking and candidate identification to meet special agency requirements.

R2-5-205. ~~Certification and selection~~ Identification and Selection of Candidates

A. ~~Certification of candidates. Upon receipt of an agency's request, the Director shall send a hiring list to the agency containing the names of available candidates in the order of their relative excellence on the examination. For a single vacancy, the Director shall send the names of the seven candidates with the highest final ratings or a lesser number of candidates if fewer than seven names are contained on the register. If fewer than three candidates are available, they shall be certified if requested by the agency. For multiple vacancies, the Director shall refer one additional name for each additional vacancy. The Director shall also certify the names of all qualified applicants for reinstatement or transfer.~~ The Director shall provide a referral list to the hiring agency that contains the names of available candidates who possess the knowledge, skills, and abilities required for the position.

B. ~~Duration of certification. The period during which action may be taken on a hiring list shall be determined by the Director, giving consideration to the area, type of position, and other factors. This period may be extended by the Director.~~ Referral list. An agency may request an external or an internal state service referral list.

1. An internal state service referral list may contain:
   a. Repromotion candidates;
   b. Original probation and permanent status employees in the agency;
   c. Employees currently employed in the agency;
   d. Permanent status employees in a state service position in the agency;
   e. Employees who have attained permanent status in any state service agency; or
   f. Any combination of the above.
2. An external referral list may contain any combination of qualified candidates.
3. Repromotion
   a. ~~An~~ A permanent status employee ~~with permanent status~~ who ~~has been~~ is reduced in grade as a result of a reduction in force is entitled upon written request to be considered within the agency for the class in which permanent status was held immediately ~~prior to~~ before the reduction in grade, or any intervening class. The ~~name of the~~ employee shall be considered for ~~two~~ 2 years from the ~~effective~~ date ~~of the reduction~~ on which the employee was reduced in grade ~~of the employee~~.
   b. An employee eligible for repromotion shall be offered a vacant position in the class from which the employee was reduced or in any intervening class. An employee who accepts a position in an intervening class shall continue to be considered for repromotion in other eligible classes for the balance of the ~~two~~ 2 years. ~~The name of an~~ An employee who fails to accept a repromotion to the class from which the employee was reduced shall not continue to be considered for repromotion.
   c. If more than ~~one~~ 1 employee is eligible for repromotion to a vacancy in a class, the vacancy shall be offered to the employee with the highest number of retention points at the time the repromotion is offered.
4. Reemployment.
   a. An applicant for reemployment shall submit a written request.
   b. The agency may consider an applicant for reemployment for the class in which the applicant held permanent status at time of separation and for all classes at the same or lower grade for which the applicant is qualified for 2 years from the effective date of the separation.
5. Reinstatement.
   a. An applicant for reinstatement shall submit a written request.
   b. The agency may consider an applicant for reinstatement for the class in which the applicant held permanent status at time of separation and for all classes at the same or lower grade for which the applicant is qualified for 2 years from the effective date of the separation.

~~**C.** Selective Certification.~~
~~1. The Director may make a selective certification of candidates to an agency when the vacancy is for a position requiring job related specialized qualifications.~~
~~2. The Director may make a local certification of candidates to an agency when a vacancy is outside the metropolitan Phoenix area, limiting the hiring list to those candidates who reside within the geographical area, or within 50 road miles, of the location of the vacancy, except that former employees eligible for reemployment or reinstatement shall be certified regardless of residence. The geographical area is one of the areas into which the state is divided by the Director for the purpose of certification.~~
~~**D.** Random certification. If there are 15 or more candidates with the same score to be certified under these rules, certification may be done on a random basis. Persons certified on this basis shall not be recertified until all others with the same final rating have been certified.~~
~~**E**~~**C.** Selection.
1. An agency head may non-competitively select any qualified reemployment, repromotion, reinstatement, voluntary decrease, or transfer candidate to fill ~~the~~ a position.
2. If the agency head does not select a reemployment, repromotion, reinstatement, voluntary decrease, or transfer candidate, ~~it must interview a minimum of three candidates, if available, before making a selection, except as provided in paragraph (3) below.~~ the agency head shall interview a minimum of 3 candidates, if available, before making a selection. ~~These candidates may include any combination of reinstatement, transfer, or competitive candidates. For multiple vacancies, the agency must interview one additional candidate for each additional vacancy.~~
~~3. The agency may select the single candidate with the highest rating directly from the register without certification upon request of the agency head and prior approval of the Director.~~
~~4. All interviews shall be conducted in person unless a candidate resides 50 or more miles from the interview site in which case the interview may be conducted by telephone.~~
~~5~~3. The Director or an agency head ~~may~~ shall establish procedures to check references ~~and~~ or investigate a candidate's background, education, or work history as appropriate for the position. ~~If the results of these checks and investigations bring out information that might affect the rating in any examination, the rating may be adjusted by the Director.~~
~~**F.** Confidentiality of records. The Director shall maintain the confidentiality of all examinations and records pertinent to selection and examination programs.~~
~~**G.**~~**D.** Complaints or recommendations. ~~Applicants~~ A candidate who ~~have~~ has a complaint or recommendation relating ~~about~~ to the procedures used in the selection or evaluation process shall ~~forward~~ submit ~~those~~ the ~~complaints~~ complaint or recommendation to the ~~Personnel Division~~ agency human resources representative who shall evaluate the complaint or recommendation and notify the candidate of the action to be taken.

R2-5-206. Appointment

A. ~~Original probationary appointment. An original probationary appointment shall be made from a register or by conversion.~~ General. An agency shall use a Human Resources Employment Database referral list to make an appointment to a position in the state service unless otherwise indicated in these rules.

B. ~~Limited appointment~~. Types of appointments.
1. ~~A limited appointment shall be made from a register or by conversion~~. Regular Appointment. A regular-appointment employee who successfully completes an original probation period acquires the rights of permanent status.
2. Limited appointment. A limited-appointment employee who successfully completes an original probationary period ~~shall acquire~~ acquires all rights of permanent status except reduction in force, reemployment, and reinstatement. If the limited appointment expires, is unfunded, or is eliminated, the limited-appointment employee shall be separated without the right of appeal.
   a. ~~An~~ A qualified limited-appointment employee ~~who has achieved limited permanent status~~ may be considered for transfer, promotion, or demotion to ~~permanent~~ a regular ~~positions~~ position ~~provided the original appointment was from a competitive list~~. ~~The limited-appointment employee who is appointed to a permanent position shall serve a six-month original probationary period. except as provided in R2-5-213 (B). The employee shall not have the right to return to the limited position if any required probationary period in the permanent position is unsuccessful.~~
   b. A limited-appointment employee who is promoted or transferred to a regular position shall serve an original probationary period in the regular position.

~~**C**~~ 3. Temporary appointment. A temporary appointment ~~A temporary appointment shall be made from a register or by verification of minimum qualifications in the absence of a register. The appointment may be extended for not more than three months by the Director.~~ may be made for a recurring period of time up to a maximum of 1500 hours in any 1 position per agency each calendar year.

~~**D.** Seasonal appointment.~~
~~1. A seasonal appointment shall be made from a register or by verification of minimum qualifications in the absence of a register.~~

~~2. A person who receives a seasonal appointment from a register is eligible for successive seasonal appointments to the same class without re-examination or recertification.~~

~~3. Seasonal employees are limited to a maximum of 1500 hours of employment per calendar year per agency.~~

~~**E.** Conversion of appointment. A seasonal or temporary employee who was appointed competitively and who has been employed for 1040 hours or more may be transferred by conversion to a permanent or limited position in the same class. A converted employee is required to serve an original probationary period in the permanent or limited position.~~

~~**F**~~ 4. Provisional appointment.

~~1~~ a. ~~No~~ A provisional appointment shall not continue beyond the reporting date of ~~any~~ a candidate selected from a referral list, beyond the expiration date of ~~any~~ a valid referral list, or for more than ~~six~~ 6 months.

~~2~~ b. An agency shall not make successive provisional appointments of the same person to the same class ~~in the same agency shall not be made~~.

~~**G**~~ 5. Emergency appointment. ~~An emergency appointment~~ Appointments shall be at the discretion of the agency head with the approval of the Director.

~~1~~ a. An emergency appointment shall not exceed 240 hours or more than 30 working days.

~~2~~ b. An agency shall not make successive emergency appointments of the same person to the same class ~~in the same agency shall not be made~~.

~~**H**~~ 6. Clerical pool appointment.

~~1~~ a. The Director may establish a clerical pool in any locality where there is a demand for temporary clerical help.

~~2~~ b. Clerical pool appointments may be made for up to ~~six~~ 6 months by an agency head and may be extended for not more than ~~three~~ 3 months by the Director.

7. Student employment. The Director may establish special procedures for the employment of students. An agency may employ a student for a maximum of 1040 hours in a calendar year.

R2-5-207. Employment of ~~relatives~~ Relatives

A. Relationship to supervisor. An individual shall not be appointed or promoted to a position if the immediate supervisor of the individual is related within the ~~third~~ 3rd degree of affinity (marriage) or consanguinity (blood).

B. Relationship to other employees. An individual shall not be appointed or promoted to a position if ~~an employee related~~ the individual is related within the ~~third~~ 3rd degree of affinity or consanguinity to an employee who currently occupies a position under the same immediate supervisor.

C. Exceptions. The Director may grant an ~~exceptions~~ exception to the prohibitions in subsections (A) and (B)~~. above~~ if there ~~are~~ is no other qualified ~~candidates~~ candidate for the position at the location.

D. Definition. For the purpose of this ~~rule~~ Section, persons related within the ~~third~~ 3rd degree ~~shall~~ include a spouse, child, ~~and a~~ parent, grandchild, grandparent, sister, brother, great grandchild, great grandparent, aunt, uncle, niece, or nephew ~~who are related to the employee by marriage or blood~~.

R2-5-208. ~~Reserved.~~ Changes in Assignment

A. Promotion.

1. State service promotions shall be competitive.
2. An internal state service promotion referral list may contain:
   a. Original probation and permanent status regular and limited employees;
   b. Employees currently employed in the agency;
   c. Permanent status regular and limited employees in a state service position in the agency;
   d. Employees who have attained regular and limited permanent status in any state service agency; or
   e. Any combination of the above.
3. Criteria for evaluation. The basis for evaluating candidates for a promotion referral list shall be the knowledge, skills, and abilities required for the position as identified in the class specification or the position description questionnaire. The same criteria shall apply to all applicants.

B. Transfer.

1. Intra-agency transfer.
   a. An agency head may transfer an employee to a position in the same pay grade.
   b. An agency head, upon the request of an employee, may transfer the employee to a position in the same pay grade.
2. Interagency transfer. An employee may transfer to a position in the same pay grade in another state service agency, upon request by the employee and approval of the gaining agency head.
3. Qualifications. An employee shall possess the knowledge, skills, and abilities required for the position as identified in the class specification or the position description questionnaire for the position to which transferred.
4. Transfer of function.
   a. Between state service agencies. If part or all of the functions of an agency are transferred to another agency, all employees in the positions affected shall be transferred to the gaining agency.

b. From non-state service agencies. If part or all of the functions of a non-state service agency are transferred to the state service, all of the affected employees of the agency may be offered state service employment on a non-competitive basis in the transferred functional area. An agency head may require a transferred employee to serve an original probationary period.

C. Special detail.
1. General. An agency head may assign a permanent status employee to a special detail in a covered position within the agency.
   a. Short-term special detail. A special detail made for a maximum of 6 months may be made non-competitively.
   b. Long-term special detail. A special detail made for more than 6 but fewer than 12 months shall be competitive in accordance with these rules, unless the Director approves a non-competitive special detail.
2. Qualifications. An employee is not required to possess the precise knowledge, skills, and abilities of the position to be assigned to a special detail.
3. Return from special detail. At the end of the special detail, the employee shall return to the position previously held, if vacant. If the position is not vacant, the employee shall return to a position in the same class held before the special detail.
4. Extensions. A special detail shall not exceed 12 months unless extended by the Director.

D. Mobility assignments
1. State service employees. An employee with permanent status in the state service may accept a mobility assignment to an uncovered position or to a position in another Arizona state agency, for not more than 36 months with the concurrence of the Director, the employee, the agency in which employed, and the agency to which the employee will be assigned. The employee has the right to return to a position in the original agency in the same pay grade held before the mobility assignment if the employee possesses the required knowledge, skills, and abilities.
2. Extension.The Director, the employee, the employing agency and the agency from which the employee came shall renegotiate a mobility assignment that extends beyond 36 months.

E. Voluntary grade decrease
1. Request. An employee may request a permanent change in assignment to a position with a lower pay grade. The employee shall possess the knowledge, skills, and abilities required of the new position. An employee is not eligible to grieve or appeal an approved voluntary pay grade decrease.
2. Probation. An employee on original probation shall be required to serve a new original probation in the new position.

F. Relocation. The agency may reimburse reasonable relocation expenses to a current employee for a management-initiated geographical transfer of more than 50 miles from the employee's current work site.

R2-5-210. ~~Student employment~~ Repealed

~~The Director may designate the use of special procedures for the employment of students. Any such special procedure for a particular class or classes will be outlined in the examination announcement for student employment.~~

R2-5-211. Clerical Placement

An ~~Applicants~~ applicant for a ~~classifications~~ class in the clerical occupational series may be interviewed by an agency upon ~~the~~ referral ~~of candidates~~ by the Director. The Director shall refer the ~~applicants~~ applicant based upon ~~their~~ the applicant's ~~merit and fitness~~ knowledge, skills, and abilities for the particular vacancy. The agency, upon such referral ~~and without a hiring list,~~ may interview any or all referred applicants and hire ~~whichever~~ the applicant the agency prefers.

R2-5-213. Probation

A. Types of probation. Original probation and promotional probation are the only types of probation ~~allowed~~ in ~~the~~ state service ~~are original probation and promotional probation~~.

B. Credit for prior service. ~~Upon the request of an~~ An agency head may credit up to ~~six~~ 6 months of state service that was completed in the same class immediately ~~prior to~~ before a probationary appointment ~~in the same class, provided~~ if that ~~such~~ service was achieved under the same program of orientation, training, and evaluation currently applied to other probationary employees in the same class. ~~This provision for crediting prior service does not apply to employees converted to a permanent or limited position~~.

C. Original probation.
1. Duration. An original probationary period is ~~six~~ 6 months. Upon request of an agency head, the Director may establish a longer or shorter period for any class of positions in the agency. In no case ~~will~~ shall the probationary period established for a class be less than 90 days or more than ~~one~~ 1 year.
2. Extensions.
   a. An agency head may extend ~~an employee's probationary period~~ original probation up to 6 months for ~~job~~ employment- related reasons. ~~Such~~ If original probation is extended, an employee's probation may exceed ~~one~~ 1 year in the aggregate.
   b. The probationary period shall be extended for any ~~corresponding~~ period for which a probationary employee is on leave without pay for more than 80 consecutive working hours. ~~Such an~~ If original probation is extended for this reason, the employee's probation may exceed ~~one~~ 1 year ~~in the aggregate~~.

3. Completion of probation.
   a. ~~The agency head~~ A supervisor shall evaluate a probationary employee and submit a report to the ~~Director~~ agency head ~~at least 15 days prior to the~~ before expiration of the employee's probationary period. ~~unless the agency head supplies to the Director, in writing, justification for a period of time less than 15 days.~~ If the agency head takes no action ~~is taken by the agency head~~ to extend the probationary period or to terminate the employee, the ~~employee~~ agency head shall ~~be awarded~~ grant permanent status to the employee upon ~~the~~ completion of the probationary period.
   b. If ~~the~~ an agency head determines at any time during an original probationary period that the services of ~~the~~ a probationary employee are no longer required in that position for any reason or for no reason ~~the employee may be offered a voluntary grade decrease or be dismissed~~, the agency head may:
      i. ~~May offer~~ Offer the employee another position for which the employee ~~possess~~ possesses the ~~required knowledge, skills and abilities~~ criteria in R2-5-201(A); or
      ii. Dismiss the employee without a stated reason and without the right of appeal~~;~~, ~~and,~~ ~~iii. The agency head Shall furnish~~ providing the employee a ~~copy of the~~ letter of dismissal. ~~the employee may be offered a voluntary grade decrease~~
4. An original-probation employee who is selected for another state service position shall serve an original probation period in the new position.

D. Promotional probation.
1. ~~An~~ A permanent-status employee who is promoted shall serve a promotional probationary period ~~under the same rules as an original probation, except for subparagraph (C)(3)(b) above.~~ of 6 months. The agency head may extend the probation up to a total of 1 year for employment-related reasons.
2. A limited-appointment employee on original probation who is promoted or is transferred to a regular position shall serve an original probationary period.
~~2~~3. If ~~An~~ an employee ~~who~~ fails to ~~successfully~~ complete a promotional probation successfully the agency head may:
   a. ~~shall revert~~ Revert the employee to a ~~vacancy~~ vacant position in the current employing agency in the class in which the employee held permanent status ~~was held~~ immediately ~~prior to the~~ before promotion; or
   b. Offer the employee a similar position in another class at the same grade as the class that the employee holds permanent status if the employee meets the knowledge, skills, and abilities of that position.
4. ~~A reversion~~ Neither (D)(3)(a) nor (D)(3)(b) shall ~~not~~ preclude the imposition of ~~any~~ disciplinary action.
5. An employee who is reverted to a position in the same class or transferred to a position in another class shall not have the right to appeal.
6. If ~~such~~ a vacancy does not exist in the agency, the rules governing reduction in force shall apply.
~~3~~7. An employee who is repromoted shall not be required to serve a probationary period.

E. Reinstatement and reemployment. ~~1.~~ When an employee is reinstated or reemployed, ~~An~~ the agency head:
1. ~~may~~ May require ~~a~~ the former employee ~~who is reinstated or reemployed~~ to complete an original probation.
2. ~~An agency head shall~~ Shall require ~~a~~ the former employee ~~who is reinstated or reemployed in a class other than a class the employee has previously held~~ to complete an original probation if the former employee is reinstated or reemployed in a class other than the class the employee previously held.

~~**F.** Demotion. Except as otherwise provided in these rules, a demoted employee shall not be required to serve a probationary period in the position to which demoted.~~

~~ARTICLE 6. CHANGES IN ASSIGNMENT~~ REPEALED

~~R2-5-601. Promotion~~ Repealed

~~**A.** General. All promotions shall be competitive unless the Director approves a non-competitive promotion as being in the best interests of the state service.~~

~~**B.** Qualifications. An employee shall not be promoted unless:~~
~~1. The employee has attained permanent status in the state service or will attain it by the closing date of the competitive announcement. For open continuous announcements, the employee must attain permanent status on or before submitting an application; and,~~
~~2. The employee meets the minimum qualifications for the class.~~

~~R2-5-602. Transfer~~ Repealed

~~**A.** Intra-agency transfer. An agency head may transfer an employee to a position in the same pay grade.~~

~~**B.** Interagency transfer. Upon the request of an employee, the employee may transfer to a position in the same pay grade in another state service agency, with the approval of the head of the gaining agency.~~

~~**C.** Qualifications. A transferred employee must meet the minimum qualifications for the class to which transferred.~~

~~**D.** Limitation. An employee appointed to a position through selective certification shall not be transferred from that position during the probationary period without the prior approval of the Director.~~

~~**E.** Transfer of function.~~

~~1. Between state service agencies. If part or all of the functions of an agency are transferred to another agency, all employees in the positions affected shall be transferred to the gaining agency.~~

~~2. From non-state service agencies. If part or all of the functions of a non-state service agency are transferred to the state service, all of the affected employees of the agency shall may be offered state service employment on a non-competitive basis in the functional area transferred. Any of these employees who have not completed six months of related experience shall serve a 90-day original probationary period under the rules set forth in R2-5-213(C)(2) and (3).~~

~~R2-5-603.~~ ~~Detail to special duty~~ Repealed

~~**A.** General. An agency head may detail a permanent status employee to special duty to a covered position in the same or another class within the agency as provided below:~~

~~1. If the detail is for 4 months or less, the detail may be made non-competitively.~~

~~2. If the detail is for more than 4 months the detail shall be made competitively in accordance with these rules, unless the Director approves a non-competitive detail.~~

~~**B.** Duration. The length of the detail shall not exceed one year, unless extended by the Director.~~

~~**C.** Return from detail. An employee shall have the right to return to the position from which detailed at the conclusion of the detail.~~

~~R2-5-604.~~ ~~Mobility assignments~~ Repealed

~~**A.** State service employees. An employee with permanent status in the state service may accept a mobility assignment to an uncovered position, to another Arizona state agency, or to another government jurisdiction for not more than 36 months with the concurrence of the Director, the employee, the agency in which employed, and the agency or jurisdiction to which the employee would be assigned. The employee shall have the right to return to a position in the agency in the employee's former class, with the same status held prior to the mobility assignment.~~

~~**B.** Non-state service employees. An employee from another government jurisdiction may serve a mobility assignment in the state service for not more than 36 months, with the concurrence of the Director, the employee, the employee's present employer, and the state agency to which the employee would be assigned.~~

~~**C.** Extension. An employee serving in a mobility assignment may be extended beyond thirty-six months with the approval of the Director, the employee, the employing agency or jurisdiction, and the agency or jurisdiction from which the employee came.~~

~~R2-5-605.~~ ~~Voluntary grade decrease~~ Repealed

~~**A.** Request. An employee may request a permanent change in assignment to a position in a lower pay grade, provided the employee meets the minimum qualifications for the class of the position. Such request, if approved, may not be grieved.~~

~~**B.** Probation. An employee who is on original probation when the request for a voluntary grade decrease is approved shall serve a complete original probation in the new position.~~

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE – PLANT SERVICES DIVISION

PREAMBLE

1. Sections Affected **Rulemaking Action**

R3-4-716 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. §§ 3-107(A)(1) and 3-487(B)

Implementing statute: A.R.S. § 3-487

3. The effective date for the rule:

November 13, 2000

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 1513, April 21, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 2824, August 4, 2000

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

Name: Ross Rodgers, Rules Specialist

Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-0111

E-Mail: ross.rodgers@agric.state.az.us

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

This rulemaking removes all container and packing requirements for unwrapped or naked head lettuce.

In the past, more than 90% of all head lettuce was shipped naked and very little head lettuce was shipped in individual prewrapped packages or in packages with 3-heads to a pack. In today's market, most head lettuce is prepackaged for consumer use.

Today, most retailers require prepackaging, specify the type and size of container, and the arrangement of head lettuce in the container. The lettuce industry is changing so rapidly it makes little sense for the Department to regulate packing requirements for head lettuce.

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

None

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. *The Arizona Department of Agriculture*.

Removing the requirements for head lettuce packaging allows the Department to accommodate producers and shippers by giving them the latitude of using whatever method necessary to meet changing industry requirements.

B. *Political Subdivision.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Most retail establishments demand that head lettuce be prepackaged and packed in a specific manner. This rulemaking allows producers and shippers to meet changing industry requirements when shipping head lettuce.

D. *Private and public employment.*

Private and public employment is not directly affected by the implementation and enforcement of this rulemaking.

E. *Consumers and the Public.*

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

F. *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:

Minor clarifying changes were made in response to comments from Council staff.

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

No comments were received regarding the 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. Whether the rule was previously made as an emergency rule and, if so, whether the text was changed between making as an emergency and the making of these final rules:

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE, PLANT SERVICES DIVISION

ARTICLE 7. FRUIT AND VEGETABLE STANDARDIZATION

R3-4-716. Head Lettuce Standards~~, Containers, Packing Arrangements~~

ARTICLE 7. FRUIT AND VEGETABLE STANDARDIZATION

R3-4-716. Head Lettuce Standards~~, Containers, Packing Arrangements~~

A. Definition

"Serious damage" means damage caused by broken midribs, bursting, freezing, or tipburn:

1. "Broken midribs" ~~shall be~~ is considered serious damage when the midribs of more than ~~four~~ 4 of the outer head leaves are broken and severed all the way across the midrib.
2. "Bursting" ~~shall be~~ is considered serious damage when the head is cracked or split open and any part of the inner portion of the head is exposed.
3. "Freezing" ~~shall be~~ is considered serious damage when it affects any portion of the head inside the ~~six~~ 6 outer head leaves and the tissue ~~in~~ of the inner head leaves is brittle, soft, pithy, or discolored due to freezing.
4. "Tipburn" ~~shall be~~ is considered serious damage when the affected portion on ~~one~~ 1 or more leaves, inside the ~~six~~ 6 outer head leaves exceeds an aggregate area of 1 inch by 1/2 inch and the color of the tipburn is light buff or darker. Serious damage does not include areas showing tan or brown specks with normal lettuce color between ~~such~~ the specks.

B. Head lettuce, when being packed or offered for sale, shall ~~conform to the following standards~~:

1. ~~Head lettuce shall be~~ Be mature;
2. ~~6~~2. ~~Head lettuce shall be~~ Be free from serious damage;
3. ~~2~~3. ~~Head lettuce shall not~~ Not be leafy without head formation;
4. ~~3~~4. ~~Head lettuce shall have~~ Have no more than ~~six~~ 6 wrapper leaves adhering to the head;
5. ~~4~~5. ~~Head lettuce shall be~~ Be free from insect injury, slime, or decay affecting the leaves within the head;
6. ~~5~~6. ~~Head lettuce shall be~~ Be free from a ~~seedstems which have been determined to be~~ seedstem present ~~by~~ upon internal examination ~~and which as depicted in the first illustration~~ that ~~are~~ is less than 1/2 inch from the top of the head of lettuce or ~~as depicted in either illustration exceed~~ exceeds 4 inches in length~~;~~.

LETTUCE SEEDSTEM

C. Not more than 5%, by count, of the heads of lettuce in any ~~one~~ 1 lot of ~~container~~ containers or bulk lot shall contain decay or slime and not more than 15%, by count, shall fail to meet ~~the total~~ all requirements prescribed in this Section.

D. Individual containers in any lot shall not contain more than 1 1/2 times the tolerance of defects prescribed in this Section ~~if~~ provided the average percentage of defects in the entire lot ~~averages~~ is within the tolerances specified in subsection (C), as determined by inspection of a representative sample~~, as set forth in R3-4-740~~ under R3-4-738.

~~**E.** Packing requirements and standards containers for packaging head lettuce shall apply only to unwrapped or naked lettuce.~~

~~**F.** No heads shall be placed in irregular arrangements of flat layers except when 30 heads are packed in a standard container, 6 heads of the same size or dimensions may be placed between the two layers of 12 heads each.~~

~~**G.** Bulk lettuce shall be packaged in a container constructed either in a rectangular or semi-octagonal shape with an optional top cap and outside dimensions of 40 to 48 inches length, 33 to 40 inches width, and 24 to 42 inches depth. Bulk containers may be used for iceberg head lettuce harvested for processing.~~

~~**H.** Standard containers for the packaging of unwrapped head lettuce shall conform to the following inside dimensions, in terms of inches. A closing device used to properly close the standard containers may be used only to assist in closing the container. The device shall not be used to apply pressure to eliminate any excessive bulge.~~

	~~Length~~	~~Width~~	~~Depth~~
~~Standard Containers~~	~~21"~~	~~14"~~	~~9-3/4"~~
	~~21-1/2"~~	~~16-1/8"~~	~~10-3/4"~~
	~~22-3/4"~~	~~14-7/8"~~	~~11"~~
	~~23-1/4"~~	~~15-1/4"~~	~~10-3/8"~~

~~**I.** Standard and bulk containers shall be of corrugated fiberboard construction and may vary in size by 1/4 inch in all dimensions.~~

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. BOARD OF MEDICAL EXAMINERS

PREAMBLE

1. Sections Affected **Rulemaking Action**

R4-16-303 Amend

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

Authorizing statute: A.R.S. § 32-1404(D)

Implementing statute: A.R.S. § 32-1456(B)

3. The effective date of the rules:

November 13, 2000

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 1029, March 17, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 1968, June 2, 2000

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

Name: Dominick Spatafora
Public & Regulatory Relations Administrator

Address: Arizona Board of Medical Examiners
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

Telephone: (480) 551-2700, Ext. 2712

Fax: (480) 551-2701

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

To exercise its authority under A.R.S. § 32-1456 (B), the Arizona Board of Medical Examiners adopted rules that addressed medical assistants in fiscal year 1999-2000. The adopted rules set forth the activities that a medical assistant is permitted to carry out under the direct supervision of a physician or physician assistant.

Although there was no opposition to R4-16-303 prior to the close of the record, there was an oral comment inquiring where a small volume nebulizer (SVN) treatment fits into the rule. Two individuals suggested that they would like to see SVNs included in the rule as long as treatments are administered under the direct supervision of a physician or physician assistant. A SVN uses a pharmacological agent, or prescription drug that is mixed with a saline or other solution and is administered through the nebulizer. After carefully examining this issue, and receiving input from several physicians, public and other stakeholders across the state, it is apparent that it is a very common practice for medical assistants to administer SVNs. Therefore, the Board agreed with the public comment and attempted to include the administration of SVNs in the rulemaking. However, the Governor's Regulatory Review Council determined that the inclusion of SVNs was a substantive change because the persons affected by and the effects of the final rule differed from those of the proposed rule. The Board agreed. Small volume nebulizers were left out of the rulemaking due to lack of opportunity for public comment on the substantive change. Therefore, in a new rulemaking the Board is amending the rule to allow medical assistants to administer SVNs.

7. A reference to any study that the agency relied on in its evaluation of or jurisdiction 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 this 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 Board believes that implementation of the proposed rule will be of significant benefit to both physicians and health care consumers. The rule will actually allow physicians and patients to save money. The Board's regulated community will save money because physicians will not have to hire separate respiratory assistants to administer a simple mechanism that most patients can and do already administer themselves. Medical assistants will be able to continue administering this mechanism allowing physicians to contain costs, therefore, directly benefiting healthcare consumers. The Board may incur minimal costs to notify its regulated community and interested parties of the amended rule if approved. The benefit of amending the medical assistant rule outweighs the costs. If the rule amendment is not approved there will be a large financial burden placed on physicians and the public to hire respiratory care therapists to perform SVN treatments at physician offices. This will add a significant cost to the physician's practice, and consequently to the patient's healthcare costs. The rule also has a greater effect on rural physicians who depend on the services of medical assistants to administer SVN treatments and to rural patients who do not have access to immediate emergency room services.

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

Minor grammatical and organizational changes were made at the request of GRRC staff.

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

Eighteen individuals attended the public hearing held by BOMEX in Scottsdale. The Board received 31 comments regarding the proposed rulemaking before the close of record on July 21, 2000. Twenty comments were written, and 11 individuals made oral comments at the public hearing on July 19, 2000. Overall, the comments were split almost evenly for and against the proposed rulemaking. The following comments are separated according to the specific issues addressed.

Safety Concerns

Several supporters of the rule spoke or wrote of the lack of safety concerns regarding medical assistants performing small volume nebulizer treatments. They also provided reasons why medical assistants should continue to deliver small volume nebulizer therapy.

Comment: Medical assistants provide an important role in the delivery of small volume nebulizers in rural communities. One commenter emphasized that in Arizona's rural communities, emergency rooms and urgent care centers are not options always available to patients. Therefore, it is more economical and safer to allow a medical assistant to provide SVN treatments than to send the patient to an emergency room or urgent care facility in a larger city.

Response: The Board agrees.

Comment: Another commenter stressed that prohibiting medical assistants from administering SVN treatment would result in greater numbers of patients being sent to already overburdened emergency rooms.

Response: The Board agrees that emergency rooms are often overburdened and that some patients could receive appropriate care from their own physicians. SVN treatment by medical assistants would alleviate the costs associated with emergency care and protect the health of Arizona's citizens by performing onsite SVN treatments.

Comment: Other supporters of the rule explained that small volume nebulizers are so easy to use that many young children, along with their parents, perform the small volume nebulizer therapy at home on a regular basis. One commenter explained that after a minimal amount of instruction (5 to 20 minutes), the patients are left to administer further treatments on their own, from one to six times a day. If an adverse reaction occurs, patients must either see their physician or go to the emergency room.

Response: The Board agrees.

Comment: Because medical assistants always perform SVN treatments under the direct supervision of a physician (meaning that the physician is physically onsite), the health and safety of the public is not compromised.

Response: The Board agrees.

Comment: Physician's cannot afford to hire a permanent respiratory care therapist to administer SVN treatments.

Response: The Board agrees. The Board's research on this issue found that most instances of patients needing the therapy in an office setting occurred on a sporadic basis. One physician in attendance at the hearing said that on average, SVN treatments are performed in his office only four to ten times a year. Therefore, a physician would have little advance notice of when patients would come to the office for treatment and, when to have a respiratory care therapist on hand. Additionally, medical assistants are already performing SVN treatments statewide. Allowing them to continue the practice will allow physicians to contain costs, therefore, directly benefiting healthcare consumers.

Comment: Four commenters said medical assistants do not need to be respiratory therapists to administer SVNs.

Response: The Board agrees. There is no danger to the public when medical assistants administer SVNs. A representative from the Arizona Academy of Family Physicians commented that they had no evidence of adverse outcomes as a result of the office use of aerosolized medications administered by medical assistants. Under the direct supervision of a physician, they believe, it is a treatment that medical assistants are very capable of providing efficiently and safely. Additionally, medical assistants are already administering SVNs and have been for several years in Arizona. The Arizona Medical Association (ArMA), in a written comment, also recognized that small volume nebulizers are currently being administered by medical assistants and that there is no evidence that patient harm has ever occurred from this practice.

Administration of Medications:

There was some debate regarding medical assistants administering medications via small volume nebulizers. One commenter was in favor of medical assistants administering medications via small volume nebulizers and two commenters were opposed to it.

Comment: The commenter in favor of this rule explained the simplicity of administering medications via SVN. He stated that following a physician's order, the medical assistant uses either unit dose (i.e. pre-mixed) ampules of the medication or measures the appropriate medication and saline and places this in the chamber of the nebulizer. He further explained that drawing up and mixing solutions for inhalation is commonplace and is no more complicated than drawing and mixing medications for injection.

Response: The Board agrees. Medical assistant rules already permit medical assistants to apply, prepare, and administer oral and parenteral medications.

Comment: Because of the wide variety of pharmacological agents involved in administering SVNs two commenters oppose the rulemaking. The commenters stated that pharmacological agents include controlled substances, antibiotic and antiviral therapy, and bronchodilators with significant cardiac effects.

Response: The Board disagrees. The law already states that medical assistants are permitted to apply pharmacological principles to prepare and administer oral and parenteral medication (meaning medications delivered by mouth and by injection). There is just not specific authority to do this through the respiratory method of administering. The law also authorizes the Board to "prescribe other medical procedures which a medical assistant may perform under the direct supervision of a doctor…" A.R.S. § 32-1456(B).

Regulation of Licensed Healthcare Providers:

Comment: Medical assistants are not regulated medical professionals like physicians or respiratory care therapists. The safety of Arizona's public will be endangered because medical assistants are not governed to maintain professional standards, are not required to get continuing medical education, are not subject to criminal background checks, and are not prevented from moving to another employer after being terminated from a previous employer for unprofessional behavior.

Response: The Board disagrees. In regard to continuing education, the Board realizes that although the medications delivered via SVN have grown greatly in the past, the scope of medications used by a medical assistant has remained relatively small.

While the Board recognizes that medical assistants are not required to undergo criminal background examinations, the Board also emphasizes that allopathic physicians in Arizona are not subject to those same examinations. It would be imprudent for a Board to require a criminal background examination on a medical assistant when it does not have the same standard for its own licensees. Instead, the Board places the burden of a medical assistant's background on the physician (A.R.S. § 32-1401(25)(ii)). Like any employer, the physician is responsible for hiring and supervising appropriate personnel.

Comment: The policing and adjudicating of medical assistants by the Board of Medical Examiners would be an extreme waste of Arizona's resources for an area which is a standard primary care practice and one without history of patient harm.

Response: The Board agrees.

Comment: Other opponents of the rule claim that the rule would be in conflict with existing laws regulating the practice of respiratory care.

Response: The Board disagrees. Although the administration of small volume nebulizers also falls within the practice of respiratory care therapists as governed in A.R.S. § 32-3501, A.R.S. § 32-1456 specifically provides that "The board (BOMEX) by rule may prescribe other medical procedures which a medical assistant may perform under the direct supervision of a doctor of medicine." Further, in State Farm v. Arizona State Board of Chiropractic Examiners 187 Ariz. 526 (App. 1996), the Arizona Court of Appeals held that healthcare services may be provided by licensed individuals and supervised assistants of those licensed individuals. The Board has both statutory authority and case authority to prescribe medical procedures performed by medical assistants.

Medical Assistant Education

Comment: Several opponents contested the proposed rule because they were not convinced that medical assistants have adequate education to administer pharmacological agents, to assess a patient's well being after a SVN treatment, or to operate complex equipment, such as a SVN.

Response: The Board disagrees. Medical assistants must complete an approved training program that ensures that basic competencies for this task are demonstrated. See A.C.R.R 4-16-302. Further, medical assistants are always under the direct supervision of a medical doctor who is capable of administering SVN treatments and addressing potential side effects.

Under current law, medical assistants are allowed to apply pharmacological principles as part of their clinical procedures. Medical assistants are also required to complete an approved training program that includes an extensive patient care curriculum. Part of the curriculum includes learning to obtain vital signs; to assist with procedures, treatments, and minor office surgery; to apply pharmacology principles to prepare and administer oral and parenteral medications; and to perform CPR and basic first aid.

Physician Supervision

Comment: The level of supervision a physician provides to a medical assistant is insufficient to protect the public.

Response: The Board disagrees. The supervising physician has to be on the premises with the medical assistant performing small nebulizer therapy. The language in the rule specifies that the medical assistant can only perform SVN treatments under the direct supervision of a physician or physician assistant - meaning that the physician or physician assistant must be onsite.

Comment: Everything a medical assistant does is under the supervision of a physician and the physician's license is at stake if the medical assistant is not appropriately supervised. Furthermore, when a patient is admitted to a physician's office with respiratory distress, the physician first assesses the patient and then writes an order for the medical assistant to carry out. The medical assistant is simply carrying out the physician's order.

Response: The Board agrees.

12. Any other matter 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. Full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. BOARD OF MEDICAL EXAMINERS

ARTICLE 3. MEDICAL ASSISTANTS

R4-16-303. Authorized Procedures for Medical Assistants

ARTICLE 3. MEDICAL ASSISTANTS

R4-16-303. Authorized Procedures for Medical Assistants

A. A medical assistant may perform, under the direct supervision of a physician or physician assistant, ~~perform~~ the medical procedures listed in the April 1999, Commission on Accreditation of Allied Health Education Program's *"Standards and Guidelines for an Accredited Educational Program for the Medical Assistant, Section (2) (A) (5) (a through c)."* The address is 35 East Wacker Drive, Suite 1970, Chicago, Illinois, 60601. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

B. In addition to the medical procedures in subsection (A), ~~Additionally,~~ a medical assistant may administer the following under the direct supervision of a physician or physician assistant:

1. Whirlpool treatments,
2. Diathermy treatments,
3. Electronic galvation stimulation treatments,
4. Ultrasound therapy,
5. Massage therapy,
6. Traction treatments,
7. ~~apply~~ Transcutaneous Nerve Stimulation unit~~s~~ treatments, ~~and~~
8. ~~apply~~ Hot and cold pack~~s~~ treatments, and
9. ~~administer~~ Small volume nebulizer treatments.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. Sections Affected **Rulemaking Action**

R4-23-110	Amend
R4-23-205	Amend
R4-23-602	Amend
R4-23-603	Amend
R4-23-605	Amend
R4-23-607	New Section

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. §§ 32-1904(A)(1), and 32-1904(B)(3)

Implementing statutes: A.R.S. §§ 32-1921(A)(2), (3), and (8), 32-1929, 32-1930(A), and 32-1931(D)(8) and (9)

3. The effective date of the rules:

November 13, 2000

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 3617, October 1, 1999

Notice of Proposed Rulemaking: 6 A.A.R. 2772, July 28, 2000

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

Name: Dean Wright, Compliance Officer

Address: Board of Pharmacy
4425 West Olive, #140
Glendale, Arizona 85302

Telephone: (623) 463-2727, Ext. 131

Fax: (623) 934-0583

E-Mail: rxcop@uswest.net

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

H.B. 2448 was passed during the 1999 legislative session and signed into law by Governor Hull. This bill relates to the sale, transfer, or furnishing of a precursor chemical or regulated chemical as defined in the federal act and mandates that anyone who sells, transfers, or furnishes these chemicals to anyone in this state be permitted by the Board under Title 32, Chapter 18. The specific precursor chemicals, ephedrine, pseudoephedrine, and phenylpropanolamine, are active ingredients in common over-the-counter products sold for treatment of flu, colds, and weight loss. The regulation of these chemicals is necessary because they are used as the starting base to manufacture illegally the street drugs, methamphetamine and amphetamine. The Board presently only issues permits to manufacturers, wholesalers, pharmacies, and retailers who reside in Arizona. This legislation requires the Board to permit nonresident suppliers of precursor or regulated chemicals. To prevent prejudice and further protect Arizona citizens, the Board intends to permit all nonresident suppliers of any drug not just precursor or regulated chemicals. The rule amends definitions and fees in Sections R4-23-110 and R4-23-205 and adds a new Section 607 establishing standards for nonresident permits. Because of an amendment in the 2000 legislative session to A.R.S. 32-1921 allowing the sale of nonprescription drugs in vending machines, Section 603 is amended to establish nonprescription drug vending machine requirements. Because Section R4-23-605, Drug Wholesaler Permit, was identified for necessary updating in the Board's 5-year rule review, the rule includes amendments to bring R4-23-605 up to today's standards for a clear, concise, and understandable document. The proposed rule includes necessary style, format, and grammar changes to provide a clear, concise, and understandable document. The definition for "responsible person" is added to R4-23-110. In S.B. 1081, the 2000 Arizona legislature established fee limits for compressed medical gas distributors and suppliers. The proposed rule amends Section 205 to include the fees approved by the Board for compressed medical gas distributors and suppliers. Section 602 is amended at subsection (A)(3) by adding the citation for the new Section 607. Section 605 receives numerous style, format, and grammar changes to modernize and clarify the wholesaler standards. The Board believes that making these rules benefits the public health and safety by establishing clear standards for drug distribution in and into Arizona.

7. A reference to any study that the agency relied 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:

Not applicable

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 only Arizona businesses directly affected by the proposed rule are compressed medical gas distributors and suppliers. Before the legislature established the permit fees in S.B. 1081, the Board bore the full costs of permitting and inspecting compressed medical gas distributors and suppliers. The proposed rule establishes the permit fees allowed by the legislature for compressed medical gas distributors and suppliers. The cost to compressed medical gas distributors and suppliers is $200 and $100 biennially, respectively. In 1998, the Board estimated that it cost $42.73 to issue a permit. At that time, the estimated Board cost of inspection was $524 for a compressed medical gas distributor and $191 for a compressed medical gas supplier. The proposed rule will have no economic impact on other Arizona businesses.

The proposed rule will have a direct economic impact on nonresident firms that ship drugs into Arizona. These firms will be required to obtain a Board permit for their type of drug distribution. This will not be new to many of these firms because over 30 states already require a nonresident permit for drug distribution. The permit fee will be a part of a nonresident firm's cost of doing business in the state of Arizona. A nonresident firm that cannot justify the permit fee will just not do business in Arizona. This possible lack of competition from nonresident firms may benefit Arizona firms. The permit costs run from $1000 biennially for a manufacturer or full-service wholesaler to $100 biennially for a nonprescription drug retailer. The proposed rule does not impose any additional costs on consumers.

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

Following public comment and Board discussion of the issues, the Board made nonsubstantive changes or changes that are less restrictive to the final rule. Subsection R4-23-603(F)(5) is removed and subsections R4-23-603(F)(6) to (9) are renumbered. This subsection prohibited the placement of vending machines in establishments selling alcoholic beverages for consumption on premises. The Board agreed with public comment that this was not necessary. The Board's assistant attorney general informed the Board that the language dealing with compliance officer liability related to inspections in renumbered subsection R4-23-603(F)(5)(b) is not necessary. Because Board staff already has qualified immunity under A.R.S. § 32-1904(C), the Board took the liability language out of subsection R4-23-603(F)(5)(b). The first sentence of renumbered subsection R4-23-603(F)(8) is removed. The Board agreed with public comment that vending machine operators should not be required to remove a drug until it has expired. The title of Section R4-23-605 is changed to Resident Drug Wholesaler Permit. The Board felt that adding "resident" to the title would reduce the possibility of confusion between the requirements of R4-23-605 which apply to drug wholesalers residing in Arizona and the requirements of R4-23-607 which apply to drug wholesalers that reside outside Arizona. Because of public comment requesting clarification of the term "drug classes" in subsection R4-23-605(A)(4)(a), the Board approved changing the subsection to read: "Indicate on the permit application whether the drug wholesaler will sell or distribute nonprescription drugs, prescription-only drugs, or controlled substances." For consistency, the Board removed all references to the term "drug classes" involving wholesalers, specifically in subsection R4-23-603(F)(4), R4-23-603(F)(4)(b), and R4-23-607(E)(1) and (4). A misspelled word is corrected in subsection R4-23-607(A). The word "quality" is changed to "qualify".

At the request of GRRC staff, the entire rule includes numerous changes for grammar, style, and format, especially Sections 603, 605, and 607, which include extensive formatting changes and renumbering.

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

There was one written comment that asked if vending machines containing nonprescription drugs could also contain other items. The Board staff wrote back that non-drug items were not prohibited in vending machines with nonprescription drugs. There were two written comments received after the close of record on August 28, 2000. The first comment requested a clarification of the term "drug classes" in subsection R4-23-605(A)(4). The Board staff sent a response that explained that "drug classes" referred to either nonprescription drugs, prescription-only drugs, or controlled substances. The Board made a change in the final rule to clarify drug classes. The second written comment was taken to the full Board at a scheduled Board meeting for discussion and response. The issues addressed in this written comment included: the storage and temperature requirements specified in Section R4-23-603(F)(3), the requirement in Section R4-23-603(F)(5) prohibiting placement of vending machine in establishments selling alcoholic beverage for consumption on the premises, and language in Section R4-23-603(F)(9) requiring that drugs with 60 days or less remaining on their expirations be removed from a vending machine. The Board agreed with the second and third issues and removed those from the final rule. The Board did not agree with the commentor's statements that vending machines should not have to maintain drugs as specified in the manufacturer's labeling and the official compendium (the United States Pharmacopeia). The Board chose to continue enforcing existing U.S.P. guidelines and FDA-approved storage and temperature requirements, specifically the maintenance of nonprescription drugs at a temperature of not less than 59° F and not greater than 86° F.

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

Not applicable

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

None

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

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

ARTICLE 2. PHARMACIST LICENSURE

R4-23-205. Fees

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-602. Permit Application Process and Time Frames
R4-23-603. Nonprescription Drugs, Retail
R4-23-605. Resident Drug Wholesaler Permit
R4-23-607. Nonresident Permits

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

"Active ingredient" means any component that furnishes pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or that affects the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug, that are present in the finished drug product in a modified form, and that furnish the specified activity or effect.

"Authentication of product history" means identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other drug.

"AZPLEX" means an Arizona pharmacy law examination written and administered by the Board staff or a Board-approved national pharmacy law examination written and administered in cooperation with NABP.

"Batch" means a specific quantity of drug that has uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

"Beyond-use date" means a date determined by a pharmacist and placed on a prescription label at the time of dispensing to indicate a time beyond which the contents of the prescription are not recommended to be used.

"Biological safety cabinet" means a containment unit suitable for the preparation of low to moderate risk agents ~~where~~ when there is a need for protection of the product, personnel, and environment, consistent with National Sanitation Foundation (NSF) standards, published in the National Sanitation Foundation Standard 49, Class II (Laminar Flow) Biohazard Cabinetry, NSF International P. O. Box 130140, Ann Arbor, MI, revised June 1987 edition, (and no future amendments or editions), incorporated by reference and on file with the Board and the office of the Secretary of State.

"Certified pharmacy technician" means an individual who receives a passing grade on a certification examination for pharmacy technicians recognized by the Arizona State Board of Pharmacy and meets the requirements of a pharmacy technician as defined in A.A.C. R4-23-110.

"Class 100 environment" means an atmospheric environment in compliance with the Federal Standard 209 Clean Room and Work Station Requirements: Controlled Environment, publication FED-STD-209D, U.S. Government Services Administration 450 Golden Gate Avenue, San Francisco, CA, June 15, 1988 edition which includes January 28, 1991, changes, (and no future amendments or editions), incorporated by reference and on file with the of the Secretary of State.

"Community pharmacy" means any place under the direct supervision of a pharmacist where the practice of pharmacy occurs or where prescription orders are compounded and dispensed other than a hospital pharmacy or a limited service pharmacy.

"Component" means any ingredient used in compounding or manufacturing drugs in dosage form, including an ingredient that may not appear in the finished product.

"Container" means:

A receptacle, as described in the official compendium or the federal act, that is used in manufacturing or compounding a drug or in distributing, supplying, or dispensing the finished dosage form of a drug; or

A metal receptacle designed to contain liquefied or vaporized compressed medical gas and used in manufacturing, transfilling, distributing, supplying, or dispensing a compressed medical gas.

"Correctional facility" has the same meaning as in A.R.S. §§ 13-2501 and 31-341.

"Current good compounding practices" means the minimum standards for methods used in, and facilities or controls used for, compounding a drug to ensure that the drug has the identity and strength and meets the quality and purity characteristics it is represented to possess.

"Current good manufacturing practice" means the minimum standard for methods used in, and facilities or controls used for manufacturing, processing, packing, or holding a drug to ensure that the drug meets the requirements of the federal act as to safety, and has the identity and strength and meets the quality and purity characteristics it is represented to possess.

"Cytotoxic" means a pharmaceutical that is capable of killing living cells.

"Day" means a calendar day unless otherwise specified.

"Delinquent license" means a pharmacist or intern license the Board suspends for failure to renew or pay all required fees on or before the date the renewal is due.

"Drug sample" means a unit of a prescription drug that a manufacturer provides free of charge to promote the sale of the drug. No person shall sell, purchase, or trade or offer to sell, purchase, or trade a drug sample.

"Extreme emergency" means the occurrence of a fire, water leak, electrical failure, public disaster, or other catastrophe constituting an imminent threat of physical harm to pharmacy personnel or patrons.

"FDA" means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services, established to set safety and quality standards for foods, drugs, cosmetics, and other consumer products.

"Inactive ingredient" means any component other than an "active ingredient" present in a drug.

"Internal test assessment" means performing quality assurance or other procedures necessary to ensure the integrity of a test.

"Limited-service correctional pharmacy" means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that:

Holds a current Board permit under A.R.S. § 32-1931;

Is located in a correctional facility; and

Uses pharmacists, interns, and support personnel to compound, produce, dispense, and distribute drugs.

"Limited-service mail-order pharmacy" means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices by mailing or delivering the prescription medication or prescription-only device to an individual by the United States mail, a common or contract carrier, or a delivery service.

"Limited-service nuclear pharmacy" means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and provides radiopharmaceutical services.

"Limited-service pharmacy permittee" means a person who holds a current limited-service pharmacy permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.

"Long-term care consultant pharmacist" means a pharmacist providing consulting services to a long-term care facility.

"Lot" means a batch or any portion of a batch of a drug, or if a drug produced by a continuous process, an amount of drug produced in a unit of time or quantity in a manner that assures its uniformity. In either case, a lot is identified by a distinctive lot number and has uniform character and quality with specified limits.

"Lot number" or "control number" means any distinctive combination of letters or numbers, or both, from which the complete history of the compounding or manufacturing, control, packaging, and distribution of a batch or lot of a drug can be determined.

"Materials approval unit" means any organizational element having the authority and responsibility to approve or reject components, in-process materials, packaging components, and final products.

"Mediated instruction" means information transmitted via intermediate mechanisms such as audio or video tape or telephone transmission.

"NABP" means National Association of Boards of Pharmacy.

"NABPLEX" means National Association of Boards of Pharmacy Licensure Examination.

"NAPLEX" means North American Pharmacist Licensure Examination.

"Other designated personnel" means a non-pharmacist individual who is permitted in the pharmacy area, for a limited time, under the direct supervision of a pharmacist, to perform non-pharmacy related duties, such as trash removal, floor maintenance, and telephone or computer repair.

"Outpatient" means an individual who is not a residential patient in a health care institution.

"Outpatient setting" means a location that provides medical treatment to an outpatient.

"Patient profile" means a readily retrievable, centrally located information record that contains patient demographics, allergies, and medication profile.

"Pharmaceutical care" means the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to curing or preventing a disease, eliminating or reducing a patient's symptoms, or arresting or slowing a disease process, by identifying and resolving or preventing potential and actual drug-related problems.

"Pharmacy law continuing education" means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations, offered by an Approved Provider.

"Pharmacy technician" means an individual, qualified under R4-23-403(A)(1) and (2), who, during and after completing the training required in R4-23-403(A)(3), performs, under the supervision of a pharmacist, activities related to the preparation and distribution of prescription medications consistent with policies and procedures required in R4-23-403(J) and state and federal law.

"Prepackaged drug" means a drug that is packaged in a frequently prescribed quantity, labeled in compliance with A.R.S. §§ 32-1967 and 32-1968, stored, and subsequently dispensed by a pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist, who verifies at the time of dispensing that the drug container is properly labeled, in compliance with A.R.S. § 32-1968, for the patient.

"Provider pharmacist" means a pharmacist who supplies medication to a long-term care facility and maintains patient profiles.

"Radiopharmaceutical" means any drug that emits ionizing radiation and includes:

Any nonradioactive reagent kit, nuclide generator, or ancillary drug intended to be used in the preparation of a radiopharmaceutical, but does not include drugs such as carbon-containing compounds or potassium-containing salts, that contain trace quantities of naturally occurring radionuclides; and

Any biological product that is labeled with a radionuclide or intended to be labeled with a radionuclide.

"Radiopharmaceutical quality assurance" means performing and interpreting appropriate chemical, biological, and physical tests on radiopharmaceuticals to determine the suitability of the radiopharmaceutical for use in humans and animals. Radiopharmaceutical quality assurance includes internal test assessment, authentication of product history, and appropriate record retention.
"Radiopharmaceutical services" means procuring, storing, handling, compounding, preparing, labeling, quality assurance testing, dispensing, distributing, transferring, recordkeeping, and disposing of radiochemicals, radiopharmaceuticals, and ancillary drugs. Radiopharmaceutical services include quality assurance procedures, radiological health and safety procedures, consulting activities associated with the use of radiopharmaceuticals, and any other activities required for the provision of pharmaceutical care.
"Red C stamp" means a device used with red ink to imprint an invoice with a red letter C at least 1 inch high, to make an invoice of a Schedule III through IV controlled substance, as defined in A.R.S. § 36-2501, readily retrievable, as required by state and federal rules.
"Remodel" means to alter structurally the pharmacy area or location.
"Remote drug storage area" means an area that is outside the premises of the pharmacy, used for the storage of drugs, locked to deny access by unauthorized persons, and secured against the use of force.
"Resident" means a person admitted to and residing in a long-term care facility.
"Responsible person" means the owner, manager, or other employee who is responsible to the Board for a permitted establishment's compliance with the laws and administrative rules of this state and of the federal government pertaining to distribution of drugs, devices, precursor chemicals, and regulated chemicals. Nothing in this definition relieves other individuals from the responsibility to comply with state and federal laws and administrative rules.
"Score transfer" means the process that enables an applicant to take the NAPLEX in a jurisdiction and be eligible for licensure by examination in other jurisdictions.
"Sterile pharmaceutical product" means a dosage form free from living micro-organisms.
"Strength" means:
The concentration of the drug substance (for example, weight/weight, weight/volume, or unit dose/volume basis); or
The potency, that is, the therapeutic activity of a drug substance as indicated by bioavailability tests or by controlled clinical data (expressed, for example, in terms of unity by reference to a standard).
"Supervision" means a pharmacist is present, assumes legal responsibility, and has direct oversight of activities relating to acquiring, preparing, distributing and selling prescription medications by pharmacy interns, graduate interns, pharmacy technicians, or certified pharmacy technicians.
"Supplying" means selling, transferring, or delivering to a patient or a patient's agent 1 or more doses of:
A nonprescription drug in the manufacturer's original container for subsequent use by the patient, or
A compressed medical gas in the manufacturer's or compressed medical gas distributor's original container for subsequent use by the patient.
"Support personnel" means an individual, working under the supervision of a pharmacist, trained to perform clerical duties associated with the practice of pharmacy including cashiering, bookkeeping, pricing, stocking, delivering, answering non-professional telephone inquires, and documenting 3rd-party reimbursement. Support personnel shall not perform the tasks of a pharmacist, pharmacy intern, graduate intern, pharmacy technician, or certified pharmacy technician.
"Transfill" means a manufacturing process by which 1 or more compressed medical gases are transferred from a bulk container to a properly labeled container for subsequent distribution or supply.
"Wholesale distribution" means distribution of a drug to a person other than a consumer or patient, but does not include:
Selling, purchasing, or trading a drug or offering to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this Section, "emergency medical reasons" includes transferring a prescription drug by a community or hospital pharmacy to another community or hospital pharmacy to alleviate a temporary shortage;
Selling, purchasing, or trading a drug, offering to sell, purchase, or trade a drug, or dispensing a drug as specified in a prescription;
Distributing a drug sample by a manufacturers' or distributors' representative; or
Selling, purchasing, or trading blood or blood components intended for transfusion.
"Wholesale distributor" means any person engaged in wholesale distribution of drugs, including: manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions in the amount of at least 5% of gross sales.

ARTICLE 2. PHARMACIST LICENSURE

R4-23-205. Fees

A. Licensure fees:
1. Pharmacist:
   a. Initial licensure [Prorated according to A.R.S. § 32-1925(B)]: $110.~~00.~~
   b. Licensure renewal: $110.~~00.~~

2. Pharmacy or graduate intern: $10.~~00~~

B. Reciprocity fee: $300.~~00.~~

C. Examination fees:

1. AZPLEX:
   a. Initial: $100.~~00.~~
   b. Retake: $50.~~00.~~
2. NAPLEX: specified by and made payable to NABP according to R4-23-202(B)(4).

D. Vendor permit fees (Resident and nonresident):

1. Pharmacy: $300 biennially. (Including community, hospital, ~~nuclear,~~ and limited service.)
2. Drug wholesaler or manufacturer:
   a. Manufacturer: $1000 biennially.
   b. Full service drug wholesaler: $1000 biennially.
   c. Nonprescription drug wholesaler: $500 biennially.
3. Drug packager or repackager: $1000 biennially.
4. Nonprescription drug, retail:
   a. Category I (30 or fewer items): $100.~~00~~ biennially.
   b. Category II (more than 30 items): $200.~~00~~ biennially.
5. Compressed medical gas distributor: $200 biennially.
6. Compressed medical gas supplier: $100 biennially.

E. Other Fees:

1. Wall certificate.
   a. Pharmacist: $20.
   b. Pharmacy intern: $10.
   c. Relief Pharmacist: $10.
2. Duplicate of any Board-issued license, registration, certificate, or permit: $10.~~00.~~
3. Certification of electronic security system: $25.~~00.~~

F. Fees are not refunded under any circumstances except for the Board's failure to comply with its established licensure or permit ~~timeframes~~ time-frames under A.R.S. § 41-1077.

G. Penalty fee. Renewals submitted after expiration date are subject to penalty fees as provided in A.R.S. § 32-1925.

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-602. Permit Application Process and Time Frames

A. A person applying for a permit shall submit to the Board Office an application packet consisting of:

1. A completed application form for the desired permit signed by the applicant;
2. A cashier's, certified, business or personal check, or money order for the applicable biennial permit fee; and
3. Other information or documents required by A.A.C. R4-23-603, R4-23-604, R4-23-605, R4-23-606, R4-23-607, or R4-23-671.

B. The Board Office shall deem an application packet received on the date that the Board Office stamps on the packet ~~as the packet is delivered to the Board Office~~ immediately upon receipt.

C. The Board Office shall finish an administrative completeness review within 20 days from the date of receipt of an application packet.

1. The Board Office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application packet.
2. If the application packet is incomplete, the Board Office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 20-day time-frame for the Board Office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board Office with all missing information.
3. If the Board Office does not provide the applicant with notice regarding administrative completeness, the application packet shall be deemed complete 20 days after receipt by the Board Office.

D. An applicant with an incomplete application packet shall submit to the Board Office all of the missing information within 60 days of service of the notice of incompleteness.

1. If an applicant cannot submit all missing information within 60 days of service of the notice of incompleteness, the applicant may obtain an extension by submitting a written request to the Board Office ~~post-marked~~ post-marked or delivered within 60 days of service of the notice of incompleteness.
2. The written request for an extension shall document the reasons the applicant is unable to meet the 60-day deadline.

3. The Board Office shall review the request for an extension of the 60-day deadline and grant the request if the Board Office determines that an extension of the 60-day deadline will enable the applicant to assemble and submit the missing information. An extension of the 60-day deadline shall be for no more than 60 days. An applicant that requires an additional extension shall submit an additional written request in accordance with this subsection. The Board Office shall notify the applicant in writing of its decision to grant or deny the request for an extension.

E. If an applicant fails to submit a complete application packet within the time allowed, the Board Office shall close the applicant's file. An applicant whose file has been closed and who later wishes to obtain a permit, shall apply again in accordance with subsection (A).

F. For a nonprescription drug permit applicant, the Board Office shall issue a permit on the day that the Board Office determines an administratively complete application packet is received.

G. Except as described in subsection (F), from the date on which the administrative completeness review of an application packet is finished, the Board Office shall complete a substantive review of the applicant's qualifications in no more than 120 days.

1. If an applicant is found to be ineligible, the Board Office shall issue a written notice of denial to the applicant.
2. If an applicant is found to be eligible, the Board Office shall recommend to the Board that the applicant be issued a permit. Upon receipt of the Board Office's recommendation, the Board shall either issue a permit to the applicant or if the Board determines the applicant does not meet eligibility requirements, return the matter back to the Board Office.
3. If the Board Office finds deficiencies during the substantive review of the application packet, the Board Office shall issue a written request to the applicant for additional documentation.
4. The 120-day time frame for a substantive review for the issuance or denial of a permit is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. When the applicant and the Board Office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 35 days.

H. For the purpose of A.R.S. § 41-1072 et.seq., the Board establishes the following time-frames for permits.

1. Administrative completeness review time frame: 20 days.
2. Substantive review time-frame:
   a. Nonprescription drug permit: none.
   b. Except as described in subsection (H)(2)(a): 120 days.
3. Overall time-frame:
   a. Nonprescription drug permit: 20 days.
   b. Except as described in subsection (H)(3)(a): 140 days.

R4-23-603. Nonprescription Drugs, Retail

A. Permit. ~~General:~~ A person, including the following, ~~may~~ shall not sell or distribute a nonprescription drug ~~except by obtaining a~~ without a current Board-issued ~~nonprescription drug permit, a pharmacy permit, a manufacturer permit, a nonprescription drug wholesale permit, or wholesale drug~~ permit~~,~~:

1. A grocer;
2. Other non-pharmacy retail outlet; or
3. Mobile or non-fixed location retailer, such as a swap-meet vendor.

B. ~~by being~~ A medical practitioner ~~exempted by A.R.S. § 32-1921. Grocers and other non-pharmacy retail outlets that want to sell over-the-counter or nonprescription drugs shall obtain a nonprescription drug permit~~ licensed under A.R.S. Title 32 is exempt from the requirements of subsection (A).

~~B~~C. Application~~:~~. To obtain a permit to sell a nonprescription drug~~s~~, a person shall submit a completed application, on a form furnished by the Board, that includes~~,~~:

1. ~~among other requirements, an address for mailing and inspection and a telephone number. An applicant may obtain a permit for a mobile or non-fixed location, such as a swap-meet vendor~~ Whether applying for Category I or Category II permit;
2. Business name, address, mailing address, if different, telephone number, and facsimile number;
3. Owner's name, if corporation or partnership, officers or partners, including address and title;
4. Date business started or planned opening date;
5. Documentation of compliance with local zoning laws;
6. Type of business, such as convenience, drug, grocery, or health food store, swap-meet vendor, or vending machine;
7. If application is submitted because of ownership change, former owner's name and business name, if different;
8. Date signed, applicant's verified signature; and
9. Fee specified in R4-23-205.

~~C~~D. ~~Original package of manufacturer~~ Drug sales: A nonprescription drug permittee~~s~~:

1. ~~shall not repackage drugs but~~ Shall sell a drug~~s~~ only in the original container packaged and labeled by the manufacturer; and

2. Shall not package, repackage, label, or relabel any drug.

~~D~~E. Inspection~~:~~. A nonprescription drug permittee shall consent to inspection during business hours by ~~the~~ a Board compliance officer or ~~its designee during business hours~~ other authorized officer of the law as defined in A.R.S. § 32-1901(4).

~~E~~F. Quality control. A nonprescription drug permittee shall:

1. Ensure that all drugs stocked, sold, or offered for sale ~~shall be~~ are:
   a. Kept clean;
   b. ~~and~~ Protected from contamination, ~~and from~~ excessive heat, cold, sunlight, and other deteriorating factors; and
   c. ~~shall~~ Comply with federal law~~.~~ ; and
2. Develop and implement a program to ensure that:
   a. Any expiration-dated drug is reviewed regularly;
   b. Any drug, that exceeds its expiration date, is deteriorated or damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
   c. ~~shall be~~ Any quarantined drug is destroyed or returned to its source of supply.

G. Nonprescription drug vending machine outlet. In addition to the requirements of R4-23-601, R4-23-602, and subsections (A) through (F), a person selling or distributing a nonprescription drug in a vending machine shall comply with the following requirements:

1. Each individual vending machine is considered an outlet and shall have a Board-issued nonprescription drug permit;
2. Each nonprescription-drug-permitted vending machine shall display in public view an identification seal, furnished by the Board, containing the permit number, vending machine's serial number, owner's name, telephone contact number, and permit expiration date;
3. Each nonprescription-drug-permitted vending machine is assigned a specific location that is within a weather-tight structure, protected from direct sunlight, and maintained at a temperature not less than 59° F and not greater than 86° F;
4. Each nonprescription drug sold in a vending machine is packaged and labeled in the manufacturer's original FDA-approved container;
5. A nonprescription-drug-permitted vending machine is subject to inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(4) as follows:
   a. The owner, manager, or other staff of the nonprescription drug permittee shall provide access to the contents of the vending machine within 24 hours of a request from a Board compliance officer or other authorized officer of the law; or
   b. The Board compliance staff shall have independent access to the vending machine;
6. Before relocating or retiring a nonprescription-drug-permitted vending machine, the owner or manager shall notify the Board in writing. The notice shall include:
   a. Permit number;
   b. Vending machine's serial number;
   c. Action planned (relocate or retire); and
   d. If retiring a vending machine, the disposition of the nonprescription drug contents of the vending machine;
7. The sale or distribution of a precursor chemical or regulated chemical in a vending machine is prohibited unless the nonprescription drug permittee provides written proof to the Board of compliance with the requirements of A.R.S. §§ 13-3401, 13-3404, and 13-3404.01; and
8. Under no circumstance may expired drugs be sold or distributed for human or animal consumption.

R4-23-605. Resident Drug Wholesaler Permit

A. Permit~~:~~.

~~1. Application procedure: No person may operate a full service or nonprescription wholesale drug firm, before the Board has approved the application, Interviewed the applicant and the responsible person, if different from the applicant, Inspected the premises, and a full service or nonprescription wholesale drug permit has been issued. No permit shall be issued unless permitted by local zoning regulations.~~ A person shall not operate a business or firm for the wholesale distribution of any drug, device, precursor chemical, or regulated chemical without a current Board-issued full service or nonprescription drug wholesale permit.

B. ~~2. Ownership and responsible person~~ Application~~:~~.

1. ~~The application for~~ To obtain a permit to operate a full service or nonprescription drug wholesale ~~drug permit~~ firm in Arizona, a person shall ~~be made~~ submit a completed application, on a form furnished by the Board, ~~which, when properly executed, shall indicate the ownership, trustee, receiver, corporation officers or other person or persons desiring the permit, including the name of the individual approved by and responsible to the Board for the operation of the wholesale facility, as well as the location, including the street name and number and the mailing address.~~ that includes:

~~3~~ a. ~~Qualification of responsible person: The applicant for a wholesale drug permit shall have the person responsible for purchasing, storing, transporting and selling narcotic and other controlled substances, prescription-only drugs, chemicals, prescription-only devices or nonprescription drugs Submit his educational and experience qualifications to the Board for approval. Only persons possessing the scientific and technical training experience requisite to protect the public health and safety, and who have not been convicted of a felony related to the sale or distribution of a nonprescription, prescription-only, controlled substance, or illicit drug shall be approved.~~ The type of drug wholesale permit;

b. Business name, address, mailing address, if different, telephone number, and facsimile number;

c. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;

d. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;

e. Whether the owner, any officer or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;

f. Whether the owner, any officer or active partner has ever been denied a drug wholesale permit in this state or any other jurisdiction, and if so, indicate where and when;

g. The type of drugs, nonprescription, prescription-only, controlled substances, human, or veterinary, the applicant will distribute;

h. Plans or construction drawings showing facility size and security adequate for the proposed business;

i. Documentation of compliance with local zoning laws;

j. Manager's or responsible person's name, address, emergency telephone number, and resume indicating educational or experiential qualifications related to drug wholesale operation;

k. For an application submitted because of ownership change, the former owner's name and business name, if different;

l. Date signed, applicant's, corporate officer's, partner's, manager's, or responsible person's verified signature and title; and

m. Fee specified in R4-23-205.

2. Before issuing a full service or nonprescription drug wholesale permit, the Board shall:

a. Receive and approve a completed permit application;

b. Interview the applicant and the responsible person, if different from the applicant, at a Board meeting; and

c. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer.

C. Notification. A full service or nonprescription drug wholesale permittee shall notify the Board of changes involving the type of drugs sold or distributed, ownership, address, telephone number, name of business, manager, or responsible person, including manager's or responsible person's telephone number.

~~B~~D. Distribution restrictions~~:~~.

1. Records~~:~~. A full service or nonprescription drug wholesale permittee shall:

a. Maintain records ~~shall be kept~~ to ~~insure~~ ensure full accountability of ~~prescription-only and controlled substance medications transactions~~ any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical including dates of receipt and sales, names, ~~and~~ addresses, and DEA registration numbers, if required, of suppliers or sources of merchandise, and customer names, ~~and~~ addresses, and DEA registration numbers, if required~~.~~ ;

b. File the records ~~of receipt and sales of all full service and nonprescription drug wholesalers shall be filed~~ required in subsection (a) in a readily retrievable manner for a minimum of 2 years; and ~~available for review by the staff of the Board.~~

c. ~~Lack of such records shall be grounds for the suspension or revocation of the wholesale drug permit.~~ Make the records required in subsection (a) available upon request during regular business hours for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(4). Records kept at a central location apart from the business location and not electronically retrievable shall be made available within 2 business days.

2. ~~Drugs sold only to drug permittees~~ Drug sales~~:~~.

a. ~~No prescription-only drug or device, narcotic or other controlled substance shall be wholesaled, sold, offered for sale, given away or otherwise disposed of by a full service wholesale drug permittee, except to a properly licensed firm or person, as specified in A.R.S. § 32-1929(A),(B) and (C).~~ A full service drug wholesale permittee shall:

i. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, to anyone except a pharmacy, drug manufacturer, full service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;

ii. Maintain a copy of the current ~~Such~~ permit or license ~~number shall be entered in the record~~ of each ~~such~~ person or firm~~.~~ who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and

iii. Provide permit and license records upon request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(4).

b. ~~No nonprescription drug shall be wholesaled, sold, offered for sale, given away or otherwise disposed of by a non-prescription drug wholesale permittee, except to a properly licensed firm or person.~~ A nonprescription drug wholesale permittee shall:

i. Not sell or distribute, any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a pharmacy, drug manufacturer, full service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;

ii. Maintain a record of the current ~~Such~~ permit or license ~~number shall be entered in the record~~ of each ~~such~~ person or firm. who buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and

iii. Provide permit and license records upon request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(4).

c. Nothing in this ~~paragraph~~ subsection shall be construed ~~as~~ to prevent the return of ~~drugs or devices~~ a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to the original source of supply.

~~d. Records of receipt and disposition of all drug merchandise shall be kept for a minimum of two years in a readily retrievable fashion and be made available upon request during regular business hours to the staff of the Board or other law enforcement officers in the course of official business. Records kept at a central location apart from the business location and not electronically retrievable shall be made available within two working days.~~

3. Out-of-state drug sales~~:~~.

a. ~~No prescription-only drug or device, narcotic or other controlled substance may be wholesaled, sold, offered for sale, given away or otherwise disposed of by a wholesale drug permittee except to a properly licensed or certified firm or person in another jurisdiction.~~ A full service drug wholesale permittee shall:

i. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, to anyone except a properly permitted, registered, licensed, or certified person or firm of other jurisdictions;

ii. ~~Such license or certification number shall be entered in the record of each person or firm.~~ Maintain a copy of the current permit, registration, license, or certificate of each person or firm who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and

iii. ~~The compliance officers or other authorized persons,~~ Provide permit, registration, license, and certificate records upon request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(4~~), shall have access to all such records of licensure or certification upon request~~.

4. Cash-and-carry sales~~:~~. ~~No prescription-only drug or device, controlled substance or nonprescription drug shall be furnished by~~ A full service or nonprescription drug wholesale ~~drug~~ permittee ~~on~~ shall complete a cash-and-carry ~~basis,~~ sale or distribution of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, only after:

a. ~~Until~~ Verifying the validity of ~~each such~~ the order; and

b. Verifying the identity of ~~each such~~ the pick-up ~~messenger is~~ person, ~~upon~~ for each ~~such occasion, checked~~ transaction by confirming that ~~with~~ the person or firm represented ~~as placing such an~~ placed the cash-and-carry order.

~~C~~**E.** ~~Premises:~~ Facility. A full service or nonprescription drug wholesale permittee shall:

1. Ensure that the ~~premises~~ facility occupied by a full service or nonprescription drug wholesale ~~drug~~ permittee ~~shall be~~ is~~:~~ of ~~suitable~~ adequate size and construction, well-lighted inside and outside, adequately ventilated, and kept clean, uncluttered, and sanitary ~~at all times.~~ ;

2. Ensure that the warehouse ~~facilities shall be~~ facility:

a. Is secure from unauthorized entry~~,~~ and

b. ~~a~~ Has an operational security system designed to provide protection against theft and diversion ~~shall be installed and operating.~~ ;

3. Ensure that only authorized personnel may enter areas where ~~prescription medications are~~ any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is kept~~.~~ ;

4. Ensure that ~~all~~ any thermolabile ~~drugs shall be~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored in ~~areas~~ an area where room temperature is maintained in compliance with storage conditions prescribed on the product label~~.~~ ;

~~3~~5. ~~the premises occupied by a full service or nonprescription drug wholesale permittee shall be made~~ Make the facility available for inspection by ~~the staff of the~~ a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(4) during regular~~ly scheduled office~~ business hours.

~~4~~6. ~~There shall be~~ Provide a quarantine area for storage of ~~prescription drugs~~ any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that ~~are~~ is outdated, damaged, deteriorated, misbranded, ~~or~~ adulterated, or that ~~are~~ is in an open container~~s that have been opened~~.

~~D~~**F.** Quality controls~~:~~. A full service or nonprescription drug wholesale permittee shall:

1. Ensure that ~~no~~ any fire, flood, or otherwise damaged or deteriorated ~~drug, medicine, medicinal chemical or device~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is not ~~shall be~~ sold, distributed, or delivered ~~at wholesale~~ to any person ~~or firm engaged in furnishing drugs~~ for human or ~~other~~ animal consumption~~.~~ ;
2. ~~Manufacturing, including packaging and repackaging prohibited: No full service or nonprescription wholesale drug permittee shall manufacture, package or repackage, label or relabel any drug.~~ Ensure that a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is not manufactured, packaged, repackaged, labeled, or relabeled by any of its employees;
3. Ensure that ~~all drugs, and devices~~ any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical stocked, sold, ~~or~~ offered for sale, or delivered ~~shall be~~ is:
   a. Kept clean;
   b. ~~and~~ Protected from contamination and ~~from~~ other deteriorating environmental factors~~,~~ ; and
   c. ~~shall comply~~ In compliance with applicable federal and state law and official compendium storage requirements~~.~~ ;
4. Maintain manual or automatic temperature~~/~~ and humidity recording devices or logs ~~shall be maintained~~ to document conditions in areas where ~~drugs are~~ any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored~~.~~ ; and

~~4~~5. Develop and implement a program to ensure that:
   a. ~~All~~ Any expiration-dated ~~items shall be~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is reviewed regularly~~.~~ ;
   b. ~~Items having~~ Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, that has less than 120 days remaining on ~~their dating shall be removed from sale, as shall any deteriorated or damaged item~~ the expiration date, is deteriorated, damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
   c. Any quarantined narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to its source of supply.

R4-23-607. Nonresident Permits

A. Permit. A person, who is not a resident of Arizona, shall not sell or distribute any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona without:
   1. A current Board-issued nonresident manufacturer permit, nonresident full service or nonprescription drug wholesale permit, or nonresident nonprescription drug permit; and
   2. A current equivalent license or permit issued by the licensing authority in the jurisdiction where the person or firm resides.

B. Application. To obtain a nonresident manufacturer, nonresident full service or nonprescription drug wholesale, or nonprescription drug permit, a person shall submit a completed application, on a form furnished by the Board, that includes:
   1. Business name, address, mailing address, if different, telephone number, and facsimile number;
   2. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
   3. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
   4. Whether the owner, any officer or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
   5. Documentation of compliance with local zoning laws;
   6. For an application submitted because of ownership change, the former owner's name and business name, if different;
   7. Date signed, applicant's, corporate officer's, partner's, manager's, or responsible person's verified signature and title, and
   8. Fee specified in R4-23-205.

C. In addition to the requirements of subsection (B), the following information is required:
   1. Nonresident manufacturer.
      a. Whether the owner, any officer or active partner has ever been denied a drug manufacturer permit in this state or any other jurisdiction, and if so, indicate where and when;

b. A copy of the drug list required by the FDA;
c. Plans or construction drawings showing facility size and security adequate for the proposed business;
d. Manager's or responsible person's name, address, and emergency telephone number; and
e. The firm's current FDA drug manufacturer or repackager registration number and expiration date; and

2. Nonresident full service or nonprescription drug wholesaler.
a. The type of drug wholesale permit;
b. Whether the owner, any officer or active partner has ever been denied a drug wholesale permit in this state or any other jurisdiction, and if so, indicate where and when;
c. The type of drugs, nonprescription, prescription-only, controlled substances, human, or veterinary, the applicant will distribute;
d. Plans or construction drawings showing facility size and security adequate for the proposed business;
e. Manager's or responsible person's name, address, emergency telephone number, and resume indicating educational or experiential qualifications related to drug wholesale operation; and

3. Nonresident nonprescription drug retailer.
a. Whether applying for Category I or Category II permit;
b. Date business started or planned opening date; and
c. Type of business, such as convenience, drug, grocery, or health food store, swap-meet vendor, or vending machine.

D. Notification.
1. Nonresident manufacturer. A nonresident manufacturer permittee shall notify the Board of changes involving listed drugs, ownership, address, telephone number, name of business, or manager including manager's telephone number.
2. Nonresident drug wholesaler. A nonresident full service or nonprescription drug wholesale permittee shall notify the Board of changes involving the type of drugs sold or distributed, ownership, address, telephone number, name of business, or manager including manager's telephone number.
3. Nonresident nonprescription drug retailer. A nonresident nonprescription drug permittee shall notify the Board of changes involving permit category, ownership, address, telephone number, name of business, or manager including manager's telephone number.

E. Drug Sales.
1. Nonresident manufacturer. A nonresident manufacturer permittee shall not:
a. Sell, distribute, give away, or dispose of, any narcotic or other controlled substance or prescription-only drug or device, to anyone in Arizona except, a pharmacy, drug manufacturer, or full service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32; and
b. Sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a pharmacy, drug manufacturer, full service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32.

2. Nonresident full service drug wholesaler. A nonresident full service drug wholesale permittee shall not:
a. Sell, distribute, give away, or dispose of, any narcotic or other controlled substance or prescription-only drug or device, to anyone in Arizona except a pharmacy, drug manufacturer, or full service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32; and
b. Sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a pharmacy, drug manufacturer, full service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32.

3. Nonresident nonprescription drug wholesaler. A nonresident nonprescription drug wholesale permittee shall not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a pharmacy, drug manufacturer, full service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32.

4. Nonresident nonprescription drug retailer. A nonresident nonprescription drug permittee shall not:
a. Sell, distribute, give away, or dispose of, a nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except in the original container packaged and labeled by the manufacturer;
b. Package, repackage, label, or relabel any drug, precursor chemical, or regulated chemical; and
c. Sell, distribute, give away, or dispose of, any drug, precursor chemical, or regulated chemical to anyone in Arizona that exceeds its expiration date, is contaminated or deteriorated from excessive heat, cold, sunlight, moisture, or other factors, or does not comply with federal law.

F. When selling or distributing any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona, a nonresident manufacturer, nonresident full service or nonprescription drug wholesale, or nonprescription drug permittee shall comply with federal law, the permittee's resident state drug law, and this Section.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R17-4-219	Repeal
R17-4-219	New Section

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 statute: A.R.S. § 28-4546

3. The effective date of the rules:

November 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. 3279, September 24, 1999

Notice of Proposed Rulemaking: 6 A.A.R. 3173, August 25, 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:

Statutory authority relegates regulation of temporary registration plates (TRP) to the agency's discretion. MVD has made no substantial changes to the requirements of the existing rule. Since, however, widespread changes to language and format are necessary to conform with current rulemaking stylistics, the agency undertakes repeal and complete rewrite. The new rule outlines clear and concise procedural requirements for issuing TRP's by authorized entities.

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 cost of this rulemaking is largely borne by the Division in production and administrative costs for TRP materials and handling. MVD covers these costs with regular vehicle registration revenues. Third party entities in TRP-issuing partnership on MVD's behalf benefit from undisclosed service fees imposed for services rendered. Vehicle dealers acquire a standard sales incentive to be able to offer the consumer a valid vehicle registration at the time of sale. The only dealer cost would be an $8 agency-assessed service charge if a TRP must be voided due to error. Consumers experience reduced need for in-person interaction with the agency.

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

The agency made global non-substantial changes between the proposed rule and final rule language upon recommendation of GRRC staff. These changes are categorized as:

a. Word choice to avoid use of the word "fee" in conflict with the definition in A.R.S. § 41-1001(8) and further application under A.R.S. § 41-1008(A). "Service charge" was substituted since the program-assessed charge is not for conducting an inspection or issuing a license.

b. Changes throughout the rule in grammar, punctuation, and stylistics to ensure rule language conforms to Administrative Procedure Act standards and the publishing style of Arizona's Secretary of State.

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

The agency received no comments on the proposed rule.

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 AND REGISTRATION

R17-4-219. ~~Procedures for issuing temporary registration permits~~ Repealed
R17-4-219. Temporary Registration Plate Procedure

ARTICLE 2. TITLES AND REGISTRATION

~~**R17-4-219. Procedures for issuing temporary registration permits**~~ **Repealed**

~~**A.** Procedure to follow when issuing temporary registration plates~~

~~1. Complete Temporary Registration Plate with all required information, filling in all blank spaces.~~

~~2. With a BLACK FELT MARKING PEN, fill in the date of issuance, in the boxes where outlined on the WHITE COPY of the Temporary Registration Plate. (Size of numbers must be at least 1" in height, and 1/4" in width.)~~

~~3. Moisten and apply the WHITE COPY to the vehicle per schedule shown:~~

~~a. Standard Passenger Cars and Trucks - Right corner of rear window.~~

~~b. Convertibles - Left rear side window.~~

~~c. Station Wagons - Left rear side window.~~

~~d. Motorcycles - To be displayed at rear of vehicle.~~

~~e. Boat, Horse, Luggage Trailers - To be displayed at rear of vehicle.~~

~~f. House or Camp Trailers - Right corner of rear window. (If no rear window, the left rear side window.)~~

~~4. Attach GREEN and YELLOW copies of the Temporary Registration Plate to the necessary title documents to be submitted with transmittal and proper fees to the County Assessor's office. ALL TITLE APPLICATIONS ACCOMPANIED BY THE GREEN AND YELLOW COPIES OF THE TEMPORARY REGISTRATION PLATE TO BE SUBMITTED TO THE COUNTY ASSESSOR NO LATER THAN TEN (10) DAYS AFTER THE DATE OF ISSUANCE.~~

~~5. PINK copy of the Temporary Registration Plate to be retained by the issuing dealer for a period of 3 years.~~

~~6. For the purposes of A.R.S. § 28-1315 and its requirement that each dealer notify the Division on the day a Temporary Registration Plate is issued, the transmittal and audit form shall serve as a copy of the Temporary Registration Plate if it contains the name of the purchaser, the Temporary Registration Plate number, the date of issuance and the year, make and identification number of the motor vehicle. Such transmittal and audit form shall be forwarded to Dealer Service, Motor Vehicle Division each day listing all Temporary Registration Plates issued for that day; provided that any such transmittal covering Temporary Registration Plates which are issued on Friday, Saturday or Sunday or legal holiday which are postmarked the next regular business day shall be considered to have been sent the same day it was issued.~~

~~7. The transmittal and audit form (AHD48-519 R-5-68) referred to in subsection (A)(6) may be modified for the dealer's convenience to permit him to comply with subsection (A)(7) of these instructions. Complete THREE (3) copies of the TRANSMITTAL AND AUDIT FORM (AHD48-519 R5-58), filling in all information. Submit the original with the title documents to the County Assessor, forward ONE copy to the Dealer Service, Motor Vehicle Division, the same day as the original is submitted to the County Assessor. Retain the 3rd copy for the dealer's own records.~~

~~**B.** Incomplete temporary registration plates~~
~~1. New vehicles~~
~~a. When a Temporary Registration Plate has been written for a new vehicle on a Manufacturer's Statement of Origin, and the sale is not completed, the GREEN copy is to be attached to the Manufacturers Statement of Origin, and the WHITE and YELLOW copies are to be forwarded immediately to the Dealer Service, Motor Vehicle Division, marked ROLL BACK, VEHICLE IN STOCK.~~
~~b. When the vehicle is eventually sold and the deal completed, attach the GREEN copy of the original Temporary Registration Plate with the GREEN and YELLOW copies of the 2nd Temporary Registration Plate issued on the same vehicle and submit to the County Assessor, whereby the fees will then be collected as of the DATE OF THE FIRST TEMPORARY REGISTRATION PLATE.~~
~~2. Used vehicles. When a Temporary Registration Plate has been written for a used vehicle and the sale is not completed, the dealer must then develop title and registration in the dealership name, by lining out the customers name and address on the GREEN and YELLOW copies of the Temporary Registration Plate, and insert the dealership name and address, then completing the transaction to the County Assessor.~~
~~**C.** Special instructions~~
~~1. Do not mark VOID on any Temporary Registration Plate. In case of an error, contact the Dealer Service, Motor Vehicle Division immediately for special instructions and authorization for proper handling.~~
~~2. When a Temporary Registration Plate has been written for a vehicle, and the previous owner surrenders the Arizona license plates with the current year's validation tabs, before the title documents have been submitted to the County Assessor, remove the WHITE copy from the vehicle, and return it along with the GREEN and YELLOW copies of the Temporary Registration Plate to the Dealer Service, Motor Vehicle Division, giving the Arizona license plate number and the current year's tab number if applicable.~~
~~3. Except where otherwise provided in these rules or by statute, when a Temporary Registration Plate has been written and registration is not completed, a registration fee of $6.25 if prior to July 1st or $4.75 if after July 1st of the current year will be charged. The WHITE, GREEN and YELLOW copies of the Temporary Registration Plate must be submitted to the Dealer Service, Motor Vehicle Division, accompanied by the proper fee. Common examples when this rule will apply are as follows:~~
~~a. When a vehicle has been dealer trade or wholesaled to another dealer.~~
~~b. When the Temporary Registration Plate has been written for a vehicle that is to be taken out-of-state.~~
~~c. When the Temporary Registration Plate has been written for a vehicle purchased by out-of-state residents who are entitled to retain their home state plates.~~
~~d. When 2 Temporary Registration Plates have been written for the same vehicle and/or for the same customer.~~
~~4. The foregoing examples are not intended to be a complete list of situations to which this rule applies; it is offered for guidance only.~~
~~**D.** Restrictions. A dealer shall not issue a Temporary Registration Plate to any vehicle requiring a Certificate of Weight, unless and until such Certificate of Weight has been obtained by the Dealer. The Certificate of Weight must accompany the Application for Title and the Application for Registration with the GREEN and YELLOW copies of the Temporary Registration Plate to the County Assessor.~~

R17-4-219. Temporary Registration Plate Procedure

A. Issuing.
1. A temporary-registration-plate "TRP" issuer shall validate the plate by:
   a. Marking an expiration date of no more than 45 days from validation with a black felt-tip marker in a manner that fills the space provided for the date and covers the holographic security strip; and
   b. Completing applicable information in all other blank spaces on the TRP.
2. An issuer shall not issue more than 1 TRP per vehicle sale;
3. An issuer shall attach a TRP to the vehicle rear in the same manner and position as a permanent license plate prescribed under A.R.S. § 28-2354; and
4. An issuer shall complete and distribute copies of a TRP registration form as follows:
   a. 1 copy to the owner to keep in the vehicle; and
   b. 1 copy to MVD as a support document for title application processing.

B. Voiding.
1. An issuer shall void a TRP under the following conditions:
   a. The issuer writes the TRP but does not complete Arizona vehicle registration,
   b. The issuer issues a duplicate TRP for the same vehicle or purchaser, or
   c. The issuer makes any alteration on the TRP.
2. An issuer shall reimburse MVD $8 for each voided TRP.

C. Recording.
1. A TRP issuer shall complete a written log of each TRP issue transaction using either:
   a. MVD form 48-4302 R09/97 as issued with the TRP and registration form, or

b. An issuer self-generated computer form that:
   i. Contains all information required under subsection (C)(2), and
   ii. Has an MVD copy of each completed TRP attached.

2. A TRP log form contains:
   a. TRP number,
   b. TRP issue date,
   c. Vehicle purchaser name and address,
   d. Vehicle identification number, and
   e. Attachment of any voided TRP or letter of explanation if a voided TRP is not available for attachment.

3. A TRP issuer shall distribute copies of a TRP log as follows:
   a. 1 copy to the original MVD or 3rd-party office issuing the TRP and registration form, and
   b. 1 copy for issuer records subject to MVD audit.

4. An issuer shall keep the TRP log record in subsection (C)(1) for 3 years as prescribed under A.R.S. § 28-4552(B).

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R20-4-503	Amend
R20-4-504	Repeal
R20-4-508	Amend
R20-4-516	Repeal
R20-4-518	Amend
R20-4-519	Amend
R20-4-524	Amend
R20-4-525	Repeal
R20-4-526	Repeal
R20-4-529	Repeal
R20-4-530	Repeal
R20-4-534	Amend

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

Authorizing statute: A.R.S. § 6-123

Implementing statutes: A.R.S. §§ 6-607, 6-634, 6-635, and 6-636

3. The effective date of the rules:

November 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. 967, March 10, 2000

Notice of Proposed Rulemaking, 6 A.A.R. 2783, July 28, 2000

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

Name: John P. Hudock

Address: 2910 North 44th Street, Suite 310
Phoenix, Arizona 85018

Telephone: (602) 255-4421, Ext. 167

Fax: (602) 381-1225

E-Mail: jhudock@azbanking.com

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

These rules regulate the operation of Small Loan Companies. In its 5-Year-Rule-Review Report approved November 3, 1998, the Department proposed to overhaul each Section in Article V. This proceeding is intended to fulfill that promise.

Amendments

The Department proposes to amend Sections R20-4-503, R20-4-508, R20-4-518, R20-4-519, R20-4-524, and R20-4-534 to modernize the writing style, remove passive constructions, and enhance each Section's clarity and readability.

In addition to these general goals, the revision of R20-4-524 will acknowledge and legitimize the modern practice of electronic recordkeeping. The same revision will also incorporate into one rule the provisions of three other rules that are being repealed in this rulemaking.

Finally, many of these amendments will implement statutory revisions added to Arizona Revised Statutes, effective October 1, 1997, by Laws 1997, Ch. 248, § 2. Those statutory changes are codified at A.R.S. §§ 6-631 through 6-638.

Repeals

R20-4-504

The Department proposes to repeal R20-4-504 because its subject matter is covered by the revised text of A.R.S. § 6-634 (A).

R20-4-516

The Department proposes to repeal R20-4-516 because it reflects a practice that is no longer current in the industry. The prevalence of electronic recordkeeping has rendered paper receipts obsolete, the customers do not want or retain them, and the licensee has every motive to create an electronic record to comply with the Sections on recordkeeping.

R20-4-525, R20-4-526, and R20-4-529

The Department also proposes to repeal Sections R20-4-525, R20-4-526, and R20-4-529. This same rulemaking will amend Section R20-4-524 to add the recordkeeping requirements of those three Sections. This creates a single Section controlling the books, accounts, and records of this class of licensees.

R20-4-530

Finally, the Department also proposes to repeal Section R20-4-530 because statutes now control the substance of that rule.

7. A reference to any study that the agency relied 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:

The Department did not rely on any study as an evaluator or justification for the rules.

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. The Banking Department

Income and expenses to this Agency are negligible. The Department will bear normal costs of the rulemaking process, as well as the cost of monitoring compliance. The Department will benefit from the ease of communication that results from a concise, modern set of rules.

B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services, to licensees' customers, will not increase to any measurable degree. The licensees' cost of rendering those services will decrease marginally.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

There is no measurable effect on private and public employment

F. State Revenues

This rulemaking will not change state revenues.

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

As a result of an examiner's comment, the final language of R20-4-503 has been rewritten. It now regulates, and limits, the permissible manners of collection of amounts adjusted into precomputed finance charges, as was the original purpose of the Section. The language of the revision, as originally proposed, had been drafted with an emphasis on records of amounts collected rather than the methods of collection.

In addition to the examiner comment discussed above, Council's staff has recommended editorial and stylistic changes to the originally proposed text of the rule. The changes improved the precision and clarity of the text and have been implemented.

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

The public was invited to comment in the Notice of Proposed Rulemaking. That invitation contained an agency contact name, address, telephone number, and fax number. However, no comments were received and no arguments against adoption have been raised.

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

Not applicable

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

There is no material incorporated by reference in these final rules.

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 5. SMALL LOANS

R20-4-503. Adjustments in Precomputed Charges ~~-- A.R.S. § 6-626~~
R20-4-504. Calculation of First Installment Date ~~-- A.R.S. §§ 6-625, 6-626~~ Repealed
R20-4-508. Cut-off Date for Computing Refunds upon Early Repayment in Full ~~-- A.R.S. §§ 6-626, 20-1611~~
R20-4-516. ~~Receipt for Default Charges -- A.R.S. §§ 6-621, 6-626~~ Repealed
R20-4-518. Deferral Fee ~~Extension Charge -- A.R.S. § 6-626~~
R20-4-519. Deferment Statement ~~-- A.R.S. §§ 6-621, 6-626~~
R20-4-524. Books, Accounts, and Records ~~-- A.R.S. §§ 6-605, 6-613, 6-615, 6-617, 6-122, 6-124~~
R20-4-525. Record of Legal Actions ~~-- A.R.S. §§ 6-605, 6-615, 6-616, 6-617, 6-122, 6-124~~ Repealed
R20-4-526. ~~Record of Loan Disbursements -- A.R.S. § 6-616~~ Repealed
R20-4-529. ~~Record of Filings and Recordings -- A.R.S. §§ 6-616, 6-122, 6-124~~ Repealed
R20-4-530. ~~Recording Fees -- A.R.S. § 6-628~~ Repealed
R20-4-534. ~~Property~~ Insurance ~~-- A.R.S. §§ 6-604, 6-632~~

ARTICLE 5. SMALL LOANS

R20-4-503. Adjustments in Precomputed Charges ~~-- A.R.S. § 6-626~~

~~Any adjustment in the total precomputed charges, due to the first installment period being more or less than one month, may be reflected in the first installment payment; spread over the life of the contract; or collected as part of the final payment under the contract.~~

A licensee shall adjust the total precomputed charges if the first installment period is more or less than 1 month long. The licensee's records shall reflect the adjustment's collection in 1 of 3 ways.

1. In the 1st installment payment,
2. Amortized over the life of the contract, or
3. As part of the final payment.

R20-4-504. ~~Calculation of First Installment Date -- A.R.S. §§ 6-625, 6-626~~ Repealed

~~The date of loan closure is the base from which the first installment date is calculated for the purpose of establishing the first installment period on precomputed loans.~~

R20-4-508. Cut-off Date for Computing Refunds upon Early Repayment in Full ~~-- A.R.S. §§ 6-626, 20-1611~~

~~For the purpose of computing refunds or credits on precomputed loans:~~

~~1. Any payment made on or before the 15th day following an installment date shall be deemed to have been made on such preceding installment date.~~

~~2. Any payment made on or after the 16th day following an installment date shall be deemed to have been made on the next succeeding installment date.~~

If a borrower repays a loan before the due date of the final installment, a licensee shall calculate any refund or credit due on the precomputed loan using the following rules:

1. A licensee shall credit any full repayment, made on or before the 15th day following an installment date, as if received on the last previous installment date.
2. A licensee shall credit any full repayment, made on or after the 16th day following an installment date, as if received on the next installment date.

R20-4-516. ~~Receipt for Default Charges -- A.R.S. §§ 6-621, 6-626~~ Repealed

~~A receipt shall be given the borrower, at the time a default is corrected, stating the amount of the default charge and when paid or payable.~~

R20-4-518. Deferral Fee ~~Extension Charge -- A.R.S. § 6-626~~

~~An extension charge may be collected at the time of the deferment or at any time thereafter. Any payment received at the time of deferment may be applied first to the extension charge and the remainder, if any, applied to the unpaid balance of the contract. If, however, such payment is sufficient to also pay in full an installment which is in default and the applicable default charge, it shall be first so applied and such installment shall not be deferred nor subject to the extension charge.~~

A. A licensee may collect a deferral fee at the time it agrees to a deferment or at any time after the assessment of a deferral fee. If a licensee receives a payment when it agrees to the deferment, it may apply the payment first to the deferral fee. Any remainder of the payment shall be applied to the balance of the loan.

B. If a licensee receives a payment that is large enough to pay in full a delinquent installment and all allowable delinquency fees, the licensee shall apply the payment 1st to the delinquent installment and fees. The licensee shall not show the paid installment as deferred, and shall not collect a deferral fee.

R20-4-519. Deferment Statement~~ -- A.R.S. §§ 6-621, 6-626~~

~~At the time a deferment is made, the borrower shall be given a statement showing the amount of the extension charge, the date and amount of his next scheduled payment and the extended maturity date of the loan, a copy of which statement shall be retained in the borrower's credit file.~~

A licensee shall give the borrower a statement at the time a deferment is made, and shall retain a copy of the statement in the borrower's credit file. The statement shall contain the following information:

1. The amount of the deferral fee,
2. The date of the borrower's next scheduled payment,
3. The amount of the borrower's next scheduled payment, and
4. The extended maturity date of the loan.

R20-4-524. Books, Accounts, and Records~~ -- A.R.S. §§ 6-605, 6-613, 6-615, 6-617, 6-122, 6-124~~

~~Books and records of all operations licensed under Chapter 5, A.R.S. shall be kept separate and apart from any other business.~~

A. A licensee may use a computer recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of its books, accounts, and records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may modify a computer recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any modification that changes a computer system back to a paper-based recordkeeping system;

B. A licensee shall keep its books, accounts, and records of operations licensed under A.R.S. Title 6, Chapter 5 separate from the books, accounts, and records of its other business activities.

C. In addition to any statutory requirements, the books, accounts, and records maintained by a Small Loan Company shall include the following:

1. A file containing a record of all legal actions brought during the fiscal year. A licensee shall keep the file until the Banking Department conducts its examination of the licensee.
2. An itemized record of disbursing the proceeds of each loan. The itemized record shall include the amount of refund on each loan that is renewed or refinanced if the licensee makes precomputed loans.
3. A record of the receipt of all allowable fees.
4. A record for each borrower and each loan that contains documentary evidence of filing or recording each instrument of record for the loan.
5. A record of the borrower's voluntary election to purchase any insurance in connection with a loan, if that insurance is sold by the licensee.

R20-4-525. ~~Record of Legal Actions -- A.R.S. §§ 6-605, 6-615, 6-616, 6-617, 6-122, 6-124~~ Repealed

~~Each licensee shall maintain a file containing a record of all legal actions brought during the fiscal year and retain such file until the licensee has been examined by the Banking Department.~~

R20-4-526. ~~Record of Loan Disbursements – A.R.S. § 6-616~~ Repealed

~~Each licensee shall maintain in his records an itemized statement showing the disbursements of the proceeds of each loan. If the licensee is operating under the precomputation method, the statement must include the amount of refund on each loan that is renewed or refinanced.~~

R20-4-529. ~~Record of Filings and Recordings -- A.R.S. §§ 6-616, 6-122, 6-124~~ Repealed

~~Each borrower's loan record shall contain a receipt or other verification of filing or recording for each instrument filed or recorded.~~

R20-4-530. ~~Recording Fees -- A.R.S. § 6-628~~ Repealed

~~Recording fees in the state of Arizona shall be limited to charges expended for recording in the original county and one additional recording or re-recording with the Secretary of State.~~

R20-4-534. ~~Property~~ Insurance~~ – A.R.S. §§ 6-604, 6-632~~

~~Licensees selling property insurance in connection with a loan on which a premium or identifiable charge is made, shall produce the voluntary election of the borrower electing insurance in the amount of the loan and charges or the approximate value of the property to be insured as fixed by the borrower, as follows:~~

~~I ELECT TO PURCHASE INSURANCE ON THE PROPERTY MADE COLLATERAL FOR MY LOAN IN THE SUM OF $. I KNOW THAT MY LOAN OBLIGATION IS $_____, AND I FIX THE VALUE OF THE ABOVE PROPERTY AT $_____.~~

~~or at the election of the licensee in form or manner approved by the State Banking Department. (Section 6-632(D), Title 6, Chapter 5, A.R.S.)~~

A. A licensee shall obtain written evidence of the borrower's voluntary election to purchase insurance in connection with a loan if the licensee's sale of insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO
PURCHASE INSURANCE IN THE AMOUNT OF
$_____.
I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS
THE SUM OF $_____.

B. A licensee shall obtain written evidence of the borrower's voluntary election to purchase property insurance in connection with a loan if the licensee's sale of property insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO
PURCHASE PROPERTY INSURANCE IN THE AMOUNT OF
$_____.
I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS
THE SUM OF $_____.
I ATTEST THAT THE VALUE OF MY PROPERTY INSURED
IN CONNECTION WITH THIS LOAN IS THE SUM OF
$_____.