

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R4-23-110 | Amend |
| R4-23-408 | 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. § 32-1904(A)(1)
Implementing statute: A.R.S. § 32-1901(59)
- 3. The effective date of the rules:**
January 11, 2001
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 4534, December 3, 1999
Notice of Proposed Rulemaking: 6 A.A.R. 2362, June 30, 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
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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rule was initiated to comply with the time-frame requirements of A.R.S. § 41-1072. The rule was not initiated by a 5-year rule review. The rule adds new definitions for "computer system", "computer system audit", "CRT", "dispensing pharmacist", "sight-readable", "single-drug audit", and "single-drug usage report" to R4-23-110. The rule addresses format and style changes necessary under the current administrative procedure act and other necessary language changes to provide a clear, concise, and understandable document.

The rule makes changes to R4-23-408 that address the minimum requirements for the use of a computer system to process, store, and retrieve original and refill prescription order information and maintain patient profiles. The rule identifies the specific prescription order information necessary to meet the minimum requirements. The rule addresses the use of the computer system as a replacement for the hard-copy refill prescription order information required in R4-23-402 and R4-23-407. The rule requires a computer system audit process to assure that a specific computer system can maintain accurate refill prescription order information and includes remedies for noncompliance. Instead of writing rules for time-frames for computer certification, the decision was made by the Board to no longer certify pharmacy computer systems. A pharmacy may begin using a computer system to process, store, and retrieve original and refill prescription order information and maintain patient profiles. If a routine compliance inspection by Board compliance officer identifies a non-compliant pharmacy computer system, the rule provides remedies to establish recordkeeping compliance.

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The Board believes that approval of these rules will benefit the public health and safety by establishing minimum standards for the use of a computer system to process, store, and retrieve original and refill prescription order information and maintain patient profiles. The Board further believes that specific regulation and enforcement are necessary to regulate and control the use of rapidly evolving technology by pharmacists.

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 rule increases protection of public health and safety by establishing minimum standards for the use of a computer system to process, store, and retrieve original and refill prescription order information and maintain patient profiles. In the last 20 plus years, the use of computer systems by pharmacies has gradually increased to where today it is very rare, fewer than 1% in Arizona, to find a pharmacy that does not use a computer system. A computer system provides many benefits to the pharmacy and the public it serves. The foremost benefit is time. A computer system allows prescription processing and refill record accessing in less time than a manual system. A computer system provides better labels, better receipts, better patient and drug-specific information for both the pharmacist and the consumer. Both pharmacist and patient have come to depend on the computer system. The rule deals with minimum standards for the use of a computer system in a pharmacy and benefits the Board of Pharmacy by promoting consistent compliance. Arizona pharmacies and pharmacists benefit because the rule is concise and compliance standards are crystal clear. Arizona citizens benefit by receiving a standard of care based on contemporary technology and rules.

Although the rule does not require the use of a computer system, fewer than 1% of Arizona pharmacies do not use a computer system, a pharmacy may need to upgrade its computer system to meet the minimum standards established by the rule. This is an obvious economic impact for those pharmacies. The rule has a grandfather clause to allow pharmacies with existing systems to continue to use the system under certain circumstances. Because the majority of the pharmacies in Arizona are chain pharmacies, the rule will actually have little economic impact. The chain pharmacies are on the cutting edge of the technology in pharmacy computer systems.

The rule will have very little economic impact because the standards established for maintaining refill prescription order information have been in place since November 1983. The rule takes those standards and uses them to establish minimum standards for all computer systems. A pharmacy computer system that is already certified by the Board to comply with the existing rule for maintaining refill prescription order information will have no trouble complying with the amended rule. The Board will no longer certify computer systems. The rule establishes enforcement remedies for non-compliant systems. Instead of certifying a computer system before use, Board compliance officers will verify, after startup, a computer system's compliance with the standards established in rule.

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

In subsections (B)(4) and (5) and (F), the Board removed the words "or intern". Because the majority of pharmacy computer systems use a pharmacist's initials at the beginning of the filling process instead of the end, the Board added a clarifying sentence to subsection (B)(6) that allows the continued use of those computer systems if the permittee or pharmacist-in-charge provides documentation that identifies the dispensing pharmacist. The final rule contains numerous style, format, grammar, and punctuation changes requested by GRRC staff.

Section R4-23-110 contains amended or new definitions that were not part of the published proposed rules. These definitions were not part of the published proposed rules because they were part of another rulemaking. A notice of final rulemaking containing these definitions was filed with the Secretary of State and was effective on November 13, 2000.

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

None

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

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 4. PROFESSIONAL PRACTICES

R4-23-408. Computer ~~Requirements~~ Records

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 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.

“Computer system” means an automated data-processing system that uses a programmable electronic device to store, retrieve, and process data.

“Computer system audit” means an accounting method, involving multiple single-drug usage reports and audits, used to determine a computer system’s ability to store, retrieve, and process original and refill prescription dispensing information.

“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.

“CRT” means a cathode ray tube or other mechanism used to view information produced or stored by a computer system.

“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.

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“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.

“Dispensing pharmacist” means a pharmacist who, in the process of dispensing a prescription medication after the complete preparation of the prescription medication and before delivery of the prescription medication to a patient or patient’s agent, verifies, checks, and initials the prescription medication, as required in R4-23-402(A).

“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.

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“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.

“Sight-readable” means that an authorized individual is able to examine a record and read its information from a CRT, microfiche, microfilm, printout, or other method acceptable to the Board or its designee.

“Single-drug audit” means an accounting method that determines the numerical and percentage difference between a drug’s beginning inventory plus purchases and ending inventory plus sales.

“Single-drug usage report” means a computer system printout of original and refill prescription order usage information for a single drug.

“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 inquiries, 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 4. PROFESSIONAL PRACTICES

R4-23-408. Computer Requirements Records

- A. ~~As an alternative to the procedures set forth in R4-23-407, an automated data processing system (“system”) may be used for the storage and retrieval of refill information for prescription orders, patient profiles and drug interactions if the following conditions have been met:~~
- ~~1. A system must provide for the retrieval (via CRT display or hard copy printout) of original prescription order information for those prescription orders which are currently authorized for refilling. Such information shall include, but not be limited to:
 - a. Date of issuance of the original prescription order;
 - b. Full name and address of the patient;
 - c. Name and address of the practitioner;
 - d. DEA registration number of the practitioner in the case of Schedule III and IV controlled substances;
 - e. Name, strength, dosage form and quantity prescribed;
 - f. Quantity dispensed; and
 - g. Total number refills authorized.~~
 - ~~2. A system must provide for the retrieval (via CRT display or hard copy printout) of the current refill history of prescription orders. Refill history shall include, but not be limited to:
 - a. Name of drug;
 - b. Date of refill;
 - c. Quantity dispensed;
 - d. Name or identification code of manufacturer or distributor in the case of a generically written prescription or a generic substitution;
 - e. Name or initials of the dispensing pharmacist for each refill; and
 - f. Total number of refills dispensed to date.~~
 - ~~3. Documentation of the correctness of refill information entered into a system must be provided by the pharmacist using a system. Documentation includes one of the following:
 - a. A hard copy printout of each days’ refill data which has been verified, dated and signed by each refilling pharmacist; or
 - b. A bound log book or separate file of daily statements which have been signed by each refilling pharmacist and which state that refill data has been reviewed by him and is correct.~~
 - ~~4. The documentation referred to in (A)(3)(a) above must be provided to the pharmacy using a system by a refilling pharmacist within 72 hours of the date of dispensing.~~
 - ~~5. A pharmacy using a system shall keep its hard copy printout, bound log book or separate file for a period of three years from the date of dispensing.~~
 - ~~6. A system must provide for retrieval (via CRT display or hard copy printout) shall include the following:
 - a. Name of prescribing practitioner;
 - b. Name and address of the patient;
 - c. Quantity dispensed for each refill;
 - d. Date of dispensing for each refill;
 - e. Name or identification code of the dispensing pharmacist; and
 - f. Number of the original prescription order.~~
 - ~~7. A system which has a central record keeping location must be capable of transmitting information to a user pharmacy within 48 hours of its request. A user pharmacy shall verify the transmittal capability of its system upon request.~~

8. ~~A user pharmacy shall have an auxiliary procedure for documentation of refill data to be used in the event of system down time. Such a procedure shall insure that all refill data is retained for on-line data entry as soon as the system is available for use again. Systems Manual. A pharmacy permittee or pharmacist-in-charge shall:~~
 1. Develop and implement policies and procedures for the following operational aspects of a computer system:
 - a. Examples of all output documentation provided by the computer system that contains original or refill prescription order or patient profile information;
 - b. Steps a pharmacy employee follows when the computer system is not operational due to scheduled or unscheduled system interruption;
 - c. Regular and routine backup file procedure and file maintenance;
 - d. Audit procedures, personnel code assignments, and personnel responsibilities; and
 - e. Quality assurance mechanism for data entry validation;
 2. Review and revise the policies and procedures biennially;
 3. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee; and
 4. Make the policies and procedures available within the pharmacy for reference by pharmacy personnel and inspection by the Board or its designee.
- B. ~~Any pharmacist who intends to use a system must notify D.E.A. of his intent. Computer system data storage and retrieval. A pharmacy permittee or pharmacist-in-charge shall ensure that the computer system is capable of:~~
 1. Producing sight-readable information on all original and refill prescription orders and patient profiles;
 2. Providing on-line retrieval (via CRT display or hard-copy printout) of original prescription order information required in A.R.S. § 32-1968(C), A.A.C. R4-23-402(A), and R4-23-407(A);
 3. Providing on-line retrieval (via CRT display or hard-copy printout) of patient profile information required in A.A.C. R4-23-402(A);
 4. Providing documentation identifying the pharmacist responsible for dispensing each original or refill prescription order, except a pharmacy permittee with a computer system, that is in use before the effective date of this Section that cannot provide documentation identifying the dispensing pharmacist, may continue to use the computer system by providing manual documentation identifying the dispensing pharmacist;
 5. Producing a printout of all prescription order information, including a single-drug usage report that contains:
 - a. The name of the prescribing medical practitioner;
 - b. The name and address of the patient;
 - c. The quantity dispensed on each original or refill prescription order;
 - d. The date of dispensing for each original or refill prescription order;
 - e. The name or identification code of the dispensing pharmacist; and
 - f. The serial number of each prescription order; and
 6. Providing a printout of requested prescription order information to an individual pharmacy within 72 hours of the request if prescription order information is maintained in a centralized computer record system.
- C. ~~A system must be approved by the Board prior to its use. The filling and refilling of prescriptions shall comply with the requirements of R4-23-402(A)(9) and subsection (A) of this rule prior to system approval by the Board. A pharmacy permittee or pharmacist-in-charge of a pharmacy that begins using a pharmacy computer system shall notify the D.E.A. and the Board in writing that original and refill prescription information and patient profiles are now contained in a computer system.~~
- D. If a pharmacy computer system does not comply with the requirements of subsections (A) or (B), the pharmacy permittee or pharmacist-in-charge shall bring the computer system into compliance within 3 months of a notice of noncompliance or violation letter. If the computer system is still non-compliant with subsections (A) or (B) after 3 months, the pharmacy permittee or pharmacist-in-charge shall immediately comply with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- E. If a pharmacy's personnel perform manual recordkeeping under subsection (D), the pharmacy's personnel shall continue manual recordkeeping until the pharmacist-in-charge sends proof, verified by a Board compliance officer, that the computer system complies with subsections (A) and (B).
- F. Security. To maintain the confidentiality of patient records, a pharmacy permittee or pharmacist-in-charge shall ensure that:
 1. The computer system has security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription order information and patient profiles; and
 2. After a prescription order is dispensed, any alteration of prescription order information is documented, including the identification of the pharmacist responsible for the alteration.
- G. A computer system that does not comply with all the requirements of subsections(A) and (B) may be used in a pharmacy if:
 1. The computer system was in use in the pharmacy before the effective date of this Section, and
 2. The pharmacy complies with the manual recordkeeping requirements of R4-23-402 and R4-23-407.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION
SUBCHAPTER A. GENERAL AND ADMINISTRATIVE

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R15-2A-101 | 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. § 42-1005
Implementing statute: A.R.S. § 43-101

- 3. The effective date of the rules:**
January 11, 2001

- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 6 A.A.R. 3118, August 18, 2000
Notice of Proposed Rulemaking: 6 A.A.R. 3463, September 8, 2000

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

Address: Tax Research & Analysis Section
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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rule stated that the rules in Chapter 2 relate to the income tax act of 1978 which was codified in A.R.S. Title 43. In addition, the rule provided for the special numbering scheme that was used in Chapter 2. However, the reference to the income tax act of 1978 is repetitive of A.R.S. 43-101 and the numbering scheme is obsolete due to the recodification of Chapter 2, which was published on June 23, 2000 (6 A.A.R. 2308). The Section listed is obsolete, repetitive and no longer needed and is repealed.

- 7. Reference to any study that the agency relied on in its evaluation of or justification for the final 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:**
In accordance with A.R.S. § 41-1055(D)(3), the Department is not required to prepare an economic, small business, and consumer impact statement because the repeal of this rule decreases monitoring, recordkeeping or reporting burdens.

- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
None

Notices of Final Rulemaking

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

The Department did not receive any written or verbal comments on the rule action after the publication of the rule-making in the Notice of Proposed Rulemaking.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION
SUBCHAPTER A. GENERAL AND ADMINISTRATIVE
ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R15-2A-101. ~~Title Repealed~~

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

~~R15-2A-101. Title Repealed~~

- ~~**A.** Income Tax Act of 1978. These regulations relate to the Income Tax Act of 1978 which was codified in Title 43 of Arizona Revised Statutes and became effective January 1, 1979.~~
- ~~**B.** Arrangement and numbering. These regulations are arranged in sequence with the Arizona Revised Statutes; for example, the regulation relating to A.R.S. Section 43-101 would be R15-2-101. In those areas where the law is considered self-explanatory, the numbering will be noted as reserved. Arizona Revised Statutes will hereinafter be referred to as Section 43-666.~~
- ~~**C.** Dual references. References made to the "Income Tax Act of 1978", the "Act", or the "Income Tax Code" may include a dual and interchangeable meaning. References to the Income Tax Act of 1978 and the Act in particular can be construed as a substitution for the words, "Income Tax Code" or "Arizona State Income Tax Code".~~

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION
SUBCHAPTER D. CORPORATIONS

PREAMBLE

1. Sections Affected

R15-2D-201
R15-2D-301
R15-2D-402
R15-2D-802

Rulemaking Action

Repeal
Repeal
Repeal
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. § 42-1005

Implementing statutes: A.R.S. 43-947, 43-1121, 43-1122, and 43-1145

3. The effective date of the rules:

January 11, 2001

Arizona Administrative Register
Notices of Final Rulemaking

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 1173, April 23, 1999
Notice of Rulemaking Docket Opening: 6 A.A.R. 1807, May 19, 2000
Notice of Recodification: 6 A.A.R. 2308, June 23, 2000
Notice of Rulemaking Docket Opening: 6 A.A.R. 3118, August 18, 2000
Notice of Proposed Rulemaking: 6 A.A.R. 3465, September 8, 2000

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

Name: Jim Bilski
Tax Analyst

Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 West Monroe
Phoenix, AZ 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

E-mail: BilskiJ@revenue.state.az.us

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

R15-2D-201 and R15-2D-301 provide information related to certain corporation income tax additions and subtractions. R15-2D-402 provides information related to consolidated and combined income tax returns. R15-2D-802 provides information related to the denominator of the sales factor.

R15-2D-201, R15-2D-301, and R15-2D-402 are proposed for repeal because the information in the rules is either repetitive of the statutes or inconsistent with the statutes.

R15-2D-802 is proposed for repeal because part of the rule is repetitive of the statutes and R15-2D-801. In addition, the last sentence of the rule is inconsistent with the statutes.

7. Reference to any study that the agency relied on in its evaluation of or justification for the final 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:

In accordance with A.R.S. § 41-1055(D)(3), the Department is not required to prepare an economic, small business, and consumer impact statement because the repeal of these rules decreases monitoring, recordkeeping or reporting burdens.

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

Not applicable

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

The Department did not receive any written or verbal comments on the rule action after the publication of the rulemaking in the Notice of Proposed Rulemaking.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 15. REVENUE

**CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION
SUBCHAPTER D. CORPORATIONS**

ARTICLE 2. ADDITIONS TO ARIZONA GROSS INCOME

R15-2D-201. ~~Additions to Arizona Gross Income~~ Repealed

ARTICLE 3. SUBTRACTIONS FROM ARIZONA GROSS INCOME

R15-2D-301. ~~Subtractions from Arizona Gross Income~~ Repealed

ARTICLE 4. MULTISTATE DIVISION OF INCOME

R15-2D-402. ~~Consolidated Returns by Controlled Corporations~~ Repealed

ARTICLE 8. SALES FACTOR

R15-2D-802. ~~Sales Factor Denominator~~ Repealed

ARTICLE 2. ADDITIONS TO ARIZONA GROSS INCOME

R15-2D-201. ~~Additions to Arizona Gross Income~~ Repealed

~~A corporation uses the taxable income as computed in accordance with the federal Internal Revenue Code as a starting point in calculating its Arizona taxable income. It is then necessary to make a series of modifications in order to reflect differences between federal and Arizona income tax laws. For subtractions required see R15-2-1122. Additions are as follows:~~

- ~~1. Modifications provided in Section 43-1021, paragraphs (8) through (20), (22) and (24). The additions included at Section 43-1021, paragraphs (8) through (20), (22) and (24) are applicable to corporations as well as individuals. In the case of a corporation, the term "adjusted gross income" should be read as "taxable income" wherever it is used in Section 43-1021, paragraphs (8) through (20), (22) and (24).~~
- ~~2. Dividends received deduction. Any dividends received deduction claimed in determining federal taxable income under Sections 243, 244 and 245 of the federal Internal Revenue Code must be added back in determining Arizona taxable income. A subtraction is permitted under Section 43-1122, paragraph (2) for dividends received from Arizona corporations if the requirements of Section 43-1052 are met.~~
- ~~3. Taxes paid to other states, local governments or foreign governments. All income taxes paid to states other than Arizona, local governments outside the state of Arizona or foreign governments which were deducted in the determination of federal taxable income shall be added back in the determination of Arizona taxable income. These items are specifically not deductible for Arizona purposes.~~
- ~~4. Expenses related to tax-exempt income. See R15-2D-301(5).~~
- ~~5. Reserved.~~
- ~~6. Reserved.~~

ARTICLE 3. SUBTRACTIONS FROM ARIZONA GROSS INCOME

R15-2D-301. ~~Subtractions from Arizona Gross Income~~ Repealed

~~Subtractions are as follows:~~

- ~~1. Modifications provided in Section 43-1022, paragraphs (7) and (11) through (27) and (29), (30) and (34). In the case of a corporation the term "federal adjusted gross income" should be read as "federal taxable income" wherever it is used in Section 42-1022, paragraphs (13), (14), and (18).~~
- ~~2. Dividends from Arizona corporations. See R15-2D-201(2).~~
- ~~3. Reserved~~
- ~~4. Reserved~~
- ~~5. Expenses related to tax-exempt income~~
 - ~~a. Since Section 43-1121, paragraph (4) provides for the disallowance (addition) of expenses and interest relating to tax-exempt income for Arizona purposes), Section 43-1122, paragraph (5) eliminates the potential of a double disallowance by permitting a subtraction for any such expenses disallowed by Section 265 of the federal Internal Revenue Code in determining federal taxable income.~~
 - ~~b. Section 43-1121, paragraph (4) and Section 43-1122, paragraph (5) are necessary since there will be cases where the exempt income as determined in accordance with the federal Internal Revenue Code will differ from exempt income as determined in accordance with the Arizona Income Tax Act of 1978. As a result the related expenses would be different for federal purposes as opposed to Arizona purposes.~~

Example: Corporation A, an Arizona corporation which carries on all of its business activities within the state of Arizona, incurs indebtedness of \$10,000 and with those funds purchases \$10,000 of bonds issued by the state of California. Section 265 of the federal Internal Revenue Code would preclude a deduction for the interest expense on the \$10,000 indebtedness since the obligation was incurred to purchase and carry an obligation the interest from which was exempt from federal income taxes. However, since for Arizona purposes, the interest income from non-Arizona state obligations is includible in income (Section 43-1021, paragraph (8)), the interest expense would be deductible and should be subtracted from federal taxable income in accordance with Section 43-1122, paragraph (5).

- 6. Reserved.
- 7. Reserved.

ARTICLE 4. MULTISTATE DIVISION OF INCOME

R15-2D-402. Consolidated Returns by Controlled Corporations Repealed

~~A. Definitions. For purposes of this Section, the following definitions shall apply:~~

- ~~1. Consolidated return. A consolidated return is a single consolidated income tax return by a group of corporations meeting common ownership standards. The member entities may be engaged in diverse businesses and may or may not be operationally integrated. A consolidated return is a consolidation of the separate returns of each affiliated member of the group. Each member entity operating within and without Arizona will apportion income to Arizona based on a separate apportionment ratio relating only to that member. The net income and losses against member entities will be consolidated, offsetting losses against gains.~~
- ~~2. Combined return. A combined return is required to be filed by a group of commonly owned corporations or businesses which constitute a unitary business because the basic operations of the entities are integrated and interrelated. See R15-2-1132. The total income of the unitary group must be combined and allocated to Arizona for taxation purposes by means of 1 apportionment formula. The combined report has the same purpose and effect as the apportionment of the net income of a unitary business conducted by a single corporation. A group of corporations operating wholly in Arizona may be required to file a combined return if the group constitutes a unitary business. See A.R.S. § 43-942. In the case of such wholly owned Arizona corporations, 100% of the net income of the unitary business is allocated to Arizona.~~

~~B. This Section provides authority for the Department to require a consolidated return under certain prescribed situations. This Section provides no authority for 2 or more taxpayers which operate wholly within Arizona to file a consolidated return. Two or more taxpayers which comprise a unitary business as defined in R15-2-1131 are required to file a combined, not a consolidated return. Discreet, separate and diverse taxpayers must file separate Arizona income tax returns.~~

ARTICLE 8. SALES FACTOR

R15-2D-802. Sales Factor Denominator Repealed

~~Sales factor: denominator. The denominator of the sales factor shall include the total domestic gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded pursuant to R15-2D-903. The unitary trade or business from which total gross receipts are derived is limited to that business subject to the tax imposed by and computed pursuant to the Internal Revenue Code, except as provided in A.R.S. § 43-1132. Gross receipts from sales of tangible personal property which are not taxable in any state having jurisdiction to tax shall be excluded from the denominator.~~

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

**CHAPTER 4. DEPARTMENT OF REVENUE
PROPERTY AND SPECIAL TAX SECTION**

PREAMBLE

1. Sections Affected

- Chapter 4
- R15-4-103
- R15-4-107
- R15-4-108
- R15-4-109
- R15-4-115
- R15-4-116
- R15-4-118
- R15-4-302

Rulemaking Action

- Amend
- Amend
- Amend
- Repeal
- Amend
- Repeal
- Amend
- Amend
- Amend

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

Authorizing statutes: Laws 1980, Ch. 221, § 11, A.R.S. §§ 42-1005, 42-11053, 42-11054, and 42-13002

Implementing statutes: A.R.S. Const. Art. 9, § 2.2 A.R.S. §§ 42-11111, 42-13005, 42-14052, 42-14053, 42-14054, 42-14103, 42-14105, 42-14152, 42-14154, 42-14202, 42-14204, 42-14251 through 42-14255, 42-14303, 42-14305, 42-14352, 42-14354, 42-14355, 42-14402, 42-14403, 42-15005, 42-15010, and 42-17154

3. The effective date of the rules:

January 11, 2001

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 3232, September 17, 1999

Notice of Proposed Rulemaking: 6 A.A.R. 2528, July 7, 2000

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

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

These rules deal with the valuation or assessment of properties for property tax purposes. As a result of legislative changes and the 5-year review of Title 15, Chapter 4, the Department is amending or repealing the rules to conform to current statutes and appraisal methods, update statutory references, remove language that is obsolete or that is repetitive of statute and conform to current rulemaking guidelines. The Department is amending R15-4-109 to state the information that shall be included in the property tax forms. In addition, the Department is repealing R15-4-108 and R15-4-115. The information in R15-4-108 is incorporated into R15-4-107. R15-4-115 is no longer needed because the annual report for airlines is addressed in R15-4-109 and the method for determining the full cash value of airline companies has changed and is now included in statute since this rule was written.

7. Reference to any study that the agency relied on in its evaluation of or justification for the final 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:

It is expected that the benefits of the rules will be greater than the costs. The amendment of these rules will benefit the public by making the rules conform to current statute, appraisal methods and rulemaking guidelines, which will make the rules more accurate as well as clearer and easier to understand. In addition, the amendment of R15-4-109 will benefit taxpayers whose property is valued by the Department by describing the type of information that is required to be included in the forms prescribed by the Department. The Department will incur the costs associated with the rule-making process. Taxpayers are not expected to incur any expense in the amendment of these rules.

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

Due to a publishing error, the titles of R15-4-118 and R15-4-302 were completely underlined. The titles of these rules have been corrected to only underline the new language.

R15-4-116 was changed to clarify the term "totally and permanently disabled" and the persons qualified to certify an individual as totally and permanently disabled.

R15-4-118 was changed to specify the period of time within which the Department is to notify a county assessor of a validation code modification.

Based on the review performed by the staff of the Governor's Regulatory Review Council, the Department made various nonsubstantive grammatical and formatting changes.

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

The Department did not receive any written or verbal comments on the rule action after the publication of the rule-making in the Notice of Proposed Rulemaking.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 15. REVENUE

**CHAPTER 4. DEPARTMENT OF REVENUE
PROPERTY AND SPECIAL TAX SECTION**

ARTICLE 1. PROPERTY VALUATION

- R15-4-103. Prorating Value for Classification Purposes
- R15-4-107. Separately Owned Separate Assessment of Minerals and Mineral Rights
- R15-4-108. Valuation of Separately Assessed Minerals or Mineral Rights Repealed
- R15-4-109. Taxpayer Reports ~~reports~~
- R15-4-115. Annual Report Repealed
- R15-4-116. Exemption for Totally and Permanently Disabled Person Definition
- R15-4-118. Sales Screening and Processing

ARTICLE 3. VALUATION OF AIRLINE PROPERTY

- R15-4-302. Definitions

ARTICLE 1. PROPERTY VALUATION

R15-4-103. Prorating Value for Classification Purposes

- A. If the assessor determines that a parcel of property should have more than 1 assessment ratio due to multiple uses pursuant to ~~under A.R.S. § 42-15010, A.R.S. § 42-227,~~ the assessor shall:
 - 1. Calculate the assessment ratios ~~shall be calculated in accordance with~~ according to subsections (B) and (C) ~~this rule,~~ and
 - 2. Apply the ratios ~~applied~~ to the full cash value of the entire parcel.
- B. For secondary tax purposes, the assessor shall calculate separate assessment ratios ~~shall be calculated~~ for land and improvements.
 - 1. The assessment ratio for land ~~is shall be~~ calculated by taking the full cash appraised value of the land in each class divided by the total full cash value of the land. The resultant quotient for each class ~~is shall be~~ then multiplied by the assessment ratio for the class. The sum of these products is the ratio for the land.
 - 2. The assessment ratio for improvements ~~is shall be~~ calculated by taking the full cash appraised value of the improvements in each class divided by the total appraised full cash value of the improvements. The resultant quotient for each class ~~is shall be~~ then multiplied by the assessment ratio for the class. The sum of these products is the assessment ratio for improvements.
- C. For primary tax purposes, the assessor shall calculate a single assessment ratio ~~shall be calculated to be applied~~ apply to the limited value. The single assessment ratio is the sum of the factors calculated in subsections (C)(1) and (C)(2).
 - 1. ~~The assessment ratio for limited value shall be calculated by dividing the~~ The full cash value of the land is divided by the total full cash value of land and improvements. The resultant quotient ~~is shall be~~ then multiplied by the assessment ratio for land as calculated in subsection (B)(1) above.
 - 2. The full cash value of improvements ~~is shall be~~ divided by the total full cash value of land and improvements. The resultant quotient ~~is shall be~~ then multiplied by the assessment ratio for improvements as calculated in subsection (B)(2) above.
 - 3. ~~The sum of the factors calculated in (C)(1) and (C)(2) is the assessment ratio for limited value.~~

R15-4-107. Separately Owned Separate Assessment of Minerals and Mineral Rights

- A.** ~~If in any case where the ownership of minerals or mineral rights in land is different from the ownership of are owned by some person or persons other than the person or persons owning the surface rights, the assessor shall assess any such minerals or mineral rights may be assessed separately from the surface rights. Whenever the value of the minerals or mineral interest is substantial, then such separately owned minerals or mineral interest shall be separately assessed.~~
- B.** The assessor shall value separately owned minerals or mineral rights on a standard amount per acre that is annually determined by the Department unless:
1. There are known mineral reserves.
 2. There is a current mineral lease on the property, or
 3. There is a reasonable basis for believing that the value of the mineral rights or the minerals located on the property exceeds the standard amount per acre determined by the Department.

R15-4-108. Valuation of Separately Assessed Minerals or Mineral Rights Repealed

~~Unless there are known mineral reserves, or unless there is a current mineral lease on the property, or unless there is a reasonable basis for believing that minerals having a substantial value are located on the property, such separately owned minerals or mineral interest in land shall be valued at such amount per acre as is annually determined by the Department of Revenue.~~

R15-4-109. Taxpayer Reports reports

- A.** ~~On or before the statutory deadline April 1 of each year, mines, railroad companies, private car companies, railroads, pipelines, natural gas distribution companies, water companies, electric companies, sewer companies, airline companies, and telecommunications companies, and oil, gas and geothermal producers, shall file property tax reports in a the reports required by the Director of the Department of Revenue. The reports shall be in such form as is prescribed by the Director. The form shall contain all the information necessary to identify the taxpayer and the property and to value the property according to prescribed statutory methods or standard appraisal methods and techniques contained in guidelines or manuals prescribed under A.R.S. § 42-11054. The Department shall not accept a form that does not contain all the necessary information.~~
- B.** A taxpayer may request that the Director grant an Requests for extension of time for filing a property tax report. The taxpayer shall submit the extension request to be made with the Director or the Director's designee in writing on or before the statutory due date April 1.

R15-4-115. Annual Report Repealed

- A.** ~~Every airline company operating within this state shall file a report under oath with the Department on or before the statutory deadline of each year. This report shall set forth the following information according to type of aircraft for the entire preceding calendar year provided, however, that the taxpayer may report for the first week of each calendar quarter of the preceding calendar year if reporting on that basis does not result in a lower valuation apportioned to the state than reporting on an entire calendar year basis:~~
- ~~1. The total Arizona ground time for flight property operated in air commerce;~~
 - ~~2. The total system ground time for flight property operated in air commerce;~~
 - ~~3. The total Arizona mileage for flight property operated in air commerce; and~~
 - ~~4. The total system mileage for flight property operated in air commerce.~~
- B.** ~~Aircraft are of different types under Subsection (A) of this rule if any of the following differ:~~
- ~~1. Seating capacity;~~
 - ~~2. Type, size, or placement of engines;~~
 - ~~3. Manufacturer, or~~
 - ~~4. Overall design.~~
- C.** ~~Annual reports shall be reported on forms prescribed by the Department. Such forms shall be filed on or before the statutory deadline each year. If any form is not fully completed, such form may not be accepted for filing.~~

R15-4-116. Exemption for Totally and Permanently Disabled Person Definition

- A.** “Disabled”. For purposes of the property tax exemption in A.R.S. Const. Art. 9, § 2.2, a person is the term “totally and permanently disabled person” if the person is unable to engage in any substantial gainful activity, for pay or profit, by reason of any physical or mental impairment that is expected to:
1. Last for a continuous period of 12 months or more, or
 2. Result in death within 12 months.
- B.** To qualify for the exemption, a disabled person shall be certified as totally and permanently disabled by a person licensed under:
1. A.R.S. Title 32, Chapter 8, 13, 14, 17, 19.1, or 29; or
 2. The laws of another state that are comparable to the laws governing persons qualifying under subsection (B)(1), means:
1. A person who is totally and permanently disabled, either physically or mentally, resulting in the person's inability to engage in any substantial gainful activity.

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2. ~~The disability must be expected to last for a continuous period of not less than 12 months and must be medically certified by a competent medical authority.~~

R15-4-118. Sales Screening and Processing

- A. ~~Except as provided in subsection (B),~~ the the Department's sales-ratio studies shall be based upon sales data contained in affidavits of property value affidavits which have been that are screened by the county assessors assessor and the Department.
- B. In preparing sales-ratio studies, the Department may supplement the sales data contained in property value affidavits with an appraisal or other industry-standard market value information.
- ~~B.C.~~ The Department shall maintain a list of validation codes to be used by the county assessors assessor for the screening, editing, and processing of affidavits of a property value affidavit. The county assessors assessor shall assign a validation code from the Department's list to each affidavit of property value affidavit before transmittal to the Department. The county assessor shall transmit a property value affidavit to the Department as follows:
 1. ~~For sales which do a sale that does~~ not require a change in a parcel's legal description, the assessors assessor shall transmit such affidavits of the property value affidavit to the Department within 30 days of recording; and
 2. ~~For sales which require changes a sale that requires a change~~ in a parcel's legal description, the assessors assessor shall transmit such affidavits of the property value affidavit to the Department by January 31 of the year following the calendar year of recording.
- ~~C.D.~~ The Department may modify the validation codes code assigned to any affidavit of a property value affidavit by the county assessor. The Department shall notify the county assessor in writing of any such modifications the modification within 30 days after the modification. The county assessor may request the Department to reconsider the modified validation codes code within 15 days after receiving notice of the Department's modification.
- ~~D.E.~~ If the validation code as assigned by the county assessor or as modified by the Department indicates that a sale does not represent the market value of the subject property, the Department that sale shall exclude that sale be excluded from the Department's sales-ratio studies.
- E. ~~Multiple parcel sales of five or less parcels shall be included in the Department's sales-ratio studies, unless the validation code indicates that the sale does not represent market value.~~
- F. If the validation code as assigned by the county assessor or as modified by the Department indicates that a sale represents the market value of the subject property, the Department shall:
 1. ~~compute~~ Compute the ratio ~~that~~ of the full cash value of the subject property ~~bears~~ to the selling price of the subject property; and
 2. Include the ratio in the sales-ratio studies, unless the ratio: for use in its sales-ratio study. However, the Department shall eliminate the following from its sales-ratio studies:
 1. Sales that have
 - a. Is extremely high or extremely low ratios;
 2. Relates to the sale of property that has substantially changed since the date of the sale and the assessor's full cash value for the property reflects the change Sales in which there has been new construction; and or
 3. Relates to a sale Sales which do that does not represent the market value of the subject property for the tax year in question.

ARTICLE 3. VALUATION OF AIRLINE PROPERTY

R15-4-302. Definitions

For the purposes of valuation and taxation of airline companies under A.R.S. Title 42, Chapter 14, Article 6 the following rules, ~~unless the context requires otherwise,~~ the following definitions ~~will~~ apply:

1. "Acquisition cost" means the cost to the current owner.
2. "Acquisition date" means the date placed in service by the current owner.
3. "Arizona mileage" means that portion of system mileage which was flown within Arizona, based on a mileage table developed annually by the Department. The mileage table shall be based on maps and charts published by the Arizona Department of Transportation.
4. "Fleet type" means aircraft type and model.
- 1.5. "Flight property" as defined in A.R.S. § 42-14251 A.R.S. § 42-701 shall ~~include~~ includes both owned and leased aircraft.
6. "Original cost" means the capitalized acquisition cost of airframes and engines plus modifications, including capitalized interest, as of December 31 of the preceding calendar year.
- 2.7. "Permanently removed from operations" means aircraft ~~which have been that are~~ entirely terminated from ~~regularly scheduled~~ regularly-scheduled operations by an airline company.
- 3.8. "Regularly scheduled" means the operation of aircraft that completed at least 120 landings or takeoffs within Arizona during the preceding calendar year, according to a plan of dates or times for landings and takeoffs, regardless of whether the plan is published for customer use. whether published or not, which meets the following criteria: completion of at least 120 landings or takeoffs within Arizona during the preceding calendar year.

9. ~~“System mileage” means the total statute mileage flown within and outside Arizona during the preceding calendar year. It is the sum of airport to airport distances of all flights scheduled, including those flights operated as extra sections to accommodate traffic overflow.~~

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

PREAMBLE

1. Sections Affected

R17-4-435
R17-4-435.01
R17-4-435.02
R17-4-435.03
R17-4-435.06

Rulemaking Action

Amend
Amend
Amend
Amend
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. § 28-366

Implementing statute: A.R.S. § 28-5204

3. The effective date of the rules:

January 11, 2001

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

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

Notice of Proposed Rulemaking: 6 A.A.R. 3469, September 8, 2000

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

Name: George R. Pavia
Department Rules Supervisor

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Telephone: (602) 712-8446

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

MVD engages in this rulemaking for the following reasons:

- a. To incorporate sections of the 1999 edition of the 49 CFR by reference into Arizona Motor Carrier Safety administrative rule.
- b. To add a law enforcement requested clarification on determination of a vehicle’s gross vehicle weight rating (GVWR) in the absence of a vehicle’s GVWR plate or vehicle identification number (VIN).
- c. In R17-4-435.02, this rulemaking corrects an error in subsection (B)(7) in the required vision acuity. Also under subsection (C)(2)(d)(i) a change is made in the number of required notification days for CDL testing to align the rule’s provision with current program requirements.
- d. To implement minor language changes or deletions to streamline and align Arizona’s rule with current 49 CFR codification, Arizona Department of Public Safety internal organizational structure, and the current Secretary of State’s publishing style.
- e. To correct an inadvertent typographical numeration error of R17-4-435.06 in the previous rulemaking.

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:

Economic costs of the general motor carrier safety requirements of intrastate-only entities are not readily quantifiable by this statement. Entity costs to bring vehicles into federal compliance could range from minimal to substantial depending upon necessary vehicle modifications. Subsection (C) of the full economic impact statement will address the difficulties in estimating potential costs to motor carrier entities for compliance to federal regulations.

Three state agencies will share federal funding of approximately \$1.3 million allocated under the Motor Carrier Safety Assistance Program (MCSAP) for incorporating and enforcing the federal transportation code in this state.

A new law enforcement provision for determining GVWR in the absence of the manufacturer's value and vehicle identification number (VIN) will incur very minimal costs to motor carrier entities in driver recordkeeping and very minimal costs to DPS for training which will most likely be restricted to broadcast memorandum notification.

The cost and benefit provisions added under the rulemaking effective February 1, 2000 remain unchanged in this proposed rule. These provisions are:

- a. Drug and alcohol testing procedures for intrastate carriers.
- b. The intrastate commercial driver license pilot program for insulin-dependent diabetics.

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

In R17-4-435:

- a. Subsection A. The "Federal Highway Administration, Office of Motor Carriers" was changed to the "Federal Motor Carrier Safety Administration." The former was abolished and its duties transferred to the latter.
- b. Subsection B (1) was deleted. The Bureau of Motor Carrier Safety is no longer in existence.

In R17-4-435.02:

- c. Subsection D. The reference to amending 49 CFR 391.51 paragraph (b)(2) was changed to (b)(8). This reflects a change in paragraph numeration between the 1996- and 1999-49 CFRs inadvertently overlooked in drafting the proposed rule.

Globally edits were made in word choice, grammar, syntax, and publishing stylistics as recommended by Governor's Regulatory Review Council staff. The changes listed are all non-substantive.

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

Three written comments were received from the commanding sergeant of the Arizona Department of Public Safety, Commercial Enforcement Bureau. The comments recommended non-substantial changes to R17-4-435 and R17-4-435.02. The Division incorporated the recommended changes into the final rulemaking as detailed in preamble item #10.

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:

Title 49 of the Code of Federal Regulations, October 1, 1999 edition, Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399. These incorporations appear in R17-4-435, Subsection A.

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

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

ARTICLE 4. MOTOR CARRIERS

R17-4-435. Motor Carrier Safety: Adoption of Federal Regulations; Definitions; Application

- R17-4-435.01. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information
- R17-4-435.02. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers
- R17-4-435.03. Motor Carrier Safety: 49 CFR 382 - Controlled Substances and Alcohol Use and Testing
- R17-4-435.06. Insulin-dependent Commercial Driver License Waiver Pilot Study Program

R17-4-435. Motor Carrier Safety: Adoption of Federal Regulations; Definitions; Application

- A. The Division ~~adopts~~ incorporates by reference 49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399 published October 1, ~~1996~~ 1999, and no later amendments or editions; ~~incorporated by reference~~ and on file with the ~~Federal Highway Administration, Office of Motor Carriers~~ Federal Motor Carrier Safety Administration, the Division, and the Office of the Secretary of State, as amended by R17-4-435 through R17-4-435.06.
- B. The following definitions apply for purposes of R17-4-435 through R17-4-435.06 unless indicated otherwise:;
- ~~1. "Bureau of Motor Carrier Safety" means the United States Department of Transportation.~~
 - ~~2~~ 1. "Co-applicant" means an employer or potential employer.
 - ~~3~~ 2. "Commercial driver license" or "CDL" has the meaning prescribed in A.R.S. § 28-3001 (2).
 - ~~4~~ 3. "Division" or "MVD" means the Motor Vehicle Division, Arizona Department of Transportation.
 - ~~5~~ 4. "Division Director" means the Assistant Director of the Arizona Department of Transportation for the Motor Vehicle Division or the Assistant Director's designated agent.
 - ~~6~~ 5. "49 CFR" means Title 49, Code of Federal Regulations.
- C. The regulations of 49 CFR, incorporated by subsection (A), apply as amended by R17-4-435.01 through R17-4-435.06 to:
1. ~~Motor Carriers~~ A motor carrier as defined in A.R.S. § 28-5201 except ~~a~~ motor carriers transporting passengers for hire in a vehicle with a design capacity of 6 or fewer persons.
 2. ~~All vehicles owned~~ A vehicle owned or operated by the state, a political subdivision, or a public authority of the state, ~~which are that is~~ used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in R17-4-436.

R17-4-435.01. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information

- A. 49 CFR 390.3 General applicability is amended as follows:
1. Paragraph (a) is amended to read:
The regulations adopted in this rule are applicable to all motor carriers operating in Arizona and ~~all any~~ any vehicles owned or operated by the state, a political subdivision, or a public authority of the state, ~~which are that is~~ used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in R17-4-436.
 2. Paragraph (e) (b) is amended ~~by adding the following sentence at the end of the paragraph to read:~~
In addition to the requirements specified in 49 CFR 383, motor A motor carrier drivers domiciled in Arizona who operates ~~Commercial Motor Vehicles~~ a commercial motor vehicle as defined in A.R.S. § 28-3001 shall comply with the requirements of A.R.S. Title 28, Chapter 8 and any rules made under that Chapter.
 3. Paragraph (d) (c) is amended to read:
~~Motor carriers~~ A motor carrier operating in Arizona in furtherance of a commercial enterprise, shall comply with the financial responsibility requirements specified in A.R.S. Title 28, Chapter 9, Article 2, and 49 CFR 387.
- B. 49 CFR 390.5 Definitions. The definitions listed in 49 CFR 390.5 are amended as follows:
1. If the term "Commercial Motor Vehicle" or "CMV" is used in reference to the controlled substances and alcohol use and testing requirements of 49 CFR 382, the term has the meaning prescribed in 49 CFR 382.
 2. If the term "Commercial Motor Vehicle" or "CMV" is used in reference to the licensing requirements ~~of either 49 CFR 383 or prescribed under~~ A.R.S. § 28-3001, the term has the meaning ~~at 49 CFR 383 or prescribed under~~ A.R.S. § 28-3001.
 3. If the term "Commercial Motor Vehicle" or "CMV" is not used in reference to the controlled substances and alcohol use and testing requirements of 49 CFR 382 or the licensing requirements ~~of 49 CFR 383 or prescribed under~~ A.R.S. § 28-3001, the term means a self-propelled, motor-driven vehicle or vehicle combination, used on a public highway in this state ~~in furtherance of~~ during a commercial enterprise, ~~which that:~~
 - a. Has a gross vehicle weight rating (GVWR) as a single vehicle or a ~~combination~~ gross combination vehicle weight rating (~~CGVWR~~) (GCWR) of 18,001 pounds or more; ~~or~~
 - b. Transports passengers for hire and has a design capacity of 7 or more persons; or
 - c. Transports hazardous materials in an amount requiring marking or placarding as prescribed in R17-4-436.
 2. "Exempt intracity zone" is deleted from R17-4-435.01 through R17-4-435.04 and has no application in these rules.
 3. "For-hire motor carrier," "private motor carrier," "private motor carrier of passengers (business)" and "private motor carrier of passengers (non-business)" are deleted from R17-4-435.01 through R17-4-435.04 and the term "motor carrier" is used.

4. ~~Combination gross~~ Gross combination vehicle weight rating (CGVWR) (~~GCWR~~) and ~~gross vehicle weight rating (GVWR)~~ have has the meaning prescribed ~~in~~ under 49 CFR 390.5, Definitions.
5. Gross vehicle weight rating (GVWR) has the meaning prescribed under 49 CFR 390.5, Definitions, amended by adding:
In the absence of a value specified by the manufacturer and the vehicle identification number, law enforcement shall use a vehicle's actual gross weight or declared gross weight to determine the GVWR.
- ~~5-6.~~ "Regional Director" means the Division Director.
- ~~6-7.~~ "Special agent" means an officer or agent of the Department of Public Safety, the Division, or ~~of~~ a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.
- ~~7-8.~~ "State" means a state of the United States ~~and or~~ the District of Columbia.
- C. 49 CFR 390.15 Assistance in investigations and special studies. Paragraph (a) is amended to read:
A motor carrier shall make all records and information pertaining to an accident available to a special agent upon request or as part of any inquiry within the time the request or inquiry specifies. A motor carrier shall give a special agent all reasonable assistance in the investigation of any accident including providing a full, true, and correct answer to any question of the inquiry.
- D. 49 CFR 390.21 Marking of commercial motor vehicles. Paragraph (a) is amended to read:
This Section applies to all motor carrier vehicles operated in Arizona. A motor carrier not subject to ~~the U.S. Department of Transportation~~ marking requirements ~~of the U.S. Department of Transportation~~, shall mark its vehicles with the:
1. company Company name, or
2. business Business trade name, and
3. the city City and state.
- E. 49 CFR 390.23 Relief from regulations.
1. Paragraph (a) is amended to read:
~~The regulations~~ Regulations contained in 49 CFR 390 through 397 do not apply to a motor carrier that:
a. is not subject to Is exempt from federal jurisdiction, and
b. that operates Operates a commercial motor vehicle used or designated to provide relief during an emergency.
2. Paragraphs (a)(1), (a)(1)(A), (a)(1)(B), and (a)(1)(B)(ii) are deleted.
3. Paragraph (a)(2)(A) is amended as follows:
An emergency has been declared by a federal, state, or local government official having authority to declare an emergency; and
4. Paragraph (a)(2)(B) is amended as follows:
The Arizona Department of Public Safety, ~~Special Services Region~~ Commercial Vehicle Enforcement Bureau, determines a local emergency exists that justifies an exemption from any or all of these Parts. If the Arizona Department of Public Safety, ~~Special Services Region~~ Commercial Vehicle Enforcement Bureau determines relief from these regulations is necessary to provide vital service to the public, relief shall be granted with any restrictions the Arizona Department of Public Safety considers necessary.
5. Paragraph (b) is amended as follows:
"Interstate commerce" means ~~in the furtherance of~~ engagement in a commercial enterprise.
- F. 49 CFR 390.25 Extensions of relief from regulations - emergencies is amended as follows:
A motor carrier seeking to extend a period of relief from these regulations shall obtain approval from the Arizona Department of Public Safety, ~~Special Services Region~~ Commercial Vehicle Enforcement Bureau. The motor carrier shall give full details of the additional relief requested. ~~Taking into account the severity of the emergency and the nature of the relief services to be provided by the motor carrier, the~~ The Arizona Department of Public Safety shall observe time limits for emergency relief from regulations as prescribed under 49 CFR 390.23(a), but Arizona Department of Public Safety shall may extend a period of relief with any restrictions considered necessary: after considering:
1. Severity of the emergency,
2. Nature of relief services to be provided by the motor carrier, and
3. Other restrictions that may be necessary.
- G. 49 CFR 390.27 Locations of regional motor carrier safety offices is amended to read:
~~To make a request for relief from these regulations, the~~ A motor carrier requesting relief from these regulations shall contact the Arizona Department of Public Safety, ~~Special Services Region~~ Commercial Vehicle Enforcement Bureau, Telephone (602) 223-~~2242~~ 2522.

R17-4-435.02. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers

- A. 49 CFR 391.11 Qualifications of drivers. Paragraph (b)(1) is amended to read:
Is at least 21 years of age for interstate operation; and at least 18 years of age for operations restricted to intrastate transportation not involving the transportation of a reportable ~~quantities~~ quantity of hazardous substances, hazardous wastes required to be manifested, or hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in R17-4-436.

B. 49 CFR 391.49 Waiver of certain physical defects.

1. Paragraph (a) is amended by adding:

A person not physically qualified to drive as prescribed in 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10) but otherwise qualified to drive a motor vehicle, may drive a motor vehicle in intrastate commerce if the Division Director grants an intrastate waiver to the person. Application for an intrastate waiver shall be submitted ~~in accordance with~~ according to subsection (C). If granted, an intrastate waiver shall be for a period not exceeding 2 years. A person granted an intrastate waiver may transfer the intrastate waiver from an original employer to a new employer upon written notification to the Division Director stating the name of the new employer and the type of equipment to be driven.

2. Paragraph (b) is amended by adding:

To obtain an intrastate waiver, an applicant or an applicant and co-applicant shall submit a letter of application for an intrastate waiver of a physical qualification. The application shall be addressed to the Motor Vehicle Division, Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100. The applicant shall comply with all the requirements of 49 CFR 391.49 (c), "Waiver of certain physical defects", except paragraphs (c)(1)(i) and (c)(1)(iii). The driver applicant shall respond to the requirements of 49 CFR 391.49 (c)(2)(ii) through (c)(2)(v), if the information is known.

3. Paragraph (c)(1)(iv) is amended to read:

A description of the driver applicant's limb or visual impairment for which waiver is requested.

4. Paragraph (d)(3)(i) is amended to read:

The medical evaluation summary for a driver applicant disqualified ~~in~~ under 49 CFR 391.41 (b)(1) or (b)(10) shall include:

5. Paragraph (d)(3)(i)(B) is amended by adding:

Or a statement by the examiner that an applicant for an intrastate waiver has:

- a. ~~distant~~ Distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in 1 eye;
- b. ~~a field~~ Field of vision of at least ~~70 degrees~~ 70° peripheral measurement of the horizontal meridian of the applicant's dominant eye; and
- c. ~~the ability~~ Ability to distinguish the colors of a traffic signals ~~and or~~ devices showing standard red, green, and amber.

6. Paragraph (d)(3)(iii) is added:

The medical evaluation for a driver applicant disqualified as prescribed ~~in~~ under 49 CFR 391.41(b)(3) shall include the requirements ~~found~~ in 49 CFR 391.64.

7. Paragraph (j) is amended by adding:

A person with a distant visual acuity of ~~less~~ greater than 20/40 (Snellen), with or without a corrective lens, in 1 eye; a field of vision of less than ~~70 degrees~~ 70° peripheral measurement of the horizontal meridian of the person's dominant eye; and the inability to distinguish the colors of a traffic signals ~~and or~~ devices showing standard red, green and amber, shall not:

- a. ~~transport~~ Transport any amount of hazardous materials required to be marked or placarded as prescribed ~~in~~ under R17-4-436, ~~nor or~~
- b. ~~operate~~ Operate a vehicle for the purpose of transporting passengers as prescribed ~~in~~ under R17-4-435.

C. Waiver procedures for an intrastate drivers.

1. The Division Director shall appoint the Division's Medical Review Officer to review a requests for a physical waivers.

2. The Medical Review Officer shall:

- a. Review an application for waiver to ensure all provisions of 49 CFR 391.49 are met;
- b. Take necessary testimony and accept documentation and information about the application;
- c. Ensure that a driver applying for an intrastate waiver of the visual requirements:
 - i. Has driven the type of vehicle to be operated as prescribed in the waiver for at least 2 of the previous 5 years, and
 - ii. Will not transport passengers for hire, or
 - iii. ~~Will not~~ transport a reportable ~~quantities~~ quantity of a hazardous substances, hazardous wastes ~~required to be manifested that requires a manifest,~~ or hazardous material ~~required to be marked or placarded that requires marking or placarding~~ as prescribed ~~in~~ under R17-4-436;

d. Notify the applicant by mail:

- i. To contact the nearest CDL examiner to schedule a time to take the CDL pre-inspection, off-road, and on-road tests within ~~60~~ 30 days from date of notice.
- ii. Of the ~~decision to approve or deny~~ approval or denial of the waiver within 10 days of the decision to approve or deny.

3. The applicant shall submit an application to the Division as prescribed ~~in~~ under 49 CFR 391.49 (a), (b), (c) and (d) as amended by this rule.

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4. Waiver form.
 - a. The Division shall ensure that the application for waiver form reflects the terms, conditions, or limitations of the waiver.
 - b. The Division shall maintain the original waiver form.
 - c. The motor carrier shall retain a legible copy of the waiver form:
 - i. ~~as long as the driver is employed~~ During the driver's employment as a driver, and
 - ii. ~~for~~ For a minimum of 3 years thereafter after the driver ceases driving for the motor carrier.
 - d. A driver granted a waiver form shall ~~keep~~ possess a legible copy of the waiver ~~in possession~~ when driving a commercial motor vehicle.
 5. Hearings and appeals. If the ~~Division Director~~ Medical Review Officer denies a waiver application, the applicant may request a hearing with the MVD Executive Hearing Office within 15 days from the date of the notice as prescribed ~~in~~ under R17-4-901 through R17-4-912.
 6. ~~The Division Director~~ Using the US Department of Transportation Federal Highway Administration's Regulatory Criteria for Evaluation under Section 391.41, April 1996, the Medical Review Officer may suspend for life the commercial vehicle operating privilege of any driver who, after issuance of a waiver as prescribed in this Section:
 - a. ~~fails~~ Fails to meet the conditions imposed by this Section,
 - b. ~~or is found to have committed~~ Commits a serious traffic violation as described under A.R.S. § 28-3312(E), or
 - c. ~~is~~ Is involved in a reportable accident related to the driver's medical condition.
 7. ~~The provisions of this Section are not valid if~~ If enforcement of ~~these~~ any provisions of this Section would result in the loss of or the disqualification of federal funding for any state agency or program, that provision is invalid.
- D. Subpart F - Files and Records.**
49 CFR 391.51 Driver qualification files. Paragraph (b)(2) ~~8~~ is amended by adding the following text:
or the Division Director's letter of notification, granting an intrastate waiver of physical disqualification, if a waiver is granted as prescribed in this ~~rule~~ Section.
- E. The following sections are deleted:**
1. 49 CFR 391.68 Private motor carrier of passengers (non-business).
 2. 49 CFR 391.69 ~~Drivers operating in Hawaii.~~
 3. ~~49 CFR 391.71 Intrastate drivers of commercial motor vehicles transporting Class 3 combustible liquids.~~
 4. ~~49 CFR 391.73 Private motor carrier of passengers (business).~~

R17-4-435.03. Motor Carrier Safety: 49 CFR 382 - Controlled Substances and Alcohol Use and Testing

- A. 49 CFR 382.103 Applicability. Paragraph (a)(1) is amended to read:
The commercial driver's license requirements of the State of Arizona.
- B. 49 CFR 382.115 Starting date for testing programs. Paragraph (a) is amended to read:
The controlled substance and alcohol use and testing requirements commence for all motor carriers on the date this ~~rule~~ Section goes into effect.
- C. Paragraphs (b) through ~~(c)~~ (d) are deleted.

R17-4-~~436.06~~ 435.06. Insulin-Dependent Commercial Driver License Waiver Pilot Study Program

The Division shall create a pilot study program for insulin-dependent diabetics to process, monitor, and evaluate the feasibility of establishing a waiver program for intrastate drivers who are disqualified as prescribed in the provisions of 49 CFR 391.41 (b)(3), but who are otherwise qualified. All requirements of R17-4-435.02 apply except (B)(3) and (B)(4).

1. The Medical Review Officer, authorized to approve or deny waiver applications, shall administer the pilot study program.
2. The study program begins on the effective date of this rule and terminates 2 years from that date.
3. All waivers issued through the study program terminate upon the expiration of the study program.
4. The Division Director may extend the study or establish a permanent waiver process after review of the study program results.
5. An insulin-dependent diabetic may apply for a waiver, restricted to the State of Arizona, for participating in the 2-year pilot study if:
 - a. The applicant submits blood glucose logs to the endocrinologist or medical examiner at an annual examination or at any time as directed by the medical review section.
 - b. The applicant has a driving record meeting the minimum requirements of safe driving as specified in applicable federal and state safety regulations and has no serious traffic violation as described under A.R.S. § 28-3312 (E), no period of driver disqualification, and no reportable accident for the 3-year period before submitting the waiver application.
 - c. A separate signed statement from an examining ophthalmologist is submitted that the applicant has been examined and does not have unstable proliferative diabetic retinopathy, unstable advancing disease of blood vessels in the retina, and has stable acuity of at least 20/40 Snellen in each eye, with or without corrective lenses.
6. An insulin dependent diabetic commercial driver license applicant shall provide:

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- a. A board-certified or board-eligible endocrinologist with a complete medical history including the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies pertaining to the diabetes and follow-up reports, and reports of any hypoglycemic insulin reactions within the prior 12 months or from the date the applicant started using insulin, whichever is later.
- b. An examination by a board-certified or board-eligible endocrinologist. The complete medical examination shall consist of a comprehensive evaluation of the applicant's medical history and current status, including a review of:
 - i. Fasting blood studies glucose, glycosylated hemoglobin/Hb Alc I including lab reference page and urinalysis performed during the last 6 months; and
 - ii. Insulin dosages and types, diet utilized for control, and any significant factors such as smoking, alcohol use, and other medications, or drugs taken.
- c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
 - i. The endocrinologist is familiar with the applicant's medical history for the past 12 months whether through actual treatment over that time or through consultation with a physician who has treated the applicant during that time.
 - ii. The applicant is free from insulin reactions including severe hypoglycemia and hypoglycemia awareness, and has had no more than 1 documented hypoglycemic reaction per month in the previous 12 months or from the date the applicant started using insulin injections, whichever is later.
 - iii. The applicant does not have severe hypoglycemia episodes of altered consciousness requiring the assistance of another person to regain control.
 - iv. The applicant does not have hypoglycemia unawareness or the inability to recognize the early symptoms of hypoglycemia such as sweating, anxiety, forceful heartbeat, and light-headedness.
 - v. The applicant's diabetic condition will not adversely affect the applicant's ability to operate a commercial motor vehicle; and
 - vi. The applicant is educated in diabetes and its management and is thoroughly informed of and understands procedures to follow to monitor and manage the applicant's diabetes and procedures to follow if complications arise.
- d. An insulin-dependent applicant for a commercial driver license waiver shall meet the following requirements for the last 3 years before application:
 - i. Have a driving record that contains no suspension or revocation of the applicant's driver license for the operation of any motor vehicle, including personal vehicles, except a suspension or revocation due to nonpayment of fines;
 - ii. Have no involvement in an accident as defined in 49 CFR 390.5 for which the applicant received a citation for a moving traffic violation while operating a commercial motor vehicle;
 - iii. Have no conviction for a disqualifying offense described in 49 CFR 383.51, or more than 1 serious traffic violation as described in 49 CFR 383.51 and A.R.S. § 28-3312 (E) while operating a commercial motor vehicle; and
 - iv. Have no more than 2 convictions for any non-serious moving traffic violations while operating a commercial motor vehicle.
- e. The applicant shall immediately report any arrest, citation, or conviction to the MVD Medical Review Program. Failure to do so may result in denial or rescission of the waiver.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected

R20-4-102

Rulemaking Action

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(2)

Implementing statute: A.R.S. § 6-123(1)

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3. The effective date of the rules:

January 10, 2001

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

Notice of Rulemaking Docket Opening, 5 A.A.R. 2266, July 16, 1999

Notice of Proposed Rulemaking, 6 A.A.R. 2718, July 21, 2000

Notice of Rulemaking Docket Opening, 6 A.A.R. 3572, September 15, 2000

Notice of Proposed Rulemaking, 6 A.A.R. 3564, September 15, 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, AZ 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:

This rulemaking revises the definition of "employee" so that it includes so-called leased employees. The Department believes this closes the gap between the present definition, formulated in different economic circumstances, and modern economic conditions. It is modern economic conditions that impel licensees to use leased employees. The Department's effort properly recognizes economic reality as it affects licensees. At the same time, these revisions maintain both regulatory discipline and consumer protection.

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 rule.

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 the Department may increase if new licensees are lured into the Arizona market by the opportunity to conduct business using unlicensed leased employees. This rule revision will result in marginally lower examination costs. It broadens the definition of "employee" to include leased employees and thereby eliminates the need to cite this more frequently-occurring violation.

B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Cost of services rendered to the public may decrease as a result of lower costs of doing business and increased competition.

D. Consumers

The fees paid by consumers for mortgage broker's services may decrease.

E. Private and Public Employment

There is no measurable effect on private and public employment.

F. State Revenues

This rulemaking may increase state revenues.

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

There have been no material changes between the version of the rule contained in this Notice and the rule published in the Notice of Proposed Rulemaking. The only real difference between the two notices is typographical.

As published by the Secretary of State, the text of the proposed definition contained subsections (a), (b), (c), (d), and (f). The sentence included in the text of this Notice as subsection (e) was mistakenly published in the proposed text as the second sentence of subsection (d).

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

Clarion Mortgage of Denver, Colorado (“Clarion”). Clarion commented that the proposed rule, if eventually given legal effect, would cause it to apply for an Arizona license and to begin doing business in Arizona. The Department’s response was to continue its effort to finish the rulemaking at an early date.

Prime Capital, Inc. of Tucson, Arizona (Prime). Prime inquired whether the proposed change would allow it to use independent telemarketers to promote the licensee’s mortgage lending products. This communication was received in response to the web posting of a preliminary draft well in advance of the publication of the Notice of Proposed Rulemaking. The Department’s response was a letter to the licensee explaining that the proposed rule change would only permit the use of leased employees who would be required to be under the licensee’s direct control and supervision.

This comment provoked the Department to consider adding a definition of leased employee to the administrative rules. The Department decided, instead, to revise the proposed definition into the present form, in order to make clear the requirement that licensees control their employees and remain liable for their misconduct.

Metro Title Agency (Metro). Metro also responded to a request for comment on a pre-publication draft of the Notice of Proposed Rulemaking. This commentator expressed approval of the change in its e-mail response. A copy is attached.

Arizona Commercial Mortgage Bankers Association (ACMBA). Responding to a pre-publication request, ACMBA voiced no objection to the proposed change.

The Arizona Mortgage Lenders Association (TAMLA). TAMLA also responded to a pre-publication request for comment, announcing that it agreed with and supported these changes in the regulatory definition.

The Surety Association of America (Surety). Surety, through its General Counsel, made several helpful comments about the original form of the proposed rule and the Department’s regulatory objectives. First, it informed the Department that the standard form contract of suretyship includes leased workers as bonded employees. This answered the Department’s concern about bond coverage for the wrongful acts of leased employees that might damage a consumer’s interests.

Second, it pointed out that the proposed language used the word “agent” as a broad category intended to sweep in several different forms of employment relationship. But, the word “agent” includes “independent contractors” who are not under the licensee’s control. This comment caused the Department to rewrite parts of the definition to remove the word “agent,” and to stress the element of licensee control.

The law firm of Kunkel, Miller & Hament of Tampa, Florida (Miller). The firm, through its partner, Attorney Mike Miller, discussed the issues in this rulemaking with the Department in a series of telephone conversations in response to his initial correspondence. Miller’s interest in this matter is that it represents employee lessors (known in the industry as “professional employment organizations,” or “PEOs”). The firm’s clients have a direct interest in this Department’s licensees being legally allowed to use their services.

At the same time, Miller understood the Department’s regulatory concerns and accepted that the revisions would have to serve those ends as well as its PEO-clients’.

In this proceeding, the significance of Miller’s legal conclusions is that, so long as the leased employee is under the control of the licensee the Department’s regulatory concerns can be met. First, the licensee remains liable for employee misconduct so the licensee can be disciplined as a result of that misconduct. And second, just as asserted by Surety, the licensee has bonding coverage for employee misconduct even if the employee is leased.

The Department’s response was to fine-tune the wording of the revised definition to harmonize it with the legal conclusions flowing from Miller’s legal research.

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 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 1. GENERAL

R20-4-102. Definitions

TITLE 20. COMMERCE, BANKING AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 1. GENERAL

R20-4-102. Definitions.

1. No Change.
2. No Change.
3. No Change.
4. No Change.
5. No Change.
6. No Change.
7. No Change.
8. No Change.
9. No Change.
10. No Change.
11. No Change.
12. "Employee" means a natural person who has an employment relationship with a licensee that is acknowledged by both ~~the~~ that person and the licensee, and:
 - a. The person is entitled to payment, or is paid, by the licensee;
 - b. The licensee withholds and remits, or is liable for withholding and remitting, payroll deductions for all applicable routine federal and state payroll taxes ~~including Federal Unemployment Tax, and Federal Insurance Contributions Act;~~
 - c. The licensee has the right to hire and fire the employee and ~~to hire and fire~~ the employee's assistants;
 - d. The licensee directs the methods and procedures for performing the employee's job;
 - e. The licensee supervises the employee's business conduct and the employee's compliance with applicable laws ~~law~~ and rules; and
 - f. The rights and duties under subsections (a) through (e) belong to the licensee regardless of whether another person also shares those rights and duties.
13. No Change.
14. No Change.
15. No Change.
16. No Change.
17. No Change.
18. No Change.
19. No Change.
20. No Change.
21. No Change.
22. No Change.
23. No Change.