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 or the Attorney General. 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 25. BOARD OF PODIATRY EXAMINERS

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R4-25-101	Amend
R4-25-102	Amend
R4-25-103	Amend
R4-25-104	Amend
Table 1	Amend
R4-25-201	Amend
R4-25-203	Amend
R4-25-305	Amend
R4-25-306	New Section
Article 4	Amend
R4-25-401	Amend
R4-25-501	Amend
R4-25-502	Amend
R4-25-503	Amend
R4-25-504	Repeal
R4-25-505	Amend
Article 6	Amend
R4-25-602	Amend
R4-25-603	Amend
R4-25-604	Amend
R4-25-605	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. § 32-804

Implementing statutes: A.R.S. §§ 32-822, 32-823, 32-825, 32-826, 32-829, 32-830, and 32-871

3. The effective date of the rules:

July 19, 2003

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 2758, June 28, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 4552, November 1, 2002

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

Name: Linda Wells, Executive Director

Address: 1400 W. Washington, Suite 230
Phoenix, AZ 85007

Telephone: (602) 542-3095

Fax: (602) 542-3093

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

The Board is amending 4 A.A.C. 25 to update its rules and address issues identified in its 2000 Five-year Review Report. Specifically, the rules are amended to accurately reflect podiatry standards and practices, reflect current Board policy, be consistent with state statutes, and conform to rulemaking format and style requirements.

Some definitions are amended and new definitions are added in R4-25-101 so that the rules may be used effectively and consistently by intended audiences. R4-25-102 is amended to specify training programs that are approved by the Board. R4-25-104 and Table 1 are amended to add time-frames for approving or denying continuing education and license renewal. R4-25-201 and R4-25-203 are amended to clarify examination requirements for applicants. R4-25-305 is amended to state the information required to be submitted to the Board by a provisional licensee. R4-25-306 is a new Section that states the information required of a licensee for a renewal application. R4-25-401 is amended to update the Board's rehearing requirements. The continuing education requirements in Article 5 are amended to include requirements for preapproval and approval of continuing education. Finally, Article 6 regarding drugs and devices is being amended to clarify requirements for registration, prescribing, dispensing, and recordkeeping.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:

Annual cost/revenue changes are designated as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when greater than $10,000.

The rulemaking impacts applicants, licensed podiatrists, consumers seeking treatment, patients of licensed podiatrists, continuing medical education providers, and the Board.

Most of the rulemaking clarifies the current rules and thus, amends existing requirements already established in rule. A few new requirements for continuing education have been added. The overall economic impact of the rulemaking is expected to be minimal with the benefits outweighing the costs. The retention of requirements already in rule should have little or no direct impact. New requirements for approval of continuing education approval should have a minimal to moderate impact.

Cost Bearers

The approximately 315 podiatrists currently licensed in the state will be affected by the rules. A licensee will bear minimal costs of an application if the licensee chooses to submit a request for continuing education approval before submitting a renewal application.

There should be no additional costs to a licensee for a renewal application because the Board currently requires the licensee to complete and submit a renewal form that contains the requirements in R4-25-306.

The Board will bear minimal to moderate costs for processing renewal applications within the time-frames specified in the rules. The costs are for sending out notices of incompleteness, notices of completeness, and for substantive reviews. The Board will experience similar costs for continuing education approvals. The Board will incur moderate costs to promulgate the rules and to notify interested parties of the new rules after the rules are approved.

Beneficiaries

A licensed podiatrist benefits from gaining approval for continuing education before submitting a renewal application. The time-frames for approving or denying an application for renewal also benefit a licensee, because the rules clarify application and request requirements and a licensee knows when to expect the approval or denial.

Rules that update the drug and dispensing requirements benefit patients because they protect the public health and safety of the patients.

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

Only technical and grammatical changes were made between the proposed and final rules.

11. A summary of the comments made regarding the rule and the agency's response to them:

The Board did not receive any written or oral comments regarding the rules.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 25. BOARD OF PODIATRY EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Section
R4-25-101. Definitions
R4-25-102. Postdoctoral, Internship, and Residency Training Program Approval
R4-25-103. Fees
R4-25-104. Time-frames for ~~Licensure and Certification~~ Approvals
Table 1. Time-frames (in Days)

ARTICLE 2. EXAMINATIONS

Section
R4-25-201. Examination of Applicants
R4-25-203. ~~Conducting Examinations~~ Oral Examination Procedures

ARTICLE 3. LICENSES

R4-25-305. Supervision of a Provisional Licensee
R4-25-306. License Renewal

ARTICLE 4. REHEARING OR REVIEW

Section
R4-25-401. ~~Rehearings~~ Rehearing or Review

ARTICLE 5. CONTINUING EDUCATION

Section
R4-25-501. Continuing Education Hours Required
R4-25-502. Approval of ~~Courses~~ Continuing Education
R4-25-503. Documentation
R4-25-504. ~~Credit Hours~~ Repealed
R4-25-505. Waiver of Continuing Education ~~Requirement~~

ARTICLE 6. DISPENSING ~~OF~~ DRUGS AND DEVICES

Section
R4-25-602. Registration ~~and Inventory~~ Requirements
R4-25-603. Prescribing and Dispensing Requirements
R4-25-604. Record Keeping and Reporting Shortages
R4-25-605. ~~Renewals, Inspections, Penalties, and Fees~~ Registration Renewal

ARTICLE 1. GENERAL PROVISIONS

R4-25-101. Definitions

The following definitions apply in this Chapter unless otherwise specified:

1. "Administer" ~~means~~ has the same meaning as ~~the definition "Administer"~~ in A.R.S. § 32-1901.
2. No change
3. "Applicant" means an individual requesting ~~licensure or registration by~~ an approval from the Board.
4. No change
5. No change
6. "Contested case" has the same meaning as in A.R.S. § 41-1001.
7. "Continuing education" means a workshop, seminar, lecture, conference, class, or instruction related to the practice of podiatry.
8. "Credit hour" means 60 minutes of participation in continuing education.

~~6.~~9. ~~"Days"~~ "Day" means calendar ~~days~~ day.

~~7.~~10. "Controlled substance" ~~means~~ has the same meaning as ~~the definition~~ in A.R.S. § 32-1901.

11. "Council" means the Council of Podiatric Medical Education, an organization approved by the American Podiatry Association to govern podiatric education.

~~8.~~12. "Device" ~~means~~ has the same meaning as ~~the definition~~ in A.R.S. § 32-1901 and includes ~~the definition of~~ a prescription-only device defined in A.R.S. § 32-1901.

13. "Directly supervise" has the same meaning as "direct supervision" in A.R.S. § 32-871(D).

14. "Dispense" has the same meaning as in A.R.S. § 32-871(F).
15. "Distributor" has the same meaning as in A.R.S. § 32-1901.
~~9.~~16. "Drug" ~~means~~ has the same meaning as ~~the definition~~ in A.R.S. § 32-1901 and includes a controlled substance, a narcotic drug defined in A.R.S. § 32-1901, a prescription medication, and a prescription-only drug.
~~10. "Equivalency to 1-year internship program" means a minimum of 5 years of continuous, active, clinical practice prior to filing an application and provided that no disciplinary action has been taken against the applicant in any other state during the 5-year period.~~
17. "Fiscal year" means the period beginning on July 1 and ending on the following June 30.
18. "Hospital" means a classification of health care institution that meets the requirements in A.R.S. Title 36, Chapter 4 and 9 A.A.C. 10, Article 2.
~~11. "Knee" means the site of articulation of the tibia and fibula and those structures or portions of structures that touch, attach, or articulate at the site with the tibia and fibula.~~
19. "Informed consent" means a document signed by a patient or patient's representative that authorizes treatment to the patient after the treating podiatrist informs the patient or the patient's representative of the following:
    a. A description of the treatment;
    b. A description of the expected benefits of the treatment;
    c. Alternatives to the treatment;
    d. Associated risks of the treatment, including potential side effects and complications; and
    e. The patient's right to withdraw authorization for the treatment at any time.
~~12. "Lawfully practiced" means the full-time continuous and licensed practice of podiatry by the applicant. Where an applicant practices in more than one place, the practice consuming the greater portion of the applicant's time is deemed the applicant's place of lawful practice.~~
~~13. "Nursing care institution" means a health care institution providing inpatient beds or resident beds and nursing services to persons who need nursing services on continuing basis but who do not require hospital care or direct daily care from a physician.~~
20. "Label" has the same meaning as in A.R.S. § 32-1901.
21. "Manufacturer" has the same meaning as in A.R.S. § 32-1901.
22. "Medical record" has the same meaning as in A.R.S. § 12-2291(4).
~~14.~~23. No change
~~15.~~24. No change
25. "Party" has the same meaning as in A.R.S. § 41-1001.
26. "Patient" means an individual receiving treatment from a podiatrist.
27. "PMLexis examination" means the test required by A.R.S. § 32-825(C)(2).
28. "Prescription order" has the same meaning as in A.R.S. § 32-1901.
~~16.~~29. "Prescription medication" ~~means~~ has the same meaning as ~~the definition~~ in A.R.S. § 32-1901.
30. "Provisional licensee" means an individual licensed under A.R.S. § 32-826(B).
~~17.~~31. "Prescription-only drug" ~~means~~ has the same meaning as ~~the definition~~ in A.R.S. § 32-1901.
~~18.~~32. "Prescription-only device" ~~means~~ has the same meaning as ~~the definition~~ in A.R.S. § 32-1901.
~~19.~~33. No change
34. "Representative' means a legal guardian, an individual acting on behalf of another individual under written authorization from the individual, or a surrogate according to A.R.S. § 36-3201.
~~20.~~35. No change
36. "Treatment" means podiatric medical, surgical, mechanical, manipulative, or electrical treatment according to A.R.S. § 32-801.
37. "Visit" means to seek diagnosis or treatment of an ailment of the foot or leg from a podiatrist and be physically present for the diagnosis or treatment.

R4-25-102. Postdoctoral, Internship, and Residency Training Program Approval

~~A list of each official hospital-based internship and residency program approved by the American Podiatric Medical Association shall be retained by the Board. Graduates of any podiatric college accredited by the Council of Podiatric Medical Education who are enrolled in any American Podiatric Medical Association approved programs may qualify for a license exemption pursuant to A.R.S. § 32-821(6).~~

A. For purposes of satisfying the requirements of A.R.S. § 32-826(A), a postdoctoral, internship, or residency training program approved by the Council is approved by the Board.

B. ~~Any~~ A postdoctoral, internship or residency training program provisionally approved or placed on probation by the ~~American Podiatric Medical Association shall be~~ Council is approved by the Board until the ~~American Podiatric Medical Association~~ Council makes a final adverse determination of the status of the postdoctoral, internship, or residency training program.

R4-25-103. Fees

~~The following fees shall be paid:~~ The Board shall charge the following fees, which are not refundable unless A.R.S. § 41-1077 applies:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change

R4-25-104. Time-frames for ~~Licensure and Certification~~ Approvals

A. No change

B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Board is set forth in Table 1.

1. No change
   a. No change
   b. No change
   c. For approval of a registration to dispense drugs, when the Board receives the application packet required in R4-25-602; ~~or~~
   d. For approval ~~or denial~~ of a regular podiatry license, when the applicant sits for both a written and an oral podiatry examination or only an oral examination~~.~~;
   e. For approval of an application for renewal of a license or dispensing registration, when a licensee submits an application packet to the Board; or
   f. For approval of continuing education, when the Board receives a request for approval.
2. No change
3. If an application is complete, the ~~bopard~~ Board shall send a written notice of administrative completeness to the applicant.
4. No change

C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.

1. During the substantive review time-frame, the Board may make ~~a~~ one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
2. The Board shall send a written notice ~~approving the applicant to take an examination or granting a license~~ of approval to an applicant who meets the qualifications and requirements in A.R.S. ~~§ 32-821 through 32-830~~ Title 4, Chapter 7 and this Chapter.
3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications and requirements in A.R.S. ~~§ 32-821 through 32-830~~ Title 4, Chapter 7 and this Chapter.

D. No change

1. No change
2. No change

E. No change

F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board considers the next business day ~~will be considered~~ the time-frame's last day.

Table 1. Time-frames (in Days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval to Take a Written and Oral Examination or Oral Examination Only (R4-25-301)	A.R.S. § 32-822 A.R.S. § 32-823 A.R.S. § 32-824	90	30	60
Regular Podiatry License (R4-25-301)	A.R.S. § 32-826	60	30	30
License by Comity (R4-25-302)	A.R.S. § 32-827	60	30	30
Provisional License (R4-25-304)	A.R.S. § 32-826	60	30	30
Dispensing Registration (R4-25-602)	A.R.S. § 32-871	60	30	30
License Renewal (R4-25-306)	A.R.S. § 32-829	60	15	45
Registration Renewal (R4-25-605)	A.R.S. § 32-871	60	30	30
Continuing Education Approval (R4-25-502)	A.R.S. § 32-829	60	15	45

ARTICLE 2. EXAMINATIONS

R4-25-201. Examination of Applicants

A. ~~The state written and~~ The Board administers the state oral examination ~~shall be administered twice annually~~ each year in June and December.

B. ~~Applicants who do not meet all of the requirements of A.R.S. § 32-827 shall be required to pass the PMLexis examination approved by the Arizona State Board of Podiatry Examiners as the state written examination with a grade of not less than 75%.~~ An applicant who meets the requirements in A.R.S. § 32-827 for licensure by comity shall pass the state oral examination with a grade of 75% or more.

C. ~~Applicants who meet all of the requirements of A.R.S. § 32-827 shall pass the state oral examination with a grade of not less than 75%.~~ An applicant who does not meet the requirements in A.R.S. § 32-827 for licensure by comity shall pass the PMLexis examination and state oral examination with a grade of 75% or more.

D. ~~Applicants for licensure who have been licensed by examination in another state shall be required to pass the Arizona state-approved examination. If the examination in another state is the PMLexis examination, and the applicant passed the PMLexis examination within five years preceding application for licensure in Arizona with a score of not less than 75%, the applicant shall be deemed to have passes the approved Arizona state examination.~~ An applicant licensed to practice podiatry in a state other than Arizona who is applying to the Board for a license by comity and who:

1. Passed the PMLexis examination in a state other than Arizona with a score of 75% or more within five years of the application submission date meets the examination requirements of A.R.S. § 32-825, or
2. Did not pass the PMLexis examination in any state with a score of 75% or more does not meet the examination requirements of A.R.S. § 32-825 and shall pass the PMLexis examination with a score of 75% or more to be licensed in this state.

~~**E.** Applicants shall be required to pass the state oral examination.~~

~~**F.** Applicants will be notified in writing, of their examination scores within 60 days after examination.~~

R4-25-203. ~~Conducting Examinations~~ Oral Examination Procedures

A. ~~Licensing examinations shall be conducted in accordance with the following requirements~~: An applicant taking an oral examination shall:

~~1. In order to be admitted to the examination, the applicant shall bring the letter of admission from the Board advising the applicant of the time, date, and place of the examination.~~

~~2.~~1. ~~Applicants shall be~~ Be present ~~and ready~~ to take the examination at the date, time, and place scheduled by the Board; ~~Late arrival shall not justify an extension of the time scheduled for the examination.~~

~~3.~~2. During the examination, ~~an applicant shall~~ not communicate with ~~any other~~ another applicant except with the permission of the examiner~~.~~ ; and

~~4.~~3. ~~Applicants may, at the outset of the examination, question the examiner or proctor regarding the examination and, at the conclusion of the examination, submit in writing any comments regarding the examination.~~ Except for a writing instrument, not bring examination assistance, such as books or equipment, into the examination room unless given permission by the Board.

B. An applicant may submit written comments to the Board about an oral examination after the examination concludes.

~~B.~~C. ~~Violators of any requirement of subsection (A) shall be considered dismissed from the examination.~~ An applicant who does not meet the requirements in subsection (A):

1. Shall not be permitted by the Board to complete an oral examination,
2. Forfeits the examination fee, and
3. May submit a new application to take an examination and the examination fee.

ARTICLE 3. LICENSES

R4-25-305. Supervision of a Provisional Licensee

A. No later than the 20th day of each month, ~~A~~ a provisional licensee shall~~, each month, personally~~ submit to the Board ~~a cumulative and detailed log of all podiatry activity in which the provisional licensee has been engaged over the previous month and shall be ready and available to discuss individual patient medical records, treatment, diagnosis and progress with the Board or a designated Board member. The log of podiatry activity shall be personally submitted at a time and place specified by the Board, which time shall be no later than the 20th day of the month following the most recent complete month of activity. The log shall include the following information:~~ the following information about each patient's treatment for the previous 30 days:

1. The ~~Initials,~~ initials of the patient's first and last name, age, and gender ~~of each patient.~~;
2. The ~~Date~~ date of ~~initial~~ each visit~~.~~;
3. The ~~Patient's chief complaint~~ reason for the patient's visit~~.~~;
4. ~~Detailed working and supplemental~~ The patient's diagnosis; ~~of the patient's condition.~~
5. The ~~Detailed and specific type and manner of~~ treatment provided including a list of all ~~medications~~ prescription orders and drugs or devices ~~prescribed,~~ administered or dispensed~~.~~;
6. ~~Copies of all~~ A copy of the informed ~~consents~~ consent form signed by the patient ~~from patients prior to the performance of any~~ before a surgical procedure was performed on the patient~~.~~; and
7. ~~Copies of pathology reports and operative reports described in detail.~~ The location of the patient when treated.
8. ~~The facility in which patients are located including the hospital, nursing home, outpatient surgical facility, or office setting.~~

B. ~~Prior to~~ Before ~~the expiration of the~~ a regular license is issued to a provisional ~~license~~ licensee, the Board ~~provisional licensee~~ shall ~~appear before~~ meet with the ~~Board~~ provisional licensee~~, at the a time and place specified by the Board, for a conference and final disposition of future licensure status.~~ to determine whether the provisional licensee obtained podiatry experience equal to experience in a one-year-internship program.

1. The Board shall send a written notice to the provisional licensee informing the provisional licensee of the location, date, and time of the Board meeting.

~~C.~~2. At ~~this conference~~ the Board meeting, the Board ~~will examine and~~ shall review the ~~cumulative log of podiatry activity of the provisional licensee~~ information required by subsection (A) and consider ~~to ascertain and determine whether the podiatry experience of the provisional licensee during the provisional period was of a quality and content to correspond to the experience acquired in an internship program. Such determination will be based upon~~ the following ~~considerations~~:

~~1.~~a. The number of patients treated ~~during the provisional period.~~,

~~2.~~b. The diversity and complexity of ~~podiatry activity engaged in by the provisional licensee during the provisional period.~~ treatment,

~~3.~~c. The ~~degree of~~ expertise~~, judgement and sophistication of the provisional licensee in diagnosing,~~ required of the provisional licensee while treating ~~and operating on his or her~~ each patient~~.~~ , and

~~4.~~d. ~~Evaluation from~~ The evaluation performed by the provisional licensee of the necessity for ~~procedures and treatments being performed~~ treatment.

~~D.~~ ~~Upon request of the Board, the provisional licensee shall be available to personally appear before the Board at a time and place specified to discuss and explain individual patient medical records, treatment, and progress and shall open his or her office and all patient records for inspection by the Board or any member designated thereof.~~

~~E.~~ ~~If the provisional licensee fails to comply with any rule or regulation governing the supervision of provisional licensees, including, but not limited to, the failure to attend any requested or required meeting or conference with either the Board or its designated member, or if the experience acquired by the provisional licensee during the provisional licensing period is of an inferior quality or is found not to have been equivalent to the experience attainable in a one-year internship program, such will constitute sufficient grounds for Board refusal to substitute said provisional practice for the one-year internship~~

~~requirement of A.R.S. 32-826(A) for regular license to practice podiatry.~~

C. If the Board determines that the provisional licensee obtained podiatry experience equal to experience in a one-year-internship program and meets the requirements in A.R.S. § 32-826, the Board shall issue a regular podiatry license to the provisional licensee.

R4-25-306. License Renewal

On or before June 30 of each year, a licensee shall submit the renewal fee required in R4-25-103 and:

1. A renewal application that contains the following information:
   a. The licensee's name, home and business mailing addresses, and location of practice;
   b. Whether the licensee has been named as a defendant in a medical malpractice matter during the 12 months before the date of the renewal application, including:
      i. The name of the court having jurisdiction over the medical malpractice matter and case number assigned to the medical malpractice matter, and
      ii. Copies of all court documents relating to the medical malpractice matter;
   c. Whether the licensee has been convicted of a felony or a misdemeanor involving moral turpitude during the 12 months before the date of the renewal application;
   d. Whether the licensee's malpractice or professional liability insurance has been denied, suspended, or revoked during the 12 months before the date of the renewal application;
   e. Whether the licensee's Drug Enforcement Administration Certificate of Registration required in R4-25-602(A)(1)(a) has been suspended or revoked during the 12 months before the date of the renewal application, or is currently under investigation;
   f. Whether the licensee has had a license, certification, or registration, other than a driver's license, suspended or revoked by any state or jurisdiction during the 12 months before the date of the renewal application;
   g. Whether the licensee has been treated for alcoholism or drug abuse during the 12 months before the date of the renewal application;
   h. Whether the licensee has a medical condition that in any way impairs or limits the licensee's ability to practice podiatric medicine;
   i. Whether the licensee has been denied staff membership in a hospital or other health care institution, as defined in A.R.S. § 36-401, during the 12 months before the date of the renewal application;
   j. Whether the licensee has been investigated by a health insurance company for health insurance fraud during the 12 months before the date of the renewal application; and
   k. A statement by the licensee that the information on the renewal application is true and correct and the licensee's signature;
2. If the licensee answers yes to any of the questions in subsections (1)(c) through (1)(j), an explanation of each answer including applicable dates, outcomes, and current status; and
3. The written report required in R4-25-503 for continuing education, including a notarized affirmation of attendance signed by the licensee.

ARTICLE 4. REHEARING OR REVIEW

R4-25-401. ~~Rehearings~~ Rehearing or Review

A. Except as provided in subsection (G), ~~any~~ a party ~~in a contested case before the Board of Podiatry Examiners~~ who is aggrieved by a decision ~~rendered in such case~~ issued by the Board may file with the Board ~~of Podiatry Examiners, not~~ no later than ~~ten~~ 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the ~~particular~~ grounds ~~therefor~~ for rehearing or review. For purposes of this Section, a decision ~~shall be deemed~~ is considered to have been served when personally delivered to the party's last known home or business address or five days after the decision is mailed by certified mail to the party ~~at the party's last known residence or place of business~~ or the party's attorney.

B. A party filing a motion for rehearing or review ~~under this rule~~ may ~~be amended~~ amend the motion at any time before it is ruled upon by the Board ~~of Podiatry Examiners~~. Other parties ~~A response~~ may ~~be filed within ten~~ file a response within 15 days after ~~service of such~~ the date the motion or amended motion by any other party for rehearing or review is filed. The Board ~~of Podiatry Examiners~~ may require ~~the filing of written briefs upon the issues raised in the motion and may provide for oral argument~~ ~~the parties~~ a party to file a supplemental memorandum explaining the issues raised in the motion or response and may permit oral argument.

C. The Board may grant ~~A~~ a rehearing or review of the decision ~~may be granted~~ for any of the following ~~causes~~ reasons materially affecting the moving party's rights:

1. Irregularity in the Board's administrative proceedings ~~of the agency or its hearing officer or the prevailing party,~~ or ~~any order or~~ an abuse of discretion that ~~, whereby the moving party was~~ deprived the party of a fair hearing~~.~~.
2. Misconduct of the Board ~~of Podiatry Examiners or its hearing officer~~ or the prevailing party~~.~~.
3. Accident or surprise ~~which~~ that could not have been prevented by ordinary prudence~~.~~;

4. Newly discovered material evidence ~~which~~ that could not with reasonable diligence have been discovered and produced at the original hearing~~.~~.
5. Excessive or insufficient penalties~~.~~.
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing~~.~~, or
7. That the decision is not ~~justified~~ supported by the evidence or is contrary to law.

D. The Board ~~of Podiatry Examiners~~ may affirm or modify the decision or grant a rehearing or review ~~to~~ on all or ~~any of the parties and on all or~~ part of the issues for any of the reasons ~~set forth~~ in subsection (C). An order granting a rehearing or review shall specify ~~with particularity~~ the ground ~~or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified~~ for the rehearing or review.

E. ~~Not~~ No later than ~~ten~~ 30 days after a decision is ~~rendered,~~ issued by the Board, the Board may, on its own initiative, ~~order~~ grant a rehearing or review of its decision for any reason ~~for which it might have granted a rehearing on motion of a party~~ in subsection (C). ~~After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds therefor.~~ An order granting a rehearing or review shall specify the grounds for the rehearing or review.

F. When a motion for rehearing or review is based upon affidavits, ~~they shall be served with the motion~~ a party shall serve the affidavits with the motion. An opposing party may, within ten days after ~~such~~ service, serve opposing affidavits~~.~~ ~~which period~~ The Board may ~~be extended~~ extend ~~for an additional period~~ the time for serving opposing affidavits for ~~not exceeding~~ no more than 20 days ~~by the Board of Podiatry Examiners~~ for good cause ~~shown~~ or by written stipulation of the parties. The Board may permit ~~Reply~~ reply affidavits ~~may be permitted~~.

G. If ~~in a particular decision,~~ the Board ~~of Podiatry Examiners~~ makes specific findings that the immediate effectiveness of ~~such~~ a decision is necessary ~~for the immediate preservation of~~ to preserve the public ~~peace,~~ health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the ~~decision~~ Board may ~~be issued~~ issue the decision as a final decision without an opportunity for rehearing or review. If a decision is issued as a final decision without an opportunity for a rehearing or review, an aggrieved party that makes ~~any~~ an application for judicial review of the decision shall ~~be made~~ make the application within the time limits permitted ~~for~~ an application for judicial review of the ~~Board of Podiatry Examiners'~~ Board's final ~~decisions~~ decision at A.R.S. § 12-904.

~~**H.** For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.~~

~~**I.** To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Board of Podiatry Examiners, such statutory provisions shall govern.~~

ARTICLE 5. CONTINUING EDUCATION

R4-25-501. Continuing Education Hours Required

A. ~~In order to~~ Unless a licensee obtains a waiver according to R4-25-505, ~~meet the continuing education requirements of A.R.S. § 32-829, every~~ the licensee ~~must have attended~~ shall complete ~~at least~~ 25 hours or more of ~~Board-approved courses of programs relating to the practice of podiatry~~ continuing education credit hours ~~in the year preceding application for license renewal~~ every fiscal year.

~~**B.** Any licensee who cannot complete at least 25 hours of approved continuing education during the preceding year will be is ineligible for renewal unless the licensee obtains a waiver pursuant to R4-25-505.~~

B. A licensee who has been licensed for less than 12 months before license renewal shall complete two continuing education credit hours for each month of licensure.

R4-25-502. Approval of ~~Courses~~ Continuing Education

~~**A.** Every year, each person holding an active license to practice podiatry in this state shall complete 25 credit hours of the continuing medical education required by A.R.S. § 32-829. One hour of credit will be allowed for each clock hour of participation in approved continuing medical education activities, unless otherwise designated in subsection (B) below.~~

A. A licensee may submit a written request to the Board for approval of continuing education before submission of a renewal application.

B. A request under subsection (A) shall contain:

1. A brief summary of the continuing education;
2. The educational objectives of the continuing education;
3. The date, time, and place of the provision of the continuing education;
4. The name of the individual providing the continuing education, if available; and
5. The name of the organization providing the continuing education, if applicable.

~~**B.**~~**C.** ~~Approved continuing medical education activities include the following:~~ In determining whether to approve continuing education, the Board shall consider whether the continuing education:

1. ~~Podiatry educational programs~~ Is designed to provide ~~understanding of~~ current developments, skills, procedures, or treatments related to the practice of podiatry;

~~2. Up to 10 credit hours may be earned by completion of a podiatric educational program based on self-instruction which may include videotapes, films, filmstrips, slides, plus written materials.~~

2. Is developed and provided by an individual with knowledge and experience in the subject area; and

3. ~~The Board may approve courses in podiatric or medical education that are sponsored by other health-related associations or privately sponsored education programs provided the subject matter and material have been approved by the Arizona Board of Podiatry Examiners.~~
   Contributes directly to the professional competence of a licensee.

D. A licensee may request approval of 10 credit hours or less of continuing education if provided in any of the following ways:
1. On the internet,
2. On a CD ROM, or
3. In podiatric medical literature, such as a journal.

E. The Board shall approve or deny a request for approval according to the time-frames set forth in R4-25-104 and Table 1.

F. According to A.R.S. § 32-829(E), if approval of a continuing education request is denied, a licensee has 60 days from the date of the denial to meet the continuing education requirements.

R4-25-503. Documentation

A. ~~Each application for renewal must be accompanied by a written report which affirms the applicant's attendance of 25 hours of Board-approved courses and programs in continuing education. The report shall include the date, course, title, subject matter, hours attended, location, and be signed by the applicant.~~ A licensee shall submit a written report of completed continuing education with a renewal application that includes:
1. The name of the licensee,
2. The title of each continuing education,
3. A description of the continuing education's content and educational objectives,
4. The date of completion of each continuing education,
5. The number of credit hours of each continuing education, and
6. A statement signed by the licensee verifying the information in the report.

~~**B.** Any material false statement in this report will be grounds for revocation or suspension or refusal to renew a license under the provisions of A.R.S. § 32-852(2).~~

~~**C.**~~**B.** ~~Each year, the Board will select continuing education reports to be audited. The reports will be selected randomly or on the basis of previous unsatisfactory reports from particular applicants. Applicants selected for audit will be required to provide the Board with evidence which documents continuing education attendance.~~
The Board may audit continuing education reports every 12 months for conformance with A.R.S. § 32-829 and this Article:
1. Randomly; or
2. Selectively for licensees who previously submitted reports that did not conform with the requirements in A.R.S. § 32-829 or this Article.

R4-25-504. ~~Credit Hours~~ Repealed

~~**A.** One hour of credit shall be recorded for each hour of participation in the educational or scientific portion of programs approved pursuant to R4-25-502.~~

~~**B.** No credit shall be recorded for attending any committee or noneducational hospital meeting.~~

R4-25-505. Waiver of Continuing Education ~~Requirement~~

A. ~~If a renewal applicant~~ A licensee who is unable to complete 25 hours of ~~the~~ continuing education ~~requirement of R4-25-501~~ for ~~one~~ any of the reasons ~~specified~~ in A.R.S. § 32-829(C), ~~the renewal application shall contain a~~ may submit a written request for a waiver ~~or postponement~~ to the Board by August 31 ~~The request shall include the report specified in R4-25-503(A) concerning those courses that have been completed and an explanation of why courses or programs sufficient to complete the requirement could not have met during the year preceding renewal. If the request is for postponement, it shall also include the applicant's plan for completing the continuing education requirement.~~ that contains:
1. The name, address, and telephone number of the licensee;
2. The report required in R4-25-503;
3. An explanation of why the licensee was unable to meet the Board's continuing education requirements that includes one of the reasons in A.R.S. § 32-829(C); and
4. The signature of the licensee.

~~**B.** In making a decision on the request for postponement, the Board shall consider the following:~~
~~1. What justification exists for postponement?~~
~~2. How soon the applicant will makeup the continuing education requirement.~~
~~3. If the applicant will be practicing podiatry in Arizona in the interim.~~

B. The Board shall send written notice of approval or denial of the request for waiver within seven days of receipt of the request.

C. ~~Any licensee who submits an application for waiver which is denied by~~ If the Board ~~will be ineligible for license renewal until the licensee has complied with R4-25-501~~ denies a request for a waiver, a licensee has 60 days from the date of the denial to meet the requirements for continuing education.

D. ~~Licensees who have been licensed for less than a full licensing year must complete two continuing education hours for each month of the licensee's initial license.~~

ARTICLE 6. DISPENSING ~~OF~~ DRUGS AND DEVICES

R4-25-602. Registration ~~and Inventory~~ Requirements

A. ~~A podiatrist may dispense drugs and devices if:~~

~~1. The podiatrist is currently licensed as a podiatrist in Arizona and registers with the Board by submitting all of the following to the Board:~~

An individual currently licensed as a podiatrist in this state who wishes to dispense drugs and devices shall register with the Board by submitting all of the following:

~~a.~~1. The ~~applicant's~~ podiatrist's current Drug Enforcement Administration Certificate of Registration issued by the Department of Justice under 21 U.S.C. 801 et seq;

~~b.~~2. The fee required in R4-25-103; and

~~c.~~3. An application form provided by the Board, signed and dated by the ~~applicant~~ podiatrist, and notarized that contains:

~~i.~~a. The ~~applicant's~~ podiatrist's name,

~~ii.~~b. The address of each location where ~~applicant~~ the podiatrist intends to dispense drugs and devices, and

~~iii.~~c. The types of drugs and devices the ~~applicant~~ podiatrist intends to dispense.

~~2. The podiatrist ensures that all drugs are dispensed in a prepackaged container or in a light-resistant container with a consumer safety cap, and labeled with the following information:~~

~~a. The podiatrist's name, address, and telephone number;~~

~~b. The serial number and date the drug or device is dispensed;~~

~~c. The patient's name; and~~

~~d. The name, strength of the drug, the quantity dispensed and direction for its use.~~

~~3. The podiatric physician secures all controlled substances and the prescription-only medications Nalbuphine Hydrochloride (Nubain) and Butorphanol Tartrate (Stadol) in a locked cabinet or room and controls access to the cabinet or room by written procedure and maintains an ongoing inventory of the contents. This written procedure shall be made available to the Board or its authorized agents on demand for inspections or copying.~~

~~4. The podiatric physician ensures that drugs and devices not requiring refrigeration are maintained in an area where the temperature does not exceed 85° F.~~

~~5. The podiatric physician maintains an ongoing dispensing log which includes separate inventory sheets for each controlled substance and the prescription-only medications Nalbuphine Hydrochloride (Nubain) and Butorphanol Tartrate (Stadol). The dispensing sheets shall include the following information:~~

~~a. The date the drug is dispensed;~~

~~b. The patient's name;~~

~~c. The name and strength of the drug;~~

~~d. The number of dosage units dispensed;~~

~~e. A running total of medication dispensed; and~~

~~f. The signature of the podiatric physician or the person authorized by the podiatric physician in dispensing the medication. The signature must be placed next to each entry.~~

B. ~~This rule does not apply to manufacturers' samples of drugs and devices.~~

R4-25-603. Prescribing and Dispensing Requirements

A. ~~The podiatric physician shall record on the patient's medical record the name and strength of the drug dispensed, the quantity or volume dispensed, the date the drug is dispensed, and the number of refills authorized.~~

B. ~~Prior to delivery to the patient, the doctor shall review the prepared drug and device to ensure compliance with the prescription and, additionally, ensure that the patient has been informed of the name of the drug, directions for its use, precautions, and storage.~~

C. ~~All dispensed drugs and devices shall be purchased from a manufacturer or distributor licensed in this state, or another state or jurisdiction.~~

D. ~~Prior to dispensing a drug or device, the patient shall be given a written prescription signed by the dispensing physician, on which appears the following statement in bold type: **"This prescription may be filled by the prescribing doctor or by a pharmacy of your choice."**~~

E. ~~A podiatric physician shall dispense drugs and devices only to the dispensing doctor's own patient and only for conditions being treated by that podiatric physician.~~

F. ~~The podiatric physician shall provide direct supervision to all persons involved in the dispensing process.~~

G. ~~The original prescription form for drugs and devices shall be countersigned and dated by the actual person who prepared the drugs and devices for dispensing.~~

A podiatrist shall:

1. Not dispense a drug unless the drug is obtained from a manufacturer or distributor licensed in any state or jurisdiction;
2. Ensure that a drug or device is dispensed only to a patient being treated by the podiatrist;
3. Before dispensing a drug, provide a patient with a written prescription order that:
   a. Contains the following statement in bold type: "This prescription may be filled by the prescribing podiatrist or by a pharmacy of your choice," and
   b. Is signed by the podiatrist;
4. Directly supervise each individual involved in preparing a drug that is dispensed;
5. Ensure that a drug is:
   a. Dispensed in a prepackaged container or in a light-resistant container with a consumer safety cap; and
   b. Labeled with the following information:
      i. The podiatrist's name, address, and telephone number;
      ii. The date the drug is dispensed;
      iii. The patient's name; and
      iv. The name, strength of the drug, and directions for the drug's use;
6. Ensure that the original prescription order for a drug is countersigned and dated by the individual who prepared the drug for dispensing;
7. Before a drug or device is dispensed to a patient:
   a. Review the drug or device to ensure compliance with the prescription order;
   b. Ensure the patient is informed of the following:
      i. The name of the drug or device,
      ii. Directions for taking the drug or using the device,
      iii. Precautions for the drug or device, and
      iv. Directions for storing the drug or device;
8. Document in the medical record the following for each patient:
   a. Name of the drug or device dispensed,
   b. Strength of the drug dispensed,
   c. Date the drug or device is dispensed, and
   d. Therapeutic reasons for dispensing the drug or device;
9. Maintain an inventory record for each drug that contains:
      i. Name of the drug,
      ii. Strength of the drug,
      iii. Date the drug was received by the podiatrist,
      iv. Amount of the drug received by the podiatrist,
      v. Name of the manufacturer and distributor of the drug, and
      vi. A unique identifying number provided by the manufacturer or distributor of the drug;
10. Store a drug in a locked cabinet or room and:
   a. Establish a written policy for access to the locked cabinet or room, and
   b. Make the written policy available to the Board or its authorized agent within 72 hours of a Board request;
11. Ensure that a drug is stored at temperatures recommended by the manufacturer of the drug; and
12. Maintain a dispensing log, separate from the inventory record for each drug dispensed that includes the:
   a. Name of the drug,
   b. Strength of the drug,
   c. Amount of the drug,
   d. Patient's name,
   e. Date the drug was dispensed, and
   f. The name and signature of the podiatrist who dispensed the drug.

R4-25-604. Record Keeping and Reporting Shortages

A. ~~All original prescription orders for medications dispensed from a podiatric physician's office shall be dated, consecutively numbered in the order in which they were originally dispensed, and filed separately from the medical records. Original prescription orders for Schedule II drugs shall be maintained separately from other prescription orders.~~
A prescription order written by a podiatrist for a drug shall:

1. Contain the:
   a. Name of the patient,
   b. Date the prescription order is written, and
   c. Name and signature of the podiatrist;
2. Be numbered consecutively; and
3. Be maintained separately from a medical record.

B. A ~~podiatric physician~~ podiatrist shall maintain ~~a drug purchase orders, invoices, and an original prescription orders~~ an invoice of a drug purchased from a manufacturer or distributor for ~~a period of~~ three years from the date ~~of the order~~ purchased. ~~Dispensing logs and destruction records shall be maintained for ten years.~~

~~**C.** The medication log required pursuant to R4-25-602(6) may be maintained by computer.~~

C. A podiatrist shall maintain the inventory record in R4-25-603(9) and the dispensing log in R4-25-603(12) for ~~10~~ seven years from the date of entry.

D. A ~~podiatric physician from whose office drugs are illegally removed, or~~ podiatrist who ~~determined~~ discovers that ~~an inaccurate drug count or~~ a drug ~~shortage exists in controlled drugs maintained for dispensing~~ identified in the podiatrist's inventory record cannot be accounted for shall:

1. ~~immediately~~ Within 48 hours of discovery or the next business day if a weekend or holiday, whichever is later, notify the appropriate law enforcement agency and the federal Drug Enforcement Administration~~.~~ ; and
2. ~~The podiatric physician shall provide~~ Provide written notification to the Board within seven days ~~of~~ from the date of the ~~determination~~ discovery, including the name of the law enforcement agency notified.

R4-25-605. ~~Renewals, Inspections, Penalties, and Fees~~ Registration Renewal

A. ~~A podiatric physician shall renew a registration to dispense annually, on or before on a registration form provided by the Board.~~

A podiatrist shall renew a registration no later than June 30th of each year by submitting to the Board:

1. An application form provided by the Board, signed and dated by the podiatrist, and notarized that contains:
   a. The podiatrist's name,
   b. The address of each location where the podiatrist dispenses drugs and devices,
   c. The types of drugs and devices the podiatrist dispenses, and
   d. The podiatrist's Drug Enforcement Administration registration number issued by the Department of Justice under 21 U.S.C. 801 et seq; and
2. The fee required in R4-25-103.

~~**B.** The Board may conduct periodic inspection of dispensing practices to assure compliance with these rules and applicable Arizona Revised Statutes.~~

~~**C.** Except in an emergency situation, a podiatric physician who dispenses drugs or devices without being registered by the Board is subject to a civil penalty by the Board of not less than $300 and not more than $1,000 for each transaction and may be prohibited from further dispensing for a period of time prescribed by the Board.~~

~~**D.** The initial registration fee for dispensing drugs and devices by a podiatric physician shall be $200. The annual renewal fee for continuing registration to dispense drugs and devices shall be $100.~~

~~**E.**~~**B.** If ~~the completed annual~~ a podiatrist fails to submit ~~renewal form and correct fees are not received in the Board's office~~ the information required in subsection (A) and the registration renewal fee required in R4-25-103 by June 30th, the ~~physician's certification shall expire~~ podiatrist's registration expires. If a ~~podiatric physician's~~ registration expires, ~~that physician~~ the podiatrist shall ~~not be permitted to dispense~~:

1. Immediately cease dispensing drugs or devices, and
2. ~~The physician shall register again, by means of an initial registration~~ Register pursuant to R4-25-602(A)~~,~~ before dispensing drugs and devices.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES NONCOMMUNICABLE DISEASES

PREAMBLE

1. Sections Affected | **Rulemaking Action**

R9-4-401.01	New Section
R9-4-404	Repeal

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

Authorizing statute: A.R.S. § 36-136(F)

Implementing statute: A.R.S. § 36-133

3. The effective date of the rules:

June 3, 2003. These rules become effective upon filing with the Secretary of State. This immediate effective date is allowed under A.R.S. § 41-1032(A)(1) to preserve the public peace, health, or safety, and A.R.S. § 41-1032(A)(4) to provide a benefit to the public and a penalty is not associated with a violation of the rule. Under the Clinical Laboratory Improvement Act (CLIA) laboratories can release confidential case information when it is required by state law. Including pathology laboratories in the rules as a cancer reporting source will clarify that the pathology laboratories have the authority to release the confidential information to the Department. It is necessary that these rules become effective immediately upon filing with the Secretary of State so that the Department can continue to collect information from pathology laboratories. The data collected by the Department may be used by researchers to identify effective treatments, which may cure or prolong the lives of individuals with cancer, thus helping to preserve the public health and provide a benefit to the public. There is no penalty associated with a violation of this rule. Additionally, an immediate effective date will not be a burden to the pathology laboratories because they are currently voluntarily providing the information required in this rule.

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 137, January 17, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 589, February 28, 2003

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

Name: Georgia Yee
Office Chief

Address: Arizona Department of Health Services
Bureau of Public Health Statistics
Office of Health Registries
1740 W. Adams, Room 410
Phoenix, AZ 85007

Telephone: (602) 542-7308

E-mail: geyee@hs.state.az.us

or

Name: Kathleen Phillips
Rules Administrator

Address: Arizona Department of Health Services
1740 W. Adams, Room 102
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

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

The Arizona Department of Health Services (Department) rules concerning cancer reporting are located in Title 9, Chapter 4, Articles 1 and 4 of the *Arizona Administrative Code*. The rules specify that cancer is a reportable disease.

The rules meet the requirements of A.R.S. § 36-133 that the Department establish procedures for reporting incidence of cancer. The rules also respond to the public's need for a system that monitors the yearly incidence rates of cancer. The information compiled by the Department is used by researchers to identify effective treatments and used by other health care professionals to provide intervention and prevention of cancer.

The Department is adding a new Section, R9-4-401.01, that adds pathology laboratories as a cancer case reporting source. Under the Clinical Laboratory Improvement Act (CLIA) laboratories can release confidential case information when it is required by state law. Including pathology laboratories in the rules as a cancer reporting source will clarify that the pathology laboratories have the authority to release the confidential information to the Department. The Department is also repealing R9-4-404 that specifies the effective date because it does not belong in rule.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review any study relating to 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:

As used in this summary, "minimal" economic impact means less than $1,000 per year, "moderate" means between $1,000 and $10,000 per year, and "substantial" means greater than $10,000 per year.

The public will benefit substantially from a complete population-based cancer reporting system that may lead to a reduction in the number of individuals who develop cancer and die of cancer. The information gathered and compiled by the Department is used by researchers to identify effective treatments for cancer and used by other health care professionals to provide intervention programs for individuals with cancer.

There is no increased cost to the Department or to pathology laboratories as the Department has been collecting information from pathology laboratories on a voluntary basis since 1995. However, the current cost to the Department to obtain this information from the pathology laboratories is substantial. The current cost to pathology laboratories to provide the Department with the requested information is minimal to moderate.

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

The Department made minor technical and grammatical changes suggested by the Governor's Regulatory Review Council.

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

The Department did not receive any written or oral comments.

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 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES
NONCOMMUNICABLE DISEASES

ARTICLE 4. CANCER REGISTRY

Section
R9-4-401.01. Pathology Laboratory Reporting
R9-4-404. ~~Effective date~~ Repealed

ARTICLE 4. CANCER REGISTRY

R9-4-401.01. Pathology Laboratory Reporting

A. For the purposes of this Section, "pathology laboratory" means a location where human cells or tissue are examined for the purpose of diagnosing cancer.

B. A pathology laboratory shall permit the Department to review pathology reports once every 90 days to collect the information specified in R9-4-401(B) that is necessary for the Department to complete a case report.

R9-4-404. ~~Effective date~~ Repealed

~~The rules in this Article and the related definitions in R9-4-104 shall take effect on January 1, 1992.~~

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

PREAMBLE

1. Sections Affected **Rulemaking Action**

R17-4-502 Amend

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

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-3005, 28-3052, 28-3153, 28-3158, 28-3159, 28-3164, 28-3171, 28-3172, 28-3306, 28-3314, and 28-3315

3. The effective date of the rules:

June 3, 2003. The agency requests an immediate effective date because the amendment incorporated by this rulemaking qualifies under A.R.S. § 41-1032(A)(4). The rule provides a benefit to the public by protecting the confidentiality of an applicant's or licensee's medical information in accordance with statutory standards. There is no penalty associated with a violation of the rule.

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 476, February 14, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 760, March 7, 2003

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

Name: Troy A. Walters, Rules Analyst

Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Telephone: (602) 712-6722

Fax: (602) 241-1624

E-mail: twalters@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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

The agency amends its motor vehicle safe operation medical provisions rule to include a new subsection that protects the confidentiality of applicant or licensee medical information submitted to the Division.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not review any study for this rulemaking.

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 economic impact of this Section remains essentially unchanged from the last time the rule was amended, effective July 12, 2002. There are less than 20 requests for medical information annually. The addition of subsection (G) provides confidentiality for medical information to persons licensed or applying for a license to drive in Arizona. Accordingly, subsection (G) benefits the agency in potential reduction in liability when release of information is denied a non-qualified requestor.

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

The agency made no changes between the proposed and final rule.

11. A summary of the comments made regarding the rule and the agency response to them:

The agency received no comments on this rulemaking.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 5. SAFETY

Section

R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely

ARTICLE 5. SAFETY

R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely

A. Applicant's or licensee's responsibility. To comply with the Division's screening process for safe operation of a motor vehicle, an applicant or licensee shall:

1. Provide the Division with all requested information about the applicant's or licensee's visual, physical, or psychological condition;
2. Successfully complete all required examinations;
3. Obtain all required evaluations;
4. Ensure timely submission of evaluation reports to the Division; and
5. Appear at all required interviews.

B. Screening process for safe operation of a motor vehicle. This subsection and subsection (C) through subsection (E) state the screening process for safe operation of a motor vehicle.

1. An applicant shall complete the application, including the medical screening questions and certification.
2. An applicant without a valid driver license, who successfully completes all required examinations, shall obtain an evaluation if:
   a. The Division informs the applicant that the applicant's responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
   b. The applicant comes under subsection (C)(1)(a), subsection (C)(1)(c), or subsection (C)(1)(d).
3. An applicant for license renewal shall successfully complete an examination if the applicant's responses to the medical screening questions indicate that since the applicant's last driver license renewal:
   a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition~~,~~; or
   b. There has been a change in an existing visual, physical, or psychological condition that may ~~impair the applicant's functional ability~~ constitute a disqualifying medical condition.

4. As soon as an applicant's medical condition allows, the applicant shall notify the Division, in writing or by telephone, that the applicant has or may have a medical condition not previously reported to the Division that affects the applicant's functional ability.
5. Upon receipt of the notification required under subsection (B)(4), the Division shall require the applicant to:
   a. Complete the medical screening questions and certification on the application, and
   b. Continue with the screening process for safe operation of a motor vehicle.

C. Evaluation, interview, and additional evaluation. An applicant or licensee shall submit to an evaluation, attend an interview, or submit to an additional evaluation as required by the Division.
1. The Division shall require an evaluation if the Director notifies the applicant or licensee in writing that:
   a. ~~An~~ The applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
   b. ~~An~~ The applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;
   c. ~~An~~ The applicant or licensee exhibits unexplained confusion, loss of consciousness, or incoherence that is observed by Division personnel; or
   d. A person with direct knowledge submits to the Division written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit, to the Division's Medical Review Program, an evaluation report on a Division-prescribed form.
3. If the evaluation report on ~~an~~ the applicant or licensee is inconclusive regarding the existence of a disqualifying medical condition, the Division shall require the applicant or licensee to appear for an interview to explain information in the evaluation report.
4. If the ~~existence of~~ Division is unable to determine whether a disqualifying medical condition ~~remains inclusive~~ exists after an interview with the applicant or licensee, the Division shall require an additional evaluation, performed by an appropriate specialist and reported to the Division's Medical Review Program on ~~the~~ a Division-prescribed form.
5. ~~The~~ An applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.

D. Licensing action. The Division shall take a licensing action after requiring an applicant or licensee to complete an examination successfully, obtain an evaluation and submit an evaluation report, or appear at an interview.
1. The Division shall deny a driver license if an applicant:
   a. Fails to complete successfully an examination; or
   b. Fails to:
      i. Obtain an evaluation;
      ii. Have ~~the~~ a physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Division within 30 days after the Division notifies the applicant that an ~~the~~ evaluation is required; or
      iii. Appear at an interview; or
   c. Has an evaluation report submitted that indicates a disqualifying medical condition.
2. The Division shall summarily suspend a licensee's driver license under A.R.S. §§ 28-3306(A)(5) and 41-1064(C) for a reason stated in subsection (D)(1).
3. The Division shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the ~~applicant~~ licensee that:
   a. Unless the Division receives ~~a~~ the licensee's timely hearing request under subsection (F), the revocation becomes effective:
      i. Fifteen days after the date the licensee is personally served with the notice; or
      ii. Twenty days after the date the notice is mailed to the licensee.
   b. A person who wishes to obtain a license after suspension or revocation shall reapply for a license as follows:
      i. After suspension as specified in A.R.S. § 28-3315(H)~~; and~~, or
      ii. After revocation as specified in A.R.S. § 28-3315(B).
4. The Division shall issue a driver license to an applicant or shall not suspend or revoke a licensee's driver license if:
   a. The applicant or licensee successfully completes all required examinations and the Division does not require an evaluation~~;~~, or
   b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.

E. Driver license restrictions. If an applicant or licensee uses an adaptation, including those listed below to demonstrate functional ability during an examination, the Division shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant's or licensee's driving record.
1. Automatic transmission,
2. Hand dimmer switch,

3. Left-foot gas pedal,
4. Parking-brake extension,
5. Power steering,
6. Power brakes,
7. Six-way power seat,
8. Right-side directional signal,
9. A device that enables an operator to spin the steering wheel,
10. A device that enables full foot control,
11. Dual outside mirrors,
12. Chest restraints,
13. Shoulder restraints,
14. A device that extends pedals,
15. A device that enables full hand control, and
16. Adapted seat.

F. Hearings. This subsection states the hearing procedure for licensing actions taken by the Division after the screening process for safe operation of a motor vehicle.

1. If the Division takes an adverse licensing action under this Section, an applicant or licensee may request a hearing with the Division's Executive Hearing Office. A hearing request is timely if received by the Division:
   a. Within 15 days after the date the notice is delivered to the applicant or licensee, or
   b. Within 20 days after the date the notice is mailed to the applicant or licensee.
2. R17-1-501 through R17-1-511 and R17-1-513 govern a hearing conducted under this subsection.
3. The administrative law judge shall sustain, modify, or void the Division's licensing action.

G. The Division shall not release information required to be submitted to the Division under this Section by an applicant or licensee except to a person or entity qualified under A.R.S. § 28-450(B).

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R17-5-402	Amend
R17-5-403	New Section

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

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-4362 and 28-5005

3. The effective date of the rules:

August 2, 2003

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 2645, June 21, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 5074, December 13, 2002

Notice of Supplemental Proposed Rulemaking: 9 A.A.R. 608, February 28, 2003

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

Name:	Troy A. Walters, Rules Analyst
Address:	Administrative Rules Unit Department of Transportation, Mail Drop 507M 3737 N. 7th Street, Suite 160 Phoenix, AZ 85014-5079
Telephone:	(602) 712-6722
Fax:	(602) 241-1624

E-mail: twalters@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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

R17-5-402 identifies the specific bonding amounts necessary to accompany license applications for motor vehicle dealers, recyclers, and brokers, as prescribed in A.R.S. § 28-4362. The rule increases the amount of the required bonds for some licenses and adds an amount for vehicle title service businesses. The Division has determined that dividing R17-5-402 into two Sections provides clarity and understandability in the license bonding process. R17-5-402, "Bond Amounts. Motor Vehicle Business Licenses," is prescribed by A.R.S. § 28-4362. R17-5-403, "Bond Amount. Title Service Motor Vehicle Business License," is prescribed by A.R.S. § 28-5005. This rulemaking action also incorporates the changes to R17-5-402 proposed in the five-year review report approved by the Governor's Regulatory Review Council.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not review any study relating to this rulemaking.

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 motor vehicle business must provide a bond in an amount prescribed by these rules when applying to the Division for a business license. License applicants will pay a premium to a surety company to obtain the correct bond amount, which varies by the type of motor vehicle business. The Division bears the cost of licensure that includes confirmation of the validity and correctness of a bond, the decision-making process for licensure, and resolving customer claims against a business and its bond. In determining the amount of bonding for motor vehicle business license applicants, statute provides that the bond amount prescribed is at least $20,000 for an automotive recyclers license and not more than $100,000 for all other licenses. The Division viewed the current vehicle market and believes that increasing the bond amounts may have a moderate to substantial impact on businesses by requiring the statutory maximum of $100,000 for bonding purposes for new and used motor vehicle dealers and raising the bond amounts for all other motor vehicle business licenses. However, the Division feels the increase in bond amounts for all motor vehicle businesses is reasonable and provides an adequate level of protection for customers.

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

Changes were made to the bond amounts for wholesale motor vehicle dealers and wholesale motor vehicle auction dealers as contained in the Notice of Proposed Rulemaking. The agency determined that since wholesale motor vehicle dealers and wholesale motor vehicle auction dealers transfer vehicles from dealer to dealer and do not sell vehicles to the public, the $50,000 bond amount was excessive, and therefore reduced the amount to $25,000. A notice of supplemental rulemaking was published reflecting these changes.

11. A summary of the comments made regarding the rule and the agency response to them:

The agency received no comments on this rulemaking.

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

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 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

ARTICLE 4. DEALERS

Section
R17-5-402. ~~Dealer and wrecker bond amounts~~ Bond Amounts. Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses
R17-5-403. ~~Reserved~~ Bond Amount. Motor Vehicle Title Service Business License

ARTICLE 4. DEALERS

R17-5-402. ~~Dealer and wrecker bond amounts~~ Bond Amounts. Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

~~Title 28, Chapter 8, Article 1, Arizona Revised Statute provides that every application for a license to engage in business of a motor vehicle dealer, motor dealer or wrecker shall be accompanied by a bond in a form to be approved by the Assistant Director and shall be in such amount, not less than $1000, as the Assistant Director prescribes.~~

~~1. The minimum amount of such bonds shall be as follows:~~
~~a. Motor Vehicle Dealer dealing in motor vehicles other than motorcycles, motor driven cycles or trailers with an unladen weight not exceeding 1500 lbs., $25,000.~~
~~b. Motor Vehicle Dealer dealing only in motorcycles, motor driven cycles or trailers with an unladen weight not exceeding 1500 lbs., $10,000.~~
~~c. Motor Dealer -- $5,000.~~
~~d. Wrecker -- $5,000.~~
~~2. This Order to be effective as bonds accompanying applications filed for the calendar year 1982 and thereafter.~~

A. As prescribed under A.R.S. § 28-4362, the Division shall require a bond in the amount specified for the following motor vehicle business license applicants:
1. $100,000 from a motor vehicle dealer engaged in selling new or used motor vehicles,
2. $25,000 from a wholesale motor vehicle dealer,
3. $25,000 from a wholesale motor vehicle auction dealer,
4. $25,000 from a motor vehicle broker, and
5. $20,000 from an automotive recycler.

B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.

R17-5-403. ~~Reserved~~ Bond Amount. Motor Vehicle Title Service Business License

A. As prescribed under A.R.S. § 28-5005, the Division shall require a $25,000 bond for a motor vehicle title service company applying for a business license.

B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R17-5-202	Amend
R17-5-203	Amend
R17-5-206	Amend
R17-5-209	Amend

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

Authorizing statute: A.R.S. § 28-366

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

3. The effective date of the rules:

June 3, 2003. The Department is requesting an immediate effective date upon filing with the Secretary of State as allowed under A.R.S. § 41-1032(A). An immediate effective date is needed so the agency rules are up to date with the current Code of Federal Regulations. This will protect the public by allowing the Department to enforce the federal law applicable to safety of motor carriers that operate on Arizona roads. It also will allow the Department to continue to collect the federal Motor Carrier Safety Assistance Program (MCASP) grant funds of approximately $1.8 million to state law enforcement of motor carrier safety and Hazmat programs.

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 477, February 14, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 862, March 14, 2003

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

Name: Brent P. Heiss, Rules Analyst

Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Telephone: (602) 712-7941

Fax: (602) 241-1624

E-mail: bheiss@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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

MVD engages in this rulemaking to amend its Motor Carrier Safety rules as follows:

1. To incorporate sections of the 2002 edition of the 49 CFR by reference into Arizona Motor Carrier Safety and Hazardous Materials Transportation administrative rules.
2. To create two additional subsections that harmonize federal regulations with Arizona's current motor carrier safety program.

Amendments to R17-5-208 were being considered at the time the Notice of Rulemaking Docket Opening was published. For purposes of this update of motor carrier safety regulations, however, the agency has determined not to amend R17-5-208.

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

This rulemaking is an annual update that does not arise from a five-year review.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not rely on any study for this rulemaking.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

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

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

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

Only minor grammatical, sentence structure, and syntactical changes were made upon recommendations by the Governor's Regulatory Review Council staff.

11. A summary of the comments made regarding the rule and the agency response to them:

The agency did not receive any comments on this rulemaking.

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

Not applicable

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

In R17-5-202, subsection (A):

49 CFR Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399, published October 1, 2002.

In R17-5-209, subsection (A):

49 CFR Parts 107, 171, 172, 173, 177, 178, and 180, published October 1, 2002.

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

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

ARTICLE 5. MOTOR CARRIERS

Section

ARTICLE 5. MOTOR CARRIERS

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Application

A. The Division incorporates by reference 49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399 published October 1, ~~2001,~~ 2002 and no later amendments or editions, with the changes described in R17-5-202 through R17-5-508. Copies of the incorporated material are on file with the Federal Motor Carrier Safety Administration, the Division, and the Office of the Secretary of State.

B. The regulations of 49 CFR, incorporated by subsection (A), apply as amended by R17-5-203 through R17-5-208 to:

1. A motor carrier as defined in A.R.S. § 28-5201 except a motor carrier transporting passengers for hire in a motor vehicle with a design capacity of six or fewer persons.
2. A vehicle owned or operated by the state, a political subdivision, or a public authority of the state that is used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in R17-5-209.

R17-5-203. 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:
   Regulations incorporated in this Section are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be marked or placarded as prescribed in R17-5-209.
2. Paragraph (b) is amended to read:
   A motor carrier driver domiciled in Arizona who operates a commercial motor vehicle defined in A.R.S. § 28-3001 shall comply with the requirements of A.R.S. Title 28, Chapter 8 and any rule made under that Chapter.
3. Paragraph (c) is amended to read:
   A motor carrier operating in Arizona in furtherance of a commercial enterprise, shall comply with the financial responsibility requirement specified in A.R.S. Title 28, Chapter 9, Article 2, and 49 CFR 387.
4. Paragraph (f)(6) is deleted.

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 requirement of 49 CFR 382, the term has the meaning prescribed in 49 CFR 382.107.
2. If the term "Commercial Motor Vehicle" or "CMV" is used in reference to the licensing requirements prescribed under A.R.S. § 28-3223, the term has the meaning 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 requirement of 49 CFR 382 or the licensing requirement prescribed under A.R.S. § 28-3223, the term means a self-propelled, motor-driven vehicle or vehicle combination, used on a public highway in this state in furtherance of a commercial enterprise that:
   a. Has a gross vehicle weight rating (GVWR) as a single vehicle or a gross combination weight rating (GCWR) of 18,001 pounds or more for purposes of intrastate commerce;
   b. Transports passengers for hire and has a design capacity of seven or more persons; or
   c. Transports a hazardous material in an amount requiring marking or placarding as prescribed in R17-5-209;
   d. Is not an intrastate-operating tow truck that has a GVWR up to 26,000 pounds, but a tow truck operator remains subject to all other provisions prescribed under 49 CFR 391.41, 391.43, 391.45, 391.47, and 391.49; and
   e. Operates for purposes of interstate commerce with a GVWR of greater than 10,001 pounds.
4. "Exempt intracity zone" is deleted and has no application in R17-5-203 through R17-5-206.
5. "For-hire motor carrier," "private motor carrier", "private motor carrier of passengers (business)," and "private motor carrier of passengers (nonbusiness)" are deleted from R17-5-203 through R17-5-206 and the term "motor carrier" is substituted.
6. "Gross vehicle weight rating (GVWR)" is 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.
7. "Regional Director of Motor Carriers" means the Division Director of the Arizona Department of Transportation, Motor Vehicle Division.
8. "Special agent" means an officer or agent of the Department of Public Safety, the Division, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.
9. "State" means a state of the United States or the District of Columbia.
10. "Tow truck," as used in the definition of emergency in 49 CFR 390.5, has the meaning prescribed under A.A.C. R13-3-101.

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 CMVs. Paragraph (a) is amended to read:
This Section applies to all motor carrier vehicles operated in Arizona. A motor carrier not subject to U.S. Department of Transportation marking requirements shall mark its vehicle with the:
1. Company name, or
2. Business trade name, and
3. City and state.

E. 49 CFR 390.23 Relief from regulations.
1. Paragraph (a) is amended to read:
   Regulations contained in 49 CFR 390 through 397 do not apply to a motor carrier that:
   a. Is exempt from federal jurisdiction, and
   b. Operates a commercial motor vehicle used or designated to provide relief during an emergency.
2. Paragraphs (a)(1), (a)(1)(i), (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii) are deleted.
3. Paragraph (a)(2)(i)(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)(i)(B) is amended as follows:
   The Arizona Department of Public Safety 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 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. "Interstate commerce" as used in paragraph (b) means engagement in a commercial enterprise.

F. 49 CFR 390.25 Extension 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 Commercial Vehicle Enforcement Bureau. The motor carrier shall give full details of the additional relief requested. The Arizona Department of Public Safety shall observe time limits for emergency relief from regulations as prescribed under 49 CFR 390.23(a), but may extend a period of relief 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 motor carrier safety service centers is amended to read:
A motor carrier requesting relief from these regulations shall contact the Arizona Department of Public Safety, Commercial Vehicle Enforcement Bureau, Telephone (602) 223-2522.

R17-5-206. Motor Carrier Safety: Amendment to 49 CFR 392

A. 49 CFR 392.5 Alcohol prohibition. Paragraph (e) is amended to read:
Drivers who violate the terms of an out-of-service order as prescribed in this Section are subject to the provisions and sanctions of A.R.S. § 28-5232.

B. 49 CFR 392.9a is deleted.

R17-5-209. Hazardous Materials Transportation

A. Incorporation of federal regulations.
1. The Motor Vehicle Division incorporates the following portions of the Federal Hazardous Materials Regulations by reference. Materials incorporated by reference are on file in the Secretary of State's Office. The incorporated Hazardous Materials Regulations are published in 49 CFR Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Research and Special Programs Administration, Department of Transportation:
   a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
   b. Subchapter C - Hazardous Materials Regulations; Parts:
      i. 171 - General information, regulations, and definitions;
      ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements;
      iii. 173 - Shippers - general requirements for shipments and packagings;
      iv. 177 - Carriage by public highway;
      v. 178 - Specifications for packagings; and
      vi. 180 - Continuing qualification and maintenance of packagings.

2. These parts are incorporated as printed in the October 1, ~~2001~~ 2002 edition, and those sections of the October 1, 1991 edition authorized for use under the transitional provisions of Section 171.14 of the October 1, ~~2001~~ 2002 edition.

B. Application and exceptions.

1. Application.

   a. Regulations incorporated in subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined in A.R.S. § 28-5201.

   b. Regulations incorporated in subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.

2. Exceptions. An authorized emergency vehicle, as defined in A.R.S. § 28-101, is excepted from the provisions of this Section.

C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:

1. Part 171. General information, regulations, and definitions.

   a. Section 171.1 Purpose and scope.

      Paragraph (a) is amended to read:

      "The transportation of hazardous materials by and their offering to: (1) interstate, intrastate, and foreign motor carriers; and (2) vehicles owned or operated by the state, a political subdivision or a state public authority, which are used to transport hazardous material."

   b. Section 171.8 Definitions and abbreviations. Section 171.8 is amended by revising the definitions for "Carrier," "Hazmat employer," and "Person," and adding a definition for "Highway" as follows:

      "'Carrier' means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material."

      "'Hazmat employer' means a person who uses one or more of its employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined in A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities."

      "'Highway' means a public highway defined in A.R.S. § 28-5201."

      "'Person' has the same meaning as in A.R.S. § 28-5201."

2. Part 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements.

   Section 172.3 Applicability.

      Paragraph (a)(2) is amended to read:

      "Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway."

3. Part 177. Carriage by public highway.

   a. Section 177.800 Purpose and scope of this part and responsibility for compliance and training.

      In paragraph (a), the phrase "by private, common, or contract carriers by motor vehicle" is amended to read, "by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway."

   b. Section 177.802 Inspection. Section 177.802 is amended to read: "Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed in A.R.S. §§ 28-5204 and 28-5231."