

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

[R07-319]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R3-2-606 | Amend |
| R3-2-612 | 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. §§ 3-107(A)(1) and 3-1205(A)
Implementing statute: A.R.S. § 3-1203(B)(1)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 13 A.A.R. 1563, May 4, 2007
- 4. The name and address of agency personnel with whom persons may communication regarding the rulemaking:**
- | | |
|------------|---|
| Name: | Dr. Rick Willer, State Veterinarian |
| Address: | Arizona Department of Agriculture
Animal Services Division
1688 W. Adams St.
Phoenix, AZ 85007 |
| Telephone: | (602) 542-4293 |
| Fax: | (602) 542-4290 |
| E-mail: | rwiller@azda.gov |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The rule adds a requirement that bulls imported from other states for breeding must test negative for *Tritrichomonas foetus* and not engage in breeding activities between the time of testing negative and importation into Arizona. The health certificate required for importation must state those two requirements have been met. Test samples must be collected by an accredited veterinarian and analyzed at an approved laboratory. The Department is initiating this rule at the request of cattlegrowers to reduce the spread of the disease trichomoniasis among cattle.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
"Bovine Trichomoniasis: Biology, Impact and Control" by S. Peder Cuneo, Extension Veterinarian, University of Arizona.
The public may review a copy of this study from the person identified in item 4 above.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable

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

The benefits of this rule outweigh the costs. Out-of-state sellers of breeding bulls will face increased costs in order to test their bulls for *Tritrichomonas foetus*, though they are expected to make up these increased costs through higher prices to Arizona purchasers. Nevertheless, there are substantial benefits from importing disease-free bulls: increased fertility and fetal survival rates, which translate into larger herds and increased revenues from the sale of those cattle. The increased costs of purchasing bulls and providing feed to the larger herds will be more than made up through the increased revenue from the sale of the additional cattle. So, the cost/benefit to bull sellers is roughly even, while the benefit to cattlegrowers greatly outweighs the costs. Additionally, veterinarians, laboratories, and feed sellers are each expected to increase revenue as a result of the rule. Further, while the Department of Agriculture will have increased administration and enforcement costs, those costs are minimal compared to the anticipated gains of the cattlegrowers and related industries. Finally, there are no feasible alternatives for reducing the impact on small businesses, and those impacts will not be disproportionate in relation to the impact on large businesses.

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

See item 4.

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

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit written, faxed, or e-mail comments, please contact the agency official listed in item 4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. If no request for an oral proceeding is made, the rulemaking record will close at the end of the 30-day period following publication of this notice in the *Register*.

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

None

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

None

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION**

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

Section

R3-2-606. Official Health Certificate

R3-2-612. Importation of Cattle and Bison

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

R3-2-606. Official Health Certificate

A. A health certificate is valid for not more than 30 days after the date of issue, except where otherwise noted in this Article, and shall contain:

1. The name and address of the shipper and receiver;
2. The origin of the animal;
3. The animal's final destination;
4. Cattle.
 - a. The number of animals covered by the health certificate, ~~and~~ an accurate description and, except for steers, spayed heifers, or "F" branded heifers consigned to a designated feedlot identified by brand, one of the following individual identifications:
 - i. The USDA metal eartag number,
 - ii. The registration tattoo number, or
 - iii. The registration brand of a breed association recognized by VS;
 - b. The health status of the animals, including date and result of an inspection, dipping, test, or vaccination required by Arizona; ~~and~~
 - c. The method of transportation; ~~and~~
 - d. For bulls subject to testing under R3-2-612(J), a statement that the bulls:

- i. Tested negative for Tritrichomonas foetus within one month prior to shipment using a polymerase chain reaction test or three cultures collected at intervals of no less than seven days apart; and
- ii. Have had no breeding activity during the interval between the collection of the samples and the date of shipment.

- 5. Swine.
 - a. Evidence that the swine have been inspected by the veterinarian issuing the health certificate within 10 days before the shipment,
 - b. A statement that:
 - i. The swine have never been fed garbage, and
 - ii. The swine have not been vaccinated for pseudorabies;
 - c. Except for feeder swine consigned to a restricted swine feedlot:
 - i. A list of the individual permanent identification for each exhibition swine, using an eartag that conforms to the universal swine-eartag system or for each commercial swine, using other individual identification, and the premises identification using a tattoo or producer furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
 - ii. The validated brucellosis-free herd number and last test date for swine originating from a validated brucellosis-free herd;
 - iii. The pseudorabies status of the state of origin; and
 - iv. The pseudorabies qualified negative herd number, if applicable;
 - d. Except for feeder swine consigned to a restricted swine feedlot, swine moving directly to an exhibition, and swine from a farm of origin in a state recognized by APHIS as a pseudorabies Stage V state, a statement that the swine shall be quarantined on arrival at destination and kept separate and apart from all other swine until tested negative for pseudorabies no sooner than 15 days nor later than 30 days after entry into Arizona; and
 - e. Feeder swine consigned to a restricted swine feedlot shall be identified by premises of origin using a tattoo or producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
- 6. Sheep and goats.
 - a. Individual identification prescribed in R3-2-614;
 - b. A statement that:
 - i. The sheep or goats are not infected with bluetongue, or exposed to scrapie, and do not originate from a scrapie-infected or source flock;
 - ii. Breeding rams have been individually examined and are free of gross lesions of ram epididymitis; and
 - c. A statement that the sheep or goat test negative for Brucella ovis if a test is required by R3-2-614(B); and
- 7. Equine.
 - a. An accurate identification for each equine covered by the health certificate including age, sex, breed, color, name, brand, tattoo, scars, and distinctive markings; and
 - b. A statement that the equine has a negative test for EIA, as required in R3-2-615, including:
 - i. The date and results of the test;
 - ii. The name of the testing laboratory; and
 - iii. The laboratory accession number.

- B.** Additions, deletions, and unauthorized or uncertified changes inserted or applied to a health certificate renders the certificate void. Uncertified photocopies of health certificates are invalid.
- C.** The veterinarian issuing a health certificate shall certify that the animals shown on the health certificate are free from evidence of any infectious, contagious, or communicable disease or known exposure.
- D.** An accredited veterinarian shall inspect animals for entry into the state.
- E.** The Director may limit the period for which a health certificate is valid to less than 30 days if advised by the State Veterinarian of the occurrence of a disease that constitutes a threat to the livestock industry.

R3-2-612. Importation of Cattle and Bison

- A.** The owner of cattle and bison entering Arizona or the owner's agent shall comply with the requirements in R3-2-602 through R3-2-611 and the following conditions:
 - 1. Pay the expenses incurred to quarantine, test, and retest the imported cattle or bison.
 - 2. For imported beef breeding cattle, breeding bison, and dairy cattle, ensure that an accredited veterinarian applies a USDA metal eartag to each animal.
- B.** Arizona shall not accept:
 - 1. Cattle or bison from brucellosis infected, exposed, or quarantined herds regardless of their vaccination or test status, or both, except:
 - a. Steers and spayed females, and
 - b. Animals shipped directly for immediate slaughter to an official state or federal slaughter establishment;
 - 2. Cattle or bison of unknown brucellosis exposure status, unless consigned for feeding purposes to a designated feedlot,

Notices of Proposed Rulemaking

- or to a quarantine pen approved by the State Veterinarian at an export station approved by the USDA;
3. Dairy cattle from a state or region within a foreign country without brucellosis status comparable to a Class-Free State, or without tuberculosis status comparable to an Accredited-Free State;
 4. Dairy and dairy cross steers, and dairy and dairy cross spayed heifers from Mexico;
 5. Beef breeding cattle or breeding bison from a state or region within a foreign country without brucellosis status comparable to a Class A State, or without tuberculosis status comparable to a Modified Accredited State.
- C. Brucellosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from other states.
1. The owner or owner's agent shall ensure that an official calfhood vaccinate is tested negative for brucellosis within 30 days before entering Arizona if the official calfhood vaccinate is:
 - a. 18 months or older,
 - b. Cutting the first set of permanent incisors, or
 - c. Parturient or postparturient.
 2. The owner or owner's agent shall ensure that bulls and non-vaccinated heifers test negative for brucellosis if 12 months of age or older, unless consigned for feeding purposes to a designated feedlot. All cattle or bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona unless permission is granted by the State Veterinarian to apply the "F" brand on arrival. All "F" branded cattle or bison that leave the designated feedlot shall go directly to an official state or federal slaughter establishment for immediate slaughter or to another designated feedlot or be shipped to another state with the permission of the State Veterinarian in the state of destination.
 3. No brucellosis test is required for cattle or bison originating from a Certified Brucellosis-Free Herd if the herd certification number is documented on the health certificate and import permit.
 4. If native ranch cattle are from a brucellosis Class-Free State that does not have free-ranging brucellosis infected bison or wildlife, no brucellosis test is required when:
 - a. The native ranch cattle are moved directly from the ranch of origin to an Arizona destination and the USDA metal eartag numbers are listed on a health certificate; or
 - b. The native ranch cattle are from a state that has a brand inspection program approved by the State Veterinarian and the owner's brand is listed on a brand inspection certificate or health certificate.
 5. Health and brand inspection certificates issued for the movement shall be forwarded to the State Veterinarian in Arizona within two weeks of issue.
 6. The owner or owner's agent shall ensure that beef breeding cattle or breeding bison from Class A States remain under import quarantine and isolation until tested negative for brucellosis not earlier than 45 days nor later than 120 days after entry. Dairy cattle shall be retested only if the State Veterinarian determines that there is a potential risk of the introduction of brucellosis in the state. Exceptions to this import quarantine and brucellosis testing are provided for native ranch cattle in an adjacent Class A State and for official calfhood vaccinates less than 18 months of age if permission is granted by the State Veterinarian.
 7. The owner or owner's agent shall notify the State Veterinarian within seven days of moving or bison under import quarantine from the destination listed on the import permit and health certificate, unless the animals are shipped directly to an official state or federal slaughter establishment for immediate slaughter, and shall notify the State Veterinarian at the time animals under import quarantine that are not moved from the destination are retested for brucellosis.
 8. Beef breeding cattle, breeding bison, and dairy cattle meeting the criteria of subsections (C)(1) or (C)(2) and not meeting the criteria of subsection (C)(3) may be imported without a brucellosis test if moved to a specifically approved stockyard and tested before sale or movement from the stockyard. The owner or owner's agent shall not commingle these cattle or bison with other cattle or bison until these cattle or bison are tested and found to be brucellosis negative.
 9. Within seven days after importation, the owner or owner's agent shall ensure that the individual metal eartag identification for imported dairy cattle is the same as that listed on the health certificate and shall report any discrepancies to the State Veterinarian. Any dairy cattle shipped into Arizona not documented on the health certificate shall be tested for brucellosis and tuberculosis by the receiver within one week of arrival.
- D. Brucellosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from Mexico.
1. Before entry into Arizona, beef breeding cattle, breeding bison, or dairy cattle from Mexico shall meet the requirements of 9 CFR 92.424 through 92.427, January 1, 1996, edition, as amended at 60 FR 13898, 13900, March 15, 1995. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
 2. The owner or owner's agent shall ensure that beef breeding cattle, breeding bison, and dairy cattle from Mexico remain under import quarantine and isolation until tested negative for brucellosis not earlier than 60 days nor later than 120 days after entry into Arizona, and again 30 days after calving, unless consigned to a designated feedlot. All

cattle or bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona unless permission is granted by the State Veterinarian to apply the "F" brand on arrival. Unless neutered, all beef breeding cattle, breeding bison, and dairy cattle leaving the designated feedlot shall go directly to an official state or federal slaughter establishment for immediate slaughter or to another designated feedlot. The owner of the designated feedlot shall ensure that metal eartag identification records are kept on all incoming consignments and submit the records monthly to the State Veterinarian. An accredited veterinarian shall identify, on a form approved by the State Veterinarian, all cattle and bison leaving the designated feedlot. A copy of the form shall accompany the cattle or bison to slaughter and a copy shall be submitted to the State Veterinarian.

- E.** Except for the following, all female dairy cattle four months of age or older, imported into Arizona, shall be official calf-hood vaccinates, properly identified, certified, and legibly tattooed:
1. Show cattle for exhibition,
 2. Cattle from a Certified Brucellosis-Free Herd with permission of the State Veterinarian,
 3. Cattle from a brucellosis-free state or country with permission of the State Veterinarian,
 4. Cattle consigned directly to an official state or federal slaughter establishment for immediate slaughter, and
 5. Cattle consigned for feeding purposes to a designated feedlot under import permit.
- F.** When imported breeding cattle, breeding bison, or dairy cattle under import quarantine and isolation are sold at a specifically approved stockyard, the owner or owner's agent shall, at the time of the sale, identify those cattle to the new owner as being under import quarantine. If market cattle identification testing for brucellosis is conducted at the auction, the owner or owner's agent shall ensure that the cattle or bison are tested before the sale. The new owner shall segregate the cattle or bison and retest for brucellosis 45 to 120 days after the animals entered the state.
- G.** Tuberculosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from other states.
1. No tuberculosis test is required for:
 - a. Beef breeding cattle, breeding bison, or dairy cattle from an accredited herd if the herd accreditation number is documented on the health certificate and import permit;
 - b. Native commercial and purebred beef breeding cattle from an Accredited-Free State if its accredited-free status is documented on the health certificate; and
 - c. Steers and spayed heifers.
 2. Unless from an accredited herd, prescribed in subsection (G)(1), the owner or owner's agent shall ensure that purebred beef breeding cattle from modified accredited states, breeding bison, dairy females, and bulls for breeding dairy cattle test negative for tuberculosis within 60 days before entry into Arizona.
- H.** Tuberculosis testing requirements for cattle and bison imported into Arizona from Mexico.
1. Before entry into Arizona, cattle and bison from Mexico shall meet the requirements of 9 CFR 92.424 through 92.427, incorporated by reference in subsection (D)(1).
 2. Steers and spayed heifers from states or regions in Mexico that have not been determined by the State Veterinarian to have fully implemented the Control, Eradication, or Free Phase of the bovine tuberculosis eradication program of Mexico shall not enter the state.
 3. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have fully implemented the Control Phase of the bovine tuberculosis eradication program of Mexico shall not be imported into Arizona without prior permission of the State Veterinarian.
 4. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have fully implemented the Eradication Phase of the bovine tuberculosis eradication program of Mexico may be imported into Arizona, if they have either:
 - a. Tested negative for tuberculosis in accordance with procedures equivalent to the Bovine Tuberculosis Eradication - Uniform Methods and Rules within 60 days before entry into the United States, or
 - b. Originated from a herd that is equivalent to an accredited herd in the United States and are moved directly from the herd of origin across the border as a single group and not commingled with other cattle or bison before arriving at the border.
 5. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have achieved the Free Phase of the bovine tuberculosis eradication program of Mexico may move directly into Arizona without testing or further restrictions if they are moved as a single group and not commingled with other cattle before arriving at the border.
 6. Beef breeding cattle and breeding bison from states or regions in Mexico determined by the State Veterinarian to have fully implemented the Eradication or Free Phase of the bovine tuberculosis eradication program of Mexico may be imported into Arizona if they remain under import quarantine and isolation until retested negative for tuberculosis in accordance with the Bovine Tuberculosis Eradication - Uniform Methods and Rules, not earlier than 60 days, nor later than 120 days after entry unless consigned to a designated feedlot for feeding purposes only. Unless neutered, all beef breeding cattle or breeding bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona unless permission is granted by the State Veterinarian to apply the "F" brand on

Notices of Proposed Rulemaking

arrival. All beef breeding cattle or breeding bison leaving the designated feedlot shall go directly to an official state or federal slaughter establishment for immediate slaughter or to another designated feedlot. The owner of the designated feedlot shall ensure that metal eartag identification records are kept on all incoming consignments and submit the records monthly to the State Veterinarian. An accredited veterinarian shall identify, on a form approved by the State Veterinarian, all beef breeding cattle and breeding bison leaving the designated feedlot. A copy of the form shall accompany the cattle and bison to slaughter and a copy shall be submitted to the State Veterinarian.

I. Bovine scabies requirements.

1. The owner or owner’s agent shall ensure that no cattle or bison affected with or exposed to scabies is shipped, trailed, driven, or otherwise transported or moved into Arizona except cattle or bison identified and moving under permit number and seal for immediate slaughter at an official state or federal slaughter establishment.
2. The owner or owner’s agent of cattle or bison from an official state or federal scabies quarantined area shall comply with the requirements of 9 CFR 73, Scabies in Cattle, January 1, 1996, edition, as amended at 56 FR 52463, October 21, 1991, before moving the cattle or bison into Arizona. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
3. The State Veterinarian may require that breeding and feeding cattle and bison from known scabies infected areas and states be dipped or treated even if the animals are not known to be exposed. The State Veterinarian shall require that dairy cattle be dipped only if the animals are known to be exposed; otherwise a veterinarian’s examination and certification shall be sufficient.

J. Trichomoniasis requirements for bulls imported into Arizona from other states.

1. The owner or owner’s agent shall ensure bulls:
 - a. Test negative for Tritrichomonas foetus within 30 days prior to shipment using a polymerase chain reaction test or three cultures collected at intervals of no less than seven days apart, except for bulls:
 - i. Less than one year of age;
 - ii. Consigned directly to a state or federal licensed slaughter facility;
 - iii. Consigned directly to a dairy;
 - iv. Consigned directly to an exhibition or rodeo;
 - v. Consigned directly to a licensed feedlot for castration on arrival;
 - vi. Branded with an “F” adjacent to the tailhead and consigned directly to a designated feedlot for feeding and later movement directly to slaughter; and
 - b. Have no breeding activity during the interval between the collection of a sample and the date of shipment.
2. An accredited veterinarian approved to collect samples for Tritrichomonas foetus testing by the state animal health official in the state of origin shall collect the Tritrichomonas foetus test samples.
3. A laboratory approved to conduct tests for Tritrichomonas foetus by the state animal health official in the state of origin shall perform the test for Tritrichomonas foetus.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION**

[R07-320]

PREAMBLE

1. Sections Affected

Article 6
R17-1-601
R17-1-602
R17-1-603
R17-1-604
R17-1-605
R17-1-606
R17-1-607
R17-1-608
R17-1-609
R17-1-610

Rulemaking Action

New Article
New Section
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Notices of Proposed Rulemaking

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. §§ 28-331 and 28-363

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 3092, September 7, 2007

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

Name: John Lindley, Administrative Rules Analyst

Address: Administrative Rules Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007

Telephone: (602) 712-8804

Fax: (602) 712-3081

E-mail: jlindley@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/mvdrules/rules.asp.

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

The Arizona Department of Transportation proposes to adopt rules that provide formal guidelines for all solicitation activities sought to be conducted on Department property. Although similar solicitation guidelines are set forth in rules promulgated by the Arizona Department of Administration, ADOT buildings are not subject to the ADOA regulations. The Department's need for its own rules on this subject is therefore immediate, due to a sharp increase in the number of requests received from persons and organizations seeking permission to conduct solicitations at high-traffic Motor Vehicle Division Customer Service offices located throughout the state, as well as a corresponding increase in the number of complaints the Department has received about the intrusive nature of these solicitation activities.

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

None

7. A showing of good cause why the 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

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

The proposed rules will prohibit solicitation activities that involve the collection of monetary contributions or the exchange of money for goods or services on Department property. ADOT has determined that a complete ban of this particular form of solicitation activity is necessary because it is the most disruptive to the Department's regular business operations and places its customers at too great a risk of fraud and/or theft.

The anticipated economic impact to the various organizations no longer permitted to conduct solicitation activities involving the collection of monetary contributions or the exchange of money for goods or services on Department property will vary greatly depending on the type of organization. The Department anticipates that some of the solicitation organizations affected by the proposed rules may temporarily experience a minimal to moderate economic impact due to their loss of potential sales or contributions while having to seek an alternative venue.

The Department anticipates that consumers of Department products and services in many communities will experience an un-quantifiable benefit from the additional controls and protections the proposed rules will provide, which should ensure that consumers are not inundated by solicitors each time they need to enter or exit a Department building to accomplish personal business.

The anticipated economic impact to the solicitors who remain eligible to apply for a solicitation permit will be minimal, and will include the costs involved with completing the application process; providing the Department with copies of all solicitation materials; and supplying the appropriate equipment for solicitation activities.

The anticipated economic impact to the Department should be moderate and results from having to provide the resources necessary for rulemaking; administrative costs involved with reviewing, approving, or denying solicitation requests; making appropriate notifications; and conducting administrative hearings when applicable. However, the Department expects to benefit substantially by reducing the number of approved solicitors and the amount of resources necessary for the Department's Office of Inspector General to investigate the numerous solicitation-related complaints that are currently being made on a regular basis by Motor Vehicle Division customers and employees. The

Notices of Proposed Rulemaking

proposed rules should also provide much needed relief to individual office supervisors and other Division staff, who now have to expend valuable time away from their regular duties in order to mediate interactions between solicitors and Department customers, which may contribute to longer customer wait times as well.

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

An interested person may communicate with the agency official listed under item 4 regarding the economic impact statement.

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

The Division has scheduled the following oral proceeding/public hearing:

Date: October 30, 2007

Time: 3:00 p.m.

Location: 206 S. 17th Ave.
Phoenix, AZ

Written comments on the proposed rulemaking or the preliminary economic, small business, and consumer impact summary may be submitted to the analyst listed under item 4 until the close of public record at 5:00 p.m. on October 30, 2007. Comments are accepted Monday through Friday, 8:00 a.m. to 5:00 p.m., with the exception of state holidays.

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

None

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

None

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION**

ARTICLE 6. SOLICITATION

Section

<u>R17-1-601.</u>	<u>Definitions</u>
<u>R17-1-602.</u>	<u>Applicability; Exemptions</u>
<u>R17-1-603.</u>	<u>Application for Permit</u>
<u>R17-1-604.</u>	<u>Application Processing; Time-frames</u>
<u>R17-1-605.</u>	<u>Permit Limitations</u>
<u>R17-1-606.</u>	<u>Permit Issuance; Denial; Appeal; Hearing</u>
<u>R17-1-607.</u>	<u>Solicitor Responsibilities; Prohibited Activities</u>
<u>R17-1-608.</u>	<u>Signage Requirements</u>
<u>R17-1-609.</u>	<u>Removal; Revocation; Appeal; Hearing</u>
<u>R17-1-610.</u>	<u>Hold Harmless; Assumption of the Risk</u>

ARTICLE 6. SOLICITATION

R17-1-601. Definitions

In addition to the definitions under A.R.S. § 28-101, the following terms and phrases apply to this Article, unless otherwise specified:

“Animal guide or service animal” means an animal that:

Completes a formal training program;

Assists its owner in one or more daily living tasks associated with a productive lifestyle; and is

Trained to not pose a danger to the health and safety of the general public.

“Application” means a Solicitation Request form completed and submitted to the Division Director’s Office by a person seeking to conduct a solicitation on Department property.

“Department” means the Arizona Department of Transportation.

“Department property” means real property and buildings under the jurisdiction of the Director, excluding highways, highway rights-of-way, excess rights-of-way, and property leased by the Department to third parties.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designee.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Division headquarters” means 1801 W. Jefferson St., Phoenix, AZ 85007.

“Excess right-of-way” means real property under the jurisdiction of the Director that is:

Determined by the Director to be no longer needed or used for transportation purposes; and

Held by the Department for disposition under the provisions of A.R.S. § 28-7095.

“Objectionable tactics” means any unreasonably aggressive behavior on the part of a solicitor, including but not limited to, shouting at or verbally harassing a customer or employee; continuing to solicit from a person after that person has given a negative response to the solicitation; following the person after receiving such a response; intimidating a customer or employee; or preventing or interrupting the flow of customer traffic to or from a building located on Department property.

“Permit” means the approved Solicitation Request form signed by the Director.

“Person” has the meaning prescribed in A.R.S. § 1-215.

“Solicitation” means any activity, with the exception of those activities prohibited under R17-1-607, subsections (B)(3) and (B)(4), which can be interpreted as being for the expression of ideas, the distribution of information, or for the promotion of causes or memberships.

“Solicitation area” means a location outside a building on Department property, which shall be designated by an office supervisor for solicitation activities without interfering with business operations, blocking entry or exit doors, or inhibiting pathways to or from the building.

“Solicitation material” means advertising circulars, flyers, handbills, leaflets, petitions, or other printed information.

“Solicitor” means a person conducting a solicitation.

“Work site” means a location within a building on Department property where public employees or officers conduct the daily business of the Department. A cafeteria or break room may be designated a work site by an office supervisor where appropriate.

R17-1-602. Applicability; Exemptions

A. This Article does not apply to the following state programs:

1. The State Deferred Compensation Program;
2. The State Employees Charitable Campaign;
3. The U.S. Savings Bond Drive;
4. The United Blood Services Blood Drive;
5. The Capitol Rideshare Commuter Club;
6. The Capitol Rideshare Clean Air Campaign;
7. The Employee Wellness Program;
8. The employee recognition programs of the Department or Division; or
9. Any other state program expressly exempted by the Arizona Department of Administration under A.A.C. R2-11-309(A).

B. An employee association composed principally of employees of state government agencies, and designated a recognized association by the Arizona Department of Administration, shall apply under this Article for a permit to conduct a solicitation at a Department work site.

R17-1-603. Application for Permit

A. A person seeking to conduct a solicitation on Department property shall first apply to the Division Director’s Office for a permit by completing a Solicitation Request form provided by the Department.

B. The completed application shall be submitted to Division headquarters, either in person or by mail, at least 15 days before the desired date of the solicitation.

C. A completed application is one that is legible and contains, at a minimum, all of the following information:

1. The name, address, and telephone number of the applicant. If a permit is requested on behalf of an organization, the application shall also include the name, address, and telephone number of the organization, as well as its primary representative or contact person deemed in charge of and responsible for the proposed solicitation;
2. The proposed date and approximate starting and concluding times of the proposed solicitation;
3. The names of all persons who will take part in conducting solicitation activities on behalf of the applicant;

Notices of Proposed Rulemaking

4. The specific office location requested for the proposed solicitation;
5. The general purpose of the proposed solicitation;
6. Copies of all solicitation materials to be used; and
7. The signature of the applicant acknowledging that he or she has read, understands, and agrees to:
 - a. Comply with all requirements under this Article; and
 - b. Indemnify, defend, and hold harmless the State of Arizona and its agencies, officers, and employees from all liabilities as provided under R17-1-610.

R17-1-604. Application Processing: Time-frames

- A.** The Department shall not process an application for a permit until the applicant has fully complied with the application requirements under R17-1-603.
- B.** The Department shall provide notice to the applicant that the application is either complete or incomplete within five days of receiving the application.
 1. The date of receipt is the date the Department stamps on the application when received.
 2. If the application is incomplete, the notice shall indicate what required information is missing.
- C.** An applicant with an incomplete application shall supply the missing information to the Department within five days after the date on the notice provided by the Department under subsection (B).
 1. The Department may deny the permit if the applicant fails to supply the missing information within five days after the date of notice.
 2. Upon receipt of all missing information, the Department shall notify the applicant that the application is complete.
- D.** The Director shall render a permit decision within 10 days of the date a complete application is received. The date of receipt is the date on the notice provided to the applicant by the Department under subsections (B) or (C) acknowledging receipt of a complete application.
- E.** For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
 1. Administrative completeness review time-frame: five days.
 2. Substantive review time-frame: 10 days.
 3. Overall time-frame: 15 days.

R17-1-605. Permit Limitations

- A.** A solicitation permit approved by the Director under this Article shall be issued on a first-come, first-served basis no earlier than 60 days before the proposed solicitation.
- B.** A maximum of three solicitations may be conducted outside a building on Department property at any one time.
- C.** A maximum of three solicitor-authorized representatives may conduct solicitation activities on behalf of the permit-holder at any one location.
- D.** Solicitations may be conducted on Department property only on weekdays, between the hours of 8:30 a.m. and 4:30 p.m.

R17-1-606. Permit Issuance: Denial: Appeal: Hearing

- A.** If the Director approves an application for a solicitation permit, the permit:
 1. Shall expire after the approved solicitation time-period specified on the permit, unless previously revoked;
 2. Shall not be valid for more than 90 days from the effective date approved by the Director;
 3. Shall not be transferred or assigned, in whole or in part, to any person other than the person or organization to whom the permit is issued; and
 4. May be renewed only upon submission of a new application.
- B.** The Director may deny an application for a permit for one or more of the following reasons:
 1. The solicitation is likely to:
 - a. Interfere with the work of an employee or daily business of the Department;
 - b. Create a risk of injury to a person or risk of damage to property; or
 - c. Conflict with the time, place, manner, or duration of another solicitation for which a permit is already issued or pending;
 2. The applicant or the solicitation activity fails to comply with the requirements of this Article or any other applicable rule or statute;
 3. The applicant, or the person or organization on whose behalf the application was made, has within 12 months of the date of application, had a previous solicitation permit revoked by the Department for non-compliance with a provision of this Article or any other applicable rule or statute; or
 4. The applicant, or the person or organization on whose behalf the application was made, has on three separate occasions within a five-year period, had a previous solicitation permit revoked by the Department for non-compliance with a provision of this Article or any other applicable rule or statute.
- C.** If the Director denies an application for a solicitation permit, the Department shall send written notification of the Director's decision to the mailing address listed on the applicant's permit application, within three business days of denying the permit. The written notification shall state:

1. The Department's reason for the denial, citing all applicable supporting statutes or rules;
 2. The applicant's right to request a hearing to appeal the Department's action under A.R.S. Title 41, Chapter 6, Article 6, and Article 5 of this Chapter; and
 3. The time-frame for requesting a hearing with the Department's Executive Hearing Office as prescribed under Article 5 of this Chapter.
- D.** The scope of the hearing shall be limited to a determination of whether the Department possessed grounds to deny the solicitor's permit under subsection (B).

R17-1-607. Solicitor Responsibilities: Prohibited Activities

- A.** After receiving express written permission from the Director for a solicitation on Department property, an approved solicitor shall:
1. Provide a table to be used for all authorized solicitation activity;
 2. Present the original, approved Solicitation Request form, without any modifications or alterations, to an office supervisor at the approved location for inspection and sign-in prior to setting up a table or distributing materials;
 3. Provide at least one form of photo identification to an office supervisor for each person participating in or conducting solicitation activities on behalf of the permit-holder;
 4. Maintain a copy of the approved Solicitation Request form at each authorized location at all times;
 5. Set-up a table only in the solicitation area designated by an office supervisor;
 6. Remain outside the building, at the table, while performing any solicitation activity;
 7. Ensure that no entry or exit doors are blocked at any time;
 8. Ensure that no solicitation activity interferes with customer access to or egress from the building;
 9. Ensure that no solicitation activity interferes with Department operations; and
 10. Ensure that all solicitors employed by, or acting on behalf of, the permit-holder display a name badge that is at least three inches in height and four inches in width. The name badge shall contain:
 - a. The name of the organization conducting the solicitation, if applicable;
 - b. The organization's address;
 - c. The name of the individual solicitor in bold letters; and
 - d. The words "Authorized Representative."
- B.** A solicitor shall not:
1. Conduct any type of solicitation on Department property without the express written permission of the Director as provided under this Article;
 2. Perform any activity not specifically authorized by the permit;
 3. Solicit monetary contributions of any kind, whether for charitable purposes or not;
 4. Offer goods or services for sale, or engage in any other activity involving the exchange of money for a product or service;
 5. Engage in any solicitation activity outside of the solicitation area designated by an office supervisor;
 6. Use profane or offensive language, or engage in any objectionable tactics as defined under R17-1-601;
 7. Use any manual or electronic audio amplification device;
 8. Use any Department materials, supplies, equipment, or other resources to conduct a solicitation;
 9. Bring an animal, other than an animal guide or service animal, into a designated solicitation area;
 10. Leave garbage, litter, trash, human or animal waste, or any other kind of waste on Department property unless the waste is deposited in a container the Department maintains for that kind of waste;
 11. Conduct a solicitation outside the hours of 8:30 a.m. to 4:30 p.m. on a weekday; or
 12. Conduct a solicitation at any Department location on a Saturday, Sunday, or legal holiday.

R17-1-608. Signage Requirements

- A.** A solicitor, approved for conducting a solicitation at any Department location, shall provide, and prominently display at each solicitation table, a sign that is clearly visible to the public.
1. The sign shall:
 - a. Be at least 48" high and 36" wide;
 - b. Be printed in Times New Roman font, with a minimum font size of 72 point; and
 - c. Include the following language: "(Name of company or organization represented) is a private organization. Its representatives are not affiliated with, nor are they employees of, the state of Arizona or the Arizona Department of Transportation."
 2. The sign for a solicitor providing voter registration services shall include the following additional language: "The Motor Vehicle Division provides voter registration services inside all Customer Service offices and on the Internet at www.ServiceArizona.com."
- B.** The sign required by the Department under subsection (A) shall contain no additions or modifications.

R17-1-609. Removal; Revocation; Appeal; Hearing

- A.** The Department reserves the right at all times to immediately remove, or cause to be removed, any and all items of a solicitation that may damage state property, inhibit egress, or pose safety issues. The Department also reserves the right to immediately remove, or cause to be removed, any and all solicitors who are found to be damaging state property, inhibiting egress, or posing safety issues.
- B.** The Director may revoke a permit and ask a solicitor to leave the premises if the Director determines that:
 - 1. The solicitor's permit application contained a false or misleading statement or a material omission; or
 - 2. The solicitor or solicitation failed to comply with a provision of this Article or any other applicable rule or statute.
- C.** If the Director revokes a solicitation permit, the Department shall send written notification of the Director's decision to the mailing address listed on the solicitor's permit application, within three business days of revoking the permit. The written notification shall state:
 - 1. The Department's reason for the revocation, citing all applicable supporting statutes or rules;
 - 2. The solicitor's right to request a hearing to appeal the Department's action under A.R.S. Title 41, Chapter 6, Article 6, and Article 5 of this Chapter; and
 - 3. The time-frame for requesting a hearing with the Department's Executive Hearing Office as prescribed under Article 5 of this Chapter.
- D.** The scope of the hearing shall be limited to a determination of whether the Department possessed grounds to revoke the solicitor's permit under subsection (B).
- E.** A person or organization that has had a previous solicitation permit revoked by the Director, due to non-compliance with this Article, or any other applicable rule or statute, shall be ineligible to re-apply for another permit for a period of 12 months from the date of revocation.
- F.** If an individual solicitor or organization has had a permit, issued under this Article, revoked three separate times in a five-year period, the individual solicitor or organization shall be permanently disqualified from engaging in solicitation activities on Department property.

R17-1-610. Hold Harmless; Assumption of the Risk

- A.** The State of Arizona and its agencies, officers, and employees shall not be responsible or liable for any loss or damage that may be suffered by an individual solicitor or organization while conducting a solicitation under this Article.
- B.** All solicitation activities conducted on Department property are undertaken at the sole risk of the solicitor. The solicitor shall be fully and exclusively liable for all:
 - 1. Claims, losses, demands or judgments, including costs, expenses, and attorney or witness fees, arising out of the solicitor's use of Department property, or a negligent or intentional act, omission, or other misconduct performed by the solicitor, or by any other person acting on behalf of the solicitor; and
 - 2. Cleanup and damage repair costs incurred by the Department arising out of the solicitor's use of Department property, or a negligent or intentional act, omission, or other misconduct performed by the solicitor, or by any other person acting on behalf of the solicitor.
- C.** A solicitor shall indemnify, defend, and hold harmless the State of Arizona and its agencies, officers, and employees from all liabilities prescribed under this Section.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

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

[R07-316]

PREAMBLE

- 1. **Sections affected:**
 - R17-4-501
 - R17-4-504
 - 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 statute: A.R.S. § 28-3167
- | |
|----------------------------------|
| <u>Rulemaking Action:</u> |
| Amend |
| Amend |

Notices of Proposed Rulemaking

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2931, August 24, 2007

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

Name: Celeste M. Cook, Administrative Rules Analyst
Address: Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007
Telephone: (602) 712-7624
Fax: (602) 712-3081
E-mail: ccook@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/MVDRules/rules.asp.

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

The Arizona Department of Transportation, Motor Vehicle Division, proposes to amend the rule to incorporate recent legislative changes provided under Laws 2007, Chapter 97, which amends A.R.S. § 28-3167 to allow a registered nurse practitioner to sign the statement required to place a medical alert condition code on a person's driver license.

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

None

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

Not applicable

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

The small business and consumer impact of this rule is nil.

The Division impact of this rule is minimal. The only costs incurred by the Division are the costs of rulemaking.

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

Name: Celeste M. Cook, Administrative Rules Analyst
Address: Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007
Telephone: (602) 712-7624
Fax: (602) 712-3081
E-mail: ccook@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/MVDRules/rules.asp.

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

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit a written faxed or e-mail comments, please contact the Administrative Rule Analyst listed in item 4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. If no request for an oral proceeding is made, the public record will close on October 29, 2007 at 5:00 p.m.

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

None

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

None

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

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

ARTICLE 5. SAFETY

Section

R17-4-501. Definitions

R17-4-504. Medical Alert Conditions

ARTICLE 5. SAFETY

R17-4-501. Definitions

In addition to the definitions ~~in~~ provided under A.R.S. §§ 28-101 ~~and~~ 28-3001, 28-3005, and 32-1601, in this Article, unless otherwise specified:

“Adaptation” means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

“Applicant” or “licensee” means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Division to complete an examination successfully or to obtain an evaluation.

“Application” means the Division form required to be completed by or for an applicant for a driver license or driver license renewal.

“Arizona Driver License Manual” or “manual” means the reference booklet for applicants, issued by the Division, containing non-technical explanations of the Arizona motor vehicle laws.

“Aura” means a sensation experienced before the onset of a neurological disorder.

“Commercial Driver License physical qualifications” means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under R17-5-202 and R17-5-204.

“Director” means the Division Director or the Division Director’s designee.

“Disqualifying medical condition” means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

“Division” means the Arizona Department of Transportation, Motor Vehicle Division.

“Evaluation” means a medical assessment of an applicant or licensee by a specialist as defined below to determine whether a disqualifying medical condition exists.

“Examination” means testing or evaluating an applicant’s or licensee’s:

Ability to read and understand official traffic control devices,

Knowledge of safe driving practices and the traffic laws of this state, and

Functional ability.

“Functional ability” means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

“Identification number” means a distinguishing number assigned by the Division to a person for a license or instruction permit.

“Licensee” means a person issued a driver license by this state.

“Licensing action” means an action by the Division to:

Issue, deny, suspend, revoke, cancel, or restrict a driver license; or

Require an examination or evaluation of an applicant or licensee.

“Medical code” means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.

“Medical screening question and certification” means the questions and certification on the application.

“Neurological disorder” means a malfunction or disease of the nervous system.

~~“Physician” has the same meaning as prescribed under A.R.S. § 28-3005.~~

“Seizure” means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor con-

trol, or behavior, due to an abnormal electrical discharge in the brain.

“Specialist” means:

A physician who is a surgeon or a psychiatrist;

A physician whose practice is limited to a particular anatomical or physiological area or function of the human body, patients with a specific age range; or

A psychologist.

“Substance abuse” means:

Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021(1), or

Use of controlled substance in a manner that makes the user a drug dependant person as defined in A.R.S. § 36-2501.

“Substance abuse evaluation” means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.

~~“Substance abuse counselor” is defined in A.R.S. § 28-3005.~~

“Successful completion of an examination” means an applicant or licensee:

Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or

Achieves a score of at least 80% on any required written test and road test.

R17-4-504. Medical Alert Conditions

- A. In this Section, “license” means any class driver license, commercial driver license, non-operating identification license, or instruction permit.
- B. The Division shall provide on each license a space to indicate a medical alert condition. A list of recognized medical alert conditions is available at all Motor Vehicle Division Customer Service offices and Authorized Third Party Driver License offices.
- C. The Division shall not maintain the medical alert code on the Division computer record unless written authorization is submitted.
- D. A person shall submit a signed statement from a physician or registered nurse practitioner stating that the person is diagnosed with a medical condition. The signed statement is required every time the person requests a license unless the person authorizes the Division to maintain the medical code in the Division computer.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

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

[R07-315]

PREAMBLE

- 1. Sections Affected**
R17-4-508
- Rulemaking Action**
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 statute: A.R.S. §§ 28-3051 and 28-3223
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 13 A.A.R. 3203, September 21, 2007
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Celeste M. Cook, Administrative Rules Analyst
Address: Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007

Notices of Proposed Rulemaking

Telephone: (602) 712-7624
Fax: (602) 712-3081
E-mail: ccook@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/MVDRules/rules.asp.

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

The Arizona Department of Transportation, Motor Vehicle Division, proposes to amend this rule to further clarify that a licensed optometrist is authorized to perform the vision examination required for a commercial driver license applicant.

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

None

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

Not applicable

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

There are no costs imposed by this rulemaking other than the minimal costs of rulemaking activity. The benefit is increased clarity and reduction of possibility of confusion for an agency, business, entity, or person performing a vision examination or a commercial driver license applicant seeking a vision examination.

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

Name: Celeste M. Cook, Administrative Rules Analyst
Address: Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007
Telephone: (602) 712-7624
Fax: (602) 712-3081
E-mail: ccook@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/MVDRules/rules.asp.

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

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit a comment in writing, by fax or e-mail, please contact the Administrative Rule Analyst listed in item 4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. If no request for an oral proceeding is made, the public record will close on October 29, 2007 at 5:00 p.m.

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

Not applicable

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

Not applicable

13. The full text of the rule follows:

TITLE 17. TRANSPORTATION

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

ARTICLE 5. SAFETY

Section
R17-4-508. Commercial Driver License Physical Qualifications

ARTICLE 5. SAFETY

R17-4-508. Commercial Driver License Physical Qualifications

A. Requirements.

1. A Commercial Driver License applicant shall submit to the Division a U.S. Department of Transportation medical examination form completed as prescribed under 49 CFR 391.43:
 - a. Except as provided in subsection (c) of this Section, By by a professional licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:
 - i. Medical Doctor,
 - ii. Doctor of Osteopathy,
 - iii. Doctor of Chiropractic,
 - iv. Nurse Practitioner, or
 - v. Physician Assistant, and
 - b. Upon the applicant's initial application and at the time of each 24-month renewal.
 - c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform so much of the medical examination as pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.43(b)(10).
2. As prescribed under 49 CFR 391.41(a), a licensee who possesses a Commercial Driver License shall keep an original or photographic copy of the licensee's current medical examination form required under subsection (A)(1) available for law enforcement inspection upon request.
3. A licensee who possesses a Commercial Driver License shall notify the Division of a physical condition that develops or worsens causing noncompliance with the Commercial Driver License physical qualifications as soon as the licensee's medical condition allows.

B. Commercial Driver License suspension and revocation notification procedure. To notify a licensee of any Commercial Driver License suspension and revocation under subsection (C), the Division shall simultaneously mail two notices within 15 days after a medical examination form's due or actual submission date to the licensee's address of record that:

1. Suspends the licensee's Commercial Driver License beginning on the notice's date; and
2. Revokes the licensee's Commercial Driver License 15 days after the date of the suspension notice issued under subsection (B)(1).

C. Noncompliance actions.

1. Initial application denial. If an applicant's initial medical examination form required under subsection (A)(1) shows that the applicant does not comply with the Commercial Driver License physical qualifications, the Division shall immediately mail the Commercial Driver License denial notification to the applicant's address of record.
2. Twenty-four month renewal suspension and revocation. If a renewing Commercial Driver licensee submits:
 - a. No medical examination form required under subsection (A)(1) or a form indicating noncompliance with Commercial Driver License physical qualifications, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).
 - b. An incomplete medical examination form required under subsection (A)(1), the Division shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Division within 45 days after the date of the Division's letter. The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information in the time-frame prescribed in this subsection.
 - c. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 140 systolic or 90 diastolic, the Division shall mail notice to the licensee requiring three additional blood pressure evaluations:
 - i. Made on three different days,
 - ii. Performed by a qualified professional as prescribed under subsection (A)(1)(a), and
 - iii. Returned to the Division within 90 days after the Division's written notification. The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information prescribed under this subsection.
 - d. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 180 systolic or 110 diastolic, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).

D. A Commercial Driver License that remains revoked for longer than 12 months expires. The holder of an expired Commercial Driver License may obtain a new Commercial Driver License by successfully completing all Commercial Driver License original-application written, vision, and demonstration-skill testing and submitting the medical examination form

- prescribed under subsection (A)(1).
- E. Administrative hearing. A person who is denied a Commercial Driver License or whose Commercial Driver License is suspended or revoked under this Section may request a hearing according to the procedure prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.A.C. R17-1-501 through R17-1-511 and R17-1-513.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R07-318]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R20-5-602 | Amend |
| R20-5-602.01 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 41-1003; 23-107(A)(1); 23-405(4)
Implementing statute: A.R.S. § 23-410
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 13 A.A.R. 3157, September 14, 2007
- 4. The name and address of agency personnel with whom persons may communicate regarding the rule:**
- | | |
|------------|--|
| Name: | Nancy O. Johnson, Attorney
Legal Division
Industrial Commission of Arizona |
| Address: | 800 W. Washington St.
Phoenix, AZ 85007 |
| Telephone: | (602) 542-5948 |
| Fax: | (602) 542-6783 |
| E-mail: | njohnson@ica.state.az.us |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
Arizona Administrative Code R20-5-602 specifies that each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910. The current rule exempts from the standards those diving operations by or under the control of a governmental agency "performed solely for search, rescue, or related public safety purposes," and thus places diving team members for governmental agencies, such as police department dive teams, at risk. The purpose of the amendment to R20-5-602 is to designate that the exemption to the standards in the current rule does not apply except as specified in the new rule. The effect of the new rulemaking is that Subpart T, Commercial Diving Operation, shall apply to any diving operation by or under the control of a governmental agency.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant authority of a political subdivision of this state:**
Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**
Annual costs/revenues changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues.

The Commission will bear minimal to moderate costs for promulgating and enforcing the rules. Costs for promulgating the rules include staff time to write, review, and direct the rules through the rulemaking process.

Governmental agencies that perform diving operations pursuant to this rule may bear minimal costs for training diving members on the standards in subpart T. This training would be incorporated into the training already provided to the diving members, and so the cost should be negligible.

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

Name: Nancy O. Johnson, Attorney
Legal Division
Industrial Commission of Arizona

Address: 800 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-5948

Fax: (602) 542-6783

E-mail: njohnson@ica.state.az.us

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

The ICA has scheduled an oral proceeding on the proposed rulemaking:

Date: October 31, 2007

Location: 800 W. Washington St.
Phoenix, AZ 85007

Time: 1:00 p.m.

The close of record is October 31, 2007, 5:00 p.m.

A person may also submit written comments on the proposed rules no later than 5:00 p.m., October 31, 2007, to the individual listed in items 4 and 9.

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

Not applicable

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

None

13. The full text of the rule follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry

R20-5-602.01. Subpart T, Commercial Diving Operations

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry

Except as provided in R20-5-602.01, ~~Each~~ each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of February 14, 2007, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of in rule R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after February 14, 2007.

R20-5-602.01. Subpart T. Commercial Diving Operations

Each employer shall comply with the standards in Subpart T of the Federal Occupational Safety and Health Standards for the General Industry as published in 29 CFR 1910, with amendments as specified in R20-5-602, except that the exemption set forth in 29 CFR 1910.401(a)(2)(ii) shall not apply. Subpart T shall apply to any diving operation performed solely for search, rescue, or related public safety purposes by or under the control of a governmental agency.