

# 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 3. AGRICULTURE

#### CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

[R08-387]

#### PREAMBLE

- 1. Sections Affected**  
R3-11-105
- 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. § 32-2207(9)  
Implementing statute: A.R.S. §§ 32-2219(C) and 32-2250(3)
- 3. The effective date for the rule:**  
January 3, 2009
- 4. List of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening: 14 A.A.R. 3127, August 1, 2008  
Notice of Proposed Rulemaking: 14 A.A.R. 2962, August 1, 2008
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Jenna Jones  
Address: Veterinary Medical Examining Board  
1400 W. Washington St., Suite 240  
Phoenix, AZ 85007  
Telephone: (602) 542-8150  
Fax: (602) 364-1039  
E-mail: Jenna.jones@vetboard.az.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:**  
The Board is making permanent a fee increase that became effective under an emergency rulemaking on September 8, 2008 (14 A.A.R. 3806, October 3, 2008). The rulemaking increases the fee that a licensee or certificate holder pays to renew the license or certificate. The increase in fees was necessitated by a fund sweep that the legislature put into the state's FY2009 budget. The Board had \$460,000 in its fund at the end of FY2008 and anticipated collecting \$789,305 in FY2009. Before any expenditure, the Board would have \$1,249,305 in FY2009. The legislature swept \$609,500 from the Board's fund as part of the state's FY2009 budget and appropriated \$468,300 for the Board's FY2009 operations for a total of \$1,077,800. This left the Board with \$171,505 in its fund at the start of FY2010, which is less than the more than \$450,000 required to operate the Board. Because renewals occur only in even-numbered years, the Board will not collect enough in FY2010 to meet its operating expenses. It will begin FY2011 with a deficit of more than \$100,000. The Board anticipates the fee increase will generate approximately \$110,000 every two years. With the fee increase, it is possible that the Board will again have funds with which to operate in FY2013.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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

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**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:**

This rulemaking makes permanent a fee increase that became effective under an emergency rulemaking on September 8, 2008. The rulemaking increases the fee that a licensee or certificate holder pays to renew the license or certificate. The increased fee is a cost of doing business for the licensee or certificate holder that may be passed to consumers of veterinary services. Because the Board contributes 10 percent of the fees collected to the state's general fund, the rulemaking will increase state revenue.

The increase in fees was necessitated by a fund sweep that the legislature put into the state's FY2009 budget. The Board had \$460,000 in its fund at the end of FY2008 and anticipated collecting \$789,305 in FY2009. Before any expenditure, the Board would have \$1,249,305 in FY2009. The legislature swept \$609,500 from the Board's fund as part of the state's FY2009 budget and appropriated \$450,000 for the Board's FY2009 operations for a total of \$1,059,500. This left the Board with \$189,805 in its fund at the start of FY2010, which is less than the \$450,000 required to operate the Board. Because renewals occur only in even-numbered years, the Board will not collect enough in FY2010 to meet its operating expenses. It will begin FY2011 with a deficit of more than \$100,000.

The Board anticipates that the fee increase in this rulemaking will generate approximately \$110,000 every two years. The increase, which puts renewal fees at the statutory maximum, will help but still leaves the Board with a deficit until approximately FY2013.

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

No changes were made between the proposed and final rule.

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

No comments were made regarding the rule.

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

None

**13. Incorporations by reference and their location in the rule:**

None

**14. Was the rule previously made as an emergency rule?**

Yes. There are no changes in the text between the emergency and final rule.

**15. The full text of the rule follows:**

TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

ARTICLE 1. GENERAL PROVISIONS

Section  
R3-11-105. Fees

ARTICLE 1. GENERAL PROVISIONS

**R3-11-105. Fees**

**A. Veterinarian fees are as follows:**

1. No change
2. No change
3. No change
4. No change
5. No change
6. License renewal - ~~\$350.00~~ \$400.00
7. No change
8. No change
9. No change
10. No change

**B. Veterinary technician fees are as follows:**

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- 1. No change
- 2. No change
- 3. No change
- 4. Certificate renewal - ~~\$50.00~~ \$100.00
- 5. No change
- 6. No change
- C. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- D. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
  - 7. No change
- E. No change
- F. No change
- G. No change
- H. No change

**NOTICE OF FINAL RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 23. BOARD OF PHARMACY**

[R08-394]

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R4-23-110                          | Amend                           |
| R4-23-412                          | New Section                     |
| R4-23-413                          | New Section                     |
| R4-23-617                          | New Section                     |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statutes: A.R.S. §§ 32-1904(A)(1), (2), and (B)(3)  
Implementing statutes: A.R.S. § 32-1910
- 3. The effective date of the rules:**  
January 3, 2009
- 4. A list of all previous notices appearing in the Register addressing the proposed rules:**  
Notice of Rulemaking Docket Opening: 14 A.A.R. 1619, May 2, 2008  
Notice of Proposed Rulemaking: 14 A.A.R. 2305, June 13, 2008
- 5. The name and address of agency personnel with whom persons may communicate regarding the rules:**  
Name: Dean Wright, Compliance Officer  
Address: Board of Pharmacy  
1700 W. Washington St., Suite 500  
Phoenix, AZ 85007  
Telephone: (602) 771-2744

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Fax: (602) 771-2749  
E-mail: dwright@azpharmacy.gov

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

During the 48th Legislative Session in 2007, the Legislature passed HB 2155 adding A.R.S. § 32-1910 *Emergencies; continued provision of services* to the Pharmacy Act. A.R.S. § 32-1910 requires the Board to cooperate with the state, county, city, or town to ensure the provision of drugs, devices, and professional services to individuals affected by a declared state of emergency related to a natural disaster or terrorist attack. A.R.S. § 32-1910 allows the Board to make rules implementing the statute.

The rulemaking includes necessary new definitions added to R4-23-110 (Definitions) and three new Sections: R4-23-412 (Emergency Refill Prescription Dispensing), R4-23-413 (Temporary Recognition of Non-resident Licensure), and R4-23-617 (Temporary Pharmacy Facilities or Mobile Pharmacies). The new Sections establish requirements for the dispensing of an emergency refill prescription, temporary recognition of a non-resident licensee working in Arizona during a declared emergency, and operation of temporary pharmacy facilities or mobile pharmacies during a declared emergency. The rules include format, style, and grammar necessary to comply with the current rules of the Secretary of State and the Governor's Regulatory Review Council.

The Board believes that making these rules will benefit the public and the pharmacy community by clearly establishing the requirements for dispensing of an emergency refill prescription during a declared emergency, temporary recognition of a nonresident licensee working in Arizona during a declared emergency, and operation of temporary pharmacy facilities or mobile pharmacies during a declared emergency.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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 or rely on any study relevant to the rules.

**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:**

The rules will impact the Board, pharmacists, interns, technicians, and pharmacies. The rules' impact on the Board is the usual rulemaking-related costs, which are minimal. The rules will only impact the Board during a declared emergency. During such an emergency, the Board staff is required to monitor temporary pharmacy facilities and mobile pharmacies for compliance. The Board estimates the economic impact of a declared emergency is minimal to moderate. The cost of a compliance inspection is approximately \$250. The Board estimates a single declared emergency might require from one to 12 inspections for an estimated cost of from \$250 to \$3000.

The rules have minimal economic impact on pharmacists, interns, technicians, and pharmacies. The rules are necessary to implement statute. The rules provide guidance for nonresident licensees who come to Arizona to work in a relief effort during a declared emergency. The rules allow those nonresident licensees to work without obtaining an Arizona pharmacist, intern, or technician license, so there is no economic impact for those licensees. The rules allow pharmacies that are damaged or destroyed by a disaster to temporarily relocate the business or to set up a mobile pharmacy to continue serving the public during the declared emergency. The rules have no economic impact on the public. The public benefits from rules that ensure the provision of drugs, devices, and professional services to individuals affected by a declared state of emergency related to a natural disaster or terrorist attack.

The rules benefit the public and the pharmacy community by clearly establishing the requirements for dispensing of an emergency refill prescription during a declared emergency, temporary recognition of a nonresident licensee working in Arizona during a declared emergency, and operation of temporary pharmacy facilities or mobile pharmacies during a declared emergency.

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

There are no substantial changes in the final rules from the proposed rules. Based on received public comment and to be consistent with other subsections of the rule, R4-23-413(A)(2)(a) is changed by adding the words "or registration" after the word "licensure." There are minor changes to style, format, grammar, and punctuation requested by G.R.R.C. staff.

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

A public hearing was held July 14, 2008. Janet Elliott representing the Arizona Community Pharmacy Committee attended the public hearing. Ms. Elliott provided written comment from the Arizona Community Pharmacy Committee voicing support for the rulemaking. A written comment was received from Lis Houchen, Northwest Regional Director for the National Association of Chain Drug Stores (NACDS). Ms. Houchen asked the Board to clarify R4-23-412 by adding language to specifically allow filling new prescriptions and to allow refilling without restrictions when the patient's prescription information is available. Ms. Houchen specifically cited the system that was put in place after the Katrina disaster that allows pharmacies to access patients' prescription history information and to fill

patient's existing prescriptions. The system is available at [www.icerx.org](http://www.icerx.org). Ms. Houchen asked the Board to clarify that this rule would not prohibit this legitimate prescription processing. Regarding Ms. Houchen's comments requesting clarification of R4-23-412 to specifically allow filling new prescriptions and to allow refilling without restrictions when the patient's prescription information is available, the Board does not believe a clarification is necessary. The statute, A.R.S. § 32-1910, the rule is implementing specifically states that a pharmacist may dispense an emergency refill as a consequence of a declared state of emergency that results in an individual being unable to refill existing prescriptions. Ms. Houchen's comments imply that the rule would prohibit legitimate prescription processing, but the rule does not apply to legitimate prescription processing. The rule applies to a specific declared state of emergency situation where an individual is unable to refill the individual's prescription through normal legitimate prescription processing.

Ms. Houchen also asked that the Board clarify R4-23-617 to provide for some flexibility in the event of an emergency or disaster to allow a pharmacist-in-charge to cover more than one temporary or mobile pharmacy. Regarding Ms. Houchen's final comment about flexibility regarding the pharmacist-in-charge of a temporary or mobile pharmacy, the Board feels the rule is sufficiently flexible, as R4-23-617(A)(1) specifically allows the temporary or mobile pharmacy to be under the control of the pharmacist-in-charge or a supervising pharmacist.

Ms. Houchen also asked the Board to clarify R4-23-413(A)(2)(a) to allow a pharmacy technician or pharmacy intern to provide proof of licensure or registration in another state. The subsection as proposed does not state "or registration," which is inconsistent with the other subsections in R4-23-413 that state licensed or registered (R4-23-413(A)(2) or licensure or registration (R4-23-413(B)). The Board agrees that R4-23-413(A)(2)(a) is inconsistent with R4-23-413(A)(2) and R4-23-413(B) and has changed the final rule to include the words "or registration" after the word "licensure" in R4-23-413(A)(2)(A).

**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. Any material incorporated by reference and its location in the rules:**

None

**14. Were the rules previously approved as an emergency rules?**

No

**15. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 23. BOARD OF PHARMACY**

**ARTICLE 1. ADMINISTRATION**

Section

R4-23-110. Definitions

**ARTICLE 4. PROFESSIONAL PRACTICES**

Section

R4-23-412. ~~Reserved~~ Emergency Refill Prescription Dispensing

R4-23-413. ~~Reserved~~ Temporary Recognition of Nonresident Licensure

**ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS**

Section

R4-23-617. ~~Reserved~~ Temporary Pharmacy Facilities or Mobile Pharmacies

**ARTICLE 1. ADMINISTRATION**

**R4-23-110. Definitions**

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to 4 A.A.C. 23:

"Active ingredient" No change

"Alternate physician" No change

"Approved course in pharmacy law" No change

"Approved Provider" No change

"Authentication of product history" No change

"Automated storage and distribution system" No change

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- “Batch” No change
- “Beyond-use date” No change
- “Biological safety cabinet” No change
- “Care-giver” No change
- “Community pharmacy” No change
- “Component” No change
- “Compounding and dispensing counter” No change
- “Computer system” No change
- “Computer system audit” No change
- “Contact hour” No change
- “Container” No change
- “Continuing education” No change
- “Continuing education activity” No change
- “Continuing education unit” or “CEU” No change
- “Correctional facility” No change
- “CRT” No change
- “CSPMP” No change
- “Current good compounding practices” No change
- “Current good manufacturing practice” No change
- “Cytotoxic” No change
- “Day” No change
- “DEA” No change
- “Declared disaster areas” means areas designated by the governor or by a county, city, or town under A.R.S. § 32-1910 as those areas that have been adversely affected by a natural disaster or terrorist attack and require extraordinary measures to provide adequate, safe, and effective health care for the affected population.
- “Delinquent license” No change
- “Dietary supplement” No change
- “Digital signature” No change
- “Dispensing pharmacist” No change
- “Drug sample” No change
- “Drug therapy management” No change
- “Drug therapy management agreement” No change
- “Electronic signature” No change
- “Eligible patient” No change
- “Extreme emergency” No change
- “FDA” No change
- “Immediate notice” No change
- “Inactive ingredient” No change
- “Internal test assessment” No change
- “ISO Class 5 environment” No change
- “ISO Class 7 environment” No change
- “Limited-service correctional pharmacy” No change
- “Limited-service long-term care pharmacy” No change
- “Limited-service mail-order pharmacy” No change
- “Limited-service nuclear pharmacy” No change
- “Limited-service pharmacy permittee” No change
- “Limited-service sterile pharmaceutical products pharmacy” No change

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- “Long-term care consultant pharmacist” No change
- “Long-term care facility” or “LTCF” No change
- “Lot” No change
- “Lot number” or “control number” No change
- “Materials approval unit” No change
- “Mechanical counting device for a drug in solid, oral dosage form” No change
- “Mechanical storage and counting device for a drug in solid, oral dosage form” No change
- “Mediated instruction” No change
- “Medical practitioner-patient relationship” No change
- “Mobile pharmacy” means a pharmacy that is self propelled or movable by another vehicle that is self propelled.
- “MPJE” No change
- “NABP” No change
- “NABPLEX” No change
- “NAPLEX” No change
- “Order” No change
- “Other designated personnel” No change
- “Outpatient” No change
- “Outpatient setting” No change
- “Patient profile” No change
- “Pharmaceutical patient care services” No change
- “Pharmaceutical product” No change
- “Pharmacist-administered immunizations training program” No change
- “Pharmacy counter working area” No change
- “Pharmacy law continuing education” No change
- “Pharmacy permittee” No change
- “Precursor chemical” No change
- “Prepackaged drug” No change
- “Prep area” No change
- “Proprietor” No change
- “Provider pharmacy” No change
- “Radiopharmaceutical” No change
- “Radiopharmaceutical quality assurance” No change
- “Radiopharmaceutical services” No change
- “Red C stamp” No change
- “Refill” No change
- “Regulated chemical” No change
- “Remodel” No change
- “Remote drug storage area” No change
- “Resident” No change
- “Responsible person” No change
- “Score transfer” No change
- “Security paper” No change
- “Shared order filling” No change
- “Shared order processing” No change
- “Shared services” No change
- “Sight-readable” No change
- “Single-drug audit” No change

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- “Single-drug usage report” No change
- “Standard-risk sterile pharmaceutical product” No change
- “State of emergency” means a governmental declaration issued under A.R.S. § 32-1910 as a result of a natural disaster or terrorist attack that results in individuals being unable to refill existing prescriptions.
- “Sterile pharmaceutical product” No change
- “Strength” No change
- “Substantial-risk sterile pharmaceutical product” No change
- “Supervision” No change
- “Supervisory physician” No change
- “Supplying” No change
- “Support personnel” No change
- “Temporary pharmacy facility” means a facility established as a result of a declared state of emergency to temporarily provide pharmacy services within or adjacent to declared disaster areas.
- “Transfill” No change
- “Verified signature” or “signature verifying” No change
- “Wholesale distribution” No change
- “Wholesale distributor” No change

ARTICLE 4. PROFESSIONAL PRACTICES

**R4-23-412. ~~Reserved~~ Emergency Refill Prescription Dispensing**

- A.** When a state of emergency is declared under A.R.S. § 32-1910(A) or (B) and the state of emergency results in individuals being unable to refill existing prescriptions, a pharmacist may work in the affected county, city, or town and may dispense a one-time emergency refill prescription of up to a 30-day supply of a prescribed medication to an affected individual if both of the following apply:
  - 1. In the pharmacist’s professional opinion the medication is essential to the maintenance of life or to the continuation of therapy, and
  - 2. The pharmacist makes a good faith effort to reduce the information to a written prescription marked “emergency prescription” and files and maintains the prescription as required by law.
- B.** If the state of emergency declared under A.R.S. § 32-1910(A) or (B) continues for at least 21-days after the pharmacist dispenses an emergency prescription under subsection (A), the pharmacist may dispense one additional emergency refill prescription of up to a 30-day supply of the prescribed medication if the pharmacist complies with subsection (A)(2).
- C.** A pharmacist’s authority to dispense emergency prescriptions under this Section ends when the declared state of emergency is terminated.

**R4-23-413. ~~Reserved~~ Temporary Recognition of Nonresident Licensure**

- A.** When a state of emergency is declared under A.R.S. § 32-1910(A) or (B):
  - 1. A pharmacist who is not licensed in this state, but who is currently licensed in another state, may dispense prescription medications in those affected counties, cities, or towns in this state during the time that a declared state of emergency exists under A.R.S. § 32-1910(A) or (B) if both of the following apply:
    - a. The pharmacist provides proof of current licensure in another state, and
    - b. The pharmacist is engaged in a relief effort during a state of emergency.
  - 2. Acting under the direct supervision of a pharmacist, a pharmacy technician or pharmacy intern not licensed in this state, but currently licensed or registered in another state, may assist a pharmacist in dispensing prescription medications in affected counties, cities, or towns in this state during the time that a declared state of emergency exists under A.R.S. § 32-1910(A) or (B) if both of the following apply:
    - a. The pharmacy technician or pharmacy intern provides proof of current licensure or registration in another state, and
    - b. The pharmacy technician or pharmacy intern is engaged in a relief effort during a state of emergency.
- B.** The recognition of nonresident licensure or registration shall end with the termination of the declared state of emergency.

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

**R4-23-617. ~~Reserved~~ Temporary Pharmacy Facilities or Mobile Pharmacies**

- A.** Pharmacies located in declared disaster areas, nonresident pharmacies, and pharmacies licensed or permitted in another state but not licensed or permitted in this state, if necessary to provide pharmacy services during a declared state of emergency, may arrange to temporarily locate to a temporary pharmacy facility or mobile pharmacy or relocate to a temporary pharmacy facility or mobile pharmacy if the pharmacist-in-charge of the temporary pharmacy facility or mobile pharmacy



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ensures that:

1. The pharmacy is under the control and management of the pharmacist-in-charge or a supervising pharmacist designated by the pharmacist-in-charge;
  2. The pharmacy is located within or adjacent to the declared disaster area;
  3. The Board is notified of the pharmacy's location;
  4. The pharmacy is properly secured to prevent theft and diversion of drugs;
  5. The pharmacy's records are maintained in accordance with Arizona statutes and rules; and
  6. The pharmacy stops providing pharmacy services when the declared state of emergency ends, unless it possesses a current resident pharmacy permit issued by the Board under A.R.S. §§ 32-1929, 32-1930, and 32-1931.
- B.** The Board shall have the authority to approve or deny temporary pharmacy facilities, mobile pharmacies, and shall make arrangements for appropriate monitoring and inspection of the temporary pharmacy facilities and mobile pharmacies on a case-by-case basis.
- C.** A temporary pharmacy facility wishing to permanently operate at its temporary site shall apply for and have received a permit issued under A.R.S. §§ 32-1929, 32-1930, and 32-1931 by following the application process under R4-23-606.
- D.** A mobile pharmacy, placed in operation during a declared state of emergency, shall not operate permanently.

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ARIZONA LONG-TERM CARE SYSTEM**

[R08-391]

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R9-28-501                          | Amend                           |
| R9-28-501.01                       | New Section                     |
| R9-28-503                          | Amend                           |
| R9-28-505                          | 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. § 36-2932  
Implementing statute: A.R.S. §§ 36-2932, 36-2939
- 3. The effective date of the rules:**  
January 3, 2009
- 4. A list of all previous notices appearing in the Register addressing the final rules:**  
Notice of Rulemaking Docket Opening: 14 A.A.R. 2784, July 11, 2008  
Notice of Proposed Rulemaking: 14 A.A.R. 2971, August 1, 2008
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Administrative Legal Services  
701 E. Jefferson St., Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4693  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@azahcccs.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**  
The Administration is making rule changes as a result of a Five-year Rule Review recently conducted. The topics requiring an update are requirements that relate to: pre-existing conditions, nursing facilities required to be registered with a program contractor, and other technical updates.

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7. **A reference to any study relevant to the rule that the agency reviewed and either relied on 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:**  
No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.
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:**  
The Administration anticipates that there will be a minimal to no economic impact as a result of the rule changes. The changes provide clarification of current processes and technical updates, and therefore do not require a change in practices for those affected by the rulemaking.
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
No substantial changes have been made between the proposed rules and the final rules below. The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.
11. **A summary of the comments made regarding the rules and the agency response to them:**  
The Administration did not receive any 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:**  
Not applicable
13. **Incorporations by reference and their location in the rules:**  
None
14. **Were these rules previously adopted as emergency rules?**  
No
15. **The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Section

- R9-28-501. Program Contractor and Provider Standards – ~~related~~ Related Definitions  
R9-28-501.01. Pre-Existing Conditions  
R9-28-503. Licensure and Certification for Long-term Care Institutional Facilities  
R9-28-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

**R9-28-501. Program Contractor and Provider Standards – ~~related~~ Related Definitions**

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

1. “Certification” means a voluntary process by which a federal or state regulatory entity grants recognition to a person, facility, or organization that has met certain qualifications specified by the regulatory entity, allowing the person, facility, or organization to use the word “certified” in a title or designation.
2. “Therapeutic leave” means ~~when that~~ a member leaves an institutional facility for a period of time. ~~That time cannot that does not~~ exceed nine days per contract year.

**R9-28-501.01. Pre-Existing Conditions**

A program contractor shall comply with the pre-existing condition requirements in A.A.C. R9-22-502.

**R9-28-503. Licensure and Certification for Long-term Care Institutional Facilities**

- A. A nursing facility shall not provide services to a member, unless the facility is licensed by Arizona Department of Health Services, Medicare- and Medicaid- certified, and meets the requirements in 42 CFR 442, as of October 1, 2004, and 42 CFR 483, as of October 1, 2004, incorporated by reference, on file with the Administration, and available from the U.S.

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Government Printing Office, ~~Mail Stop: IDCC, 732 N. Capitol Street, NW St. N.W., Washington, DC, D.C. 20401, and licensed by Arizona Department of Health Services.~~ This incorporation by reference contains no future editions or amendments.

- B. An ICF-MR shall not provide services to a member unless the ICF-MR is Medicaid-certified and meets the requirements in A.R.S. § 36-2939(B)(1) and 42 CFR 442, Subpart C, as of October 1, 2004, and 42 CFR 483, as of October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, ~~Mail Stop: IDCC, 732 N. Capitol Street, NW St. N.W., Washington, DC, D.C. 20401.~~ This incorporation by reference contains no future editions or amendments.
- C. A nursing facility or ICF-MR that provides services to a member shall register as a provider with the Administration to receive reimbursement. The Administration shall not register a provider unless the provider meets the licensure and certification requirements of ~~subsections~~ subsection (A) or (B) ~~and has a current provider agreement with a program contractor.~~

**R9-28-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services**

- ~~A. A provider of hospital and medical care services shall be registered with the Administration to receive reimbursement.~~
- B. A provider shall not provide hospital services to a member unless the hospital is licensed by the Arizona Department of Health Services, and meets the requirements in 42 CFR 441 and 482, as of October 1, 2004, and 42 CFR 456, Subpart C, as of October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, ~~Mail Stop: IDCC, 732 N. Capitol Street, NW St. N.W., Washington, DC, D.C. 20401.~~ This incorporation contains no future editions or amendments. An Indian Health Service (IHS) hospital and a Veterans Administration hospital shall not provide services to a member unless accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
CHILDREN’S HEALTH INSURANCE PROGRAM**

[R08-392]

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R9-31-501                          | Amend                           |
| R9-31-502                          | 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. § 36-2986  
 Implementing statute: A.R.S. § 36-2986
  - 3. The effective date of the rules:**  
 January 3, 2009
  - 4. A list of all previous notices appearing in the Register addressing the final rules:**  
 Notice of Rulemaking Docket Opening: 14 A.A.R. 2786, July 11, 2008  
 Notice of Proposed Rulemaking: 14 A.A.R. 2973, August 1, 2008
  - 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
 Name: Mariaelena Ugarte  
 Address: AHCCCS  
 Office of Administrative Legal Services  
 701 E. Jefferson St., Mail Drop 6200  
 Phoenix, AZ 85034  
 Telephone: (602) 417-4693  
 Fax: (602) 253-9115  
 E-mail: AHCCCSRules@azahcccs.gov

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

The Administration is proposing rule changes as a result of a Five-year Rule Review recently conducted. The Section requiring an update contains requirements that relate to pre-existing conditions. The Administration has also made other technical changes as needed.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:**

No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.

**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:**

The Administration anticipates that there will be minimal to no economic impact as a result of the rule changes. The changes provide clarification of current processes and technical updates, therefore not requiring a change in practices for those affected by the rulemaking.

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

No substantial changes have been made between the proposed rules and the final rules below. The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.

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

The Administration did not receive any 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:**

Not applicable

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

None

**14. Were these rules previously adopted as emergency rules?**

No

**15. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
CHILDREN'S HEALTH INSURANCE PROGRAM

ARTICLE 5. GENERAL PROVISIONS AND STANDARDS

Section

R9-31-501. General Provisions and Standards – ~~related~~ Related Definitions

R9-31-502. Pre-existing ~~Definitions~~ Conditions

ARTICLE 5. GENERAL PROVISIONS AND STANDARDS

**R9-31-501. General Provisions and Standards – ~~related~~ Related Definitions**

Definitions. In this Chapter, unless the context explicitly requires another meaning: ~~“pre-existing condition” means an illness or injury that is diagnosed or treated within a six-month period before the effective date of coverage.~~ terms are defined in R9-31-101 or cross-referenced to the location of the definition.

**R9-31-502. Pre-existing ~~Definitions~~ Conditions**

**A.** ~~Pre-existing conditions. The Administration shall not deny eligibility for the program based on a child having a pre-existing medical condition as defined in R9-31-501.~~

**B.** ~~A contractor or subcontractor shall not adopt or use any procedure to identify individuals who have an existing, pre-existing or anticipated medical or psychiatric condition to discourage or exclude the individuals from enrolling in the contractor's health plan or encourage the individuals to enroll in another health plan.~~

A contractor shall comply with the pre-existing condition requirements in A.A.C. R9-22-502.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 3. DEPARTMENT OF REVENUE  
LUXURY TAX SECTION

[R08-393]

PREAMBLE

**1. Sections Affected**

	<b><u>Rulemaking Action</u></b>
R15-3-201	Amend
Article 3	Amend
R15-3-301	Amend
R15-3-302	Amend
R15-3-303	Amend
R15-3-304	Amend
R15-3-305	Amend
R15-3-307	Amend
R15-3-308	Amend
R15-3-309	New Section
R15-3-310	Amend
R15-3-311	Amend
R15-3-312	Amend
R15-3-313	New Section
R15-3-314	Amend
R15-3-315	Amend
R15-3-316	Amend
Article 4	Amend
R15-3-401	Amend
R15-3-402	Amend
R15-3-403	Amend
R15-3-404	New Section
R15-3-405	New Section
R15-3-406	Amend
R15-3-407	Amend
R15-3-408	Amend
R15-3-410	Amend
R15-3-501	Amend

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

Authorizing statute: A.R.S. § 42-1005(A)(1)

Implementing statutes: A.R.S. § 42-3001 et seq.

**3. The effective date of the rules:**

January 3, 2009

**4. A list of all previous notices appearing the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 2153, May 30, 2008

Notice of Proposed Rulemaking: 14 A.A.R. 2074, May 30, 2008

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

Name: Hsin Pai, Tax Analyst  
Address: Tax Policy and Research Division  
Department of Revenue  
1600 W. Monroe St., Room 810  
Phoenix, AZ 85007-2650  
Telephone: (602) 716-6851  
Fax: (602) 716-7995  
E-mail: hpai@azdor.gov

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Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at [www.azdor.gov/ResearchStats/Proposedrulesmainmenu.htm](http://www.azdor.gov/ResearchStats/Proposedrulesmainmenu.htm).

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

The Department is amending all rules on the administration and enforcement of Arizona luxury tax to conform to the Secretary of State's drafting guidelines and provide enhanced clarity and guidance to affected taxpayers. The Department last made substantial revisions to the majority of these rules in 1999. Since then, there have been substantial changes to the statutes governing the state's administration and enforcement of luxury tax for, and the distribution of, tobacco products and alcoholic beverages, necessitating the current rulemaking.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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. A summary of the economic, small business, and consumer impact:**

There should be no significant economic impact arising solely from the proposed rules. As previously mentioned, this rulemaking is a necessary step in amending rules that fail to account for statutory changes, thereby providing clear and understandable guidance to interested parties and the general public that accurately reflects current agency practices. The Department expects that the benefits of the amended rules to the public and the agency from achieving a better understanding of taxes on alcoholic beverages and tobacco products will be greater than the costs.

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

The following list summarizes the changes between the proposed rules and final rules:

- a. Responding to discussions with the Office of the Attorney General, the Department changed a definition in A.A.C. 15-3-302(A)(9) to remove an obsolete citation and preserve the intent that the term "tobacco distributors" subject to the non-participating manufacturer product reporting requirements be identical to the term "distributor" in the tobacco tax statutes. Because the change clarifies the rules without broadening the intent or scope of the definition, the change is not substantial in nature.
- b. Responding to discussions of the rules with Council staff in the course of the Five-year Review Report process, the specific section of A.R.S. § 44-7111 for which violations may result in license revocation or suspension is now cited in R15-3-308(A). Additionally, the reference to A.R.S. § 42-3201(G) is corrected to provide that the Department may revoke or suspend a license after more than two violations—not "two or more," as the rule had read in the Notice of Proposed Rulemaking—within a three-year period of any provision of A.R.S. Title 42 or this Article, as provided by the statute. Because the rule merely restates information that is explicitly provided in statute, the change is not substantial in nature.
- c. Responding to discussions of the rules with Council staff in the course of the Five-year Review Report process, the Department has added a reference to A.R.S. § 42-3210(B)(1) in a newly inserted R15-3-308(B). The Department had inadvertently left off the citation in listing violations that may prompt revocation or suspension of a distributor's license in subsection (A) of the rule. Nevertheless, A.R.S. § 42-3210(B) only allows the Department to revoke a distributor's license for a violation of the statute, necessitating an additional subsection to separately address the Department's response to such violations.
- d. Responding to discussions of the rules with Council staff in the course of the Five-year Review Report process, the Department has removed specific references to form numbers and titles of distributor's reports and returns that the Department had added in the Notice of Proposed Rulemaking for R15-3-311, R15-3-314(2), and R15-3-316. Referring instead to applicable distributor's reports and returns and the availability of the forms online at the Department's web site or at the physical location of any of the Department's offices simplifies the rule and eliminates potential confusion caused by changes to the numbers or titles due the Department's subsequent revision of the forms. The clarification is nonsubstantive and thus not substantial in nature.
- e. Based on internal discussions, the Department has eliminated several references to cider and "domestic cider producers" in R15-3-403, given that the term "domestic cider producer" is not defined in statute and that cider, as defined in A.R.S. § 42-3001(2), is merely a specific form of vinous liquor. Additionally, the Department is unstriking references to beer, as the term had been erroneously marked for deletion in the Notice of Proposed Rulemaking, and adding the term "malt liquor." Beer and malt liquor are each addressed in A.R.S. § 42-3355, the underlying return-and-payment statute for R15-3-403.
- f. Based on internal discussions, the Department has replaced the term "alcoholic beverage producer" with more specific references to domestic farm wineries and domestic microbreweries, which are the only two types of alcoholic beverage producers currently required under A.R.S. Title 4, Chapter 2, Article 1 to remit retail transaction privilege tax in addition to luxury tax.

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- g. Based on internal discussions, the Department has R15-3-410 to state that, upon notifying the agency of a licensee's failure to file a return or pay tax due, the Department will ask the Department of Liquor Licenses and Control ("DLLC") to pursue any action authorized for the licensee's noncompliance under DLLC's statutes found at A.R.S. Title 4. The previous language stated that the Department would request DLLC to issue a citation against the licensee, a response not explicitly provided for in DLLC's statutes or administrative rules.
- h. Responding to discussions of the rules with Council staff in the course of the Five-year Review Report process, the Department has replaced a reference to a "common carrier" in R15-3-501 with the more precise term, "commercial delivery service," and added language clarifying that the transmittal date the service shows on its shipping envelope or container is adequate in lieu of a postmark. The change merely acknowledges the fact that commercial delivery services do not use postmarks, but does not alter the general premise that the acknowledged date of receipt by the carrier will be deemed acceptable for purposes of determining the date of filing. The change is consequently not substantial in nature.
- i. Additional minor stylistic and nonsubstantive changes were made at the recommendation of Council staff that are not substantial in nature.

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

The Department received no written comments on the Notice of Proposed Rulemaking for the rules. The Department made changes to the rules based on issues raised in discussions with the Office of the Attorney General and Council staff, prompting the changes described in Section 10 *supra*.

**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. Any material incorporated by reference and its location in the text:**

None

**14. Whether the rules were previously made as emergency rules and, if so, whether the text was changed between the making as emergency and the making of the final rules:**

Not applicable

**15. The full text of the rules follows:**

TITLE 15. REVENUE

CHAPTER 3. DEPARTMENT OF REVENUE  
LUXURY TAX SECTION

ARTICLE 2. GENERAL

Section  
R15-3-201. Definitions

ARTICLE 3. TAXES ON TOBACCO PRODUCTS

Section  
R15-3-301. Licensing  
R15-3-302. Tobacco Products from Manufacturers Not Participating in the Master Settlement Agreement  
R15-3-303. ~~Luxury Tax~~ Tobacco Taxes on Other Tobacco Products  
R15-3-304. Change of Licensee's Business Name  
R15-3-305. Change of Licensee's Business Location or Mailing Address  
R15-3-307. Cancellation of Distributor's License  
R15-3-308. Revocation or Suspension of Distributor's License  
R15-3-309. ~~Repealed~~ Inspection of Tobacco Product Retailers  
R15-3-310. Vending Machine Identification and Inspection  
R15-3-311. Cigarette Distributor's Monthly ~~Report~~ Return  
R15-3-312. Purchase of Cigarette Tax Stamps  
R15-3-313. ~~Expired~~ Invoice Issued by a Distributor of Other Tobacco Products  
R15-3-314. Sales in Interstate or Foreign Commerce  
R15-3-315. Credit Purchases of ~~Revenue~~ Cigarette Tax Stamps  
R15-3-316. Sale of Unstamped Cigarettes

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**ARTICLE 4. LIQUOR TAX ON ALCOHOLIC BEVERAGES**

Section

- R15-3-401. Tax Return Filing Requirements ~~– Vinous or~~ for a Malt Liquor Wholesaler
- R15-3-402. Tax Return Filing Requirements - for a Spirituous or Vinous Liquor Wholesaler
- R15-3-403. Tax Return Filing Requirements - for a Domestic Microbrewery, Domestic Farm Winery, Domestic Cider Producer, or Beer Manufacturer
- R15-3-404. ~~Repealed Taxes Remitted~~
- R15-3-405. ~~Repealed Alcoholic Beverage Samples~~
- R15-3-406. Metric Conversion
- R15-3-407. Filing Requirements for a Primary Source of Supply ~~– Failure to Report Sales to Arizona Wholesalers~~
- R15-3-408. ~~Arizona Wholesaler~~ – Failure to Report Purchases from a Primary Source of Supply
- R15-3-410. Failure to File a Return or Pay Tax

**ARTICLE 5. ADMINISTRATION**

- R15-3-501. Return and payment of tax ~~— general~~ Filing of Luxury Tax Reports and Returns

**ARTICLE 2. GENERAL**

**R15-3-201. Definitions**

The following definitions apply to the rules in In this Chapter, unless the context requires otherwise specified:

1. “Indian” means any individual registered on the tribal rolls of the Indian tribe for whose benefit the reservation was created.
2. “Indian Reservation” means all lands within the limits of areas set aside by the United States for the exclusive use and occupancy of Indian tribes by treaty, law, or executive order and which are currently recognized as Indian Reservations by the United States Department of the Interior.
3. “Indian Tribe” means any organized nation, tribe, band or community recognized as an “Indian tribe” by the United States Department of the Interior.
1. “Alcoholic beverage” means cider, malt liquor, spirituous liquor, and vinous liquor, as these terms are defined in A.R.S. § 42-3001.
2. “Business location” means either of the following:
  - a. Pursuant to A.R.S. § 42-3151(A), any place where books, papers, invoices, or records of a wholesaler, distributor, or retailer are open for inspection by the Department; or
  - b. Pursuant to A.R.S. § 42-3151(B), any place where luxuries are placed, produced, stored, or sold.
3. “Cigar” has the same meaning as prescribed in A.R.S. § 42-3001.
4. “Cigarette” has the same meaning as prescribed in A.R.S. § 42-3001.
5. “Cigarette distributor” has the same meaning as prescribed in A.R.S. § 42-3001.
6. “Consumer” has the same meaning as prescribed in A.R.S. § 42-3001.
7. “Distributor” has the same meaning as prescribed in A.R.S. § 42-3001.
8. “Luxury” has the same meaning as prescribed in A.R.S. § 42-3001.
- 4-9. “Other tobacco products” means all types of tobacco products fit for human consumption other than cigarettes included in A.R.S. §§ 42-3052(6) through (9).
5. “Place of business,” “business location,” and “location” mean the place where luxuries are sold, stored or kept for the purpose of sale or distribution or, if sold from a vending machine or mobile unit, the location where records of sale are available for examination.
6. “Returns” means Cigarette Distributors Monthly Report; Distributor’s Monthly Return of Cigars or Tobacco Products Received; Wholesaler’s Return of Vinous and Malt Liquor Purchased; or Wholesaler’s Return of Spirituous Liquor Sold.
10. “Primary source of supply” has the same meaning as prescribed in A.R.S. § 4-243.01(E)(1).
11. “Retailer” has the same meaning as prescribed in A.R.S. § 42-3001.
- 7-12. “Sale” means the act of soliciting, receiving an order for, keeping or offering for sale, delivering for value, peddling, or keeping with intent to sell; any of the luxuries taxable under this Chapter.
13. “Tobacco products” has the same meaning as prescribed in A.R.S. § 42-3001.
14. “Tobacco taxes” means all taxes imposed on tobacco products under A.R.S. Title 42, Chapter 3.

**ARTICLE 3. TAXES ON TOBACCO PRODUCTS**

**R15-3-301. Licensing**

- A. An individual shall obtain a distributor’s license before engaging in business as a distributor. The Department issues shall issue a tobacco distributor’s license to the individual named in the license application for a business making the initial sale or distribution of tobacco products in this state, to a specific person pursuant to the requirements of A.R.S. § 42-3201(A). The A licensee shall not transfer the tobacco its distributor’s license to a new owner when selling the its business. A per-



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~~son shall obtain a tobacco distributor's license before engaging in business as a tobacco distributor.~~

- ~~B.~~ Court appointed trustees, receivers, and others in the case In cases of liquidation, insolvency, or bankruptcy where the business continues to be operated businesses remain in operation as distributors of tobacco products, that sell tobacco products subject to tax court-appointed trustees, receivers, or others shall obtain a tobacco distributor's license distributors' licenses in their own name names.
- ~~C.~~ A licensee ~~that changes its legal entity~~ shall apply for a new tobacco distributor's license. ~~A licensee that changes its form of business shall apply for a new tobacco distributor's license. For example: A licensee that operates as a sole proprietorship incorporates the business. A corporation is a different form of business. The licensee shall apply for a new tobacco distributor's license if it changes its legal entity or otherwise changes the legal structure of its business.~~
- ~~D.~~ A licensee shall obtain a ~~tobacco distributor's~~ license for each business location that maintains an inventory of tobacco products and shall display the license in a conspicuous place at the business location.
- ~~E.~~ A licensee shall display the tobacco distributor's license in a conspicuous place at each business location.
- ~~E.~~ Except as provided in subsection (F), the Department shall issue a license for a business location only if the business maintains any books, papers, invoices, records, and luxuries subject to the Department's inspection under A.R.S. § 42-3151 in a place and manner at the business location that is accessible to the Department during normal business hours without a judicial warrant or prior written consent of the licensee. For example, if a licensee or agent of the licensee also uses the business location for residential purposes, the licensee shall maintain its books, papers, invoices, records, and luxuries in a place and manner at the business location that does not require the Department to obtain a judicial warrant or written consent from the licensee or an agent of the licensee before conducting an inspection during normal business hours.
- ~~F.~~ If a business maintains any books, papers, invoices, or records electronically, the Department shall issue a license for a business location only if the business provides access to the data for the Department's inspection at the business location, regardless of the storage location of the data. The business shall provide the access at the business location in a place and manner that is accessible to the Department during normal business hours without a judicial warrant or prior written consent of the licensee.
- ~~G.~~ If an applicant remits payment of the licensee fee for its business location by cashier's check, company check, or money order, the payment shall bear one of the following:
  - 1. The name of the applicant as the purchaser or remitter, if the payment is made by cashier's check or money order; or
  - 2. The name of the applicant as the drawer or maker, if the payment is made by company check.
- ~~H.~~ Pursuant to A.R.S. §§ 42-3004(1) and 42-3201(B), the Department may request an applicant for a distributor's license to submit additional supporting documentation for the purpose of enforcing this Section.

**R15-3-302. Tobacco Products from Manufacturers Not Participating in the Master Settlement Agreement**

- ~~A.~~ For purposes of In this Section, the following definitions apply:
  - 1. "Cigarette" has the same meaning as prescribed in A.R.S. § ~~44-7101(A)~~ 44-7101, Section 2(d).
  - 2. "Department" means the Arizona Department of Revenue.
  - 3. "Excise taxes" means taxes imposed on cigarettes under A.R.S. Title 42, Chapter 3.
  - 4. "Master Settlement Agreement" has the meaning prescribed in A.R.S. § ~~44-7101(A)~~ 44-7101, Section 2(e).
  - 5. "Non-participating manufacturer" means a tobacco product manufacturer that is not a "participating manufacturer."
  - 6. "Original participating manufacturers" means Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, and R.J. Reynolds Tobacco Company, and the respective successors of each of them.
  - 7. "Participating manufacturer" means the "original participating manufacturers" and "subsequent participating manufacturers."
  - 8. "Subsequent participating manufacturers" means tobacco product manufacturers that have become signatories to the Master Settlement Agreement but that are not original participating manufacturers, and the respective successors of each of them.
  - 9. "Tobacco distributor" means a "distributor" ~~as defined in A.R.S. § 42-3001(5) that has paid or is obligated to pay excise taxes as prescribed in A.R.S. § 42-3001.~~
  - 10. "Tobacco product manufacturer" has the same meaning as prescribed in A.R.S. § ~~44-7101(A)~~ 44-7101, Section 2(i).
- ~~B.~~ The Department shall maintain a current list of participating manufacturers and make it available to tobacco distributors.
- ~~C.~~ A tobacco distributor shall report monthly to the Department on a form provided by the Department:
  - 1. The brand names of each non-participating manufacturer's cigarettes received by the tobacco distributor in Arizona;
  - 2. The brand names of each non-participating manufacturer's cigarettes received by the tobacco distributor outside Arizona and sold by the tobacco distributor in Arizona;
  - 3. The name and address of the non-participating manufacturer of each brand of cigarettes identified by the tobacco distributor;
  - 4. The number of individual cigarettes of each brand of each non-participating manufacturer sold in Arizona by the tobacco distributor during the preceding month, separately stating:
    - a. The number of cigarette packages sold and the number of individual cigarettes in each package; and

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- b. The number of "roll-your-own" tobacco containers sold and the number of individual cigarettes in each container;
  5. The amount of excise taxes paid or to be paid on the cigarettes addressed in subsection (C)(4), separately stating:
    - a. The amount of excise taxes paid by purchasing and affixing tax stamps to cigarette packages;
    - b. The amount of excise taxes to be paid with the tobacco distributor's tax return for "roll-your-own" tobacco containers; and
    - c. Any other amount of excise taxes paid or to be paid on the cigarettes not addressed in subsections (C)(5)(a) or (b);
  6. The number of individual cigarettes of each brand of each non-participating manufacturer received by the tobacco distributor in Arizona, separately stating:
    - a. The number of cigarette packages received and the number of individual cigarettes in each package; and
    - b. The number of "roll-your-own" tobacco containers received and the number of individual cigarettes in each container;
  7. The number of individual cigarettes of each brand of each non-participating manufacturer that the tobacco distributor exported from Arizona without payment of excise taxes, separately stating:
    - a. The number of cigarette packages exported and the number of individual cigarettes in each package; and
    - b. The number of "roll-your-own" tobacco containers exported and the number of individual cigarettes in each container;
  8. The number of individual cigarettes of each brand of each non-participating manufacturer for which the tobacco distributor obtained a tax refund under A.R.S. § 42-3008, separately stating:
    - a. The number of cigarette packages for which the tobacco distributor obtained a tax refund and the number of individual cigarettes in each package; and
    - b. The number of "roll-your-own" tobacco containers for which the tobacco distributor obtained a tax refund and the number of individual cigarettes in each container; and
  9. The invoice number (and if subsequently requested by the Department, a copy of each invoice) relating to the tobacco distributor's:
    - a. Purchase or acquisition of any non-participating manufacturer's cigarettes received or sold by the tobacco distributor in Arizona; and
    - b. Export, if any, of any non-participating manufacturer's cigarettes from Arizona.
- D. A tobacco distributor shall file the report required under subsection (C) with the Department by the 20th day of the month following the month for which the report is made. Reports for cigarettes sold in Arizona after April 24, 2000, and before the effective date of this Section are due 60 days after the effective date of this Section.
- E. A tobacco distributor shall maintain all records relating to or reflecting its purchase and sale of non-participating manufacturers' cigarettes after April 24, 2000, for a period of four years after the date of sale. The tobacco distributor shall make the records available to the Department upon request by the Department.
- F. Subject to the requirements of R15-3-308, the Department may revoke a license issued to a tobacco distributor under A.R.S. § 42-3201 if the tobacco distributor fails to comply with this Section, based on the severity of the violations.

**R15-3-303. ~~Luxury Tax~~ Tobacco Taxes on Other Tobacco Products**

The Department shall consider ~~Arizona luxury tax~~ tobacco taxes paid at the time of the sale, distribution, or transfer of other tobacco products if distributors report and remit the ~~tax~~ taxes on the products in accordance with the manner, method, and time prescribed by A.R.S. § 42-3208. Sworn returns prepared and remitted by distributors pursuant to A.R.S. § 42-3208 constitute official indicia that ~~luxury tax has~~ tobacco taxes have been paid on the other tobacco products.

**R15-3-304. Change of Licensee's Business Name**

A licensee that changes the name under which ~~the~~ its business operates shall notify the Department in writing within 30 days of the name change and request a reissuance of its ~~tobacco~~ distributor's license for each business location described in R15-3-301(D).

**R15-3-305. Change of Licensee's Business Location or Mailing Address**

- A. ~~A~~ Except as provided in subsection (C), a licensee shall notify the Department in writing within 30 days of a change in the physical location of the a business location described in R15-3-301(D) and request a reissuance of its tobacco distributor's license for each the business location.
- B. ~~A~~ Except as provided in subsection (C), a licensee shall notify the Department in writing within 30 days of a change in the licensee's mailing address. The licensee shall specify whether the change is for the mailing address only.
- C. A licensee that has received a service of documents from the Department pursuant to A.R.S. § 41-1092.04 shall notify the Department of any change in the licensee's business location or mailing address that would affect the subsequent service of documents within five days of the change.

**R15-3-307. Cancellation of Distributor's License**

If a licensee sells or terminates its business ~~is sold or terminated~~, the licensee shall notify the Department in writing within 30

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days of the sale or termination of the business, ~~giving~~ including the date ~~the business was sold or terminated~~ of the sale or termination. The Department shall cancel the license, effective as of the date of the sale or termination of the business.

**R15-3-308. Revocation or Suspension of Distributor's License**

- A. The Department may revoke or suspend a license for violation of the provisions of A.R.S. Title 42, Chapter 3 or this Article; ~~either of the following~~:
1. More than two violations within a three-year period of any provision of A.R.S. Title 42 or this Article, pursuant to A.R.S. § 42-3201(G); or
  2. Any violation described in A.R.S. § 44-7111, Section 6(a).
- ~~B.~~ The Department may revoke a license for any violation of A.R.S. § 42-3210(B)(1).
- ~~B-C.~~ The Department shall give written notice of ~~the~~ a revocation or suspension to a licensee ~~30 days prior to the effective date of the revocation~~ by delivering the notice to the licensee by certified mail, ~~at return receipt requested,~~ to the licensee's place of business location or by personal service.
- ~~C-D.~~ ~~A~~ The licensee has shall request a hearing in writing within 30 days after receipt of the notice is mailed to appeal the revocation or suspension, in writing, to the Department. If the licensee does not file an appeal within the 30-day period, the Department's determination becomes final. If the notice is delivered by certified mail, return receipt requested, the licensee is presumed to have received notice upon the date shown on the return receipt signed by or on behalf of the licensee, or, if the receipt is unsigned, upon the date that the United States Postal Service attempted to deliver the notice. If the notice is delivered by personal service, the licensee is presumed to have received notice upon the date of service.
- ~~D-E.~~ If the licensee does not file an appeal within the 30-day period, the Department's determination becomes final. The Department shall consider the appeal filed on the earlier of the date received by the Department or the date deposited in the United States mail as evidenced by a postmark. If the licensee files a timely appeal, the Department shall request a hearing by the Office of Administrative Hearings.
- ~~E-F.~~ If the licensee appeals the revocation or suspension, the Department shall suspend action until the final order of the Department has been issued under A.A.C. R15-10-131.
- G. Pursuant to A.R.S. §§ 41-1092.11(B) and 42-3201(G), the Department may order the summary suspension of a license, pending a hearing by the Office of Administrative Hearings on the revocation or suspension, if the Department finds that the public health, safety, or welfare imperatively requires emergency action and incorporates the finding in the written notice described in subsection (C).

**R15-3-309. Repealed Inspection of Tobacco Product Retailers**

- A. A tobacco product retailer shall maintain any books, papers, invoices, records, and luxuries subject to the Department's inspection under A.R.S. § 42-3151 in a place and manner at the retail operation that is accessible to the Department during normal business hours without a judicial warrant or prior written consent of the retailer. For example, if a retailer or agent of the retailer also uses the business location for residential purposes, the retailer shall maintain its books, papers, invoices, records, and luxuries in a place and manner at the business location that does not require the Department to obtain a judicial warrant or written consent from the retailer or an agent of the retailer before conducting an inspection during normal business hours.
- B. If the retailer maintains any books, papers, invoices, or records electronically, the business shall provide access to the data for the Department's inspection at the business location, regardless of the storage location of the data. The retailer shall provide the access at the business location in a place and manner that is accessible to the Department during normal business hours without a judicial warrant or prior written consent of the retailer.

**R15-3-310. Vending Machine Identification and Inspection**

- A. A licensee ~~An owner, operator, or person in possession of a vending machine~~ shall ensure that ~~the Department's agents are able to~~ any agent of the Department can inspect all cigarettes that are ~~distributed through or by~~ offered for sale using the vending machines machine. ~~The licensee~~ Except as provided in subsection (B), the owner, operator, or person in possession of the vending machine shall visibly display cigarettes in ~~all the vending machines machine~~ so the Department's agents agent can inspect the cigarettes in the machines machine to verify that the required cigarette tax stamps are properly affixed; ~~unless subsection (B) of this rule applies.~~
- B. If the cigarettes cannot be visually inspected in a vending machine, the ~~owner, operator, or~~ person in possession of the machine shall have access to the cigarettes in the machine and shall permit ~~agents of the Department~~ Department's agent to inspect the cigarettes visually.

**R15-3-311. Cigarette Distributor's Monthly ~~Report~~ Return**

Every distributor selling cigarettes subject to the luxury tax under A.R.S. Title 42, Chapter 3 shall file with the Department a "Cigarette Distributor's Monthly Report" on the 20th of each month showing:

1. The quantity of cigarettes and cigarette tax stamps purchased and sold or otherwise disposed of during the calendar month immediately preceding the month in which the report is filed;
2. The quantity of cigarettes and stamps on hand at the beginning and at the end of the month.

A cigarette distributor shall file the applicable return or report, in the form furnished by the Department at [www.azdor.gov](http://www.azdor.gov) or

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an office of the Department, on a monthly basis, as prescribed in A.R.S. § 42-3211.

**R15-3-312. Purchase of Cigarette Tax Stamps**

- A. ~~A licensed tobacco~~ cigarette distributor shall obtain cigarette tax stamps only from the Department. The Department shall not provide cigarette tax stamps to a person who does not hold a valid distributor's license issued by the Department.
- B. A cigarette distributor shall not sell, lend, give, purchase, or otherwise transfer cigarette tax stamps to or for another person.
- C. If a cigarette distributor remits payment for cigarette tax stamps by cashier's check, company check, or money order, the payment shall bear one of the following:
  - 1. The name of the cigarette distributor purchasing the cigarette tax stamps as the purchaser or remitter, if the payment is made by cashier's check or money order, or
  - 2. The name of the cigarette distributor purchasing the cigarette tax stamps as the drawer or maker, if the payment is made by company check.

**R15-3-313. ~~Expired Invoice Issued by a Distributor of Other Tobacco Products~~**

For the purpose of enforcing A.R.S. § 42-3202 and pursuant to A.R.S. § 42-3004, a distributor of other tobacco products shall issue an invoice or equivalent documentation for each transaction that involves the sale, purchase, or consignment of other tobacco products to the distributor's customer. The invoice or equivalent documentation shall include the license number of the distributor, which the distributor's customer may use to determine whether the license is current and valid.

**R15-3-314. Sales in Interstate or Foreign Commerce**

~~Cigarettes or other tobacco~~ Tobacco products sold by licensed distributors to purchasers located outside the state are exempt from the tax imposed by A.R.S. Title 42, Chapter 3, tobacco taxes if the following conditions are met:

- 1. The ~~cigarettes or other tobacco~~ products are shipped or delivered by the distributor to a location outside the state for use outside the state; and
- 2. The distributor files a "Cigarette Distributor's Monthly Report" or a "Monthly Return of Cigars or Other Tobacco Products Purchased," as applicable, indicating with the Department the applicable monthly return or report for the tobacco products being sold, in the form furnished by the Department at [www.azdor.gov](http://www.azdor.gov) or an office of the Department;
- 3. The distributor, on the form filed under subsection (2), indicates the amount of out-of-state sales in the appropriate section and the party to whom the sales were made; and provides each of the following:
  - a. Submits one One copy of the return or report to the Arizona Department of Revenue;
  - b. Submits one One copy of the return or report to the taxing authority of the state of destination of the cigarettes or other tobacco products; and
- e-4. Retains The distributor retains one copy of the each return or report for two four years following the close of the calendar year in which the sale is made cigarettes are sold or two years following the close of the calendar year in which the other tobacco products are sold.

**R15-3-315. Credit Purchases of Revenue Cigarette Tax Stamps**

A cigarette distributor may increase its credit limit for cigarette tax stamp purchases by increasing the amount of the its bond on file with the Department.

**R15-3-316. Sale of Unstamped Cigarettes**

- A. A Except as otherwise provided in A.R.S. Title 42, Chapter 3, Article 5, a cigarette distributor shall file a Form 800-20 or Form 800-25, ~~Distributor's Monthly Report~~ the applicable monthly return with the Department, on the form furnished by the Department at [www.azdor.gov](http://www.azdor.gov) or an office of the Department, showing that the cigarette distributor has purchased a sufficient number of cigarette tax stamps to be affixed to all cigarettes it distributes in this state during the period. If the cigarette distributor does not provide this information, the Department shall presume that the cigarette distributor sold unstamped cigarettes. In that case, the Department shall determine the amount of unstamped cigarettes sold by the cigarette distributor and shall issue a proposed deficiency assessment for any luxury tax found due. The proposed deficiency assessment becomes final unless the cigarette distributor protests the assessment within 45 days under A.R.S. § 42-1108 and 15 A.A.C. 10, Article 1.
- B. If a retailer maintains or possesses cigarettes at its place of business that, upon the Department's inspection, are loose or otherwise repackaged in a manner different from that distributed for sale by the cigarette manufacturer, the Department shall presume, unless the retailer establishes the contrary, that the retailer is offering the cigarettes for sale in violation of A.R.S. § 42-3203(E).

**ARTICLE 4. LIQUOR TAX ON ALCOHOLIC BEVERAGES**

**R15-3-401. Tax Return Filing Requirements ~~Vinous or~~ for a Malt Liquor Wholesaler**

On or before the statutory deadline each month, each wholesaler of ~~vinous or~~ malt liquor shall file a return on a form prescribed by the Department. The return shall show the following:

- 1. Taxpayer's name, mailing address, business address, liquor license number issued by the Department of Liquor

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- Licenses and Control, and identification number;
2. The itemized ~~quantities~~ quantity of ~~vinous and malt liquors~~ liquor purchased during the month the tax accrued, listed by supplier and invoice number;
  3. The itemized ~~quantities~~ quantity of tax-free sales of ~~vinous and malt liquors~~ liquor during the month the tax accrued, listed by purchaser and invoice number;
  4. The itemized ~~quantities~~ quantity of out-of-state sales of ~~vinous and malt liquors~~ liquor during the month the tax accrued, listed by purchaser and invoice number;
  5. The itemized ~~quantities~~ quantity of ~~vinous and malt liquors~~ liquor purchased from other licensed Arizona wholesalers during the month the tax accrued, listed by supplier and invoice number;
  6. The total quantity of ~~vinous and malt liquors~~ liquor purchased in Arizona during the month the tax accrued;
  7. The amount of luxury tax accrued during the month; and
  8. Supporting documentation for the information provided in the return.

**R15-3-402. Tax Return Filing Requirements – for a Spirituous or Vinous Liquor Wholesaler**

On or before the statutory deadline each month, each spirituous or vinous liquor wholesaler shall file a return on a form prescribed by the Department. The return shall show the following:

1. Taxpayer's name, mailing address, business address, liquor license number issued by the Department of Liquor Licenses and Control, and identification number;
2. The itemized ~~quantities~~ quantity of spirituous ~~liquors~~ or vinous liquor sold during the month the tax accrued, listed by purchaser and invoice number;
3. The itemized ~~quantities~~ quantity of spirituous ~~liquors~~ or vinous liquor received during the month the tax accrued, listed by supplier and invoice number;
4. The total quantity of spirituous ~~liquors~~ or vinous liquor available at the beginning and at the end of the month the tax accrued;
5. The itemized ~~quantities~~ quantity of tax-free sales of spirituous ~~liquors~~ or vinous liquor during the month the tax accrued, listed by purchaser and invoice number;
6. The itemized ~~quantities~~ quantity of out-of-state sales of spirituous ~~liquors~~ or vinous liquor during the month the tax accrued, listed by purchaser and invoice number;
7. The itemized ~~quantities~~ quantity of spirituous ~~liquors~~ or vinous liquor sold to other licensed Arizona wholesalers during the month the tax accrued, listed by purchaser and invoice number;
8. The total quantity of spirituous ~~liquors~~ or vinous liquor sold in Arizona during the month the tax accrued;
9. The amount of luxury tax accrued during the month; and
10. Supporting documentation for the information provided in the return.

**R15-3-403. Tax Return Filing Requirements – for a Domestic Microbrewery, Domestic Farm Winery, ~~Domestic Cider Producer~~, or Beer Manufacturer**

On or before the statutory deadline each month, each domestic microbrewery, domestic farm winery ~~including domestic cider producers~~, or beer manufacturer subject to A.R.S. § 42-3355 shall file a return on a form prescribed by the Department. The return shall show the following:

1. Taxpayer's name, mailing address, business address, liquor license number issued by the Department of Liquor Licenses and Control, and identification number;
2. The itemized ~~quantities~~ quantity of tax-free sales to Arizona purchasers during the month the tax accrued, listed by purchaser and invoice number;
3. ~~The~~ For taxpayers filing for locations physically within the state, the itemized ~~quantities~~ quantity of out-of-state sales during the month the tax accrued, listed by purchaser and invoice number;
4. The itemized ~~quantities~~ quantity of ~~liquors or beer, malt liquor, or vinous liquor~~ sold to other licensed Arizona wholesalers during the month the tax accrued, listed by purchaser and invoice number;
5. The total quantity of ~~liquors or beer, malt liquor, or vinous liquor~~ sold ~~in Arizona~~ to Arizona purchasers during the month the tax accrued;
6. The amount of luxury tax accrued during the month; and
7. Supporting documentation for the information provided in the return.

**R15-3-404. Repealed Taxes Remitted**

Any domestic farm winery or domestic microbrewery required under A.R.S. Title 4, Chapter 2, Article 1 to remit transaction privilege tax shall remit the tax under the retail classification (see 15 A.A.C. 5, Article 1) on its gross receipts from the sale in addition to luxury tax, regardless of its business location.

**R15-3-405. Repealed Alcoholic Beverage Samples**

Samples of alcoholic beverages, whether intended for personal or commercial use and consumption, and whether provided for a consideration, are subject to luxury tax at the rates prescribed in A.R.S. § 42-3052 unless otherwise exempt under A.R.S. Title 42, Chapter 3.

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**R15-3-406. Metric Conversion**

To compute the luxury tax for ~~liquors~~ alcoholic beverages in metric containers, each taxpayer shall multiply the quantity in liters by 0.264172 to determine the equivalent quantity in gallons.

**R15-3-407. Filing Requirements for a Primary Source of Supply ~~Failure to Report Sales to Arizona Wholesalers~~**

**A.** At the time of making a sale to an Arizona wholesaler, a primary source of supply shall file with the Department a copy of the sales invoice issued to the wholesaler that provides the information required under A.R.S. § 42-3352.

**B.** If the Department determines that a primary source of supply failed to transmit ~~to the Department~~ copies of all invoices for sales of alcoholic beverages to Arizona wholesalers ~~within the state~~ as required by A.R.S. § 4-243.01, the Department shall instruct each Arizona wholesaler not to accept any shipment of alcoholic beverages from the primary source of supply for one year.

**R15-3-408. ~~Arizona Wholesaler~~ Failure to Report Purchases from a Primary Source of Supply**

If the Department determines that an Arizona wholesaler failed to transmit to the Department copies of all invoices for alcoholic beverages purchased from any primary source of supply as required by A.R.S. § 4-243.01, the Department shall report the failure to the Department of Liquor Licenses and Control.

**R15-3-410. Failure to File a Return or Pay Tax**

The Department shall report any failure by a licensee to file a return or pay the tax due to the Department of Liquor Licenses and Control, and the Department shall request that the Department of Liquor Licenses and Control ~~issue a citation against the licensee~~ take any applicable action authorized under A.R.S. Title 4.

ARTICLE 5. ADMINISTRATION

**R15-3-501. ~~Return and payment of tax~~ general Filing of Luxury Tax Reports and Returns**

**A.** All reports and returns required to be filed ~~by the Act under A.R.S. Title 42, Chapter 3 or these rules~~ this Chapter shall be deemed timely filed if ~~postmarked by the date shown by the postmark of the U.S. postal service on or before the due date~~ United States Postal Service is on or before the due date. If a report or return is filed using a commercial delivery service that requires a signed receipt as part of a standardized delivery confirmation process, it shall be deemed timely filed if the transmittal date shown on the envelope or container in which the filer sends the document is on or before the due date.

**B.** ~~If the monthly report form is not available, the taxpayer shall submit the taxpayer's report or return on a plain sheet of paper.~~