

## NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing, and the agency decides that, due to public comment or internal review, the rules need to be substantially changed, the agency shall prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office. The Secretary of State shall publish the Notice, including the Preamble and the full text, in the next available issue of the *Arizona Administrative Register*.

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 Supplemental Proposed Rulemaking in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

**TITLE 17. TRANSPORTATION**  
**CHAPTER 4. DEPARTMENT OF TRANSPORTATION**  
**MOTOR VEHICLE DIVISION**  
**PREAMBLE**

1. **Register citation and date for the original Notice of Proposed Rulemaking:**

1	A.A.R.	193	March 17, 1995
Vol. #		Page #	Issue date

2. **Sections Affected**

R17-4-520

**Rulemaking Action**

Amend

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

Authorizing statute: A.R.S. § 28-202

Implementing statute: A.R.S. §§ 28-413, 28-429, and 28-433

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

Name: Glenn C. Johnson

Address: Department of Transportation  
4747 North Seventh Avenue, Third Floor  
Phoenix, Arizona 85013-2401

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

The Division proposes extensive amendments to R17-4-520 which has been in effect without change since 1987.

The proposed amended rule set forth is the product of a cooperative effort between the Department of Transportation, Motor Vehicle Division and representatives of groups representing segments of the disabled and medical communities. As currently in effect, R17-4-520 is not clear, concise, or understandable and fails to address the non-discrimination requirements of the Americans with Disabilities Act which postdates the current regulation.

Further, in its current form, R17-4-520 fails to address amendments to A.R.S. § 28-413(A)(5) effective in 1992. These amendments require that driver's license applicants who disclose an alcohol or substance abuse condition submit to a substance abuse evaluation administered by a certified substance abuse counselor as defined in A.R.S. § 28-429. As currently in effect, R17-4-520 provides that a medical evaluation can only be administered by a medical doctor or doctor of osteopathy licensed to practice in Arizona or contiguous U.S. state or employed by the Federal Government and practicing in Arizona.

The proposed definition of physician is expanded to include any medical doctor or doctor of osteopathy licensed to practice in the United States. This will have the effect of easing regulatory burden on many members of the affected public, particularly part-time residents or winter visitors who often have a long-standing relationship with competent physicians in other states. Communication between state licensing agencies is currently so sophisticated that it is very easy to verify the credentials of medical practitioners throughout the country.

The proposed amended rule provides for and sets forth a "vision, medical, physical, or psychological screening questionnaire" to be completed by every applicant or an original Arizona driver's license or renewal license. The vision, medical, physical, or psychological screening questionnaire requires that every applicant disclose any medical, psychological or substance abuse condition that may impair the applicant's ability to safely operate a motor vehicle.

The Americans with Disabilities Act prohibits discrimination against qualified persons as defined in that Act and particularly prohibits discrimination against persons who appear to have disabilities simply on the basis of appearance or stereotype.

As proposed, R17-4-520 sets forth criteria for compliance with the Americans with Disabilities Act. While every applicant for an original Arizona driver's license is required to submit to road, written, and vision testing, an applicant for a renewal license will only be required to submit to either departmental road and written testing or a medical evaluation when that renewal applicant discloses a new condition or a change in an existing condition that may affect the ability to safely operate a motor vehicle, or when severe symptoms such as incoherence or disorientation are exhibited to Department personnel. The proposed amendments are intended to prevent renewal applicants from being subjected to additional road and written testing at the discretion of Division personnel merely because of the appearance of a disability.

The proposed amendments to R17-4-520 also set limitations on the requirement that a medical evaluation be submitted in order to be licensed and prescribes the procedures for the assessment of medical evaluations.

The proposed amended rule also clarifies the right to challenge adverse medical licensing decisions through the administrative hearing process.

**Notices of Supplemental Proposed Rulemaking**

Additionally, proposed R17-4-520 prescribes that, when adaptive equipment or vehicle modifications are necessary in order to safely operate a motor vehicle, the restriction be noted on the licensee's license and driving record.

R17-4-520 as proposed in this supplemental rulemaking has also been substantially changed from the version published on March 17, 1995, by the incorporation by reference of Departmental policies setting forth the criteria for passing the road and written tests. This is included in the proposed rule in order to clarify the testing standards for all persons including those qualified persons as defined in the Americans with Disabilities Act.

**6. An explanation of the substantial change which resulted in this supplemental notice:**

On March 17, 1995, proposed amendments to R17-4-520 and proposed R17-4-525 were published in the *Register*. Various segments of the potentially regulated community, including numerous interest groups of persons with disabilities, requested substantial changes in the regulations as published. The Division, after careful consideration, concurs that those substantial changes be incorporated into the proposed rule. Those changes are set forth in these proposed amendments.

The Division also determined that R17-4-525, which set forth alcohol and substance abuse standards, was unnecessary because those standards were also set forth in R17-4-520. R17-4-525 was found to be redundant and unnecessary and its provisions have been merged into R17-4-520 as proposed in this rulemaking.

**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:**

It is not believed that the proposed amendments will have a significant general impact on either consumers or small businesses. It is anticipated, however, that there will be an impact on those qualified persons with disabilities affected by this rule who require special vehicle modifications in order to safely operate a motor vehicle. It is also anticipated that those persons who require evaluations from physicians and Substance Abuse Counselors will incur costs for those reports.

There are also costs that will be incurred by Substance Abuse Counselors in order to obtain the necessary certifications in order to submit evaluations pursuant to this rule.

A breakdown of estimated costs is set forth below:

1. Estimated vehicle modifications/special equipment costs:

<u>Equipment</u>	<u>Costs</u>
Steering Devices	\$55
Complete Hand Controls (manual)	\$400 to \$3,200 (power assist)
Left Foot Accelerator	\$400
Full Foot Controls	\$400 to \$3,200
Right-side Directional	\$400 (remote)
Chest/Shoulder Restraints	Manufacturer Cost
Six-way Power Seat	\$1,350
Hand Dimmer Switch	\$55
Parking Brake Extension	\$375
Pedal Extensions	\$55
Wide-angle Mirrors	Manufacturer Cost
Modified Seat	\$300
Other - Lowered Floor Wheelchair-accessible Minivans	\$9,000 to \$13,000

2. Substance Abuse Counselors are required to pay the following certifications fees: \$200 application fee, \$115 testing fee, and \$200 recertification fee every two years. These fees are payable to the Board of Behavioral Health.

3. The average cost for a Substance Abuse Evaluation is approximately \$80. This is a cost that will be incurred by the examinee required to submit the evaluation and will be an increase in revenue to the Substance Abuse Counselor. The increase in revenue for each Substance Abuse Counselor will be a function of the number of Substance Abuse Evaluations performed.

4. There is possible economic benefit resulting from decreased insurance carrier liability exposure by identifying and denying licenses to those persons with an alcoholic or drug-dependent condition. This may result in a small general decrease in automobile liability insurance premiums.

**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:**

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 Phoenix, Arizona 85013-2401  
 Telephone: (602) 255-7737  
 Fax: (602) 241-1624

**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:**

Public hearings were conducted on April 21, 1995, in Tucson, Phoenix, and Flagstaff, Arizona, and extensive public comment was taken. This public comment was considered by the Division prior to making substantial rule changes.

Further public hearings will only be scheduled if requested in writing by 5 members of the public.

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The Division will accept written comment on the proposed amended rule as set forth until 5 p.m., October 23, 1995.

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:  
Motor Vehicle Division Policy No. DL600.25 Scoring the Road Test and Restrictions dated June 2, 1992.  
Motor Vehicle Division Policy No. DL300.20 Written Test Scoring Standards dated June 2, 1992.  
The materials incorporated by reference are located at R17-4-520(A)(16) and are available for inspection at the Department of Transportation, Motor Vehicle Division, Executive Hearing Office, 4747 North Seventh Avenue, Third Floor, Phoenix, Arizona.
13. The full text of the changes follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
MOTOR VEHICLE DIVISION

ARTICLE 5. DRIVER LICENSES

R17-4-520. General Provisions for Visual, Medical, Physical, or Psychological Ability to Safely Operate a Motor Vehicle

ARTICLE 5. DRIVER LICENSES

R17-4-520. General Provisions for Visual, Medical, Physical, or Psychological Ability to Safely Operate a Motor Vehicle.

A. Definitions

1. "Applicant" means any person who applies for a driver's license or driver's license renewal to complete a re-examination. "Certified substance abuse counselor" has the same meaning as set forth in A.R.S. § 28-429.
2. "Application" means the forms provided by the Motor Vehicle Division prior to the issuance or renewal of a driver's license.
- 4.2. "Director" means the Assistant Director of the Motor Vehicle Division, or his the Director's designee.
3. "Department Division" means the Motor Vehicle Division of the Department of Transportation.
4. "Examination" means the process of observing, testing, and evaluating an examinee's:
  - a. Ability to read and understand official traffic control devices;
  - b. Knowledge of safe driving practices and the traffic laws of this state; and
  - c. Visual, medical, physical, and psychological condition to determine the examinee's functional ability.
5. "Examinee" means any individual who applies for a license, license renewal, or is required to complete an examination.
6. "Functional ability" means the ability to safely operate a motor vehicle of the type permitted by the operator's license classification or endorsement, as determined by successful completion of an examination.
- 5.7. "License" means any driver's license or permit the Department is authorized to issue authorization issued by the Division to operate a motor vehicle.
- 6.8. "Licensee" means a person an individual who has a current license issued by the Department Division.
7. "Licensing action" means any action by the Department involving the issuance, denial, suspension, revocation, cancellation, restriction, or re-examination of a license under this Article.
- 8.9. "Medical condition" means any condition in these rules which could affect a person's functional ability to safely

operate a motor vehicle means any disease, injury, physical or psychological condition including substance abuse, the symptoms of which impair functional ability, or any disease, injury, or physical or psychological condition including substance abuse which, because of the sudden and unpredictable onset of its symptoms, impairs functional ability.

- 9.10. "Medical examination evaluation" means an evaluation assessment of a person's an individual's physical or mental psychological status condition performed by a physician in accordance with the rules under this Article, to determine the existence of a medical condition, that could affect functional ability, compliance with the standards set forth in R17-4-521 or R17-4-522, or a substance abuse evaluation as defined in this subsection in order to determine a person's an individual's functional ability to operate a motor vehicle with the results reported on a form prescribed by the Department.
10. "Medical questionnaire" means a series of questions designed to indicate the existence of a medical condition.
11. "Medical screening question" means a question designed to describe the medical condition(s) identified in the medical questionnaire.
- 12.11. "Medical specialist" means a physician certified by a recognized medical specialty board and approved by the Department whose practice of medicine is limited in scope to a particular anatomical or physiological area of the human body including psychiatry and psychology, or whose practice is limited to patients within a specific age range.
- 13.12. "Physician" means a medical doctor or doctor of osteopathy licensed to practice medicine in Arizona, a contiguous U.S. state, or employed by the federal government and practicing in Arizona the United States.
13. "Substance abuse" when used in this rule means either or both of the following:
  - a. The use of alcohol by an individual such that the individual is an alcohol abuser as defined in A.R.S. § 36-2021(A).
  - b. The use of one or more controlled substances as defined in A.R.S. § 36-2501(3) or Cannabis as defined in A.R.S. § 36-2501(2), such that the individual is a drug-dependent individual as defined in A.R.S. § 36-2501(5).
14. "Substance abuse evaluation" means an assessment by a certified substance abuse counselor to determine whether substance abuse exists and whether, in the opinion of the certified substance abuse counselor, substance abuse impairs functional ability.

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15. "Medical, physical, or psychological screening questionnaire for the safe operation of a motor vehicle" also referred to as "screening questionnaire", means the standardized instructions, questions, and certifications set forth below:

a. Instructions:

i. Under Arizona state law, the Motor Vehicle Division of the Department of Transportation is charged with the responsibility of insuring that the individuals it licenses to operate a motor vehicle can do so safely so as not to pose a threat to their own lives or the lives of others.

ii. Some applicants for a driver's license may have a physical or psychological condition which could make it extremely dangerous for them to operate a motor vehicle on public streets or highways. If you have any such condition, or think you may have, it is important to indicate it at this point in the licensing process so that an evaluation of the condition can be made as it pertains to the safe operation of a motor vehicle. Conditions that should be identified are those which, without giving you adequate time to respond safely while you are driving, could cause you to lose control of your vehicle and cause injury to yourself and others. If you currently experience episodes of sudden and unexpected dizziness, weakness, confusion, loss of consciousness or vision, or similar symptoms for whatever reason, check "yes" in the appropriate box below.

iii. If you require modifications or additions to the standard operating controls of a motor vehicle in order to demonstrate your ability to safely operate a motor vehicle, it is important to indicate this so that your license indicates this restriction and your driving record reflects the modification you require. Such modifications may include but are not limited to: hand-operated gas, brake, or clutch pedals; modification to driver's seat; and chest or shoulder restraints.

iv. Your response to the questions below could save your life as well as the lives of others who depend on your safe driving decisions.

b. Questions (i), (ii), and (iii) apply to all examinees:

i. If you use alcohol or drugs, are you able to control your use of alcohol or drugs so that such use does not affect your ability to safely operate a motor vehicle? Yes No

ii. Do you think you may have any medical, physical, or psychological condition that may affect your ability to safely operate a motor vehicle? Yes No

iii. Do you require assistive devices or adaptive equipment to safely operate a motor vehicle? Yes No

c. Questions (iv) and (v) only apply to renewals:

i. Have you maintained your safe driving skills since your last renewal? Yes No

ii. Do you have a new or significantly changed visual, medical, physical, or psychological condition since your last road test (other than

glasses or contact lenses) which may affect your ability to safely operate a motor vehicle?

Yes No

d. Certification:

i. I have truthfully answered all questions on this application to the best of my knowledge.

ii. I understand that making a false statement on this application is a crime and may be punishable under one or more of the following statutes: A.R.S. §§ 28-471(5), 28-472, 13-2407, and 32-161.

iii. I understand the Arizona Driver License manual and I agree to abide by the "Arizona Rules of the Road" and all applicable laws, rules, and regulations.

iv. I understand that I am required to report in writing to the Motor Vehicle Division any medical, physical, or psychological conditions which may affect my ability to safely operate a motor vehicle.

v. I affirm that I am medically, physically, and psychologically able to safely operate a motor vehicle with the designated restrictions when required.

vi. I understand that I must notify the Motor Vehicle Division in writing or by telephone within 10 days of any address or name change.

Signature of Examinee

(Must be your normal signature)

Witnessed this date \_\_\_\_\_ MVD Agent

16. "Successful completion of an Examination" means that an Examinee has met the minimum criteria set forth in Motor Vehicle Division Policy No. DL600.25, Scoring the Road Test and Restrictions, dated June 2, 1992, and Motor Vehicle Division Policy No. DL300.20, Written Test Scoring Standards, dated June 2, 1992. Motor Vehicle Division Policy No. DL600.25 and Motor Vehicle Division Policy No. DL300.20 are incorporated by reference and are on file with the Secretary of State.

B. Failure to meet licensing standards. No person shall be licensed or allowed to maintain a driver's license who fails to meet the medical licensing standards. Screening process for the safe operation of a motor vehicle.

1. Every examinee shall submit to a visual screening to determine that the examinee meets the standards contained in R17-4-521.

2. Every examinee shall complete a license application which shall include a screening questionnaire.

3. On an original application for a license, an examinee may be requested to obtain a medical evaluation when the examinee's responses to the screening questionnaire indicate that the examinee may have a medical condition.

4. On a renewal application for a license, a licensee shall be required to successfully complete an examination only when the licensee's responses to the screening questionnaire indicate that, since the licensee's last application, the licensee may have a new medical condition or a change in an existing medical condition that may impair the licensee's functional ability. The licensee may be required to obtain a medical evaluation when any of the items in subsection (C)(2) are present.

5. When and if a licensee experiences either a new medical condition that was not indicated on the last application,

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or a change in a medical condition which the licensee has reason to believe may impair functional ability, the licensee is required to notify the Division within 15 days of the onset of the condition and may be required to complete a new screening questionnaire. When the licensee's responses on the medical questionnaire indicate the licensee's functional ability may be impaired, the licensee may be required to complete an examination, obtain a medical evaluation, or both.

**C. Medical screening process Evaluation.**

1. The Director shall not require a medical evaluation unless the Director finds in writing that the examinee's functional ability cannot be determined by an examination administered by the Division.

1.2. The license application shall include a medical questionnaire. If the applicant indicates a medical condition or if the Department personnel observes an apparent medical condition, the applicant or licensee will be required to complete the medical screening question. An examinee may be required to obtain a medical evaluation, and the results shall be reported by the physician or certified substance abuse counselor on a form prescribed by the Division, when any of the following apply:

- a. Failure to demonstrate compliance with one or more of the standards prescribed in R17-4-521 and R17-4-522;
- b. Possible medical condition reported by a licensee pursuant to subsection (B)(5);
- c. Unexplained confusion, loss of consciousness, or incoherence observed by the Division at the time of license application or renewal;
- d. Information from one or more individuals having direct knowledge of specific events or conduct which may indicate that the licensee has a medical condition.

2. If the person's response to the medical screening question indicates the likelihood that a medical condition exists, the person must submit to a medical examination within 30 days from the Department mailing date.

3. The Department may require an additional medical examination performed by a medical specialist, if the initial medical examination reported to the Department is insufficient to establish that the applicant or licensee possesses the functional ability to safely operate a motor vehicle based on the medical licensing standards in this Article. The Director may require an examinee to appear for an interview to clarify information disclosed by a medical evaluation or examination.

4. The applicant or licensee may be required by the Department to appear for an interview to clarify information disclosed by the medical examination. The Director may require one or more additional medical evaluations performed by a medical specialist if the initial medical evaluation fails to establish the examinee's functional ability.

5. The Department shall not be held liable for any expenses incurred by an applicant or licensee in the process of meeting the medical licensing standards.

**D. Reporting requirements. Results of Examination or Medical Evaluation.**

1. Failure to complete the medical screening question at the time of application will result in an order to submit to a medical examination within 30 days from the date of

the order. When the results of the examination or medical evaluation indicate that the examinee's functional ability is impaired, or when the examinee fails to complete any examination or medical evaluation requested by the Division, the examinee's license or privilege to operate a motor vehicle shall be denied, or summarily suspended in accordance in the provisions of A.R.S. § 41-1064(C) and revoked in accordance with the provisions of A.R.S. § 28-448(A)(5).

2. Failure to submit to the medical examination and submit the required report to the Department as required within the timeframe shall result in a suspension of the driver's license or denial of issuance until compliance is met. When the results of the examination, medical evaluation, or both indicate that the examinee's functional ability is not impaired, a license shall be issued or remain valid.

3. If a person experiences any medical condition after being licensed, he is required to report this condition to the Department within five days of occurrence or as soon as the condition allows.

**E. Failure to Report Results of a Medical Evaluation**

1. The written results of a medical evaluation shall be submitted by or on behalf of the examinee to the Division within 30 days from the date the medical evaluation is requested.

2. Failure to submit the results of a medical evaluation requested by the Division to the Division within 30 days of the date the medical evaluation is requested shall result in a summary suspension in accordance with the provisions of A.R.S. § 41-1064(C) and revocation in accordance with the provisions of A.R.S. § 28-446(A)(5) of the license or privilege to drive, or denial of issuance until the completed medical evaluation has been submitted to the Division and is evaluated pursuant to this subsection (E).

**F. License Restrictions/Adaptive Equipment**

When an examinee requires one or more of the vehicle modifications, as listed but not limited to those below, in order to demonstrate functional ability, the Division shall place the restriction on the examinee's license and note the restriction on the examinee's driving record.

- 1. Automatic transmission,
- 2. Hand dimmer switch,
- 3. Left foot gas pedal,
- 4. Parking brake extension,
- 5. Power steering,
- 6. Power brakes,
- 7. Six-way power seat,
- 8. Right-side directional signal,
- 9. Steering wheel spinner device,
- 10. Full foot controls,
- 11. Dual outside mirrors,
- 12. Chest/shoulder restraints,
- 13. Pedal extensions,
- 14. Full hand controls,
- 15. Adapted seat,
- 16. Other equipment.

**E.G. Hearings and appeals.**

1. All In all cases where licensing actions have been taken, adverse to the licensee or applicant examinee pursuant to this rule or R17-4-521 or R17-4-522, the examinee may request a hearing with the Division's executive hearing section office within 15 days from of the date of the notice of the licensing action.

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**Notices of Supplemental Proposed Rulemaking**

2. All hearings ~~procedures are defined in administrative~~ shall be conducted as prescribed in R17-4-901 and through R17-4-902~~912~~.
3. The results of the hearing shall sustain, modify, or void the Division's licensing action.