

NOTICES OF PROPOSED RULEMAKING

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

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE ENVIRONMENTAL SERVICES DIVISION

PREAMBLE

- 1. Sections Affected**
Article 1
Table 1
- 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 statutes: A.R.S. §§ 3-107(A)(1) and 41-1073
Implementing statute: A.R.S. § 3-906(D)
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 976, March 12, 2004 (in this issue)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Sherry D. Blatner, Rules Analyst
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, AZ 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: sherry.blatner@agric.state.az.us
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**
This rulemaking adds the Native Plant licensing time-frames to the Environmental Services Division Time-frames Table. The rules covering Native Plants were recodified from Chapter 4, Article 6 to Chapter 3, Article 11 effective February 6, 2004. It is not possible to recodify part of a licensing time-frame table.
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of and justification for the rules, 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
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**
A. *The Arizona Department of Agriculture*

Notices of Proposed Rulemaking

The Department will incur modest expenses related to training staff and educating the regulated community on the amendment.

B. *Political Subdivision*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected By the Rulemaking*

Native plant licensees will need to become aware of the recodification and subsequent movement of the related licensing time-frames from the Plant Services Division to the Environmental Services Division.

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

Name: Sherry D. Blatner, Rules Analyst
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, AZ 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: sherry.blatner@agric.state.az.us

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

An oral proceeding is not scheduled for this proposed rulemaking. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 5:00 p.m. on April 12, 2004.

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

None

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

None

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE
ENVIRONMENTAL SERVICES DIVISION

ARTICLE 1. GENERAL PROVISIONS

Section

Table 1. Time-frames (Calendar Days)

Notices of Proposed Rulemaking

ARTICLE 1. GENERAL PROVISIONS

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Regulated Grower Permit	A.R.S. § 3-363	14	14	56	14	70
Seller Permit	A.R.S. § 3-363	14	14	56	14	70
Agricultural Aircraft Pilot License	A.R.S. § 3-363	14	14	56	14	70
Custom Applicator License	A.R.S. § 3-363	14	14	63	14	77
Application Equipment Tag	A.R.S. § 3-363	14	14	56	14	70
Agricultural Pest Control Advisor (PCA) License	A.R.S. § 3-363	14	14	63	14	77
Commercial Applicator Certification	A.R.S. § 3-363	14	14	63	14	77
Private Applicator Certification	A.R.S. § 3-363	14	14	63	14	77
Private Fumigation Certification	A.R.S. § 3-363	14	14	63	14	77
Experimental Use Permit	A.R.S. § 3-350.01	14	14	28	14	42
Pesticide Registration	A.R.S. § 3-351	14	14	91	14	105
License to Manufacture or Distribute Commercial Feed	A.R.S. § 3-2609	14	14	42	14	56
Commercial Fertilizer License	A.R.S. § 3-272	14	14	42	14	56
Specialty Fertilizer Registration		14	14	56	14	70
Agricultural Safety Trainer Certification	A.R.S. § 3-3125	28	14	28	14	56
ARIZONA NATIVE PLANTS						
<u>Notice of Intent Confirmation Notice of Intent</u>	<u>A.R.S. § 3-904</u>	<u>7</u>	<u>14</u>	<u>7</u>	<u>14</u>	<u>14</u>
<ul style="list-style-type: none"> • <u>Salvage Assessed Native Plant Permits</u> • <u>Salvage Restricted Native Plant Permits</u> • <u>Scientific Permits</u> 	<u>A.R.S. § 3-906</u>	<u>5</u>	<u>14</u>	<u>5</u>	<u>14</u>	<u>10</u>
		<u>5</u>	<u>14</u>	<u>5</u>	<u>14</u>	<u>10</u>
		<u>14</u>	<u>14</u>	<u>14</u>	<u>14</u>	<u>28</u>
<u>Movement Permits</u>	<u>A.R.S. § 3-906</u>	<u>5</u>	<u>14</u>	<u>5</u>	<u>14</u>	<u>10</u>
<u>Annual Permits for Harvest-Restricted Native Plants</u>	<u>A.R.S. § 3-907</u>	<u>5</u>	<u>14</u>	<u>5</u>	<u>14</u>	<u>10</u>

Notices of Proposed Rulemaking

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

An oral proceeding is not scheduled for this proposed rulemaking. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 5:00 p.m. on April 12, 2004.

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

None

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

None

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION**

ARTICLE 1. GENERAL PROVISIONS

Section

Table 1. Time-frames (Calendar Days)

ARTICLE 1. GENERAL PROVISIONS

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
QUARANTINE						
Cotton Boll Weevil Pest	A.R.S. § 3-201.01 R3-4-218	14	14	30	30	44
Citrus Fruit Surface Pest	A.R.S. § 3-201.01 R3-4-219	14	14	60	30	74
Citrus Nursery Stock Pests	A.R.S. § 3-201.01 R3-4-220	14	14	30	30	44
Lettuce Mosaic Pest	A.R.S. § 3-201.01 R3-4-233	14	14	30	30	44
Noxious Weeds Regulated and Restricted Prohibited	A.R.S. § 3-201.01 R3-4-244 R3-4-245	14	14	30	30	44
Scale Insects Pests	A.R.S. § 3-201.01 R3-4-226	14	14	30	30	44
Plum Curculio Apple Maggot	A.R.S. § 3-201.01 R3-4-240	14	14	60	30	74
Colored Cotton	A.R.S. § 3-205.02 R3-4-501	14	0	0	0	14

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License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
NURSERY						
Ozonium Root Rot Inspection	A.R.S. § 3-201.01 A.R.S. § 3-217					
• Method of Growing	R3-4-303	7	14	30	14	37
• Indicator Crop Planted on Applicant's Property		7	14	4 yrs	14	4 yrs, 7 days
• Indicator Crop Planted in Surrounding Area		7	14	5 yrs	14	5 yrs, 7 days
Other Certification Inspections	A.R.S. § 3-201.01 A.R.S. § 3-217	30	14	1 yr	14	1 yr, 30 days
• Nursery Inspection						
Phytosanitary Field Inspection	A.R.S. § 3-233(A)(7) R3-4-407	30	7	210	7	240
STANDARDIZATION						
Experimental Pack and Product for Fruit and Vegetables	A.R.S. § 3-487 R3-4-740	7	7	7	7	14
Experimental Pack and Product for Citrus Fruit	A.R.S. § 3-445 R3-4-814	7	7	7	7	14
Citrus Fruit Dealer, Packer, or Shipper License	A.R.S. § 3-449	14	14	14	14	28
Fruit and Vegetable Dealer, Packer, or Shipper License	A.R.S. § 3-492	14	14	14	14	28
ARIZONA NATIVE PLANTS						
Notice of Intent Confirmation Notice of Intent	A.R.S. § 3-904 R3-3-1102	7	14	7	14	14
• Qualifications for Salvage Assessed Native Plant Permits	A.R.S. § 3-906	5	14	5	14	10
• Salvage Restricted Native Plant Permits	R3-3-1108	5	14	5	14	10
• Scientific Permits	R3-3-1105	14	14	14	14	28
Movement Permits	A.R.S. § 3-906 R3-3-1107	5	14	5	14	10
Qualifications for Annual Permits for Harvest Restricted Native Plants	A.R.S. § 3-907 R3-3-1108	5	14	5	14	10
SEED DEALERS AND LABELERS						
Seed Dealer	A.R.S. § 3-235 R3-4-408	14	14	14	14	28
Seed Labeler	A.R.S. § 3-235 R3-4-408	14	14	14	14	28

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G. ADVISORY OPINION 24 (AO-24): "Normal Course of Business." This is a new Advisory Opinion addressing the concept of "Normal Course of Business" that is used in Standards Rules 1-5 and 7-5.

H. ADVISORY OPINION 25 (AO-25): "Clarification of the Client in a Federally Related Transaction." This is a new Advisory Opinion that addresses whether an appraiser has an obligation to ensure that his or her services are directly engaged by a federally insured depository institution.

I. ADVISORY OPINION 26 (AO-26): "Readdressing (Transferring) a Report to Another Party." This new Advisory Opinion addresses the practice of altering a report to indicate that a new recipient is the client when it was originally completed for another party.

J. ADVISORY OPINION 27 (AO-27): "Appraising the Same Property for a New Client." This new Advisory Opinion addresses the practice of appraising a property for a party after appraising it for another party.

K. GLOSSARY: The Glossary has been removed from the USPAP publication.

L. NOTE: Administrative edits were made to appropriate sections of the document to improve consistency.

M. USPAP STRUCTURE AND USABILITY FEATURES: Each Statement (SMT) and Advisory Opinion (AO) is labeled as to its applicability to the various appraisal disciplines. These labels are located at the beginning of each Statement and Advisory Opinion, as well as in the Table of Contents. The abbreviations are: Real Property-RP; Personal Property-PP; Business-IP; All disciplines-ALL. No IP (Intangible Property, which includes business interests) abbreviations are utilized since all Statements and Advisory Opinions that apply to Intangible Property also apply to Real Property and Personal Property, and are thus part of the "ALL" label.

N. ASB WORK IN PROGRESS: Over the years, the USPAP document has evolved in content, form, and organizational structure. It is a work in progress, with an overall goal of Standards becoming more stable over time and guidance in the form of Statements and Advisory Opinions appearing as required. Toward this end, the ASB has developed a process for developing both Standards and guidance text based, in part, on written comments submitted in response to exposure drafts and oral testimony presented at public meetings. This process requests input on proposed changes to USPAP from all interested parties, including professional appraisers and professional appraisal organizations, users of appraisal services, educators, regulators and state enforcement agencies. In July, 1998, the ASB established a mechanism for organizations to interact with the ASB and present official positions on USPAP topics during the research phase of the exposure draft process. Known as "work groups," these entities, which are registered with The Appraisal Foundation, may develop recommendations for consideration by the ASB prior to its dissemination of proposed changes through the exposure draft process.

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

None

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

Not applicable

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

The rule is being changed to adopt the latest standards of practice in the profession, as required by federal and state law. The primary groups that will be affected are the Board, the licensed or certified appraisers, and the public. The Board annually adopts the latest standards for professional appraisal practice and there should be no appreciable changes in the economic impact. The cost for the new edition is \$30. Not all appraisers will find it necessary to own a copy. Some offices share copies. The cost is a deductible business expense.

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

Name: Deborah G. Pearson, Executive Director
Address: 1400 W. Washington, Suite 360
Phoenix, AZ 85007
Telephone: (602) 542-1539
Fax: (602) 542-1598
E-mail: deborah.pearson@appraisal.state.az.us

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

Date: April 15, 2004

Notices of Proposed Rulemaking

Time: 9:00 a.m.
Location: 1400 W. Washington, Basement Conference Room B-2
Phoenix, Arizona
Nature: The Board will hold an open meeting to hear opinions and suggestions, and to adopt, amend, or repeal the rule. The agenda for this Board meeting will be available to the public the day before the meeting. It may be obtained by contacting the Board office at (602) 542-1539.

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

Not applicable

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

The *Uniform Standards of Professional Appraisal Practice* (USPAP), 2004 Edition, published by the Appraisal Foundation and effective nationally January 1, 2004. The location in the rules is R4-46-401.

13. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 4. STANDARDS OF PRACTICE

Section

R4-46-401. Standards of Appraisal Practice

ARTICLE 4. STANDARDS OF PRACTICE

R4-46-401. Standards of Appraisal Practice

Every appraiser, in performing the acts and services of an appraiser, shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP), ~~2003~~ 2004 edition, published by ~~the~~ The Appraisal Foundation, which is incorporated by reference and on file with the Board and the Office of the Secretary of State. This incorporation by reference contains no future additions or amendments. A copy of the USPAP ~~2003~~ 2004 edition may be obtained from the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005; toll free 1-800-805-7857; (202) 347-7722; fax (202) 347-7727; or web site www.appraisalfoundation.org.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 1. RADIATION REGULATORY AGENCY

PREAMBLE

1. Sections Affected

R12-1-541
R12-1-542
R12-1-1102
R12-1-1140
R12-1-1142
R12-1-1302
R12-1-1402
R12-1-1421
R12-1-1438
R12-1-1439
R12-1-1439
Appendix C
Appendix D

Rulemaking Action

Repeal
Repeal
New Section
New Section
New Section
Amend
Amend
Amend
New Section
Repeal
New Section
New Appendix
New Appendix

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

General: A.R.S. § 30-654(B)

Notices of Proposed Rulemaking

Specific: A.R.S. §§ 30-657, 30-672, 30-673, and 30-683

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 798, February 22, 2002

Notice of Rulemaking Docket Opening: 8 A.A.R. 2113, May 10, 2002

Notice of Rulemaking Docket Opening: 8 A.A.R. 4301, October 11, 2002

Notice of Rulemaking Docket Opening: 10 A.A.R. 980, March 12, 2004 (in this issue)

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

Name: John Lamb
Address: Arizona Radiation Regulatory Agency
4814 South 40th Street
Phoenix, AZ 85040
Telephone: (602) 255-4845, ext. 235
Fax: (602) 437-0705
E-mail: jlamb@arra.state.az.us

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

Notice is given that new rules are going into Article 11. This Article did not exist when this notice was drafted in February. These rules are needed to complete the new rulemaking package, RMP-0056, that introduces a new Article 11 to the Governor's Regulatory Review Council at its April 6, 2004 meeting. Further explanation follows.

In RMP-0056 the x-ray rules affecting industrial uses are being moved to Article 11. This change is made to clarify and improve understandability by separating the requirements for x-ray and radioactive material into two separate Articles. The radioactive material rules affecting industrial radiography will remain in Article 5. Because all of the rules in Article 5 were not opened in RMP-0056, the remaining x-ray rules are being moved to Article 11 in this package. The affected rules are R12-1-541 and R12-1-542. They will be R12-1-1140 and R12-1-1142, respectively. Additionally, necessary x-ray related definitions are moved from Article 5 into a new definition rule R12-1-1102.

R12-1302, which contains registration and license categories used in determining costs thereof, is being amended to correct incorrect rule references related to the amendments made in Article 14 described below.

Article 14 is amended to list new standards for Intense Pulsed Light (IPL) devices and lasers used for medical purposes. R12-1-1402 is amended to add new definitions that will be helpful in understanding the new light based cosmetic surgery and hair removal requirements proposed in the other affected rules in Article 14. Of special interest and concern to affected users and patients are new standards for operator supervision for these light emitting devices and training standards for Laser Safety Officers (LSO) and operators. The standards for training are listed in the newly proposed Appendices C and D to Article 14.

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

None

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

Not applicable

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

There is no economic burden associated with the moving of the rules from Article 5 to Article 11. The affected rules are not amended. Also, there is no new economic burden associated with the correction of the rule references in the category system located in R12-1-1302. There is an obvious economic implication associated with the proposed changes to Article 14. These costs are explained as follows:

Because of the potential public hazard associated with laser and IPL misuse, it is believed these rules are needed. The changes may present some increase in operating cost, if a user has not made an effort to stay abreast of training and industry safety. The actual cost associated with staying abreast of the new standards is unknown, however, it is believed to be minimal when compared to the cost of the machines that produce the nonionizing radiation and potential costs associated with resolving a court case if one of these devices is misused. As stated above, supervision and training for medical laser systems and IPLs is being proposed at this time. The annual cost to register a laser or an IPL system is \$40. At this time there are 220 medical laser registrants and less than 25 users of IPL systems in the state that will be affected by the new rules. It is estimated that a training program for operators of lasers and IPLs to be in the range of \$750 to \$2000. It is believed that most of this cost will be passed on to the patient/ client receiving the laser/IPL treatment. As with tanning, improper use of these devices can result in severe burns, that may be perma-

nently disfiguring. It has been estimated by a local cosmetic surgery provider that an unlicensed provider will charge \$800.00 to \$1000.00 for a complete cosmetic surgery/hair removal procedure versus \$3000.00 to \$5000.00 for a licensed provider. In most cases a procedure will involve multiple visits over a six-month period. Additionally, liability insurance for a licensed practitioner is approximately 10 times higher than the insurance costs for a unlicensed cosmetic surgery provider. Even though licensed practitioners are generally against the regulatory fees associated with Agency intervention, telephone surveys have disclosed that many believe the proposed rules, as a whole, are necessary to protect the public from unscrupulous and unqualified users.

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

Name: Daniel H. Kuhl, State Health Physicist II
Address: Arizona Radiation Regulatory Agency
4814 South 40th Street
Phoenix, AZ 85040
Telephone: (602) 255-4845, ext. 233
Fax: (602) 437-0705
E-mail: dkuhl@arra.state.az.us

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

An oral proceeding at the agency is scheduled for Thursday, June 3, 2004, at 1:00 p.m. A person may submit written comments concerning the proposed rules by submitting them no later than 5:00 p.m., on June 3, 2004, to the following person:

Name: Aubrey V. Godwin, Director
Location: Arizona Radiation Regulatory Agency
Address: 4814 South 40th Street
Phoenix, AZ 85040
Telephone: (602) 255-4845
Fax: (602) 437-0705

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

Not applicable

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

21 CFR 878.48, located in R12-1-1438(A)(1)

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 1. RADIATION REGULATORY AGENCY

ARTICLE 5. SEALED SOURCE INDUSTRIAL RADIOGRAPHY

Section

R12-1-541. ~~Enclosed Radiography Using X-ray Machines~~ Repealed

R12-1-542. ~~Baggage Inspection Systems~~ Repealed

ARTICLE 11. ~~REPEALED~~ INDUSTRIAL USES OF X-RAY, NOT INCLUDING ANALYTICAL SYSTEMS

Section

R12-1-1102. ~~Repealed~~ Definitions

R12-1-1140. Enclosed Radiography

R12-1-1142. Baggage Inspection Systems

ARTICLE 13. LICENSE AND REGISTRATION FEES

Section

R12-1-1302. License and Registration Categories

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

Section

- R12-1-1402. Definitions
- R12-1-1421. Laser Safety
- R12-1-1438. ~~Repeated~~ Hair Removal and Cosmetic Procedures Using Laser and Intense Pulsed Light
- R12-1-1439. ~~Additional Requirements for Medical Laser Applications~~ Laser/IPL User Safety Training
- Appendix C. Hair Removal and Cosmetic Laser/IPL Operator Training Program
- Appendix D. Laser User and Laser Safety Officer Training

ARTICLE 5. SEALED SOURCE INDUSTRIAL RADIOGRAPHY

R12-1-541. ~~Enclosed Radiography Using X-ray Machines~~ Repealed

- ~~A. Certified and certifiable cabinet x-ray systems, as defined in Article 1, are exempt from the requirements of Article 5, provided the following conditions are met:
 - 1. The registrant shall make, or cause to be made, an evaluation of each certified and certifiable cabinet x-ray system, at intervals not to exceed 12 months, to determine conformance with the standards for certified and certifiable cabinet x-ray systems defined in Article 1. Records of the evaluations shall be retained for three years from the date of their creation; and
 - 2. Physical radiation surveys shall be performed with a survey instrument appropriate for the energy range and levels of radiation to be assessed and calibrated within the preceding 12 months.~~
- ~~B. The registrant shall ensure that cabinet x-ray systems not exempted in subsection (A) comply with the recordkeeping requirements of this Article and the following special requirements:
 - 1. Radiation levels measured at 5 centimeters (2 inches) from any accessible exterior surface of the enclosure shall not exceed 50 microsievert (0.5 milliroentgen) in one hour for any combination of technical factors (i.e., mA, kVp);
 - 2. Access to the interior of the enclosure shall be possible only through interlocked doors or panels that allow production of radiation only when all interlocked doors or panels are securely closed. Opening any point of access shall result in immediate termination of radiation production, and subsequent reactivation of the x-ray tube shall only be possible at the control panel;
 - 3. Visible warning signals that are activated only during production of radiation shall be provided at the control panel and at each point of access to the interior of the enclosure;
 - 4. The registrant shall make, or cause to be made, evaluations of each x-ray system to determine conformance with this Article, before placing the x-ray system into use and thereafter at intervals not to exceed three months. Records of the evaluations shall be retained for two years, and
 - 5. Physical radiation surveys to satisfy the requirements of subsection (B)(4) shall be performed only with instrumentation meeting the requirements of R12-1-504.~~
- ~~C. The registrant shall ensure that shielded room x-ray systems comply with the recordkeeping requirements of this Article and the following special requirements:
 - 1. Each x-ray room shall be so shielded that every location on the exterior meets the requirements for an "unrestricted area" as specified in R12-1-416;
 - 2. Access to the interior of a shielded x-ray room shall only be possible through doors or panels which are interlocked. Radiation production shall be possible only when all interlocked doors and panels are securely closed. Opening of any interlocked access points shall result in immediate termination of radiation production, and subsequent reactivation of the x-ray tube shall only be possible at the control panel;
 - 3. Each access point shall be provided with two interlocks, each on a separate circuit so that failure of one interlock will not affect the performance of the other;
 - 4. Visible warning signals activated only during production of radiation shall be provided at the control panel and at each point of access into the shielded room;
 - 5. The registrant shall make, or cause to be made, evaluations of each shielded room x-ray system before placing the system into use and thereafter at intervals not to exceed three months to determine compliance with this Article. Records of the evaluations shall be retained for two years.
 - 6. Radiation surveys performed to determine exposure shall be performed with instrumentation that meets the requirements of R12-1-504;
 - 7. Electrical interlocks and warning devices shall be inspected for proper operation at the beginning of each period of use, and records of the inspections shall be prepared and retained for two years;
 - 8. The registrant shall not permit any individual to operate an x-ray machine for shielded room radiography unless that individual has received a copy of, and instruction in, the operating procedures and has demonstrated competence in the safe use of the equipment;
 - 9. An individual shall not occupy the interior of any shielded room x-ray system during production of radiation; and~~

10. The registrant shall provide personnel monitoring devices that meet the requirements of R12-1-523(C) to each shielded room x-ray machine operator, and require that each operator use the devices.
 11. The registrant shall maintain records of:
 - a. Quarterly inventories for mobile systems, as prescribed in R12-1-506; and
 - b. Utilization of all systems, as prescribed in R12-1-507.
 12. Records shall be maintained for three years from the date of the inventory or utilization.
- D.** The registrant shall connect an enclosed radiography machine to the electrical system in a manner that will prevent a ground fault from generating x-radiation.

R12-1-542. ~~Baggage Inspection Systems Repealed~~

- A.** ~~For x-ray systems designed to screen carry-on baggage at airlines, railroads, bus terminals, or similar facilities, a registrant shall station the operator at the control area in a position that permits surveillance of the ports and doors during generation of x-radiation to prevent exposure to passengers and other members of the public.~~
- B.** ~~For an exposure or preset succession of exposures of one half second or greater duration, a registrant shall use a system that enables the operator to terminate the exposure or preset succession of exposures at any time.~~
- C.** ~~For an exposure or preset succession of exposures of less than one half second duration, a registrant shall use a system that allows the operator to complete the exposure in progress, but prevent additional exposures.~~
- D.** ~~A registrant shall operate a baggage inspection system according to the manufacturer's instructions.~~
- E.** ~~A registrant shall not disconnect or otherwise tamper with the safety systems of a baggage inspection system, except for maintenance purposes.~~
- F.** ~~In addition to the requirements in this Section, registrants using a baggage inspection system shall meet the requirements in R12-1-541(A), (B), and (D).~~

ARTICLE 11. ~~REPEALED~~ INDUSTRIAL USES OF X-RAY, NOT INCLUDING ANALYTICAL SYSTEMS

R12-1-1102. ~~Repealed Definitions~~

"Access panel" means any panel that is designed to be removed or opened for maintenance or service purposes, opened using tools, and used to provide access to the interior of the cabinet x-ray unit.

"Annual refresher safety training" means a review conducted or provided by the registrant for its employees on radiation safety aspects of industrial radiography. The review shall include, as applicable, the results of internal inspections, new procedures or equipment, new or revised state rules, accidents or errors that have occurred, and provide opportunities for employees to ask safety questions.

"Aperture" means any opening in the outside surface of the cabinet x-ray unit, other than a port, which remains open during generation of x-radiation.

"Door" means any barrier that is designed to be movable or opened for routine operation purposes, not opened using tools, and used to provide access to the interior of the cabinet x-ray unit.

"Ground fault" means an accidental electrical grounding of an electrical conductor.

"Hands-on experience" means accumulation of knowledge or skill in any area relevant to radiography.

"Port" means any opening in the outside surface of the cabinet x-ray unit that is designed to remain open, during generation of x-rays, for conveying material being irradiated into and out of the cabinet, or for partial insertion of an object for irradiation whose dimensions do not permit complete insertion into the cabinet x-ray unit.

"Practical examination" means a demonstration, through practical application of safety rules and principles of industrial radiography, including use of all radiography equipment and knowledge of radiography procedures.

"Radiographic operations" means all activities associated with use of a radiographic x-ray system. This includes performing surveys to confirm the adequacy of boundaries, setting up equipment, and conducting any activity inside restricted area boundaries.

R12-1-1140. ~~Enclosed Radiography~~

- A.** The Agency has determined that certified and certifiable cabinet x-ray systems, as defined in Article 1, are exempt from the requirements of Article 5, provided the following conditions are met:
1. The registrant shall make, or cause to be made, an evaluation of each certified and certifiable cabinet x-ray system, at intervals not to exceed 12 months, to determine conformance with the standards for certified and certifiable cabinet x-ray systems defined in Article 1. Records of the evaluations shall be retained for three years from the date of their creation; and
 2. The registrant performs a physical radiation survey with a survey instrument appropriate for the energy range and levels of radiation to be assessed and calibrated within the preceding 12 months.
- B.** A registrant shall ensure that cabinet x-ray systems not exempted in subsection (A) comply with the recordkeeping

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requirements of this Article and the following special requirements:

1. Radiation levels measured at 5 centimeters (2 inches) from any accessible exterior surface of the enclosure shall not exceed 50 microsievert (0.5 milliroentgen) in one hour for any combination of technical factors (i.e., mA, kVp);
 2. Access to the interior of the enclosure shall be possible only through interlocked doors or panels that allow production of radiation only when all interlocked doors or panels are securely closed. Opening any point of access shall result in immediate termination of radiation production, and subsequent reactivation of the x-ray tube shall only be possible at the control panel;
 3. Visible warning signals that are activated only during production of radiation shall be provided at the control panel and at each point of access to the interior of the enclosure;
 4. The registrant shall make, or cause to be made, evaluations of each x-ray system to determine conformance with this Article, before placing the x-ray system into use and thereafter at intervals not to exceed three months. Records of the evaluations shall be retained for two years, and
 5. The registrant performs a physical radiation survey to satisfy the requirements of subsection (B)(4) shall be performed only with instrumentation meeting the requirements of R12-1-1108.
- C.** A registrant shall ensure that shielded room x-ray systems comply with the recordkeeping requirements of this Article and the following special requirements:
1. Each x-ray room shall be so shielded that every location on the exterior meets the requirements for an “unrestricted area” as specified in R12-1-416;
 2. Access to the interior of a shielded x-ray room shall only be possible through doors or panels which are interlocked. Radiation production shall be possible only when all interlocked doors and panels are securely closed. Opening of any interlocked access points shall result in immediate termination of radiation production, and subsequent reactivation of the x-ray tube shall only be possible at the control panel;
 3. Each access point shall be provided with two interlocks, each on a separate circuit so that failure of one interlock will not affect the performance of the other;
 4. Visible warning signals activated only during production of radiation shall be provided at the control panel and at each point of access into the shielded room;
 5. The registrant shall make, or cause to be made, evaluations of each shielded room x-ray system before placing the system into use and thereafter at intervals not to exceed three months to determine compliance with this Article. Records of the evaluations shall be retained for two years.
 6. Radiation surveys performed to determine exposure shall be performed with instrumentation that meets the requirements of R12-1-1108;
 7. Electrical interlocks and warning devices shall be inspected for proper operation at the beginning of each period of use, and records of the inspections shall be prepared and retained for two years;
 8. The registrant shall not permit any individual to operate an x-ray machine for shielded room radiography unless that individual has received a copy of, and instruction in, the operating procedures and has demonstrated competence in the safe use of the equipment;
 9. An individual shall not occupy the interior of any shielded room x-ray system during production of radiation; and
 10. The registrant shall provide personnel monitoring devices that meet the requirements of R12-1-1130(C) to each shielded room x-ray machine operator, and require that each operator use the devices.
 11. The registrant shall maintain records of:
 - a. Quarterly inventories for mobile systems, as prescribed in R12-1-1110; and
 - b. Utilization of all systems, as prescribed in R12-1-1112.
 12. The registrant shall maintain the records for three years from the date of the inventory or utilization.
- D.** A registrant shall connect an enclosed radiography machine to the electrical system in a manner that will prevent a ground fault from generating x-radiation.

R12-1-1142. Baggage Inspection Systems

- A.** For x-ray systems designed to screen carry-on baggage at airlines, railroads, bus terminals, or similar facilities, a registrant shall station the operator at the control area in a position that permits surveillance of the ports and doors during generation of x-radiation to prevent exposure to passengers and other members of the public.
- B.** For an exposure or preset succession of exposures of one-half second or greater duration, a registrant shall use a system that enables the operator to terminate the exposure or preset succession of exposures at any time.
- C.** For an exposure or preset succession of exposures of less than one-half second duration, a registrant shall use a system that allows the operator to complete the exposure in progress, but prevent additional exposures.
- D.** A registrant shall operate a baggage inspection system according to the manufacturer’s instructions.
- E.** A registrant shall not disconnect or otherwise tamper with the safety systems of a baggage inspection system, except for maintenance purposes.
- F.** In addition to the requirements in this Section, a registrant using a baggage inspection system shall meet the requirements in R12-1-1140(A), (B) and (D).

ARTICLE 13. LICENSE AND REGISTRATION FEES

R12-1-1302. License and Registration Categories

- A.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- B.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- C.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change
 - 10. No change
 - 11. No change
 - 12. No change
 - 13. No change
 - 14. No change
 - 15. No change
 - 16. No change
 - 17. No change
- D.** No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change
 - 10. No change
 - 11. No change
 - 12. No change
 - 13. No change
 - 14. No change
 - 15. No change
 - 16. No change
 - 17. No change
 - 18. No change
 - 19. No change
- E.** No change
 - 1. No change
 - 2. No change
 - 3. No change

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4. No change
5. No change
6. No change
- F. No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. A laser light show registration authorizes the operation of a laser device subject to ~~R12-1-1440~~ R12-1-1441.
 6. A medical laser registration authorizes the operation of one or more laser devices subject to ~~R12-1-1439~~ R12-1-1440.
 7. A Class II surgical device registration authorizes the operation of one or more Class II surgical devices subject to ~~R12-1-1417~~ R12-1-1438.
 8. No change
 9. No change
 10. No change
 11. No change
 12. No change

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

Editor's Note: The following Section contains new definitions that do not conform to the subsection labeling format of the Secretary of State's Office. It is printed here nevertheless to inform the public about the agency's rulemaking intent. The Radiation Regulatory Agency will conform to Secretary of State formatting style in a future Notice of Final Rulemaking.

R12-1-1402. Definitions

General definitions:

"Cosmetic procedure" means: Use of medical lasers or intense pulse light (IPL) devices, approved by the federal Food and Drug Administration (FDA), for the purpose of spider vein removal, skin rejuvenation, non-ablative skin resurfacing, skin resurfacing, port wine stain removal, epidermal pigmented skin lesion, or tattoo removal.

"Direct supervision" means supervising the use of a radiation source for medical purposes by a licensed practitioner while present inside the facility where the radiation source is being used.

"Indirect supervision" means: For lasers or IPL used for cosmetic procedures: there shall be, as a minimum, responsible supervision and control by a licensed practitioner who is easily accessible by telecommunication. The supervising practitioner shall have ordered the application of radiation prior to its application, shall have established a method for emergency medical care in the absence of the supervising practitioner, and shall assume legal liability for the service rendered by the indirectly supervised operator, who has participated in sufficient supervised training, as specified in R12-1-1438, to allow the supervised operator to function under indirect supervision.

- A. The following terms have the meaning given when used in rules pertaining to radio frequency and microwave radiation:
 1. "Accessible emission level" means the level of radio frequency radiation emitted from any source, expressed in terms of power density in milliwatts per square centimeter or electric and magnetic field strength as appropriate, and to which human access is normally possible.
 2. "Far field region" means the region in which locally uniform distribution of electric and magnetic field strengths exists in planes transverse to the direction of propagation. The far field region shall be taken to exist at distances greater than $2D^2/l$ from the antenna, where l is the wavelength and D is the largest antenna aperture dimension.
 3. "Near field region" means the region near an antenna in which the electric and magnetic field components vary considerably in strength from point to point. For most antennas the outer boundary of the region shall be taken to exist at a distance $l/2p$ from the antenna surface, where l is the wavelength.
 4. "Radio frequency controlled area" means any area to which access is controlled for the purpose of protection from radio frequency radiation.
 5. "Radio frequency exposure limits" means the maximum permissible whole body exposure to humans, from any source of radio frequency radiation.
 6. "Radio frequency machine" means a radiation machine or system which produces electromagnetic radiation in the frequency spectrum.
 7. "Radio frequency radiation" means that electromagnetic radiation (including microwave radiation) with frequencies in the range of 0.3 megahertz to 100 gigahertz.
 8. "Safety device" means any device incorporated into a radio frequency machine which is designed to prevent human access to excessive levels of radio frequency radiation.
- B. The following terms have the meaning given when used in rules applicable to lasers:

1. "Accessible emission level" means the magnitude of emission of laser or collateral radiation to which human access is possible.
2. "Accessible emission limit" means the maximum accessible emission level of laser radiation permitted within a particular class.
3. "Angular subtense" means the apparent visual angle, α , as calculated from the source size and distance from the eye.
4. "Aperture" means any opening in a protective housing through which radiation is emitted, thereby allowing human access to the radiation.
5. "Aperture stop" means an opening serving to limit the size and to define the shape of the area over which radiation is measured.
6. "Certified laser product" means that the product is certified by a manufacturer pursuant to the requirements of 21 CFR 1040, 1993 edition, published April 1, 1993, by the Office of the Federal Register, National Archives and Records Administration, incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
7. "Class I laser" means any laser which permits human access during operation to laser radiation less than the accessible emission limits for any combination of emission duration and wavelength range.
 - a. "Class I dual limits" means, for classification purposes, laser or collateral radiation in the wavelength range of greater than 400 nanometers but less than or equal to 1,400 nanometers exceeds the accessible emission limits of Class I if it exceeds both:
 - i. The Class I accessible emission limits for radiant energy within any range of emission duration, and
 - ii. The Class I accessible emission limits for integrated radiance within any range of emission duration.
8. "Class II Laser" means any laser which permits human access during operation to laser radiation above the Class I accessible emission limits, up to the accessible emission limits of Class II accessible emission limits and does not permit human access to laser radiation in excess of the accessible emission limits of Class I for any other emission duration or wavelength range.
9. "Class IIa laser products" means any laser product that permits human access during operation to levels of visible laser radiation in excess of the Class II accessible emission limits but does not permit human access during operation to levels of laser radiation in excess of the accessible Class IIa emission limits.
10. "Class III Laser" means any laser which permits human access during operation to laser radiation above the Class I accessible emission limits and, if applicable, Class II, but below the Class IIIa accessible emission limits. Class III lasers are separately designated as Class IIIa or Class IIIb.
 - a. Class IIIa lasers are those lasers with an emission duration greater than 380 microseconds and in the wavelength range greater than 400 nanometers but less than or equal to 710 nanometers, with a radiant power of less than or equal to 5 milliwatts.
 - b. Class IIIb lasers are all other Class III lasers as defined above.
11. "Class IV laser" means any laser which permits human access during operation to laser radiation above the Class III accessible emission limits.
12. "Class I, II, III, IV facility" means a facility which has one or more Class I, II (including IIa), III (including IIIa and IIIb), or IV lasers respectively. Facilities containing more than one class of laser shall be classified according to the highest laser class contained therein.
13. "Collateral radiation" means any electronic product radiation, except laser radiation, emitted by a laser as a result of the operation of the laser or any component of the laser product that is physically necessary for the operation of the laser. The accessible emission and maximum permissible exposure limits for collateral radiation are specified in 21 CFR 1040.10, 1993 edition, published April 1, 1993, by the Office of the Federal Register, National Archives and Records Administration, incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

"Cosmetic procedure protocols" means delegated written authorization to select specific laser/IPL settings, initiate laser/IPL procedure, and exercise appropriate follow-up.
14. "Demonstration laser" means any laser manufactured, designed, intended, or used for purposes of demonstration, entertainment, advertising display, or artistic composition.
15. "Federal performance standard for light-emitting products" means the regulations in 21 CFR 1040.10, 1993 edition, published April 1, 1993, by the Office of the Federal Register, National Archives and Records Administration, incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
16. "Human access" means access to laser or collateral radiation by any part of the human body.
17. "Incident" means an event or occurrence which results in a real or suspected accidental exposure to laser radiation which caused or is likely to cause biological damage.
18. "Integrated radiance" means radiant energy per unit area of a radiating surface per unit solid angle of emission, expressed in joules per square centimeter - steradian.

19. "Irradiance" means the radiant power incident on an element of a surface divided by the area of that element, expressed in watts per square centimeter.
 20. "Laser controlled area" means any area into which human access is restricted for the purpose of radiation protection.
 21. "Laser energy source" means any device intended for use in conjunction with a laser to supply energy for the operation of the laser. General energy sources, such as electrical supply mains or batteries, shall not be considered to constitute laser energy sources.
 22. "Laser product" means any manufactured product, or assemblage of components which constitutes, incorporates, or is intended to incorporate a laser or laser system. A laser or laser system which is intended for use as a component of an electronic product shall itself be considered a laser product.
 23. "Laser protective device" means any device used to reduce or prevent exposure of personnel to laser radiation. Such devices shall include protective eye wear, garments, engineering controls, and operational controls.
 24. "Laser radiation" means all electromagnetic radiation emitted by a laser product, within the spectral range specified in the definition in Article 1, which is produced as a result of controlled stimulated emission.
 25. "Laser Safety Officer" (LSO) means any individual, qualified by training and experience in the evaluation and control of laser hazards, who is designated by the licensee and has the authority and responsibility to establish and administer the laser radiation protection program for a particular facility.
 26. "Laser system" means a laser in combination with an appropriate laser energy source, with or without additional incorporated components.
 27. "MPE" means the maximum permissible exposure limits for human exposure to laser or collateral radiation established by this Article. MPE limits for eye and skin exposure listed in ANSI Z136.1-1993, American National Standard for Safe Use of Lasers, 1993 edition, published by the Laser Institute of America, incorporated by reference and on file with the Department and the Office of the Secretary of State (this incorporation by reference contains no future editions or amendments) and for collateral radiation, in 21 CFR 1040.10, 1993 edition, published April 1, 1993, by the Office of the Federal Register, National Archives and Records Administration, incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
 28. "Maintenance" means the performance of those adjustments or procedures by the user to keep equipment in its intended operating condition. Maintenance does not include operation or service.
 29. "Protective housing" means any panel, partition, dividing wall, or similar device which prevents human access to laser or collateral radiation in excess of the prescribed accessible emission limit.
 30. "Pulse duration" means the time increment measured between the halfpeak power points at the leading and trailing edges of a pulse.
 31. "Pulse interval" means the time duration between identical points on two successive pulses.
 32. "Radiance" means the time-averaged radiant power per unit area of a radiating surface per unit solid angle of emission, expressed in watts per square centimeter per steradian.
 33. "Radiant energy" means energy emitted, transferred or received in the form of radiation, expressed in joules.
 34. "Radiant exposure" means the radiant energy incident on an element of a surface divided by the area of that element, expressed in joules per square centimeter.
 35. "Radiant power" means the time-averaged power emitted, transferred, or received in the form of radiation, expressed in watts.
 36. "Safety interlock" means a device associated with the protective housing of a laser product, system, or facility which prevents human access to laser and collateral radiation in excess of the prescribed accessible emission limit.
 37. "Sampling interval" means the time interval during which the level of accessible laser or collateral radiation is sampled by a measurement process. The magnitude of the sampling interval in units of seconds is represented by the symbol "t".
 38. "Secured enclosure" means an enclosure to which casual access is impeded by appropriate means, such as a door secured by lock, by latch, or by screws.
 39. "Uncertified laser product" means any laser which has not been certified in accordance with the requirements of 21 CFR 1040, 1993 edition, published April 1, 1993, by the Office of the Federal Register, National Archives and Records Administration, incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
- C. The following terms have the meaning given when used in rules on ultraviolet and high-intensity light sources:
1. "High-intensity mercury vapor discharge (HID) lamp" means any mercury vapor or metal halide lamp incorporating a high-pressure arc discharge tube that has a fill consisting primarily of mercury and that is contained within an outer envelope but does not include the tungsten filament self-ballasted mercury vapor or metal halide lamp.
"Intense pulsed light device" (IPL) means, for purposes of R12-1-1438, any lamp-based device that produces an incoherent filtered intense light.
 2. "Protective sunlamp eye wear" means any device designed to be worn by users of a sunlamp product to reduce radiation exposures to the eyes.

3. "Self-extinguishing lamp" means any HID lamp which ceases operation in conformance with the requirements of the performance standard in 21 CFR 1040.30(d), 1993 edition, published April 1, 1993, by the Office of the Federal Register, National Archives and Records Administration, incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
4. "Sunlamp product" means any electronic device which incorporates one or more ultraviolet lamps and is intended for use to induce skin tanning.
5. "Tanning device" means any room, booth, cabinet, tanning bed, or other enclosure which houses sunlamp products for the purpose of irradiating any part of the human body for cosmetic or nonmedical purposes.
6. "Ultraviolet lamp" means any light source that produces ultraviolet radiation and that is intended for use in any sunlamp product.
7. "Ultraviolet radiation" means electromagnetic radiation with a wavelength in air of between 200 and 400 nanometers.

R12-1-1421. Laser Safety

- A. No change
- B. No change
- C. No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
- D. A registrant ~~The licensee~~ shall retain records of:
 1. ~~Surveys~~ Results of all physical surveys made to determine compliance with this Article;
 2. ~~Operating Records indicating any restriction in operating~~ procedures necessary to prevent unnecessary or excessive exposure to laser or collateral radiation;
 3. ~~Incidents~~ Records relating to any incident for which reporting to the Agency is required ~~in pursuant to~~ R12-1-1436;
 4. ~~Medical Results of medical~~ surveillance to determine extent of injury resulting from exposure to laser or collateral radiation;
 5. No change
- E. The Laser Safety Officer shall meet the training requirements in Appendix D.

R12-1-1438. ~~Repealed~~ Hair Removal and Cosmetic Procedures Using Laser and Intense Pulsed Light

- A. Hair Removal Procedures.
 1. When submitting an application for registration to use a medical laser or an IPL device for hair removal procedures that is a Class II or III surgical device certified as complying with the design, labeling, and manufacturing standards in 21 CFR 878.48 2003 edition, Published April 1, 2003, by the Office of Federal Register National Archives and Records Administration, incorporated by reference and on file with the Agency, and containing no future editions or amendments, the applicant shall provide the following information with the application to the Agency for approval:
 - a. Documentation demonstrating the licensed practitioner is qualified in accordance with this rule; and
 - b. Documentation endorsed by a licensed practitioner, acknowledging responsibility for the minimum level of supervision of hair removal procedures, as defined in R12-1-1402 under "indirect supervision."
 2. When using a medical laser or an IPL device, that is a Class II or III surgical device certified as complying with the design, labeling, and manufacturing standards of the FDA, for hair removal procedures, A registrant shall:
 - a. Ensure the device is only used by a licensed practitioner, or by an operator under direct supervision of a licensed practitioner, or at a minimum, indirect supervision of the licensed practitioner.
 - b. Ensure that a Class II or III surgical device that will be used for hair removal procedures is purchased by or on the order of the licensed practitioner.
 3. A registrant shall:
 - a. Not permit an unlicensed practitioner to use a medical laser or IPL system for hair removal procedures until the individual:
 - i. Has completed an approved medical laser assistant didactic training course of at least 40 hours in duration. Successful completion of the training program shall be based on a test consisting of a least 50 multiple choice questions on subjects covered, with a minimum grade of 80%. The training shall be provided by an individual who is eligible, through training and experience, to apply for laser safety officer certification or is a certified laser safety officer; and
 - ii. Has completed a minimum of 24 hours of observation conducted under the direct supervision of a licensed practitioner;
 - iii. Has experience in at least 10 hair removal procedures performed by the registrant. The hands-on experience shall be conducted under the direct supervision of a licensed practitioner;

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- b. Ensure that user follows written procedure protocols established by a licensed practitioner; and
 - c. Ensure the user follows a written order provided by a licensed practitioner describing the specific site of hair removal.
 - 4. A registrant shall maintain a record demonstrating that hair removal procedure protocols are approved by a licensed practitioner, and are reviewed by a licensed practitioner at least annually.
 - 5. A registrant shall ensure that:
 - a. Procedure protocols are maintained on site, and that the protocols contain instructions to be given to the patient concerning follow-up monitoring; and
 - b. Procedure protocols are designed to promote the exercise of professional judgement by the nurse or assistant commensurate with their education, experience and training; and need not describe the exact steps that a qualified assistant take with respect to the hair removal procedures.
 - 6. A registrant shall ensure that a licensed practitioner observes the performance of each assistant operator during actual procedures at intervals not to exceed six months. A record of the observation shall be maintained for three years.
 - 7. A registrant shall ensure the licensed practitioner is qualified to do hair removal procedures, by virtue of providing evidence to the registrant that the licensed practitioner has received appropriate training in physics, safety, surgical techniques, pre and post operative care, and can perform these procedures within the scope of practice as defined by the practitioner's licensing board.
 - 8. The registrant shall ensure that radiation safety training is provided to all personnel involved with hair removal procedures, and shall ensure the training is commensurate with their involvement in the procedures. Records of training shall be available for Agency review for three years following assistant operator's period of employment.
- B. Cosmetic Procedures.**
- 1. When using a medical laser or an IPL device, that is a Class II or III surgical device certified as complying with the design, labeling, and manufacturing standards of the FDA, for cosmetic procedures, A registrant shall:
 - a. Ensure the device is only used by a licensed practitioner, or by an operator under direct supervision of a licensed practitioner;
 - b. Ensure that a Class II or III surgical device, used for cosmetic procedures, is purchased by or on the order of the licensed practitioner.
 - 2. A registrant shall not permit an unlicensed practitioner to use a medical laser or IPL system for cosmetic procedures until the individual has:
 - a. Completed an approved medical laser assistant didactic training course of at least 40 hours in duration. Successful completion of the training program will be based on a test consisting of a least 50 multiple choice questions on subjects covered, with a minimum grade of 80%. The training should be provided by an individual who is eligible, through training and experience, to apply for laser safety officer certification or is a certified laser safety officer;
 - b. Completed a minimum of 24 hours of observation, conducted under the direct supervision of a licensed practitioner; and
 - c. Completed hands on experience of at least 10 cosmetic procedures, for each type of procedure (spider vein removal, skin rejuvenation, non-ablative skin resurfacing, etc.). The hands-on experience shall be conducted under the direct supervision of a licensed practitioner.
 - 3. A registrant shall ensure that cosmetic procedure protocols are approved by the licensed practitioner in writing, and reviewed at least annually. Protocols shall be:
 - a. Maintained on site, and shall contain instructions to be given to the patient for follow-up monitoring; and
 - b. Designed to promote the exercise of professional judgment by the nurse or assistant commensurate with their education, experience and training; and need not describe the exact steps that a qualified assistant take with respect to cosmetic procedures.
 - 4. A registrant shall ensure the licensed practitioner is qualified to do laser, IPL and related procedures, by virtue of providing evidence to the registrant that the licensed practitioner has received appropriate training in physics, safety, surgical techniques, pre and post operative care and can perform these procedures within the scope of practice as defined by the director's licensing board.
 - 5. The registrant shall ensure that radiation safety training is provided to all personnel involved with cosmetic procedures, and shall ensure the training is commensurate with their involvement in the procedures. Records of training shall be available for Agency review for three years following assistant operator's period of employment.

R12-1-1439. Additional Requirements for Medical Laser Applications Laser/IPL User Safety Training

- A.** Each Class III and Class IV medical laser product shall incorporate the means for measurement of the level of laser radiation intended for human irradiation, with an error in measurement of no greater than +/- 20%, when calibrated in accordance with the laser product manufacturer's calibration procedure.
- B.** Medical lasers used for human irradiation shall be calibrated in accordance with the manufacturer's specified calibration procedure, at intervals not to exceed those specified by the manufacturer.

- ~~C.~~ The licensee shall ensure that medical lasers shall not be used for human irradiation unless all applicable requirements of this Article are met.
- ~~D.~~ In institutions where a number of different practitioners may use Class IIIb and Class IV lasers, a laser safety committee shall be formed to govern laser activity, establish use criteria, and approve operating procedures:
 - 1. Membership on the committee shall include at least a representative of the Nursing staff, the Laser Safety Officer, a representative of institution management, and a representative of each medical discipline that utilizes the lasers.
 - 2. The committee shall review actions by the Laser Safety Officer in hazard evaluation and the monitoring and control of laser hazards.
 - 3. Users, and those ancillary personnel who may operate or assist in the operation of the lasers under the direction of the users, shall be approved by the committee.
- ~~E.~~ For Class IIIb and IV lasers, the switch which controls patient exposure shall have a guard mechanism to prevent inadvertent exposure.
- A.** A person or organization seeking to initiate a medical laser/IPL operator training program, shall submit to the Agency for approval an application containing a description of the training program. The application shall include a course syllabus, including a test consisting of at least 50 multiple choice questions on subjects covered. The course material shall address all of the safety issues in R12-1-1421 through R12-1-1444, and Appendix C.
- B.** The Agency shall review the application in subsection (A) in a timely manner as required in A.A.C. R12-2-301.
- C.** The Agency shall maintain a list of approved laser/IPL training programs.

Appendix C. Hair Removal and Cosmetic Laser/IPL Operator Training Program

Hair Removal and Cosmetic Laser/IPL Operator Training Program

General Considerations:

- 1. Training programs shall be specific to the medical laser/IPL system in use, and to the clinical procedures to be performed.
- 2. Program criteria and content shall be in accordance with the facility policy and procedure, applicable standards, federal and state regulations.
- 3. The degree and type of training shall be appropriate for the hazards associated with the laser or IPLs in use.

Technical Considerations:

- 1. Description of lasers and IPLs
- 2. Definitions
- 3. Laser/IPL radiation fundamentals
- 4. Laser mediums and types of lasers – solid, liquid, diodes, and gas and IPLs
- 5. Biological effects of laser/IPL light
- 6. Damage mechanisms
 - a. Eye hazard
 - b. Skin hazard (skin type and skin anatomy)
 - c. Absorption – wavelength effects
 - d. Thermal effects
- 7. Photo chemistry
- 8. Criteria for setting Maximum Permissible Exposure (MPE) levels for eye and skin associated hazards
- 9. Explosive, electrical, and chemical hazards
- 10. Photosensitive medications
- 11. Fire, ionizing radiation, cryogenic hazards, and others as applicable

Medical Considerations:

- 1. Local anesthesia techniques, including ice, EMLA® cream and other applicable topical treatments
- 2. Typical laser settings for hair removal and other cosmetic procedures
- 3. Expected patient response to treatments
- 4. Potential adverse reactions with treatment
- 5. Anatomy and physiology of the skin areas to be treated
- 6. Indications and contraindications to use the pigment and vascular specific lasers for cutaneous procedures

General Laser/IPL safety:

- 1. Laser/IPL classifications
- 2. Control measures including protective equipment
- 3. Management and user responsibilities
- 4. Medical surveillance practices
- 5. Federal and state regulatory requirements
- 6. Related safety issues

- a. Controlled access
- b. Plume management
- c. Equipment testing, aligning, and troubleshooting

Appendix D. Non Medical Laser User and Laser Safety Officer Training

Non Medical Laser User and Laser Safety Officer Training

1. For user personnel routinely working with or around lasers:
 - a. Fundamentals of laser operation (physical principals, construction, etc.)
 - b. Bioeffects of laser radiation on the eye and skin
 - c. Significance of specular and diffuse reflections
 - d. Non-beam hazards of lasers (electrical, chemical, reaction byproducts etc.)
 - e. Ionizing radiation hazards (x-rays from power sources and target interactions when applicable)
 - f. Laser and laser system classifications
 - g. Control measures
 - h. Overall responsibilities of management and employee
 - i. Medical surveillance practices (if applicable)
 - j. CPR for personnel servicing or working on lasers, with exposed high voltages and/or the capability of producing potentially lethal electrical currents
2. For the LSO or other individual responsible for the laser safety program, evaluation of hazards, and implementation of control measures, or any others if directed by management to obtain a thorough knowledge of laser safety:
 - a. The topics in 1. Above
 - b. Laser terminology
 - c. Types of lasers, wavelengths, pulse shapes, modes, power/energy
 - d. Basic radiometric units and measurements devices
 - e. MPE levels for eye and skin under all conditions
 - f. Laser hazard evaluations, range equations, and other calculations
3. Technical Considerations:
 - a. Description of lasers and IPLs
 - b. Definitions
 - c. Laser/IPL radiation fundamentals
 - d. Laser mediums and types of lasers – solid, liquid, diodes, and gas and IPLs
 - e. Biological effects of laser/IPL light
 - f. Damage mechanisms
 - (1). Eye hazard
 - (2). Skin hazard (skin type and skin anatomy)
 - (3). Absorption – wavelength effects
 - (4). Thermal effects
 - g. Photo chemistry
 - h. Photosensitive medications
 - i. Criteria for setting Maximum Permissible Exposure (MPE) levels for eye and skin associated hazards
 - j. Explosive, electrical, and chemical hazards
 - k. Photosensitive medications
 - l. Fire, ionizing radiation, cryogenic hazards, and others as applicable

Notices of Proposed Rulemaking

- External comments stated that the increase for the license dealer license was unjustified. License dealers provide a service of selling hunting and fishing licenses, from which the Department receives much of its revenue. A fee increase may cause several small businesses to discontinue their roles as dealers, thus impacting customer service.
- The Colorado River Special Use Stamp fees will remain the same so that they are consistent with other fees for stamps that authorize fishing on bodies of water shared with other states.
- The resident hunt permit-tag fee for mountain lion be reduced to \$10.00.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to 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

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

Not applicable

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

The Department anticipates that the proposed rulemaking will create an economic impact to the agency, hunters of this state, and businesses that patronize the licenses with fees that are being amended. The Department will benefit from receiving additional revenue to use for agency operation and for the effective management of wildlife. The Department does not anticipate that demand for permit-tags will decrease as cost increases, because applications for hunt permit-tags have increased over the past five years. The proposed rulemaking will create additional costs for white amur stockers, which are mainly golf courses, and hunters. However, the Department does not anticipate that the 100% fee increase for the white amur stocking license is significant enough to impact revenues or employment. The proposed rulemaking will create additional costs for hunters by increasing fees for tags and to authorize use of wildlife opportunities. However, the Department's customers understand the relevance and importance of tag and stamp fees to the agency's objectives of effective wildlife management and providing wildlife opportunities to its customers. The Department anticipates that hunters and fishers will receive an eventual benefit from the increased fees manifested in improved wildlife opportunities. The proposed rulemaking will not affect public or private employment, or state revenues. The Department has determined that there are no less costly or intrusive methods for achieving the objectives of the proposed rulemaking.

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

Name: Mark E. Naugle, Rules and Risk Manager

Address: Arizona Game and Fish Department
2221 West Greenway Road DORR
Phoenix, AZ 85023-4399

Telephone: (602) 789-3289

Fax: (602) 789-3677

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

Written comments will be accepted at the above address until 30 days after publication of this Notice. Public hearings to discuss this proposal will be held as follows:

Date: April 16-17, 2004

Time: TBA

Location: Fraternal Order of Police Lodge #2
1281 N. 19th Ave.
Phoenix, AZ 85029

Nature: Arizona Game and Fish Commission Meeting

The Arizona Game and Fish Commission follows Title II of the Americans with Disabilities Act. The Commission does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking or otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services) to participate in the public comment process, or who require this information in an alternate form, may contact Mark E. Naugle at (602) 789-3289 (voice); 1-800-367-8939 (TDD); 2221 W. Greenway Road, Phoenix, Arizona 85023-4399. Requests should be made as soon as possible so that the Arizona Game and Fish Department will have sufficient time to respond.

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

Not applicable

12. Any material incorporated by reference and their location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Section

R12-4-102. Fees for Licenses, Tags, Stamps, and Permits

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-102. Fees for Licenses, Tags, Stamps, and Permits

Persons purchasing the licenses, tags, stamps, or permits listed in this Section shall pay the prescribed fees at the time of application, or the fees prescribed by the Director under R12-4-115.

Hunting and Fishing License Fees	
Class A, General Fishing License	
· Resident	\$18.00
· Nonresident Pursuant to A.R.S. § 17-333(A)(1), the fee for this license issued in November or December of the year for which the license is valid is half price; that includes half of the surcharge prescribed as authorized by A.R.S. § 17-345.	\$51.50
Class B, Four-month Fishing License	
· Nonresident	\$37.50
Class C, Five-day Fishing License	
· Nonresident	\$26.00
Class D, One-day Fishing License	
· Resident or Nonresident	\$12.50
Class E, Colorado River Only Fishing License	
· Nonresident	\$42.50
Class F, Combination Hunting and Fishing License	
· Resident Adult	\$44.00
· Nonresident Adult	\$177.50
· Resident or Nonresident Youth. Fee applies before and through the calendar year of the applicant's 20th birthday.	\$25.50
Class G, General Hunting License	
· Resident	\$25.50
· Nonresident	\$113.50
Class H, Three-day Hunting License	
· Nonresident	\$51.50
· Resident Youth Group Two-day Fishing License	\$25.00
Class U, Urban Fishing License	

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· Resident or Nonresident	\$16.00
Hunt Permit-tag Fees	
Antelope	
· Resident	\$59.50 <u>\$65.00</u>
· Nonresident	\$299.50 <u>\$325.00</u>
Bear	
· Resident	\$13.00 <u>\$14.50</u>
· Nonresident	\$183.00 <u>\$200.00</u>
Bighorn Sheep	
· Resident	\$179.50 <u>\$195.00</u>
· Nonresident	\$915.00 <u>\$1,000.00</u>
Buffalo	
· Adult Bulls or Any Buffalo	
· Resident	\$750.00
· Nonresident	\$3,750.00
· Adult Cows	
· Resident	\$450.00
· Nonresident	\$2,250.00
· Yearling	
· Resident	\$240.00
· Nonresident	\$1,200.00
· Yearling or Cow	
· Resident	\$450.00
· Nonresident	\$2,250.00
Deer and Archery Deer	
· Resident	\$17.50 <u>\$19.50</u>
· Nonresident	\$108.50 <u>\$125.50</u>
Elk	
· Resident	\$71.50 <u>\$78.00</u>
· Nonresident	\$366.00 <u>\$400.00</u>
Javelina and Archery Javelina	
· Resident	\$11.00 <u>\$12.50</u>
· Nonresident	\$63.00 <u>\$70.00</u>
Mountain Lion	
· Resident	\$13.00 <u>\$10.00</u>

Arizona Administrative Register / Secretary of State

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· Nonresident	\$183.00 <u>\$200.00</u>
Turkey and Archery Turkey	
· Resident	\$10.00 <u>\$11.00</u>
· Nonresident	\$50.50
Sandhill Crane	
· Resident or Nonresident	\$5.00
Nonpermit-tag and Restricted Nonpermit-tag Fees	
Antelope	
· Resident	\$59.50 <u>\$65.00</u>
· Nonresident	\$299.50 <u>\$325.00</u>
Bear	
· Resident	\$13.00 <u>\$14.50</u>
· Nonresident	\$183.00 <u>\$200.00</u>
Bighorn Sheep	
· Resident	\$179.50 <u>\$195.00</u>
· Nonresident	\$915.00 <u>\$1,000.00</u>
Buffalo	
· Adult Bulls or Any Buffalo	
· Resident	\$750.00
· Nonresident	\$3,750.00
· Adult Cows	
· Resident	\$450.00
· Nonresident	\$2,250.00
· Yearling	
· Resident	\$240.00
· Nonresident	\$1,200.00
· Yearling or Cow	
· Resident	\$450.00
· Nonresident	\$2,250.00
Deer and Archery Deer	
· Resident	\$17.50 <u>\$19.50</u>
· Nonresident	\$108.50 <u>\$125.50</u>
Elk	
· Resident	\$71.50 <u>\$78.00</u>
· Nonresident	\$366.00 <u>\$400.00</u>

Notices of Proposed Rulemaking

Javelina and Archery Javelina	
· Resident	\$11.00 <u>\$12.50</u>
· Nonresident	\$63.00 <u>\$70.00</u>
Mountain Lion	
· Resident	\$13.00 <u>\$10.00</u>
· Nonresident	\$183.00 <u>\$200.00</u>
Turkey and Archery Turkey	
· Resident	\$10.00 <u>\$11.00</u>
· Nonresident	\$50.50
Stamps and Special Use Permit Fees	
Arizona Colorado River Special Use Permit Stamp. For use by California fishing licensees, resident or nonresident.	\$3.00
Arizona Colorado River Special Use Permit Stamp. For use by Nevada fishing licensees, resident or nonresident.	\$3.00
Arizona Lake Powell Stamp. For use by resident Utah licensees.	\$3.00
Bobcat Permit Tag. For resident or nonresident.	\$2.00
State Waterfowl Stamp. Validates resident or nonresident Class F, G, or H license for ducks, geese, and swans.	\$7.50
State Migratory Bird Stamp, as prescribed in A.R.S. § 17-333.03. Resident or nonresident.	\$3.00
Trout Stamp. When affixed to the back of the license, validates Class A license for trout.	
· Resident	\$10.50
· Nonresident	\$49.50
Two-Pole Stamp. When affixed to the back of a Class A, B, C, D, E, F. Pioneer or Urban fishing license, allows simultaneous fishing as defined in R12-4-101.	\$4.00
Other License Fees	
Falconer License	\$75.00
Field Trial License	\$5.00
Fur Dealer's License	\$100.00
Guide License	
· Resident or Nonresident	\$100.00
License Dealer's License	\$75.00
Minnow Dealer's License	\$30.00
Private Game Farm License	\$40.00
Shooting Preserve License	\$100.00
Taxidermist License	\$50.00
Trapping License	
· Resident	\$10.00
· Nonresident	\$50.00
· Resident Juvenile	\$10.00
White Amur Stocking License	\$100.00 <u>\$200.00</u>

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Wildlife Hobby License	\$5.00
Zoo License	\$100.00
Administrative Fees	
Duplicate Fee. Duplicates are not issued for Trout Stamps, Arizona Colorado River Special Use Permits, Arizona Colorado River Special Use Permit Stamps, Arizona Lake Powell Stamps, State Migratory Bird Stamps, or State Waterfowl Stamps.	\$3.00
Permit Application Fee.	\$5.00
Kaibab North Special Deer Hunting Permit, resident or nonresident	\$5.00

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS**

PREAMBLE

1. **Sections affected:** R17-5-202
Rulemaking Action: Amend
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 28-366
Implementing statutes: A.R.S. §§ 28-5204 and 28-5235
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 981, March 12, 2004 (in this issue)
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Brent P. Heiss, Motor Vehicle Division Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
Telephone: (602) 712-7941
Fax: (602) 241-1624
E-mail: bheiss@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters. Questions concerning the economic impact statement may be directed to the officer listed in item #4.
5. **An explanation of the rule, including the agency's reasons for initiating the rulemaking:**
Arizona Department of Transportation (ADOT) Motor Vehicle Division (MVD) engages in this rulemaking to incorporate sections of the 2003 edition of the Code of Federal Regulations (CFR), Title 49 by reference into Arizona Motor Carrier Safety and Hazardous Materials Transportation administrative rules. R17-5-202, Motor Carrier Safety: Incorporation of Federal Regulations; Application rule is used by the agency to accomplish this incorporation.

The ADOT/MVD, Motor Carrier and Tax Services program oversees various motor carrier issues including, with the enforcement by the Department of Public Safety (DPS), motor carrier vehicle and commercial driver license safety issues. Annually, the Division adopts federal changes or updates to the CFR to follow Federal Motor Carrier Safety Administration (FMCSA) requirements for safety.
6. **A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
Not applicable

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

Not applicable

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

The economic impact of this rulemaking is negligible for R17-5-202, Motor Carrier Safety: Incorporation of Federal Regulations; Application. No substantial changes are introduced since the last rulemaking, effective June 3, 2003. The amendment in this rulemaking provide benefit to the agency and regulated persons by conforming required federal safety regulation changes in Arizona and thereby reducing confusion and employee time required to clarify regulatory provisions.

There will be some costs to DPS in the administration of this provision; however, these costs are ongoing. This rulemaking creates no additional burden. These costs are de minimus. Oversight of such issues is part of the enforcement of motor carrier issues already performed by DPS.

The only economic impact to small business or the consumer is an adverse one if this rule is not adopted. First, this rulemaking contains new hours of service provisions for interstate carriers, which is tied to federal funding for safety, some \$2 million a year and also potentially the loss of a portion of federal construction funding if such hours of operation are not adopted.

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:

Questions concerning the economic impact statement may be directed to the officer listed in item #4.

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

Date: Wednesday, April 14, 2004

Time: 2:00 p.m.

Location: Executive Hearing Office
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Nature: Oral proceeding to receive public comment

Closure: The public record will close on Friday, April 16, 2004 at 4:30 p.m.

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

None

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

In R17-5-202(A): 49 CFR Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399, published October 1, 2003

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS**

ARTICLE 2. MOTOR CARRIERS

Section

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

ARTICLE 2. MOTOR CARRIERS

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

- A. The Division incorporates by reference 49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399 published October 1, 2001, 2003, and no later amendments or editions and on file with the Federal Motor Carrier Safety Administration, the Division, and the Office of the Secretary of State, as amended by R17-5-202 through R17-5-208.
- B. The regulations of 49 CFR, incorporated by subsection (A), apply as amended by R17-5-203 through R17-5-208 to:
1. A motor carrier as defined in A.R.S. § 28-5201 except a motor carrier transporting passengers for hire in a vehicle with a design capacity of six or fewer persons.
 2. A vehicle owned or operated by the state, a political subdivision, or a public authority of the state that is used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in R17-5-209.