

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 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

[R08-247]

PREAMBLE

1. Sections Affected

Article 4
R2-5-401
R2-5-403
R2-5-404
R2-5-405
R2-5-410
R2-5-411
R2-5-413
R2-5-414

Rulemaking Action

Amend
Amend
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Amend

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

Authorizing statute: A.R.S. §§ 41-763(2) and (6)

Implementing statute: A.R.S. § 41-783(17)

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2447, July 6, 2007

Notice of Rulemaking Docket Opening: 14 A.A.R. 3154, August 8, 2008 (*in this issue*)

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

Name: Christine Bronson, Manager, Employee Relations

Address: Department of Administration
Human Resources Division
100 N. 15th Ave., Suite 261
Phoenix, AZ 85007

Telephone: (602) 542-1423

Fax: (602) 542-1980

E-mail: Christine.Bronson@azdoa.gov

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

This rulemaking primarily results from the Department's five-year review report, approved by the Governor's Regulatory Review Council (G.R.R.C.) in September 2006. Article 4, Benefits, explains the various types of employee benefits (leave and insurance), eligibility, and use. The Department proposes to amend various rules in Article 4 by adding clarifying language regarding leave accruals, accumulation limits, Family and Medical Leave Act (FMLA) leave, and an employee's eligibility for continued participation in the employee insurance plans while on leave. Clarifications and housekeeping revisions are also being made along with the specific changes.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely

Notices of Proposed Rulemaking

on in its evaluation of or 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:

The agency did not review any study and does not propose to rely on or not rely on any study for this rulemaking.

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

Not applicable

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

The proposed rulemaking affects state service employees only and will not have an impact on small businesses and consumers. It is anticipated that there will be some impact on the expenditure of state funds. R2-5-403, annual leave, currently provides that an employee who earns additional annual leave for working on a day on which a state holiday is observed may exceed the accumulation limit by up to 24 hours. This rule is being amended so that the (holiday) annual leave earned by an employee can be earned without limit and will no longer be included in the maximum accumulation for annual leave. This is likely to result in increased costs to agencies that provide additional annual leave (in lieu of pay) for employees who are required to work on a state holiday; however, the rules already provide that leave earned for working a holiday may be paid at any time by the agency head, and any associated costs should be managed with appropriate management of employee leave.

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: Christine Bronson, Manager, Employee Relations

Address: Department of Administration
Human Resources Division
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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 regarding the proposed rules will be held as follows:

Date: Tuesday, September 9, 2008

Time: 2:00 p.m.

Location: Department of Administration
100 N. 15th Ave., Room 204
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on September 10, 2008.

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

In R2-5-401: 29 CFR 825.100 through 29 CFR 825.312 (July 2007)

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION

ARTICLE 4. ~~BENEFITS~~ BENEFITS LEAVE

Section
R2-5-401. ~~Benefit Leave~~ Administration
R2-5-403. Annual Leave
R2-5-404. Sick Leave

Notices of Proposed Rulemaking

- R2-5-405. Industrial Leave
- R2-5-410. Bereavement Leave
- R2-5-411. Parental Leave
- R2-5-413. Medical Leave without Pay
- R2-5-414. Leave Without Pay

ARTICLE 4. BENEFITS LEAVE

R2-5-401. Benefit Leave Administration

- A. Eligibility for leave. All state service employees, except emergency, ~~seasonal~~, clerical pool, and temporary employees, are eligible for any type of leave with pay from the date of appointment. Emergency, ~~seasonal~~, clerical pool, and temporary employees are eligible only for holidays subject to the provisions of R2-5-402, administrative leave, military leave, and civic duty leave for the purpose of voting only, military leave, and administrative leave.
- B. Family and Medical Leave Act (FMLA) leave. FMLA Regulations, 29 CFR 825.100 through 29 CFR 825.312 (July 2007), are incorporated by this reference and on file with the Department. This incorporation by reference contains no future editions or amendments. An employee who meets FMLA eligibility requirements and uses leave for any of the situations covered by the FMLA, shall be subject to the following:
 - 1. Counting FMLA leave. Periods of paid leave and periods of leave without pay shall count towards the employee's available FMLA leave.
 - 2. Use of accrued paid leave. An employee shall use available paid leave for all or part of the employee's FMLA leave under the conditions in:
 - a. R2-5-405 for an employee on industrial leave.
 - b. R2-5-411 for an employee on parental leave, or
 - c. R2-5-412 for an employee on FMLA leave for any other reason.
- C. Insurance benefits continuation. An employee remains eligible for continued participation in the employee insurance plans while on leave of absence pursuant to this Article.
- ~~B.D.~~ Requests for leave. Except in an emergency, an employee ~~must~~ shall obtain approval in advance and in writing ~~prior to~~ before taking any leave.

R2-5-403. Annual Leave

- A. Definition. "Annual leave" means a period of approved absence with pay that is not chargeable to another category of leave.
- B. Accrual.
 - 1. All employees except temporary, emergency, clerical pool, and part-time employees shall accrue annual leave in accordance with the following schedule:

| Credited Service | Hours Bi-weekly |
|---------------------------------|-----------------|
| Fewer than 3 years | 3.70 |
| 3 years but fewer than 7 years | 4.62 |
| 7 years but fewer than 15 years | 5.54 |
| 15 years or more | 6.47 |
 - 2. Temporary, emergency, and clerical pool employees shall not accrue annual leave.
 - 3. Part-time employees who:
 - a. Work 1/4 time, 1/2 time, or 3/4 time shall accrue a proportional amount of annual leave;
 - b. Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time shall accrue annual leave at the next lower rate;
 - c. Work less than 1/4 time shall not accrue annual leave.
 - 4. ~~Eligible employees accrue~~ Except as provided by R2-5-405, pertaining to an employee on industrial leave, an eligible employee accrues annual leave on the last day of each bi-weekly pay period if the employee is in pay status for at least 1/2 one-half of the employee's scheduled work hours in that pay period.
 - 5. An annual leave accrual is credited on the last day of the bi-weekly pay period in which the accrual is earned and is available for use on the first day of the following pay period.
 - a. Annual leave accrued during the last pay period that begins in a calendar year is not subject to forfeiture under subsection (D).
 - b. An employee who is separating from state service is compensated in accordance with subsection (I) for leave accrued through the employee's last date of employment.
 - ~~5-6.~~ Service in a position that became covered in accordance with A.R.S. Title 41, Chapter 4 (formerly A.R.S. Title 38, Chapter 6), is considered credited service in determining accrual rate change dates.
 - ~~6-7.~~ The effective date for change in the accrual rate is the first day of the pay period immediately following the attainment of the required credited service.

Notices of Proposed Rulemaking

C. Credited service.

1. Credited service shall be calculated from the first day of the first complete pay period worked.
2. Credited service shall include:
 - a. A period of service as an employee of a state budget unit before a break in service of less than two years that is not the result of disciplinary action;
 - b. A period of leave without pay of 240 hours or less;
 - c. Family and Medical Leave Act (FMLA) leave;
 - d. Military leave taken under A.R.S. §§ 26-168, 26-171, or 38-610; and
 - e. Active military service of an employee who is restored to state service under A.R.S. § 38-298.

D. Accumulation.

1. Except as provided in subsections (D)(2), (D)(3) and (D)(4), an employee shall forfeit annual leave accumulated in excess of 240 hours as of the last day of the last pay period that begins in a calendar year.
2. An agency head may request an exception to the accumulation limit contained in subsection (D)(1) for an employee in an individual case.
 - a. An agency head seeking an exception shall submit a written request to the Director that contains a plan to use the excess hours during the following calendar year, pay the employee for the excess hours, or a combination of both.
 - b. The Director may approve, modify, or deny the request.
3. ~~An employee who earns additional annual~~ Annual leave earned for working on a day on which a state holiday is observed ~~may exceed the 240-hour limitation by up to 24 hours. is not included in the accumulation limit contained in subsection (D)(1) and shall not be forfeited.~~
4. An employee may retain annual leave accumulated as a result of service that became covered in accordance with A.R.S. Title 41, Chapter 4; (formerly A.R.S. Title 38, Chapter 6), without regard to the accumulation limit contained in subsection (D)(1).

E. Donation of annual leave.

1. Definitions. For the purposes of this subsection ~~(E)~~:
 - a. "Immediate family" means the recipient employee's parent, spouse, or child, whether natural, adopted, foster, or step.
 - b. "*Family*" means spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, or niece. A.R.S. § 41-783(17)(a)
 - c. "Disability that is caused by pregnancy or childbirth" means, as certified by a licensed health care practitioner:
 - i. An employee is unable to work due to the employee's pregnancy, childbirth, or medical care associated with the pregnancy or childbirth; or
 - ii. A member of the employee's immediate family requires assistance to perform regular daily activities due to the immediate family member's pregnancy, childbirth, or medical care associated with the pregnancy or childbirth.
 - d. "Extended" means a period of at least three consecutive weeks.
 - e. "Seriously incapacitating" means, ~~as certified by a licensed health care practitioner~~ certifies that an illness, injury, or disability that is caused by pregnancy or childbirth:
 - i. ~~An illness, injury, pregnancy, or childbirth that involves~~ Involves in-patient care; or
 - ii. ~~An illness, injury, pregnancy, or childbirth that involves~~ Involves continuing treatment.
2. Eligibility to receive donation of annual leave. An employee who has exhausted all available leave balances is eligible to receive donations of annual leave if, as certified by a licensed health care practitioner:
 - a. The employee is unable to work due to:
 - i. A seriously incapacitating and extended illness or injury, or
 - ii. A seriously incapacitating and extended disability that is caused by pregnancy or childbirth; or
 - b. The employee needs to care for a member of the employee's immediate family who has:
 - i. A seriously incapacitating and extended illness or injury, or
 - ii. A seriously incapacitating and extended disability that is caused by pregnancy or childbirth.
3. Eligibility to donate annual leave. An employee may donate annual leave to another employee who has exhausted all available leave balances if:
 - a. The recipient employee is employed in the same agency as the donating employee; or
 - b. The recipient employee is a family member of the donating employee and employed in another agency.
4. Exhaustion of available leave. Before using donated annual leave, a recipient employee:
 - a. ~~With~~ Who has a qualifying illness, injury, pregnancy or childbirth shall exhaust all available sick leave, compensatory leave, and annual leave; or
 - b. Whose immediate family member has a qualifying illness, injury, pregnancy or childbirth shall exhaust sick leave granted in accordance with R2-5-404(A)(4), if available, and all available compensatory leave and annual

leave.

5. Calculation of hours donated. An agency head shall adjust the number of hours of annual leave donated in proportion to the hourly rate of pay of the donating employee and the recipient employee. To calculate the number of hours of donated annual leave:
 - a. Multiply the actual number of hours donated by the donating employee's hourly rate of pay; and
 - b. Divide the result by the recipient employee's hourly rate of pay.
 6. Maximum duration. A recipient employee may use a maximum of six consecutive months of donated annual leave for each qualifying occurrence unless the recipient employee applies for Long-term Disability (LTD) by the end of the fifth month: ~~of the employee's leave, in which case~~ ~~The the~~ recipient employee ~~then~~ may continue to use donated annual leave for up to 60 additional days or until LTD benefit payments begin, whichever is sooner.
 7. Unused donated leave. If the recipient employee separates from state service, recovers before using all donated leave, attains the maximum donation of annual leave as permitted under ~~the provisions of~~ subsection (E)(6), or the need for the donated annual leave is otherwise abated, the agency head shall return unused donated leave to ~~contributors~~ employees who donated leave on a pro-rata basis.
- F. Use of annual leave. An employee may take annual leave at any time approved by the agency head. An agency head shall not advance annual leave to an employee.
- G. Payment of annual leave. Subject to funding availability:
1. An agency head may pay an employee at any time for all or any portion of the employee's annual leave that was earned as the result of working on a day on which a state holiday is observed at the employee's current rate of pay.
 2. The Director may approve pay to a non-separating employee for all or any portion of the employee's accumulated and unused annual leave at the employee's current rate of pay subject to the following:
 - a. Agency procedures. Before requesting approval to pay an employee under subsection (G)(2), an agency head shall develop written standards and procedures that provide for equal consideration of all employees similarly situated. The agency head shall submit proposed standards and procedures and any subsequent changes to the Director for approval. The agency's procedures shall include at minimum:
 - i. Request and approval procedures;
 - ii. Documentation required to support the request for payment;
 - iii. Any limitations, as applicable, including, but not limited to: the maximum number of times an employee may receive payment under subsection (G)(2); the maximum number of hours an employee may be paid per occurrence; the minimum number of hours of annual leave an employee must have used in the previous 12 months; and the minimum balance an employee is required to maintain after payout, if any.
 - b. Restrictions. If payment would reduce the employee's annual leave balance to fewer than 240 hours, the agency head shall obtain the employee's concurrence.
- H. Movement.
1. To another agency. If an employee moves from one agency to another state service agency, the employee's accumulated and unused annual leave shall be transferred to the employee's annual leave account in the new agency, unless the provisions of subsection (H)(2) apply.
 2. To an employment status ineligible for leave accrual. If an employee becomes ineligible for accrual of annual leave under R2-5-401(A), the agency head; ~~or, the agency head of the losing agency if the employee moves to another state service agency,~~ shall pay the employee for all unused and unforfeited annual leave at the employee's regular rate of pay immediately before the change in status.
- I. Separation. An agency head shall pay an employee who separates from state service for all unused and unforfeited annual leave at the employee's current rate of pay.

R2-5-404. Sick Leave

- A. Definition. "Sick leave" is any approved period of paid absence granted an employee due to:
1. Illness or injury ~~which that~~ renders the employee unable to perform the duties of the employee's position. Minor, non-disabling injuries and illnesses do not qualify an employee for sick leave.
 2. Disability of the employee due to ~~caused by~~ pregnancy, childbirth, miscarriage, or abortion.
 3. Examination or treatment of the employee by a licensed health care practitioner.
 4. Illness, injury, disability caused by pregnancy or childbirth, or examination; or treatment by a licensed health care practitioner of an employee's spouse, dependent child, or parent. Sick leave granted for this purpose shall be charged to the employee's sick leave account and shall not exceed 40 hours per calendar year. For the purposes of this Section:
 - a. ~~the~~ The term "dependent child" ~~is defined as~~ means a natural child, an adopted child, a foster child, or a step-child, over ~~1/2~~ one-half of whose support is received from the employee.
 - b. The term "parent" ~~is defined as~~ means a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or anyone who can be considered "in loco parentis", i.e., someone who assumed the responsibility of a parent. ~~Sick leave granted for this purpose shall be charged to the employee's sick leave account and shall not~~

~~exceed 40 hours per calendar year.~~

B. Accrual.

1. All state service employees, except ~~seasonal~~, temporary, emergency, clerical pool, and part-time employees, shall accrue sick leave at the rate of eight hours per month.
2. ~~Temporary, emergency, and clerical pool employees shall not accrue sick leave.~~
3. Part-time employees who:
 - a. ~~work~~ Work 1/4 time, 1/2 time, or 3/4 time ~~will~~ shall accrue a proportional amount of sick leave;
 - b. ~~Part-time employees who work~~ Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time will accrue sick leave at the next lower rate;
 - ~~3-c. Part-time employees who work~~ Work less than 1/4 time, ~~and seasonal, temporary, emergency and clerical pool employees are not eligible for sick leave.~~
4. Eligible employees accrue the appropriate number of hours of sick leave on a pay period or monthly basis, as determined by the agency head. ~~Except as provided by R2-5-405, pertaining to an employee on industrial leave, an eligible employee~~ Accrued accrues sick leave ~~is credited on the last day of the each~~ pay period or month ~~in which earned, provided if~~ the employee has been in a pay status for at least ~~1/2~~ one-half of the employee's working days in that pay period or month.
5. A sick leave accrual is credited on the last day of the pay period in which earned and is available for use on the first day of the following pay period. A separating employee accrues leave through the employee's last date of employment for the purpose of determining the employee's accumulated sick leave at the time of the employee's separation pursuant to subsection (F).

C. Accumulation. Sick leave ~~credits are accumulated~~ accumulates without limit.

D. Use of sick leave.

1. Sick leave may be taken when approved by the agency head. An agency head shall approve sick leave requested as a part of a parental leave under R2-5-411.
2. The agency head may require submission of evidence substantiating the need for sick leave. If the agency head determines the evidence is inadequate, the absence shall be charged to another category of leave or considered absence without leave.
3. An agency head may require an employee to be examined by a licensed health care practitioner designated by the agency head.
 - a. If the licensed health care practitioner determines that the employee should not work due to illness or injury, the agency head may place the employee on sick leave or, if the employee's sick leave is exhausted, charge the absence to another category of leave or leave without pay.
 - b. The agency head may require the employee to obtain approval from the licensed health care practitioner ~~prior to~~ before returning to work.
 - c. The agency shall pay for all examinations required pursuant to this subsection. The employee shall not be charged any leave while participating in or traveling to or from any examination required pursuant to this subsection.

E. Movement to another agency. An employee who moves to another state service agency shall transfer all accumulated and unused sick leave to the employee's sick leave account in the new agency.

F. Forfeiture. All sick leave credits are forfeited upon separation from state service except as otherwise provided by law. However, employees who re-enter ~~the~~ state service within two years after separation ~~will~~ shall be credited with all unused sick leave accumulated at the time of separation, provided if:

1. ~~the~~ The separation was not the result of disciplinary action, and ~~provided~~
2. ~~the~~ The employee was not paid for accumulated sick leave pursuant to A.R.S. § 38-615.

R2-5-405. Industrial Leave

A. Use of leave.

1. An agency head shall place an employee who sustains a job-related ~~disability~~ illness or injury that is compensable under the Workers' Compensation Law, A.R.S. Title 23, Chapter 6 on sick leave.
2. If an employee exhausts all sick leave and does not request annual or compensatory leave, or has exhausted annual or compensatory leave, an agency head shall place the employee on leave without pay.
3. If an employee is on leave under the Worker's Compensation laws and that leave qualifies for Family and Medical Leave Act (FMLA) leave, an agency head shall count it as FMLA leave. An agency head shall apply industrial leave and FMLA concurrently.

B. Payments.

1. An employee shall use leave in an amount necessary to receive total payments (leave payments plus Workers' Compensation payments) that do not exceed the gross salary of the employee.
2. If an employee receives a retroactive Workers' Compensation payment for any period of industrial illness or injury for which leave payments were received, the employee shall reimburse the agency for Workers' Compensation pay-

ments that exceed 100% of the employee's base pay before the illness or injury, and the agency shall restore the equivalent value of leave to the employee's appropriate leave account.

- C. Light duty. If an employee has a job-related ~~disability~~ illness or injury that impairs performance on the former job, the agency head shall make every effort to place the employee in a suitable position within the agency.
- D. Restriction. An agency head shall not grant sick leave or leave without pay to an employee who fails to accept compensation available under the industrial injury and disease provisions of A.R.S. §§ 23-901 to 23-1091.
- E. Insurance benefits continuation. An employee who is using leave with pay in accordance with subsections (A) and (B) remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay due to an industrial illness or injury may continue to participate in the employee insurance plans as follows:
 - 1. Health benefit plan participation.
 - 1-a. An employee ~~who is on leave without pay due to an industrial illness or injury~~ may continue to participate in the health benefit plan for a maximum of six months from the date of illness or injury by paying the employee ~~contribution~~ premium/contribution.
 - 2-b. At the end of the ~~6-month~~ six-month period, an employee who remains on leave without pay due to industrial illness or injury may continue to participate in the health benefit plan by paying both the state and employee ~~contributions~~ premiums/contributions, until the employee returns to work or is determined to be eligible for Medicare coverage or Long-term Disability, whichever occurs first.
 - 2. Life insurance plan participation. An employee who is on leave without pay continues to participate in the basic life and accidental death and dismemberment insurance plan without cost for six months after the month in which the illness or injury occurs. During this ~~time~~ six-month period, the employee may continue supplemental life and dependent life coverages that were in effect at the start of the leave by paying the applicable ~~premium~~ premium/contribution.
 - 3. Termination of insurance. The insurance coverage of an ~~individual employee~~ on leave without pay who fails to pay insurance ~~premiums or contributions~~ premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last ~~premium or contribution~~ premium/contribution paid.
- H-F. Accrual of leave. An employee shall continue to receive full leave accrual as long as the employee uses two or more hours of paid leave each day.

R2-5-410. Bereavement Leave

- A. General. An employee may be absent with pay ~~for up to 24 regularly scheduled work hours~~ due to the death or funeral of a spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, one who functioned "in loco parentis", grandparent, grandchild, brother, sister, brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law, or daughter-in-law.
- B. Amount of bereavement leave.
 - 1. A full-time employee may be absent with pay for up to 24 regularly scheduled work hours. An agency head may extend the bereavement leave for up to 16 work hours if the employee travels out-of-state for the funeral.
 - 2. A part-time employee who works 1/4 time, 1/2 time, or 3/4 time may be absent with pay for a proportional amount of bereavement leave. A part-time employee who works a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time may be absent with pay at the next lower rate. An employee who works less than 1/4 time is not entitled to bereavement leave.

R2-5-411. Parental Leave

- A. "Parental leave" means any combination of annual leave, sick leave, compensatory leave, or leave without pay taken by an employee due to pregnancy, childbirth, miscarriage, abortion, or adoption of children.
- B. An agency head shall approve a request for parental leave of an employee subject to the following conditions:
 - 1. An employee may take sick leave only for periods of disability.
 - 2. Parental leave for childbirth, miscarriage, abortion, or adoption shall not exceed 12 weeks, unless the agency head approves a request for a longer duration.
 - 3. An agency head shall not require an employee to exhaust all annual leave, sick leave, or compensatory leave before taking leave without pay.
 - 4. An employee shall specify the number of hours of annual leave, sick leave, compensatory leave, and leave without pay to be used when requesting parental leave.
 - 5. If leave under this Section qualifies for FMLA leave and the employee meets FMLA eligibility requirements, an agency shall count ~~it~~ the leave as FMLA leave.
 - 6. ~~An~~ Except for FMLA leave, an employee returning to work from leave without pay taken as part of a parental leave shall return to the position occupied at the start of the parental leave. If this position no longer exists, the agency shall conduct a reduction in force.
 - 7. An employee returning to work from leave without pay taken as part of a parental leave and granted as FMLA leave shall be governed by the provisions of the FMLA.

Notices of Proposed Rulemaking

- C. Insurance benefits continuation.** An employee who is using leave with pay remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay while on parental leave may continue to participate in the employee insurance plans as follows:
1. Health benefit plan participation.
 - a. An employee who is on FMLA leave is eligible to continue to participate in the health benefit plan for the duration of the FMLA leave by paying the employee premium/contribution. An agency head may recover the state's portion of premium/contributions paid to maintain health coverage for an employee if the employee fails to return from FMLA leave under certain circumstances, in accordance with FMLA regulations.
 - b. An employee who either does not meet FMLA eligibility requirements or has exhausted available FMLA leave and remains absent from work:
 - i. For a health-related reason may continue to participate in the health benefit plan by paying both the state and employee premium/contribution. Authority to continue participation shall terminate in accordance with R2-5-414.
 - ii. For other than a health-related reason may continue to participate in the health benefit plan for a maximum of six months by paying both the state and employee premiums/contributions.
 2. Life insurance plan participation.
 - a. An employee who is on FMLA leave continues to participate in the Basic Life and Accidental Death and Dismemberment Insurance Plan and may continue to participate in the supplemental life and dependent life insurance coverage by paying the full premium/contribution.
 - b. An employee who either does not meet FMLA eligibility requirements or has exhausted available FMLA leave and remains absent from work may continue to participate in the basic life insurance plan by paying the state premium/contribution. An employee who elects to continue to participate in the basic plan may also continue any supplemental or dependent life coverage that is in force at the beginning of the leave without pay by continuing to pay the premium/contribution. Authority to continue in the life insurance plan shall terminate in accordance with the time limits specified in R2-5-414(E).
 3. Termination of insurance. The insurance coverage of an employee on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.

R2-5-413. Medical Leave without Pay

- A.** An agency head shall place a permanent status employee on medical leave without pay if:
1. The employee is unable to work due to a non-job-related, seriously incapacitating and extended illness or injury;
 2. A physician selected by the employee documents the seriousness and extensiveness of the incapacitating illness or injury, subject to confirmation by an agency-selected physician, at the expense of the agency, whose opinion shall be used to determine whether a medical leave without pay should be granted;
 3. The employee exhausts all leave balances, including any leave donated to the employee; and
 4. The leave terminates when the employee returns to work or the employee is ~~absent~~ on leave without pay for 180 days, whichever occurs first.
- B.** An agency head shall determine the status of an employee who returns to work from medical leave without pay in the manner specified in subsection ~~R2-5-414(D)(2)~~ R2-5-414(D).

R2-5-414. Leave without Pay

- A. Approval.** All leave without pay requires a written request by an employee in advance and approval by the agency head. An agency head shall approve leave without pay requested as a part of a parental leave.
- B. Documentation of leave.** A request for leave without pay in excess of 80 consecutive hours shall include the beginning date of the leave without pay, the reason for the request, the anticipated date of ~~the~~ return to work, and the signature or signatures of individuals at the appropriate level or levels of authority ~~who approving~~ approve the request.
- C. Use of leave.** Except for parental leave, ~~FMLA leave~~, military leave, ~~or~~ leave granted to forestall a reduction in force, or the conditions in subsection (F), an agency head shall not grant leave without pay in excess of 80 consecutive hours until all accrued annual leave and, if the leave without pay is for medical reasons, sick leave are exhausted.
- D. Return to work.**
1. An employee who returns to work after a period of leave without pay of 80 consecutive hours or less shall return to the same position occupied at the start of the leave without pay.
 2. Except as provided in subsection ~~(D)(4)~~ (D)(5), an employee who returns to work after a period of leave without pay in excess of 80 consecutive hours is entitled to return to a position in the class held at the start of the leave without pay, if a position is available and funded, and if the leave without pay is terminated in one of the following ways:
 - a. Expiration of its term and the employee's return to work;
 - b. Rescission of the leave without pay by the agency head before its scheduled expiration, due to an unforeseen

need that results in an insufficient number of employees available to provide service and for which:

- i. The agency head ~~shall provide~~ provides written notice of the rescission to the employee's last known address at least 15 days before the date the employee is directed to return to work; or
- ii. If circumstances beyond the agency's control do not permit at least a 15-day notice, the agency head ~~shall provide~~ provides notice as soon as possible after becoming aware of the need for the employee to return to work; or

c. Curtailment of the leave without pay before its scheduled expiration date, upon request of the employee and with approval of the agency head.

3. An agency head may consider the failure or inability of an employee to return to work on the first work day after an approved leave without pay as a resignation, a separation without prejudice, or cause for dismissal.

4. If no funded position is available to accommodate an employee's return to work on the first working day following expiration of an approved leave without pay or any extensions, the agency head may separate the employee without prejudice.

5. An employee returning to work from leave without pay granted:

a. ~~for~~ For military service, for industrial illness or injury for up to six months, or to forestall a reduction in force, ~~as part of a parental or FMLA leave, or to accept an uncovered position,~~ shall return to the position occupied at the start of the leave without pay. If this position or a position in the same class is not available and funded, the agency head shall conduct a reduction in force.

b. As part of a parental leave shall be in accordance with R2-5-411.

c. As FMLA leave shall be governed by the provisions of the FMLA.

E. ~~Health benefit plan participation.~~ Insurance benefits continuation. An employee who is on leave without pay may continue to participate in the employee insurance plans as follows:

1. Health benefit plan participation.

a. An employee who is on FMLA leave is eligible to continue to participate in the health benefit plan for the duration of the FMLA leave by paying the employee premium/contribution. An agency head may recover the state's portion of premium/contributions paid to maintain health coverage for an employee if the employee fails to return from FMLA leave under certain circumstances, in accordance with FMLA regulations.

~~1-b.~~ An employee who is on leave without pay for a health-related reason that is not an industrial illness or injury and who either does not meet FMLA eligibility requirements or has exhausted FMLA leave and remains absent from work may continue to participate in the health benefit plan by paying both the state and employee ~~contribution~~ premium/contribution. Authority to continue participation in the health benefit plan shall terminate on the earliest of:

~~a-i.~~ Receipt of long-term disability benefits for which there is eligibility to continue health benefit plan participation under ~~R2-5-418(A)(3); the rules contained in 2 A.A.C. 6;~~

~~b-ii.~~ A determination of eligibility for Medicare coverage; or

~~e-iii.~~ 30 months after the incapacity began.

~~2-c.~~ An employee who is on leave without pay for reasons other than a health-related reason those outlined in subsection (E)(1)(a), (b), or R2-5-405 pertaining to industrial leave, may continue to participate in the health benefit plan for a maximum of six months by paying both the state and employee ~~contributions~~ premiums/contributions.

~~F-2.~~ Life insurance plan participation.

a. An employee who is on FMLA leave continues to participate in the Basic Life and Accidental Death and Dismemberment Insurance Plan and may continue to participate in the supplemental life and dependent life insurance coverage by paying the full premium/contribution.

b. An employee who is on leave without pay for a health-related reason that is not an industrial illness or injury and who either does not meet FMLA eligibility requirement or has exhausted FMLA leave and remains absent from work may continue to participate in the basic life insurance plan by paying the state ~~premium~~ premium/contribution. An employee who elects to continue to participate in the basic plan may also continue any supplemental or dependent life coverage that is in force at the beginning of the leave without pay by continuing to pay the ~~premium~~ premium/contribution. Authority to continue in the life insurance plan shall terminate in accordance with the time limits specified in subsection ~~(E)~~ (E)(1)(b).

c. An employee who is on leave without pay for reasons other than those outlined in subsection (E)(1)(a), (b), or R2-5-405 pertaining to industrial leave, may continue to participate in the basic life insurance plan by paying the state premium/contribution. An employee who elects to continue to participate in the basic plan may also continue any supplemental or dependent life coverage that is in force at the beginning of the leave without pay by continuing to pay the premium/contribution. Authority to continue in the life insurance plan shall be available for a maximum of six months.

~~G-3.~~ Termination of insurance. The insurance coverage of an individual on leave without pay who fails to pay insurance ~~premiums or contributions~~ premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last ~~premium or contribution~~ premium/contribution paid.

H-F. Disposition of accrued leave.

1. ~~If an employee is to be granted leave without pay by one agency to accept an uncovered position in another state service agency, the agency heads shall agree on whether the employee's accrued annual and compensatory leave is to be paid or transferred in whole or in part. Sick leave shall be transferred. The same procedure shall apply upon the return of the employee to covered service.~~
2. The disposition of all current and future accrued leave of an employee who is to be granted leave without pay to accept a position in a non-state service agency or in another governmental jurisdiction shall be covered in the inter-governmental agreement ~~concluded~~ between the Director and the non-state service agency or other jurisdiction.

NOTICE OF PROPOSED RULEMAKING

TITLE 8. EMERGENCY AND MILITARY AFFAIRS

**CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
DIVISION OF EMERGENCY MANAGEMENT**

[R08-240]

PREAMBLE

1. **Section Affected**

| | |
|-----------|---------------------------------|
| Article 7 | <u>Rulemaking Action</u> |
| R8-2-701 | New Article |
| R8-2-702 | New Section |
| R8-2-703 | New Section |
| R8-2-704 | New Section |
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 26-314
Implementing statute: A.R.S. § 26-314
3. **List of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 752, March 7, 2008
Notice of Rulemaking Docket Opening: 14 A.A.R. 2242, June 6, 2008
Notice of Rulemaking Docket Opening: 14 A.A.R. 3184, August 8, 2008 (*in this issue*)
4. **The name and address of agency personnel with whom person may communicate regarding the rulemaking:**

| | |
|------------|--|
| Name: | David Ervine, Information Technology Specialist III |
| Address: | Department of Emergency and Military Affairs Division of Emergency Management 5636 E. McDowell Road, Building 103 Phoenix, AZ 85008 |
| Telephone: | (602) 231-6334 |
| Fax: | (602) 231-6271 |
| E-mail: | david.ervine@azdema.gov |
| or | |
| Name: | Louis B. Trammell, Director |
| Address: | Department of Emergency and Military Affairs Division of Emergency Management 5636 E. McDowell Road, Building 101 Phoenix, AZ 85008 |
| Telephone: | (602) 231-6245 |
| Fax: | (602) 231-6356 |
| E-mail: | Lou.trammell@azdema.gov |

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

These rules are being established to prescribe the procedures for registration of emergency workers in accordance with A.R.S. § 26-314 (E) and creates new sections R8-2-701, R8-2-702, R8-2-703.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or 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 rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of the state:

Not applicable

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

The proposed rulemaking addresses registration procedures and it is expected these rules will have minimal or no economic impact to small business, consumer or volunteer and state agencies and political subdivisions.

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

Name: David Ervine, Information Technology Specialist III

Address: Department of Emergency and Military Affairs
Division of Emergency Management
5636 E. McDowell Road, Building 103
Phoenix, AZ 85008

Telephone: (602) 231-6334

Fax: (602) 231-6271

E-mail: david.ervine@azdema.gov

or

Name: Louis B. Trammell, Director

Address: Department of Emergency and Military Affairs
Division of Emergency Management
5636 E. McDowell Road, Building 101
Phoenix, AZ 85008

Telephone: (602) 231-6245

Fax: (602) 231-6356

E-mail: Lou.trammell@azdema.gov

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

An oral proceeding regarding the proposed rules will be held as follows:

Date: September 9, 2008

Time: 10:00 a.m. – 11:00 a.m.

Location: 5636 E. McDowell Road, Building 103
Phoenix, AZ 85008

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:

Not applicable

13. The full text of the rules follows:

TITLE 8. EMERGENCY AND MILITARY AFFAIRS

**CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
DIVISION OF EMERGENCY MANAGEMENT**

ARTICLE 7. REGISTRATION OF EMERGENCY WORKERS

Section

| | |
|------------------|--|
| <u>R8-2-701.</u> | <u>Scope</u> |
| <u>R8-2-702.</u> | <u>Registration</u> |
| <u>R8-2-703.</u> | <u>Required Registration Information</u> |
| <u>R8-2-704.</u> | <u>Registration Denial</u> |

ARTICLE 7. REGISTRATION OF EMERGENCY WORKERS

R8-2-701. Scope

This Article is applicable for the registering of emergency workers in accordance with A.R.S. § 26-314.

R8-2-702. Registration

Except what is provided in A.R.S § 26-356, registration is a prerequisite for eligibility of emergency workers for benefits and legal protections under A.R.S. § 26-314.

1. Emergency workers shall register with a department or agency of the state or a political subdivision of the state.
2. The information provided during registration may be used to conduct criminal history and driving record background checks.
3. Temporary registration.
 - a. Temporary registration may be used in emergency situations requiring immediate or on-scene recruitment of emergency workers.
 - b. Persons shall be temporarily registered if they have provided the required registration information in accordance with R8-2-703, but have not provided supporting documentation.
4. Registration information shall be reviewed and updated annually.

R8-2-703. Required Registration Information

The following information is the minimum information required to register as an emergency worker:

1. Full name;
2. Birth date;
3. Gender;
4. Social Security Account Number;
5. Citizenship, to include a document verifying citizenship;
6. Provide verification of eligibility to work in the United States;
7. Address;
8. Contact phone number and e-mail address;
9. Driver's license number, issuing state and expiration date;
10. Registering jurisdiction;
11. Registering agency/organization;
12. Employer name, address and phone number;
13. Personal reference name, address and phone number;
14. Emergency contact name, address and phone number;
15. Job related licenses, certificates and registrations, to include numbers and expiration dates (copies will be provided);
16. Record of felony convictions;
17. Record of misdemeanor convictions involving moral turpitude; and
18. Medical or health issues which might affect or limit your abilities to perform as an emergency worker.

R8-2-704. Registration Denial

- A. Failure to truthfully respond to statements set forth on the registration form may result in the denial of registration, revocation of registration as an emergency worker, or denial of compensation for claims or damage.
- B. Registration may be denied or revoked in the event of either of the following:
 1. Health issues that could affect your performance as an emergency worker, or
 2. Felony convictions.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS

[R08-235]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R9-6-103 | New Section |
- 2. The statutory authority for the rulemaking, both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 36-132(A)(1), 36-136(A)(4) and (7), 36-136(F), and 36-136(H)(1)

Implementing statute: A.R.S. § 36-664(E)

- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 13 A.A.R. 2269, June 29, 2007

Notice of Rulemaking Docket Opening: 14 A.A.R. 2863, July 18, 2008

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

Name: Ken Komatsu, State Epidemiologist

Address: Department of Health Services
Public Health Services
Office of Public Health Preparedness
150 N. 18th Ave., Suite 150
Phoenix, AZ 85007

Telephone: (602) 364-3587

Fax: (602) 542-2722

E-mail: komatsk@azdhs.gov

or

Name: Kathleen Phillips, Rules Administrator and Administrative Counsel

Address: Department of Health Services
Office of Administrative Rules and Counsel
1740 W. Adams St., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

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

A.R.S. § 36-664(E) states that the Arizona Department of Health Services (Department) or a local health agency "shall disclose communicable disease related information" to a Good Samaritan who submits a request to the Department or local health department. A.R.S. § 36-664(E) also states that the Department "shall adopt rules that prescribe standards of significant exposure risk" and "establish procedures for processing requests" from Good Samaritans. A Good Samaritan is defined in A.R.S. § 36-661 as "a person who renders emergency care or assistance in good faith and without compensation at the scene of any accident, fire or other life-threatening emergency and who believes that a significant exposure risk occurred while the person rendered care or assistance."

The current rules for Communicable Diseases and Infestations in Title 9, Article 6, do not address the disclosure of communicable disease-related information to a Good Samaritan. The Department is establishing a rule related to the disclosure of communicable disease-related information to a Good Samaritan as R9-6-103. The new rule, R9-6-103, will prescribe standards of significant exposure risk, establish procedures for processing disclosure requests from Good Samaritans, and establish procedures for disclosing requested communicable disease-related information to Good Samaritans.

Notices of Proposed Rulemaking

Under the proposed rule, a Good Samaritan is an individual who happens to come across an accident, fire, or other life-threatening emergency and decides to render emergency care or assistance. A volunteer of a fire department or emergency medical services organization who is called to the scene of any accident, fire, or other life-threatening emergency to render emergency care or assistance is not considered to be a Good Samaritan.

A distinction is made in the proposed rule between a disclosure request made 72 hours or less after an alleged significant exposure risk and a disclosure request made more than 72 hours after an alleged significant exposure risk. This distinction is based on the time period during which post-exposure prophylaxis is considered to be effective. Post-exposure prophylaxis is defined in the proposed rule as "treatment provided to an individual who may have been exposed to a communicable disease, which is intended to prevent infection of the individual." Post-exposure prophylaxis, to have any effect, typically has to be administered within 72 hours of a significant exposure risk. Thus, within 72 hours of an alleged significant exposure risk there is an emergency need for disclosure, which requires some of the proposed rule's submission requirements for making a disclosure request to be relaxed. This emergency need for disclosure no longer exists 72 hours after an alleged significant exposure risk has occurred. Accordingly, under the proposed rule, disclosure requests made more than 72 hours after an alleged significant exposure risk will be subject to stricter submission requirements.

The proposed rule will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or 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:

The Department did not review or rely on any study relevant to the rule.

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:

Annual costs/revenues changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000 in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

The proposed rule may have an economic impact on: the Department; local health agencies; public safety employers, employees, and volunteers; health care providers; hospitals; community-based organizations; owners and operators of businesses employing a Good Samaritan or a contact of a Good Samaritan; Good Samaritans; contacts of Good Samaritans; assisted persons; and the community at large.

The proposed rule is likely to cause the Department and local health agencies to incur a minimal cost to: enforce the rule; review and respond to Good Samaritan disclosure requests; disclose communicable disease-related information to Good Samaritans; and appoint an individual to be the Designated Officer. Because the rule is new, the Department and local health agencies may incur minimal-to-moderate costs for providing education about the new rule.

Although not required by the proposed rule, the following groups may wish to have knowledge of a Good Samaritan's right to request disclosure of communicable disease-related information: public safety employers, employees, and volunteers; health care providers; hospitals; and community based organizations. Accordingly, the proposed rule may cause these groups to incur a minimal-to-moderate cost for obtaining and providing education about the new rule.

The proposed rule calls for a Good Samaritan to be notified of the Good Samaritan's ability to receive post-exposure prophylaxis. Post-exposure prophylaxis will likely be administered to a Good Samaritan by a health care provider or an individual working at a hospital. Thus, the proposed rule may result in health care providers and hospitals providing post-exposure prophylaxis to a Good Samaritan who without the rule's notification would not have sought post-exposure prophylaxis. Accordingly, health care providers and hospitals may receive a minimal benefit from the proposed rule.

Owners and operators of businesses employing a Good Samaritan or a contact of a Good Samaritan may receive a minimal-to-substantial benefit as a result of the proposed rule. Disclosure of communicable disease-related information may allow a Good Samaritan or a contact of a Good Samaritan to take measures to prevent illness, which in turn may prevent the Good Samaritan or contact of the Good Samaritan from placing other employees and patrons at risk of infection, becoming ill, or having to be excluded from work due to illness.

Good Samaritans may incur a minimal cost to make a disclosure request for communicable disease-related information to the Department or a local health agency. Good Samaritans may receive significant benefit from the proposed rule because the rule may make it easier for Good Samaritans to exercise the right to request disclosure of communicable disease-related information. Good Samaritans may also receive significant benefit from the proposed rule because the rule may foster early detection of possible communicable disease exposure. Good Samaritans may receive minimal-to-substantial benefit from the proposed rule because, the easier it is for a Good Samaritan to make a

disclosure request, the faster a Good Samaritan is likely to receive disclosure of communicable disease-related information. Timely disclosure of communicable disease-related information to a Good Samaritan may reduce the possibility of the Good Samaritan becoming ill, incurring medical expenses, and being excluded from work because of illness. Accordingly, the proposed rule may cause a Good Samaritan to receive minimal-to-substantial benefit.

If a Good Samaritan is aware of an exposure to a communicable disease, the Good Samaritan may either stop interaction with a contact that could expose the contact to the communicable disease or warn a contact of possible exposure, thus fostering early detection by the contact. Accordingly, the proposed rule may cause contacts of a Good Samaritan to receive significant benefit. The possibility of a contact of the Good Samaritan becoming ill, incurring medical expenses, and being excluded from work may also be reduced as a result of the proposed rule and the timely disclosure it will likely foster. Thus, the proposed rule may cause a contact of a Good Samaritan to receive minimal-to-substantial benefit.

Because the proposed rule subjects an assisted person to the release of his or her communicable disease-related information, an assisted person may incur a significant cost. The proposed rule may also encourage individuals to assist those in life-threatening situations, thus likely causing assisted persons and the community at large to receive significant benefit. The community at large may receive a significant benefit as a result of the proposed rule, because the rule may help lessen the incidence of disease or the potential for further communicable disease exposure.

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

Name: Ken Komatsu, State Epidemiologist

Address: Department of Health Services
Public Health Services
Office of Public Health Preparedness
150 N. 18th Ave., Suite 150
Phoenix, AZ 85007

Telephone: (602) 364-3587

Fax: (602) 542-2722

E-mail: komatsk@azdhs.gov

or

Name: Kathleen Phillips, Rules Administrator and Administrative Counsel

Address: Department of Health Services
Office of Administrative Rules and Counsel
1740 W. Adams St., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

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 rules:

The Department has scheduled the following oral proceeding:

Date: September 12, 2008

Time: 10:00 a.m.

Location: Department of Health Services
150 N. 18th Ave., Conference Room 540A
Phoenix, AZ 85007

A person may submit written comments on the proposed rules to either individual listed in items 4 and 9 until the close of record on September 12, 2008 at 3:00 p.m.

Person with a disability may request reasonable accommodation by contacting Robert Lane at laner@azdhs.gov or (602) 364-0792. Requests should be made as early as possible to allow sufficient time to arrange for the accommodation.

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

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 1. GENERAL

Section

R9-6-103. ~~Renumbered~~ Disclosure of Communicable Disease-Related Information to a Good Samaritan

ARTICLE 1. GENERAL

R9-6-103. ~~Renumbered~~ Disclosure of Communicable Disease-Related Information to a Good Samaritan

A. In this Section, unless otherwise specified, the following definitions apply:

1. "Affidavit" means a declaration or statement of facts that is made in writing and under oath.
2. "Assisted person" means the individual with whom a Good Samaritan alleges interaction constituting a significant exposure risk.
3. "Available" means in the possession of or accessible by the Designated Officer who is reviewing a disclosure request.
4. "Communicable disease-related information" has the same meaning as in A.R.S. § 36-661.
5. "Designated Officer" means an individual appointed by the Director or a local health officer, to:
 - a. Review a disclosure request from a Good Samaritan.
 - b. Determine whether disclosure of communicable disease-related information is required under A.R.S. § 36-664(E) and this Section, and
 - c. Respond to the Good Samaritan.
6. "Director" has the same meaning as in A.R.S. § 36-101.
7. "Disclosure request" means the information submitted by a Good Samaritan according to A.R.S. § 36-664(E) and subsection (C) or (D).
8. "Emergency care or assistance" means actions performed by an individual on or for another individual, which are necessary to prevent death or impairment of the health of the other individual.
9. "Emergency department" has the same meaning as in A.A.C. R9-11-101.
10. "Good Samaritan" has the same meaning as in A.R.S. § 36-661.
11. "In writing" means:
 - a. An original document.
 - b. A photocopy.
 - c. A facsimile, or
 - d. An e-mail.
12. "Medical consultation" means discussion between a Good Samaritan and:
 - a. A physician or a registered nurse practitioner working in an emergency department or urgent care unit.
 - b. An occupational health provider as defined in A.A.C. R9-6-801, or
 - c. Any other health care provider knowledgeable in determining circumstances when post-exposure prophylaxis is necessary.
13. "Mucous membrane" means a thin, pliable layer of tissue that lines passageways and cavities in the human body that lead to the outside, such as the mouth, gastrointestinal tract, nose, vagina, and urethra.
14. "Notarized" means signed and dated by a notary.
15. "Notary" means any individual authorized to perform the acts specified under A.R.S. § 41-313.
16. "Post-exposure prophylaxis" means treatment provided to an individual who may have been exposed to a communicable disease, which is intended to prevent infection of the individual.
17. "Significant exposure risk" has the same meaning as in A.R.S. § 36-661.
18. "Under oath" means a sworn statement made by a Good Samaritan to a notary under the penalty of perjury.
19. "Urgent care unit" has the same meaning as in A.A.C. R9-11-201.

B. A significant exposure risk may occur when a Good Samaritan's interaction with an individual results in:

1. A transfer of blood or body fluids from the individual onto the mucous membranes or into breaks in the skin of the Good Samaritan; or
2. A sharing of airspace between the Good Samaritan and the individual.

- C.** If a Good Samaritan makes a disclosure request to the Department or a local health agency 72 hours or less after an alleged significant exposure risk, the disclosure request shall include:
1. The Good Samaritan's name;
 2. The Good Samaritan's mailing address or e-mail address;
 3. The telephone number at which the Good Samaritan may be reached during a working day;
 4. A description of the accident, fire, or other life-threatening emergency, in which the Good Samaritan rendered emergency care or assistance;
 5. A description of the:
 - a. Emergency care or assistance rendered by the Good Samaritan at the accident, fire, or other life-threatening emergency; and
 - b. Circumstances that the Good Samaritan believes constitute a significant exposure risk;
 6. If known, the name of the assisted person;
 7. If known, the date of birth of the assisted person; and
 8. Any additional information that may identify the assisted person.
- D.** If a Good Samaritan makes a disclosure request to the Department or a local health agency more than 72 hours after an alleged significant exposure risk, the disclosure request shall include:
1. A statement in writing that the Good Samaritan is requesting communicable disease-related information for an assisted person as allowed under A.R.S. § 36-664(E);
 2. Documentation concerning the accident, fire, or other life-threatening emergency in which the Good Samaritan rendered emergency care or assistance; and
 3. A notarized affidavit that contains:
 - a. The information specified in subsections (C)(1) through (8).
 - b. A statement that the Good Samaritan understands that the Good Samaritan has the ability to seek medical consultation to determine whether post-exposure prophylaxis for a communicable disease is needed.
 - c. A statement that the Good Samaritan certifies that the declarations contained within the affidavit are truthful to the best of the Good Samaritan's knowledge, and
 - d. The Good Samaritan's signature.
- E.** Within two working days after the Department or a local health agency receives a disclosure request from a Good Samaritan, the Designated Officer shall:
1. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) indicates a significant exposure risk to the Good Samaritan and communicable disease-related information is available for the assisted person:
 - a. Attempt to contact the Good Samaritan by telephone and provide the Good Samaritan with the communicable disease-related information:
 - i. For the assisted person,
 - ii. Pertaining to the specific communicable disease or diseases that may be transmitted through the interaction between the Good Samaritan and the assisted person, and
 - iii. Without revealing the assisted person's name;
 - b. Notify the Good Samaritan that disclosure of communicable disease-related information for one communicable disease does not rule out the possibility that the Good Samaritan was exposed to other communicable diseases about which information is not available to the Designated Officer;
 - c. Provide to the Good Samaritan information concerning the agent causing the communicable disease for which the Designated Officer is disclosing communicable disease-related information, including:
 - i. A description of the disease or syndrome caused by the agent, including its symptoms;
 - ii. A description of how the agent is transmitted to others;
 - iii. The average window period for the agent;
 - iv. An explanation that exposure to an individual with a communicable disease does not mean that infection has or will occur;
 - v. Measures to reduce the likelihood of transmitting the agent to others and that it is necessary to continue the measures until a negative test result is obtained after the average window period has passed or until an infection, if detected, is eliminated;
 - vi. That it is necessary to notify others that they may be or may have been exposed to the agent through interaction with the Good Samaritan; and
 - vii. The availability of assistance from the Department, local health agencies, or other resources; and
 - d. Send to the Good Samaritan in writing:
 - i. The information specified in subsection (E)(1)(a),
 - ii. The notification specified in subsection (E)(1)(b),
 - iii. The information specified in subsection (E)(1)(c), and
 - iv. A statement that the confidentiality of the disclosed communicable disease-related information is pro-

Notices of Proposed Rulemaking

- ected by A.R.S. § 36-666(A)(2) and other state law:
2. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) indicates a significant exposure risk to the Good Samaritan, but the Designated Officer is unable to provide communicable disease-related information for the assisted person:
 - a. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that either:
 - i. Communicable disease-related information, pertaining to the specific communicable disease or diseases that may be transmitted through the interaction between the Good Samaritan and the assisted person, is not available to the Designated Officer; or
 - ii. The Designated Officer is unable to identify the assisted person from the information provided in the Good Samaritan’s disclosure request, as specified in subsection (C) or (D);
 - b. Notify the Good Samaritan that:
 - i. The Good Samaritan’s interaction with the assisted person may pose a significant exposure risk to the Good Samaritan, and
 - ii. The Good Samaritan has the ability to seek medical consultation on the need for post-exposure prophylaxis, and
 - c. Send to the Good Samaritan in writing the notifications specified in subsections (E)(2)(a) and (E)(2)(b); and
 3. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) does not indicate a significant exposure risk to the Good Samaritan:
 - a. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that the Designated Officer will not disclose any available communicable disease-related information for the assisted person, and
 - b. Send to the Good Samaritan in writing:
 - i. The notification specified in subsection (E)(3)(a).
 - ii. A statement that the Designated Officer’s decision not to disclose communicable disease-related information to the Good Samaritan is based on A.R.S. § 36-664(E) and this Section.
 - iii. The Designated Officer’s reasons for not disclosing communicable disease-related information to the Good Samaritan, and
 - iv. A statement that the Good Samaritan has the right to request a hearing as specified in A.R.S. § 41-1092.03(B).

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

[R08-245]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 4 | Repeal |
| R17-1-401 | Repeal |
| R17-1-402 | Repeal |
| R17-1-403 | Repeal |
| R17-1-404 | Repeal |
| R17-1-405 | Repeal |
| R17-1-406 | Repeal |
| R17-1-407 | Repeal |
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
 Authorizing statute: A.R.S. § 28-366
 Implementing statute: A.R.S. §§ 28-374 and 28-5930
 3. **A list of all previous notices appearing in the Register addressing the proposed rules:**
 Notice of Rulemaking Docket Opening: 14 A.A.R. 3130, August 1, 2008
 4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
 Name: Celeste M. Cook, Administrative Rules Analyst

Notices of Proposed Rulemaking

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

Telephone: (602) 712-7624

Fax: (602) 712-3081

E-mail: ccook@azdot.gov

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

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

The Arizona Department of Transportation, Motor Vehicle Division proposes to repeal antiquated language within existing rules regulating electronic funds transfers and create new rules under Chapter 8.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or 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:

The Division anticipates that this rulemaking will have no economic impact on state revenues, political subdivisions, private businesses, or consumers.

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

See item 4.

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

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit a comment in writing, by fax, or e-mail, please contact the Administrative Rules Analyst listed in item 4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, with the exception of legal state holidays. If no request for an oral proceeding is made, the public record will close on September 8, 2008 at 5:00 p.m.

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

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION

ARTICLE 4. ELECTRONIC FUNDS TRANSFER REPEALED

Section

- R17-1-401. ~~Definitions~~ Repealed
- R17-1-402. ~~General Requirements~~ Repealed
- R17-1-403. ~~Authorization Agreement~~ Repealed
- R17-1-404. ~~Methods of Electronic Funds Transfer~~ Repealed
- R17-1-405. ~~Departmental Termination of EFT Agreement~~ Repealed
- R17-1-406. ~~Payment Procedures~~ Repealed
- R17-1-407. ~~Timely Payment~~ Repealed

ARTICLE 4. ~~ELECTRONIC FUNDS TRANSFER REPEALED~~

R17-1-401. Definitions Repealed

The following definitions apply for purposes of this Article:

1. ~~“Automated clearing house” or “ACH” means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.~~
2. ~~“ACH credit” means an electronic funds transfer:~~
 - a. ~~Generated by a payer, and~~
 - b. ~~Cleared through an ACH for deposit to the Department account.~~
3. ~~“ACH debit” means an electronic transfer of funds from a payer’s account:~~
 - a. ~~Authorized by a payer signed authorization agreement,~~
 - b. ~~Generated at a payer’s instruction, and~~
 - e. ~~Cleared through an ACH for deposit to the Department account.~~
4. ~~“Addendum record” means the information required by the Department in an ACH credit transfer or wire transfer, in the approved electronic format prescribed in R17-1-405(B).~~
5. ~~“Authorized means of transmission” means the deposit of funds into the Department account by electronic funds transfer.~~
6. ~~“Cash Concentration or Disbursement plus” or “CCD plus” means the standardized data format approved by the National Automated Clearing House Association for remitting tax payments electronically.~~
7. ~~“Data Collection Center” means a third party that, under contract with the Department, collects and processes electronic funds transfer payment information from payers.~~
8. ~~“Department” or “ADOT” means the Arizona Department of Transportation.~~
9. ~~“EFT Program” means the payment of taxes by electronic funds transfer under this Article.~~
10. ~~“Electronic Funds Transfer” or “EFT” means any transfer of funds initiated:~~
 - a. ~~By a person authorizing a financial institution to debit or credit an account under this Article; and~~
 - b. ~~Through one of the following:~~
 - i. ~~Electronic terminal;~~
 - ii. ~~Telephone;~~
 - iii. ~~Computer, or~~
 - iv. ~~Magnetic tape.~~
11. ~~“Financial institution” means:~~
 - a. ~~A state or national bank;~~
 - b. ~~A trust company;~~
 - e. ~~A state or federal savings and loan association;~~
 - d. ~~A mutual savings bank, or~~
 - e. ~~A state or federal credit union.~~
12. ~~“IFTA” means International Fuel Tax Agreement.~~
13. ~~“IRP” means International Registration Plan.~~
14. ~~“Payment information” means the data that the Department requires of a payer making an electronic funds transfer payment.~~
15. ~~“Payer” means a taxpayer or a third party representing a taxpayer.~~
16. ~~“Payer information number” means a confidential code assigned by the Department that identifies a payer and allows the payer to give payment information to the Department’s Data Collection Center.~~
17. ~~“State Servicing Bank” means a bank designated under A.R.S. Title 35, Chapter 2, Article 2.~~
18. ~~“Taxpayer verification number” means an optional taxpayer-generated number that a payer may use to verify an ACH credit transaction.~~
19. ~~“Tax type” means the category of tax imposed by the Department.~~
20. ~~“Wire transfer” means an instantaneous electronic funds transfer initiated by a payer.~~

R17-1-402. General Requirements Repealed

- A.** ~~Mandatory Participation. Beginning on the first day of the month at least 120 days after this Section becomes effective, a payer owing motor vehicle or use fuel taxes of \$20,000 or more for the immediately preceding tax year under A.R.S. Title 28, Chapter 16, Article 1 or 2, shall remit payment by a Department authorized method of EFT under R17-1-404. A payer with remittance requirements under this subsection shall initiate electronic funds transfer by submitting to the Department an EFT authorization agreement in compliance with R17-1-403.~~
- B.** ~~Voluntary Participation. Beginning on the first day of the month at least 180 days after this Section becomes effective, the following payers may elect to participate in the EFT Program by submitting to the Department an EFT authorization agreement specified in R17-1-403.~~
 1. ~~A payer with a recurring fee or tax liability;~~

2. An authorized third party;
 3. An IRP or IFTA jurisdiction; and
 4. Other entity or payer determined by the Director.
- C. ~~Voluntary Discontinuance. A voluntary participant in the EFT Program shall give written notice to the Department at least 45 days before discontinuing EFT Program participation.~~

R17-1-403. ~~Authorization Agreement Repealed~~

- A. ~~A payer shall complete an electronic funds transfer authorization agreement in the form prescribed by the Department at least 45 days before initiation of the first applicable transaction. The payer shall provide the following information on the authorization agreement:~~
1. ~~Payer's name and address;~~
 2. ~~Payer's federal tax identification number;~~
 3. ~~Payer's Arizona Tax Account Number, if applicable;~~
 4. ~~Type of action being authorized;~~
 5. ~~Fee or tax type;~~
 6. ~~Payment method;~~
 7. ~~Name and phone number of the payer's EFT contact person;~~
 8. ~~Financial institution name and address;~~
 9. ~~Bank account type;~~
 10. ~~Name on bank account;~~
 11. ~~Bank account number; and~~
 12. ~~Bank routing transit number.~~
- B. ~~A payer shall submit a revised authorization agreement to the Department at least 30 days before any change in information required in subsection (A) is made to the agreement.~~
- C. ~~The Department shall deny authorization for electronic funds transfer if a payer or voluntary payer does not submit the information in subsection (A).~~

R17-1-404. ~~Methods of Electronic Funds Transfer Repealed~~

- A. ~~A payer shall authorize remittance by ACH debit for electronic funds transfer unless the Department grants permission to remit by ACH credit.~~
- B. ~~The Department may authorize remittance by ACH credit for a payer that requests it on an EFT authorization agreement form.~~
- C. ~~A payer unable to remit by an established payment method may request that the Department accept deposits to the Department account by wire transfer according to the following procedure:~~
1. ~~A payer shall:~~
 - a. ~~Contact the Department;~~
 - b. ~~State the reason preventing timely compliance under either the ACH credit or debit method; and~~
 - c. ~~Obtain verbal approval for wire transfer of tax payment to the Department account before initiating a transmission.~~
 2. ~~A payer making a wire transfer shall submit the addendum record required under R17-4-405 with an approved wire transfer.~~

R17-1-405. ~~Departmental Termination of EFT Agreement Repealed~~

- A. ~~After finding grounds for withdrawal, the Department may:~~
1. ~~Withdraw permission to use the ACH credit method of EFT, if the payer is an EFT Program participant under R17-1-402(A); or~~
 2. ~~Withdraw permission to pay by EFT, if the payer is an EFT Program participant under R17-1-402(B).~~
- B. ~~Each of the following is grounds for withdrawal:~~
1. ~~Failure to make timely EFT payments;~~
 2. ~~Failure to provide payment information;~~
 3. ~~Failure to provide the required addendum record with EFT payment; or~~
 4. ~~Failure to make correct payment.~~

R17-1-406. ~~Payment Procedures Repealed~~

- A. ~~A payer remitting by the ACH debit method shall report payment information to the Department Data Collection Center no later than the time prescribed by the State Servicing Bank on the last business day before the payment due date.~~
1. ~~A payer shall communicate payment information by one of the following means:~~
 - a. ~~Operator-assisted communication of payment information made orally by rotary or touch-tone telephone;~~
 - b. ~~Touch-tone communication of payment information made by using a touch-tone telephone keypad;~~
 - c. ~~Computer terminal link with the Data Collection Center; or~~

Notices of Proposed Rulemaking

- d. Other means available and approved by the Data Collection Center.
 - 2. A payer shall communicate the following payment information to the Department Data Collection Center:
 - a. Payer information number,
 - b. Department assigned account number,
 - e. Tax type,
 - d. Payment amount,
 - e. Tax period,
 - f. Payment due date, and
 - g. Payment sequence number.
 - ~~B.~~ A payer authorized to remit by the ACH credit method shall initiate a payment transaction directly with a financial institution to ensure a payment is deposited to the Department account by the payment due date. A payer shall make an ACH credit transfer in the CCD plus addendum format by providing the following information:
 - 1. The Department assigned account number,
 - 2. The tax type,
 - 3. The payment amount,
 - 4. The tax or reporting period,
 - 5. The payment sequence number,
 - 6. The payer's taxpayer verification number provided optionally at the payer's discretion, and
 - 7. The American Bank Association nine-digit number of the receiving bank.
- R17-1-407. Timely Payment Repealed**
- ~~A.~~ A payer remitting a payment through EFT shall ensure the completion of each transaction by the payment due date.
 - ~~B.~~ If a tax due date occurs on a Saturday, Sunday, or legal holiday, a payer shall make the electronic funds transfer by 5:00 p.m. of the next business day.
 - ~~C.~~ An EFT program participant is subject to penalty prescribed under A.R.S. §§ 28-5621, 28-5721, or 28-5722 for past due payment.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 8. DEPARTMENT OF TRANSPORTATION
MOTOR CARRIER AND TAX SERVICES PROGRAM**

[R08-243]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| Chapter 8 | Amend |
| Article 4 | New Article |
| R17-8-401 | New Section |
| R17-8-402 | New Section |
| R17-8-403 | New Section |
| R17-8-404 | New Section |
| R17-8-405 | New Section |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 28-366
Implementing statute: A.R.S. §§ 28-374 and 28-5930
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 3131, August 1, 2008
Notice of Rulemaking Docket Opening: 14 A.A.R. 3187, August 8, 2008 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Celeste M. Cook, Administrative Rules Analyst

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

Telephone: (602) 712-7624

Fax: (602) 712-3081

E-mail: ccook@azdot.gov

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

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

The Arizona Department of Transportation, Motor Vehicle Division proposes to promulgate rules to prescribe who must file payments electronically and to establish the process by which an electronic funds transfer is accomplished.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or 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 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 Division anticipates that this rulemaking will not have an economic impact on state revenues, political subdivisions, private businesses, or consumers.

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

See item 4.

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

Date: September 12, 2008

Time: 1:00 p.m. to 2:00 p.m.

Location: 1801 W. Jefferson St., Room 410

Nature: Public hearing

Close of record: September 8, 2008

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:

Not applicable

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 8. DEPARTMENT OF TRANSPORTATION
~~MOTOR CARRIER AND TAX SERVICES PROGRAM~~ FUEL TAXES**

ARTICLE 4. ELECTRONIC FUNDS TRANSFERS

Section
R17-8-401. Definitions
R17-8-402. Applicability
R17-8-403. Electronic Funds Transfer Declaration
R17-8-404. Procedures for Payment

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

R17-8-405. Remedies

ARTICLE 4. ELECTRONIC FUNDS TRANSFERS

R17-8-401. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101 and 28-5601, the following definitions apply for purposes of this Article:

“Automated Clearing House,” or “ACH,” means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.

“ACH credit” means an electronic funds transfer:

Generated by a licensee, and

Cleared through an ACH for deposit to the Department account.

“ACH debit” means an electronic transfer of funds from a licensee’s account:

Authorized by a licensee-signed authorization agreement,

Generated at a licensee’s instruction, and

Cleared through an ACH for deposit to the Department account.

“Cash Concentration or Disbursement Plus,” or “CCD Plus,” means the standardized data format approved by NACHA for remitting tax payments electronically.

“Electronic Fuel Tax Program” means the Department program for the electronic filing of fuel tax reports and payment of fuel taxes.

“Electronic funds transfer” means a transmission of funds by electronic means to order, instruct, or authorize a financial institution to debit or credit an account pursuant to the Electronic Fuel Tax Program.

“Financial institution” means a licensed bank, savings and loan association, mutual savings bank or credit union.

“Licensee” means a person licensed under A.R.S. Title 28, Chapter 16, Article 1.

“MVD account number” means a confidential number assigned by the Department that identifies a licensee.

“NACHA” means NACHA – The Electronic Payments Association, a not-for-profit association that oversees the Automated Clearing House Network.

“Payment information” means data the Department requires of a licensee when making an electronic funds transfer.

“State servicing bank” means the financial institution contracted to perform banking functions on behalf of the state.

R17-8-402. Applicability

A. As prescribed under A.R.S. §§ 28-374 and 28-5930, the following persons shall remit payments by Electronic Funds Transfer:

1. A licensee authorized by the Department to file Electronic Fuel Tax Reports, and
2. Any other person determined by the Director.

B. Payments subject to this Article include any taxes, penalties, late fees, or interest resulting from an original or amended report, a taxpayer billing, or an audit assessment.

R17-8-403. Electronic Funds Transfer Declaration

A. Prior to remitting an initial payment by electronic funds transfer, and within 30 days prior to any change in the method of payment transfer, a licensee shall file with the Department an Electronic Funds Transfer Declaration.

B. The Electronic Funds Transfer Declaration shall be made on a form approved by the Department and shall contain the following:

1. Licensee name.
2. Licensee Employer Identification Number (EIN).
3. Business address.
4. MVD account number.
5. Fee or tax type.
6. Either ACH credit or ACH debit payment method.
7. Name and phone number of contact person, and
8. Any other information required by the Director.

R17-8-404. Procedures for Payment

A. All electronic funds transfers shall be in compliance with the NACHA Operating Rules.

B. A licensee may remit payments by either ACH credit or ACH debit.

C. A licensee using the ACH credit method shall ensure that all ACH Credit transfers shall be in the CCD-Plus addenda for-

mat and shall contain any information required by the Department and the licensee's financial institution in order to process the transfer.

- D.** A licensee using the ACH debit method shall electronically communicate the following payment information to the state servicing bank:
1. MVD account number.
 2. Payment amount, and
 3. Any other information required by the Director.

R17-8-405. Remedies

- A.** Violations of this Article shall result in the assessment of applicable penalties, interest, and late filing fees pursuant to A.R.S. Title 28, Chapter 16.
- B.** Licensure shall be subject to cancellation by the Department upon licensee failure of compliance with Electronic Fuel Tax Program requirements or any law, rule, agreement, manual, ruling, or procedure pursuant to this Chapter and A.R.S. Title 28, Chapters 16 and 25.
- C.** Remedies are cumulative. The cancellation of licensure shall not terminate any reporting requirement or fee, tax, penalty or interest obligation.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 8. DEPARTMENT OF TRANSPORTATION
FUEL TAXES**

[R08-244]

PREAMBLE

1. Sections Affected

Article 5
R17-8-501
R17-8-502
R17-8-503
R17-8-504
R17-8-505
R17-8-506

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section
New Section

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

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. §§ 28-374, 28-5618, 28-5625, and 28-5930

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

Notice of Rulemaking Docket Opening: 14 A.A.R. 3132, August 1, 2008

Notice of Rulemaking Docket Opening: 14 A.A.R. 3188, August 8, 2008 (*in this issue*)

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

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

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

Notices of Proposed Rulemaking

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

The Arizona Department of Transportation, Motor Vehicle Division proposes to promulgate rules to prescribe the procedure, reporting, and record maintenance requirements necessary to administer the electronic fuel tax program.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or 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:

The Division anticipates moderate benefits from this rulemaking due to the new electronic reporting process as the Electronic Fuel Tax Program will systematically receive and review fuel tax reports and allow full-time Motor Carrier and Tax Services employees to devote more time to other work-related activities.

The Division anticipates that businesses both large and small will incur minimal costs due to programming necessary to enable them to submit fuel tax reports electronically. However, they too will benefit from a simpler and less time consuming process.

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

See item 4.

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

Date: September 12, 2008
Time: 2:00 p.m. to 3:00 p.m.
Location: 1801 W. Jefferson St., Room 410
Nature: Public hearing
Close of record: September 8, 2008

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:

Not applicable

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 8. DEPARTMENT OF TRANSPORTATION
FUEL TAXES

ARTICLE 5. ELECTRONIC FUEL TAX REPORTING

Section

R17-8-501. Definitions
R17-8-502. Applicability; General Provisions
R17-8-503. Method and Medium of Transmission
R17-8-504. Data Elements and Format
R17-8-505. Record Retention; Audit
R17-8-506. Remedies and Waiver

ARTICLE 5. ELECTRONIC FUEL TAX REPORTING

R17-8-501. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101 and 28-5601, the following definitions apply for the purpose of this Article:

“Applicant” means a person applying for licensure under A.R.S. Title 28, Chapter 16, Article 1.

“Electronic Fuel Tax Program” means the Department program for the electronic filing of fuel tax reports and payment of fuel taxes.

“Electronic Fuel Tax Reporting Agreement” means the contract between the Department and each licensee pertaining to filing electronic fuel tax reporting requirements in the form and containing such terms and conditions as established by the Director from time to time.

“Electronic Funds Transfer” has the same meaning as provided under R17-8-401.

“Electronic Fuel Tax Report” means the monthly fuel tax report required under A.R.S. Title 28, Chapter 16, Article 1 filed pursuant to the Electronic Fuel Tax Program.

“Fuel Tax Suite” means the secure web site provided by the Department for filing fuel tax reports and accessing a licensee’s fuel tax account.

“Licensee” means a person licensed under A.R.S. Title 28, Chapter 16, Article 1.

“Secure Access Gateway” means the Department secure network application that allows a remote user to connect to the Fuel Tax Suite.

“ServiceArizona Access Request and Agreement” means the contract documenting terms and conditions for access to the Secure Access Gateway and Fuel Tax Suite, established by the Director from time to time.

R17-8-502. Applicability: General Provisions

- A.** For the purpose of administering the reporting requirements under A.R.S. Title 28, Chapter 16, Articles 1 and 5, licensees shall participate in the Electronic Fuel Tax Reporting Program in accordance with this Article.
- B.** Each applicant and licensee shall apply for Department authorization to submit electronic fuel tax reports as required by the Department.
- C.** Each applicant and licensee shall enter into an Electronic Fuel Tax Reporting Agreement as a condition of licensure.
- D.** A licensee shall submit monthly fuel tax reports required under A.R.S. Title 28, Chapter 16, Article 1 using Department paper forms until authorized by the Department to file electronic fuel tax reports.
- E.** A licensee authorized by the Department to file electronic fuel tax reports shall complete monthly fuel tax reports only by means of the Electronic Fuel Tax Program and shall not submit such reports in paper form.
- F.** A licensee authorized by the Department to file electronic fuel tax reports shall submit fuel tax payments by Electronic Funds Transfer in accordance with 17 A.A.C. 8, Article 4. The licensee shall ensure that the fuel tax payments are deposited to the Department account as prescribed under A.R.S. Title 28, Chapter 16, Articles 1 and 5.

R17-8-503. Method and Medium of Transmission

- A.** Electronic fuel tax reports shall be submitted through the Fuel Tax Suite.
- B.** The filing deadline is 5:00 p.m. Mountain Standard Time on the 27th day of each calendar month, or, if such day is a Saturday, Sunday, or Arizona legal holiday, the next following business day.

R17-8-504. Data Elements and Format

Electronic Fuel Tax Reports shall include the following data elements:

1. Identification of the licensee.
2. Detailed load by load receipts information that establishes the amount of fuel received.
3. Detailed load by load disbursement information that establishes the amount of fuel delivered.
4. Diesel differential information that establishes the basis for the differential adjustment, and
5. Other information required by the Director.

R17-8-505. Record Retention; Audit

- A.** Licensees shall retain the following records in accordance with this Section:
 1. Copies of electronic fuel tax reports.
 2. Records of all transactions subject to the Electronic Fuel Tax Program.
 3. Records of all other electronic transmissions under the Electronic Fuel Tax Program.
 4. Back-up files adequate to recreate all electronic records, and
 5. All other records required under A.R.S. § 28-5619.
- B.** Licensees shall make available to the Department for inspection all hard copy records, electronic records, books, receipts, disbursements, and accounts used in support of an electronic report as prescribed under A.R.S. Title 28, Chapter 16. At the time of inspection licensees shall provide access to the Department to the electronic reporting method and medium in effect at the time of all electronic transmissions, sufficient for the Department to effectively follow the audit trail.
- C.** Licensees shall retain the records specified by this Section for a period of three years following the later of the filing due date or the actual filing date of an original or amended electronic fuel tax report, or, if notified of an audit, for such longer period ending the date the Department finalizes the audit.

R17-8-506. Remedies and Waiver

- A.** Violations of this Article shall result in assessment of applicable penalties, interest, and late filing fees pursuant to A.R.S. Title 28, Chapter 16, provided that, subject to statute, the Department may waive and extend compliance deadlines in order to advance the efficient administration of the Electronic Fuel Tax Program as it may, in its sole discretion, determine appropriate in particular cases.
- B.** Licensure shall be subject to cancellation by the Department upon licensee failure of compliance with Electronic Fuel Tax Program requirements or any law, rule, agreement, manual, ruling, or procedure pursuant to this Chapter and A.R.S. Title 28, Chapters 16 and 25.
- C.** Remedies are cumulative. The cancellation of licensure shall not terminate any reporting requirement or fee, tax, penalty or interest obligation.