

## 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. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

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 adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 7. BOARD CHIROPRACTIC EXAMINERS

##### PREAMBLE

- 1. Sections Affected**

R4-7-301	<b><u>Rulemaking Action</u></b>
R4-7-305	Amend
R4-7-404	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §32-904(B)(2)  
Implementing statutes: A.R.S. §§ 32-921, 32-924, and 32-929
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 3654, September 22, 2000
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Patrice A. Pritzl, Executive Director  
Address: 5060 North 19th Avenue, Suite 416  
Phoenix, Arizona 85015-3210  
Telephone: (602) 255-1444  
Fax: (602) 255-4289
- 5. An explanation of the rule, including the Agency's reasons for initiating the rule:**

The proposed rules will define those parties possessing the authority to sign a subpoena, extend the period in which a rehearing may be requested to 30 days and clarify the Boards authority to investigate applications for licensure.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

The economic impact is minor. The proposed amendments are technical corrections to existing rule to bring the rule language into compliance with statute and to clarify procedure.

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**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: Patrice A. Pritzl, Executive Director  
Address: 5060 North 19th Avenue, Suite 416  
Phoenix, AZ 85015-3210  
Telephone: (602) 255-1444  
Fax: (602) 255-4289

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

Written comment will be accepted at the Board office, 5060 N. 19th Ave, #416, Phoenix, AZ, 85015 on a business day between the hours of 8:00 a.m. and 5:00 p.m. until 5:00 p.m., on November 27, 2000. An oral proceeding is not scheduled but may be requested.

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

Not applicable

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

Not applicable

**13. The full text of the rules as follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS**

**ARTICLE 3. HEARINGS**

Sections

R4-7-301. Hearings  
R4-7-305. Rehearing, Review of Decision

**ARTICLE 4. EXAMINATIONS**

Section

R4-7-404. Investigation

**ARTICLE 3. HEARINGS**

**R4-7-301. Investigations of Complaints**

- A. The Board may cause to be investigated any complaint alleging violation of A.R.S. § 32-900 et. seq. or these rules.
- B. During the investigation of a complaint, the affixing of the seal of the Board and the signature of any member of the Board or its Executive Director shall be attestation of a subpoena compelling the production of documentary evidence pursuant to A.R.S. § 32-929.
- C. If it appears to the Board that there is probable cause to believe that a licensee has violated A.R.S. § 32-900 et. seq. or these rules, the Board shall set a time and a place for public hearing pursuant to A.R.S. Title 41, Chapter 6, Article 6.

**R4-7-305. Rehearing, Review of Decision**

- A. Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than ~~fifteen (15)~~ thirty (30) days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefore.
- B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Board. A response may be filed by any other party within ten (10) days after service of such motion or amended motion. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C. The Board may grant a rehearing or review of a decision for any of the following causes materially affecting the moving parties rights;
  1. Irregularity in the administrative proceedings of the Board, its hearing officer or the prevailing party or any order or abuse of discretion that deprives the moving party of a fair hearing;
  2. Misconduct of the Board or its hearing officer or the prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;

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4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
  7. That the decision is not justified by the evidence or is contrary to law.
- D.** The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of issue for any of the reasons set forth in subsection (C). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters specified.
- E.** Not later than ten (10) days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting such a rehearing or review shall specify the grounds on which it is granted.
- F.** When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within ten (10) days after service, serve opposing affidavits. The Board may extend the period for serving opposing affidavits for not more than twenty (20) days for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G.** If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision shall be made within the time limits permitted for application for judicial review of the Board's final decisions.

**ARTICLE 4. EXAMINATIONS**

**R4-7-404. Investigation**

If the Board deems it necessary it may, ~~prior to the date of examination,~~ require any applicant or other person making affidavit in support of the application to appear and supply to the Board such further information or documents as the Board deems pertinent in establishing the qualifications of the applicant.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES  
HEALTH CARE INSTITUTIONS: LICENSURE**

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R9-10-122                          | New Section                     |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statutes: A.R.S. §§ 36-136(F) and 36-405(C)  
Implementing statutes: A.R.S. § 36-405(C)(1) through (2)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
None published
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |  |
|------------|--|
| Name:      | Kathleen Phillips, Rules Administrator   |
| Address:   | Department of Health Services<br>1740 West Adams, Suite 102<br>Phoenix, Arizona 85007                                      |
| Telephone: | (602) 542-1264   |
| Fax:       | (602) 542-1290   |
| or         |  |
| Name:      | Mary Wiley, Assistant Director   |
| Address:   | Department of Health Services<br>Assurance and Licensure Services<br>1647 East Morten, Suite 220<br>Phoenix, Arizona 85020 |
| Telephone: | (602) 674-4200   |
| Fax:       | (602) 861-0645   |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**  
The proposed rule implements A.R.S. § 36-405(C)(1) through (2), which requires the Department of Health Services (Department) to collect a license application fee and an architectural drawing review fee from a health care institution. A.R.S. § 36-405(C)(1) through (2) establishes a range of application and architectural drawing review fees that may be collected by the Department. The Department has determined that rules are necessary to specify the exact amount, within the range established in statute, that will be collected. The proposed rules establish the exact application fee and architectural drawing review fee that the Department will collect from a health care institution.
- 6. 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
- 7. Reference to any study that the agency relied on and its evaluation of or justification for proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**  
Not applicable

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

The Department will incur moderate initial costs and substantial ongoing costs implementing the proposed rules. The proposed rules will have a minimal economic impact upon each business that owns or operates a health care institution. State revenues will substantially increase as a result of the proposed rules.

**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: Kathleen Phillips, Rules Administrator

Address: Department of Health Services  
1740 West Adams, Suite 102  
Phoenix, Arizona 85007

Telephone: (602) 542-1264

Fax: (602) 542-1290

or

Name: Mary Wiley, Assistant Director

Address: Department of Health Services  
Assurance and Licensure Services  
1647 East Morten, Suite 220  
Phoenix, Arizona 85020

Telephone: (602) 674-4200

Fax: (602) 861-0645

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

Wednesday, November 29, 2000

10:00 a.m.

Arizona Department of Health Services  
400 West Congress, Room 5  
Tucson, Arizona 85701

Thursday, November 30, 2000

9:00 a.m.

Arizona Department of Health Services  
1647 East Morten Avenue, Hearing Room  
Phoenix, Arizona 85020

Friday, December 1, 2000

10:30 a.m.

Flagstaff Public Library  
300 West Aspen  
Flagstaff, Arizona 86001

**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 locations in the rules:**

Not applicable

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 5. DEPARTMENT OF HEALTH SERVICES  
HEALTH CARE INSTITUTIONS: LICENSURE**

**ARTICLE 1. GENERAL**

Section  
R9-10-122.      Fees

**ARTICLE 1. GENERAL**

**R9-10-122.**      **Fees**

- A.** An applicant who submits to the Department architectural plans and specifications for the construction or modification of a health care institution shall submit to the Department an architectural drawing review fee as follows:
1. Fifty dollars for a project with a cost of less than \$100,000;
  2. One hundred dollars for a project with a cost of \$100,000 or more and less than \$500,000; or
  3. One hundred fifty dollars for a project with a cost of \$500,000 or more.
- B.** An applicant submitting an initial application or a renewal application for a health care institution license shall submit to the Department an application fee of \$50.00.
- C.** All fees are nonrefundable.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION**

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R17-4-209                          | Repeal                          |
| R17-4-209                          | 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. § 28-366
- Implementing statute: A.R.S. § 28-2052
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
- Notice of Rulemaking Docket Opening: 5 A.A.R. 3278, September 24, 1999 (expired)
- Notice of Rulemaking Docket Opening: 5 A.A.R. 4324, November 12, 1999
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- Name:                    George R. Pavia, Department Rules Supervisor
- Address:                Arizona Department of Transportation  
Motor Vehicle Division, MD 507M  
3737 North Seventh Street, Suite 160  
Phoenix, Arizona 85014-5017
- Telephone:            (602) 712-8446
- Cellular:              (602) 403-3341
- Fax:                    (602) 241-1624
- E-Mail:                gpavia@dot.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
- This rulemaking arises from a 5-year review report (F-98-0401) approved by GRRC on May 5, 1998. The purpose of the rule is to prescribe additional titling standards for motor vehicles not manufactured in compliance with United States safety and emission standards (commonly called "Gray Market Vehicles") to ensure compliance before the issuance of an Arizona title. In its current form, the rule is outdated. In this rulemaking, the Division updates language to current standards and incorporates revised provisions to bring the rule in line with current Division requirements.

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

None

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

Not applicable

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

The State of Arizona subscribes to prescribed federal safety and emission standards in this rulemaking and, notwithstanding, will allow the importation of foreign vehicles into the state. Any foreign vehicle owner, business or individual, could incur expenses of greater than \$20,000 per imported vehicle to bring an import into federal compliance if it cannot be documented that the vehicle was originally so manufactured. To maintain enforcement of these provisions, the Division annually inspects 400-500 imported vehicles absorbing inspection costs with collected fees. Non-compliant vehicles may be brought into compliance through processing by registered importers (and their subcontracted entities). For services rendered, the registered importers and subcontractors can substantially profit from each imported vehicle processed for federal compliance.

**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: George R. Pavia, Department Rules Supervisor

Address: Arizona Department of Transportation  
Motor Vehicle Division, MD 507M  
3737 North Seventh Street, Suite 160  
Phoenix, Arizona 85014-5017

Telephone: (602) 712-8446

Cellular: (602) 403-3341

Fax: (602) 241-1624

E-Mail: gpavia@dot.state.az.us

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

Date: Monday, December 11, 2000

Time: 2:00 p.m.

Locations:

Flagstaff	Phoenix	Tucson
ADOT District Office Board Room 1801 South Milton Rd. Flagstaff, AZ 86001	ADOT Headquarters Board Room, 143 206 South 17th Ave. Phoenix, AZ 85007	ADOT District Office Board Room 1221 South 2nd Ave. Tucson, AZ 85713

Nature: Public hearing by teleconference

Closure: The public record in this rulemaking will close at 4:30 p.m., December 22, 2000.

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

None

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

None

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

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION**

**ARTICLE 2. TITLES AND REGISTRATION**

Sections

- R17-4-209. ~~Additional titling standards for vehicles not manufactured in compliance with United States Safety and Emission Standards Repealed~~
- R17-4-209. Additional titling standards for vehicles not manufactured in compliance with United States Safety and Emission Standards; "Gray Market Vehicles"

**ARTICLE 2. TITLES AND REGISTRATION**

**R17-4-209. ~~Additional titling standards for vehicles not manufactured in compliance with United States Safety and Emission Standards Repealed~~**

**A. Definitions**

1. ~~"DOT" means the United States Department of Transportation.~~
2. ~~"EPA" means the Environmental Protection Agency of the United States.~~
3. ~~"NHTSA" means the National Highway Traffic Safety Administration.~~
4. ~~"U.S. Customs" means the United States Treasury Department, Customs Service.~~

**B. Documentation requirements for proof of compliance. The following documents and proofs of compliance shall be presented to the Motor Vehicle Division.**

1. ~~A copy of the letter of release from the Department of Transportation, National Highway Traffic Safety Administration, to the District Director of U.S. Customs, which states that the vehicle is in compliance with the equipment standards of NHTSA, and~~
2. ~~A copy of the letter of release from the Environmental Protection Agency to U.S. Customs which states that the vehicle is in conformity with federal emission equipment standards and a copy of the Arizona Motor Vehicle Emission Test Report form shall be included unless the vehicle qualifies for exemption from EPA and/or the Arizona Motor Vehicle Emission Test, or~~
3. ~~Other written documentation from NHTSA and EPA which states that the vehicle was previously determined to be in compliance with the standards of those agencies.~~

**R17-4-209. Additional titling standards for vehicles not manufactured in compliance with United States Safety and Emission Standards; "Gray Market Vehicles."**

**A. Definitions.**

1. "EPA standards" means Environmental Protection Agency standards as prescribed under 40 CFR 86.
2. "FMVSS" means Federal Motor Vehicle Safety Standards as prescribed under 49 CFR 571.
3. "GVWR" or "gross vehicle weight rating" has the meaning prescribed in A.R.S. § 28-3001(10).
4. "Multipurpose Vehicle" or "MPV" means a motor vehicle with motive power, except a low-speed vehicle or a trailer designed to carry 10 persons or fewer, constructed either on a truck chassis or with special features for occasional off-road operation.
5. "NHTSA" means National Highway Traffic Safety Administration.
6. "Registered importer" means a person who
  - a. Is registered by the NHTSA Administrator as prescribed under 49 CFR 592.5;
  - b. Is licensed under A.R.S. Title 28, Chapter 10, Article 2; and
  - c. Performs duties as prescribed under 49 CFR 592.6.
7. "Valid titling documentation" means verification of compliance to federal standards recorded on
  - a. A registered importer's certificate,
  - b. A manufacturer's letter, or
  - c. A US federal compliance label printed in English.

**B. This subsection applies to any vehicle imported to the US.**

1. A vehicle older than 25 years from manufacture date is exempt from all provisions of this rule.
2. A vehicle between 21 and 25 years old from manufacture date:
  - a. Is exempt from EPA standards, but
  - b. Shall have valid titling documentation of compliance with US FMVSS standards.



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3. A vehicle less than 21 years old from manufacture date shall have valid titling documentation of compliance with US FMVSS and EPA standards.
- C.** This subsection grants special titling provisions as an exception to the requirements of subsection (B)(2) and (3) applicable only to a Canadian vehicle imported to the US not for resale with a GVWR of less than 10,000 pounds.
  1. Except for any exempt vehicle under subsection (B)(1), an eligible vehicle under this subsection shall include:
    - a. A passenger vehicle.
    - b. A motorcycle, or
    - c. An MPV.
  2. The Division may issue a title when a vehicle owner submits:
    - a. A certificate from a manufacturer stating that a vehicle meets US FMVSS and EPA standards except for:
      - i. Minor labeling requirements;
      - ii. Speedometer or headlights; and
    - b. Documentation verifying US FMVSS speedometer or headlight modification if a manufacturer letter contains the statement in (C)(2)(a)(ii).
  3. Before issuing a title, the Division shall require certification through a registered importer if:
    - a. A manufacturer's letter states that a vehicle meets US FMVSS standards except for occupant crash protection provisions prescribed under 49 CFR 571.208, or
    - b. An owner does not submit a manufacturer's letter.
- D.** This subsection gives titling provisions for a vehicle imported to the US that is not exempt under subsection (B)(1) and does not qualify under subsection (C). Before issuing a title, the Division shall require certification through a registered importer if a vehicle is:
  1. Canadian with a GVWR greater than 10,000 pounds not for resale in the US.
  2. Canadian for resale in the US, or
  3. An import to the US:
    - a. From a country other than Canada, and
    - b. With no valid titling documentation.