

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 34. BOARD OF MANUFACTURED HOUSING

[R07-167]

PREAMBLE

1. Sections Affected

R4-34-201
R4-34-203
R4-34-204
R4-34-401
R4-34-402
R4-34-501
R4-34-601
R4-34-607
R4-34-701
R4-34-702
R4-34-703
R4-34-704
R4-34-705
R4-34-706
R4-34-803
R4-34-804
R4-34-805

Rulemaking Action

Amend
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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. § 41-2141
Implementing statute: A.R.S. § 41-2144

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 123, January 12, 2007

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

Name: Gary Grounds
Address: Department of Fire, Building and Life Safety
1110 W. Washington, Ste. 100
Phoenix, AZ 85007
Telephone: (602) 364-1003
Fax: (602) 364-1063

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

The proposed rules are being amended for general rule housekeeping, clarification, and 2006 passed legislation.

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:

Notices of Proposed Rulemaking

The Board did not review any study related to 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:

There is no economic impact to the Department, licensees, consumers, or local jurisdictions.

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: Gary Grounds
Address: Department of Fire, Building and Life Safety
1110 W. Washington, Ste. 100
Phoenix, AZ 85007
Telephone: (602) 364-1003
Fax: (602) 364-1063

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:

No oral proceedings are scheduled. Written comments on the proposed rules will be accepted by the Board addressed to the person in #4 no later than 5:00 p.m., Monday, July 9, 2007.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 34. BOARD OF MANUFACTURED HOUSING

ARTICLE 2. LICENSING

Section
R4-34-201. General
R4-34-203. Retailers
R4-34-204. Installers

ARTICLE 4. SURETY BONDS

Section
R4-34-401. Surety Bond Forms
R4-34-402. Cash Deposits

ARTICLE 5. FEES

Section
R4-34-501. General

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

Section
R4-34-601. Manufactured Homes
R4-34-607. Manufacturing Inspection and Certification

ARTICLE 7. PLAN APPROVALS

Section
R4-34-701. General
R4-34-702. Quality Assurance Manuals

- R4-34-703. Drawings and Specifications
- R4-34-704. Alterations or Reconstruction
- R4-34-705. Accessory Structures and Ground Anchoring
- R4-34-706. Factory-Built Building Installation

ARTICLE 8. PERMITS AND INSTALLATION

Section

- R4-34-803. Soil and Materials
- R4-34-804. Utilities
- R4-34-805. Accessory Structures

ARTICLE 2. LICENSING

R4-34-201. General

- A. An administrative review of the application shall be performed within ~~5~~ five business days of receipt of an application. The ~~Assistant~~ Deputy Director shall issue a conditional license within 14 business days of the Department's receipt of the completed license application and written evidence that the applicant has passed any required license examination. The ~~5~~ five day administrative completeness and 14 day substantive review time-frames provide an overall time-frame of 19 days excluding time requirements that are the responsibility of the applicant.
- B. No change
- C. No change
- D. No change

R4-34-203. Retailers

The Department shall place a retailer's license application into one of the following license classes, based on the listed activities that limit the scope of each class:

- 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 2. No change
 - a. No change
 - b. No change
- 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. Contracts with properly licensed installers or contractors for the installation of factory-built buildings, FBB sub-assemblies, and residential; single-family; factory-built buildings, or accessory structures.
- 4. No change

R4-34-204. Installers

The Department shall place an installer's license application into one of the following license classes, based on the listed activities that limit the scope of each class:

- 1. I-10C General installer of Manufactured Homes, Mobile Homes, or Residential; Single-Family; Factory-Built Buildings:
 - a. Installs manufactured homes, mobile homes, or residential; single-family; factory-built buildings on foundation systems;
 - b. No change
 - c. No change
 - d. Installs evaporative coolers and cooler systems on manufactured homes, mobile homes, or residential; single-family; factory-built buildings;
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
- 2. I-10D Installer of Accessory Structures attached to Manufactured Homes, Mobile Homes, or Residential; Single-Family; Factory-Built Buildings:

Notices of Proposed Rulemaking

- a. No change
- b. No change
- c. No change
- d. No change
3. I-10G Master Installer of Manufactured Homes, Mobile Homes, or Residential, Single-Family, Factory Built Buildings:
 - a. No change
 - b. No change
 - c. No change

ARTICLE 4. SURETY BONDS

R4-34-401. Surety Bond Forms

Manufacturers, installers, and retailers except brokers of manufactured homes, mobile homes, or residential single-family, factory-built buildings, shall submit the applicable surety bond amount from the list in R4-34-502, with a form provided by the Office of Administration.

R4-34-402. Cash Deposits

- A. Except for applicants exempt under R4-34-401, any applicant for a license or renewal of a license who desires to post cash in place of a commercial surety bond shall deposit the applicable amount with the ~~Assistant~~ Deputy Director of the Office of Administration using any one of the following payment methods:
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
- B. Upon the receipt of the ~~Assistant~~ Deputy Director of the Office of Administration of an order from any court for the payment of funds on deposit, the ~~Assistant~~ Deputy Director shall make payment according to the court order, at which time the license is suspended under A.R.S. § 41-2179, if applicable. In order to reinstate the license, the licensee shall return the cash deposit to the required balance or, as an alternative, file a commercial surety bond for the full amount and pay all applicable reinstatement fees.
- C. No change
- D. No change
- E. No change
 1. No change
 2. No change
 3. No change
- F. Upon written request and subsequent approval by the ~~Assistant~~ Deputy Director of the Office of Administration, a cash deposit may be withdrawn by the owner of a sole proprietorship, any partner of a partnership, any person with written evidence of authority to withdraw the cash deposit for a corporation, and any other person who can establish legal right to the cash deposit.

ARTICLE 5. FEES

R4-34-501. General

- A. No change
- B. The ~~Assistant~~ Deputy Director of the Office of Administration shall notify all licensees of the established fee schedule before June 1 of each year.
- C. No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
 8. No change

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

R4-34-601. Manufactured Homes

A manufacturer shall build manufactured homes according to the standards and regulations in R4-34-102(~~C~~) and (~~D~~) (1) and (2).

R4-34-607. Manufacturing Inspection and Certification

A. The Department shall conduct manufactured home plant certification under R4-34-102(~~C~~) and (~~D~~) (1) and (2).

B. No change

C. No change

1. The Department shall conduct manufactured home certification under R4-34-102(~~C~~) and (~~D~~) (1) and (2);

2. No change

D. No change

1. Each manufactured home manufacturer shall report affixing HUD labels, complete any other required reports, and establish and maintain records under R4-34-102(~~C~~) and (~~D~~) (1) and (2); and

2. No change

E. No change

1. No change

2. No change

3. No change

4. No change

F. No change

1. No change

2. No change

G. No change

1. No change

2. No change

a. No change

b. No change

c. No change

ARTICLE 7. PLAN APPROVALS

R4-34-701. General

A. No change

1. No change

2. No change

B. No change

C. Before installing an accessory structure or ground anchors for a manufactured home, mobile home, or residential single-family, factory-built building, an installer shall obtain plan approval under R4-34-705.

D. No change

E. No change

F. No change

G. No change

H. No change

I. No change

R4-34-702. Quality Assurance Manuals

A. A manufacturer of manufactured homes shall prepare the quality assurance manual required by R4-34-102(~~C~~) and (~~D~~) (1) and (2).

B. No change

1. No change

a. No change

b. No change

c. No change

2. No change

a. No change

b. No change

c. No change

d. No change

e. No change

- f. No change
- g. No change

R4-34-703. Drawings and Specifications

- A. A manufacturer of manufactured homes shall submit drawings and specifications that comply with applicable requirements of R4-34-102(C) and (D) (1) and (2).
- B. A manufacturer of factory-built buildings or FBB subassemblies shall submit plans that comply with the codes in R4-34-102(E) (3)(a), (b), (c), (4), and (5). The plans shall provide or have the following information or format attributes:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change

R4-34-704. Alterations or Reconstruction

- A. No change
 - 1. No change
 - 2. No change
 - 3. The retailer or broker shall not prepare manufactured home plans that are not consistent with the manufactured home construction and safety standards prescribed in R4-34-102(C) and (D) (1) and (2).
 - 4. No change
- B. No change
 - 1. No change
 - 2. No change

R4-34-705. Accessory Structures and Ground Anchoring

- A. No change
 - 1. For commercial factory-built buildings, an installer shall comply with the International Building Code when preparing accessory structure plans. For residential single-family residential factory-built buildings, an installer shall comply with the International Residential Code when preparing accessory structure plans.
 - 2. No change
 - 3. No change
- B. No change
 - 1. No change
 - 2. No change

R4-34-706. Factory-Built Building Installation

- A. No change
- B. No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 3. Electrical drawings, including the isometric one-line diagram required by R4-34-102(F) (5), that contain the following information:
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 4. Plumbing drawings, including any one-line diagrams required by R4-34-102(E)(3) (4), that contain the following information:
 - a. No change
 - b. No change
 - c. No change

ARTICLE 8. PERMITS AND INSTALLATION

R4-34-803. Soil and Materials

- A.** A licensee who contracts with the consumer for an installation shall perform or contract for any site preparation necessary to make the site compatible with the manufactured home, mobile home, or residential, single-family factory-built building. The licensee may contract with a licensed installer or other qualified professional to assess site and soil compatibility or perform any necessary preparation work. The party actually performing the site compatibility assessment or work is primarily responsible for work related to site compatibility or preparation. The licensee who contracts with the consumer, if a different entity, is secondarily responsible.
- B.** No change
1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
- C.** No change
1. No change
 2. No change
- D.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 - a. Minimum 3/4-inch thick plywood or 2 two layers of 5/8-inch thick plywood no less than 12 inches wide. The plywood shall be Grade CDX APA Rated Sheeting Exposure 1, PSI-treated for ground contact, conforming to International Building Code Section 2303.1.8 or International Residential Code Section R402.1.2, as applicable under R4-34-102(3)(a) or (b);
 - b. Minimum 2 two-inch nominal thickness wood no less than 12 inches wide, and treated for ground contact, conforming to the International Building Code Section 2303.1.8 or the International Residential Code Section R402.1.2, as applicable under R4-34-102(3)(a) or (b).
 - c. No change
 - d. No change
 6. No change
 7. No change
 8. No change
 9. No change
 10. No change
 11. No change
 12. No change
- E.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
 8. No change
 9. Construct permanent support heights to the International Building Code or the International Residential Code as applicable under R4-34-102(3)(a) or (b).
- F.** No change
1. No change
 2. No change
 3. No change

Notices of Proposed Rulemaking

- 4. No change
- 5. No change
- 6. No change

G. No change

H. No change

- 1. No change
- 2. No change

I. No change

- 1. An installer or contractor shall install factory-built buildings in compliance with applicable standards incorporated by reference in R4-34-102(3)(a), (b), (c), (4), and (5); the International Building Code, International Residential Code, International Mechanical Code, Uniform Plumbing Code as incorporated by reference in 4 A.A.C. 48, and National Electrical Code.
- 2. No change

R4-34-804. Utilities

A. No change

B. Electric – An installer or contractor shall make all electric connections or installations according to the National Electric Code, R4-34-102(~~F~~) (5).

- 1. No change
- 2. No change
 - a. No change
 - b. No change
 - c. No change

C. Sewer – An installer or contractor shall make sewer connections or installations according to the Uniform Plumbing Code, and its appendices, incorporated in R4-34-102(~~E~~)(3) (4).

D. Water – An installer or contractor shall make water connections or installations according to the Uniform Plumbing Code, and its appendices, incorporated in R4-34-102(~~E~~)(3) (4).

E. Gas – An installer or contractor shall make gas connections or installations according to the Uniform Plumbing Code, and its appendices, incorporated by R4-34-102(~~E~~)(3) (4).

- 1. No change
- 2. No change

F. No change

R4-34-805. Accessory Structures

A. For the purpose of A.R.S. § 41-2142(1), the word “attached” means fastened to the manufactured or mobile home; residential single-family; residential, factory-built building; or accessory structure at the time of its installation and removable without degradation of the structural integrity of the unit.

B. An installer or contractor shall install, assemble, or construct each accessory structure in compliance with applicable standards incorporated by reference in R4-34-102(3)(a), (b), (c), (4), and (5); the International Building Code, International Residential Code, International Mechanical Code, Uniform Plumbing as incorporated by reference in 4 A.A.C. 48, and the National Electrical Code or according to the manufacturer’s installation instructions if the instructions are consistent with this Chapter.

C. No change

D. No change

E. No change

- 1. No change
 - a. No change
 - b. Ventilate skirting according to the International Building Code or the International Residential Code, as applicable under R4-34-102(3)(a) or (b), and
 - c. No change
- 2. No change
 - a. No change
 - b. Design and construct the skirting as a retaining wall according to the International Building Code or the International Residential Code, as applicable under R4-34-102(3)(a) or (b).
- 3. No change

NOTICE OF PROPOSED RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 17. DEPARTMENT OF ECONOMIC SECURITY
GENERAL ASSISTANCE PROGRAM

[R07-173]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R6-17-102 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 46-231
Implementing statute: A.R.S. § 46-233
- 3. A list of all previous notices appearing in the register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 12 A.A.C. 2573, July 21, 2006
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Beth Broeker
Address: Department of Economic Security
P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005

or

Department of Economic Security
1789 W. Jefferson, Site Code 837A
Phoenix, AZ 85007

Telephone: (602) 542-6555
Fax: (602) 542-6000
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**
The Department of Economic Security is amending this rule to include a registered nurse practitioner in the definition of "acceptable medical source" for the General Assistance program. This will allow applicants, particularly those who reside in rural areas and do not have access to a licensed physician, to obtain a disability determination verified by a registered nurse practitioner. Under A.R.S. § 32-1601(15)(d)(v), a registered nurse practitioner is a professional nurse who has an expanded scope of practice that includes: "diagnosing, performing diagnostic and therapeutic procedures...".
- 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:**
This rulemaking will allow applicants for General Assistance to obtain verification of the applicant's disability and employability status from a registered nurse practitioner. This will streamline the application process for General Assistance benefits, because under current rules the verification must be provided by a licensed physician. Many rural General Assistance clients obtain their medical care in a health clinic run by registered nurse practitioners and supervised by licensed physicians, who may not be onsite on a regular basis. The Department receives many applications that have been signed by registered nurse practitioners in these clinics, and the Department then has to inform the applicant that the form must be signed by a licensed physician. The applicant then has to return to the clinic to obtain the physician's signature, even though the original diagnosis made by the registered nurse practitioner was correct. The Department does not anticipate that this rulemaking will increase the number of eligible GA applicants. The Department does believe that this rulemaking will save it and its clients valuable time and resources.

Notices of Proposed Rulemaking

As of January 2007, there were 1,331 General Assistance cases, with 1,338 recipients. Total payments equaled \$202,376, with the average payment per case being \$152.05.

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: Beth Broeker
Address: Department of Economic Security
P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005

or

Department of Economic Security
1789 W. Jefferson, Site Code 837A
Phoenix, AZ 85007

Telephone: (602) 542-6555

Fax: (602) 542-6000

10. The time place and nature of the proceedings for the adoption, 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:

The Department does not plan to conduct an oral proceeding on the proposed rules unless a written request for an oral proceeding is submitted to the person named in item 4 within 30 days after this notice is published. The Department will accept written public comment on the rule until the Notice of Final Rulemaking is filed.

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 locations in the rules:

None

13. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

**CHAPTER 17. DEPARTMENT OF ECONOMIC SECURITY
GENERAL ASSISTANCE PROGRAM**

ARTICLE 1. GENERAL ASSISTANCE PROGRAM; PURPOSE AND DEFINITIONS

R6-17-102. Definitions

ARTICLE 1. GENERAL ASSISTANCE PROGRAM; PURPOSE AND DEFINITIONS

R6-17-102. Definitions

The following definitions apply to this Chapter:

1. "Acceptable medical source" means a registered nurse practitioner or a licensed physician, including a medical or osteopathic doctor; licensed psychologist; licensed optometrist; and licensed podiatrist, as applicable for the particular medical impairment.
2. "Administration" means the Family Assistance Administration of the Department.
3. "Adverse action" means any of the following:
 - a. The right to apply for assistance is denied;
 - b. An application for assistance is denied;
 - c. Action to approve or deny an application is not taken within 60 days of the application file date;
 - d. Assistance is terminated or reduced;
 - e. A determination that an overpayment of assistance has been made; or
 - f. A request for a waiver of an overpayment is denied.
4. "AIMBIG" or "Arizona Integrated Manual Benefit Information Guide" means the policies and procedures used to determine an assistance unit's eligibility for General Assistance.
5. "Appeals Board" means the Department's independent, quasi-judicial, administrative appellate body, established under A.R.S. § 23-672, and authorized to review administrative decisions issued by hearing officers as prescribed in A.R.S. § 41-1992(D).

6. "Appellant" means an applicant or recipient who requests a hearing with the Office of Appeals to appeal an adverse action imposed by the Department.
7. "Applicant" means a person who has directly, or through a representative, filed an application for GA with the Department.
8. "Assistance unit" means a group of persons whose needs, income, resources, and other circumstances are considered as a whole for the purpose of determining eligibility and benefit amount.
9. "Available income or resources" means income or resources that are actually available for use by the assistance unit. It includes income or resources in which the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.
10. "CA" or "Cash Assistance" means temporary assistance for needy families paid to a recipient for the purpose of meeting basic living expenses, as defined in A.R.S. § 46-101.
11. "Collateral contact" means an individual, agency, or organization the Department contacts to confirm information provided by the applicant or recipient.
12. "Countable income" means the amount of income of the assistance unit that the Department considers to determine eligibility and compute a benefit amount under R6-17-601.
13. "Day" means a calendar day unless otherwise specified.
14. "Department" means the Arizona Department of Economic Security.
15. "District Medical Consultant" means a licensed physician whom the Department employs to review medical records for the purpose of determining physical or mental incapacity.
16. "EBT" or "Electronic Benefit Transfer" means the electronic disbursement of benefits to eligible recipients.
17. "Equity value" means the fair market value of a resource minus any legal debt owed on the resource.
18. "FAA" or "Family Assistance Administration" means the administration within the Department's Division of Benefits and Medical Eligibility responsible for providing financial and food stamp assistance to eligible persons and determining eligibility for medical assistance.
19. "Fair consideration" means an amount that reasonably represents the fair market value of transferred property.
20. "Fair market value" means the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts.
21. "Federal disability benefits" means SSI and SSDI.
22. "GA" means General Assistance as provided in this Chapter.
23. "GA caretaker" means a GA recipient who is receiving GA as a full-time care provider to a disabled person.
24. "Hearing officer" means an individual appointed by the Department Director under A.R.S. § 41-1992(A) to conduct hearings when an appellant challenges an adverse action.
25. "Homebound" means a person who is confined to the home because of physical or mental incapacity.
26. "Homestead property" means a home owned and occupied by an applicant or recipient, or that is co-owned and occupied by a separated or divorced spouse of an applicant or recipient.
27. "Institution" means a facility such as a hospital or nursing home, but does not include a penal facility.
28. "Income" means earned and unearned income combined.
29. "In-kind income" means the value of goods or services received for work in lieu of the receipt of wages.
30. "Intentional Program Violation (IPV)" means an act committed by an applicant or recipient, for the purpose of establishing or maintaining eligibility for GA or for increasing or preventing a reduction in the amount of assistance, which is intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.
31. "Liquid asset" means cash or another financial instrument that is readily convertible to cash.
32. "Local office" means an FAA office that is designated as the office in which GA applications and other documents are filed with the Department and in which eligibility and benefit amounts are determined.
33. "Lump sum payment" means a single payment such as retroactive monthly benefits, non-recurring pay adjustments or bonuses, inheritances, lottery winnings, or personal injury and workers' compensation awards.
34. "Mailing date," when used in reference to a document sent first class, postage prepaid, through the United States mail, means the date:
 - a. Shown on the postmark;
 - b. Shown on the postage meter mark of the envelope, if there is no postmark; or
 - c. Entered on the document as the date of its completion, if there is no legible postmark or postage meter mark.
35. "Net income" means the assistance unit's total gross income less applicable disregards, which is used to compute the benefit amount.
36. "Notice date" means the date that appears as the official date of issuance on a document or official written notice the Department sends or gives to an applicant or recipient.
37. "Notice of adverse action" means a written notice sent to a recipient when the Department decreases or terminates assistance, as described at R6-17-805.
38. "Office of Appeals" means the Department's independent, quasi-judicial, administrative hearing body, which includes hearing officers appointed under A.R.S. § 41-1992(A).

Notices of Proposed Rulemaking

- 39. "OSI" or "Office of Special Investigations" means the Department office to which FAA refers cases for investigation of certain eligibility information, investigation and preparation of fraud charges, coordination and cooperation with law enforcement agencies, and other similar functions.
- 40. "Overpayment" means a financial assistance payment received by or for an assistance unit that exceeds the amount to which the unit is lawfully entitled.
- 41. "Recipient" means a person, including a GA caretaker, who receives GA benefits.
- 42. "Request for hearing" means a clear written or verbal expression by an applicant or recipient, or such person's representative, indicating a desire to present the case or issue to a higher authority.
- 43. "Resident" means a person who meets the definition of A.R.S. § 46-292(A)(1).
- 44. "Resources" means the assistance unit's real and personal property and liquid assets.
- 45. "Review" means a review of all factors affecting an assistance unit's eligibility and benefit amount.
- 46. "Social Disability" means any non-medical impairments or deficiencies which in combination with a medical disability further serve to limit employability. Non-medical impairments include the following:
 - a. Advanced age;
 - b. Language barriers;
 - c. Lack of education; and
 - d. Lack of employment history.
- 47. "Social Security Disability Insurance (SSDI)" means disability benefits paid pursuant to 42 U.S.C. § 401, et seq.
- 48. "Spendthrift restriction" means a legal restriction on the use of a resource that prevents a payee or beneficiary from spending the resource.
- 49. "Supplemental Security Income (SSI)" means benefits paid pursuant to 42 U.S.C. § 1381, et seq.
- 50. "Suitable work" means work for which a person is reasonably qualified.
- 51. "SVES" means the State Verification and Exchange System, which is a system through which the Department exchanges income and benefit information with the Internal Revenue Service, Social Security Administration, State Wage, and Unemployment Insurance Benefit data files.
- 52. "Underpayment" means a monthly benefit payment that is less than the amount for which the assistance unit is eligible, or the Department's failure to issue a benefit payment when such payment should have been issued.
- 53. "Vendor payment" means a payment that a person or organization who is not a member of an assistance unit makes to a third party to cover assistance unit expenses.
- 54. "Workforce Investment Act" or "WIA" means the program authorized by 29 U.S.C. 2801 *et seq.* that provides a comprehensive workforce investment system whose purpose is to increase financial productivity and reduce welfare dependency. WIA provides workforce investment activities designed to increase employment, employment retention and earnings, occupational skills, and the quality of the workforce. WIA replaces the former "Job Training Partnership Act" (JTPA) programs.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 6. SCHOOL FACILITIES BOARD

[R07-166]

PREAMBLE

1. Sections Affected

- R7-6-258
- R7-6-261
- R7-6-301
- R7-6-502
- R7-6-504
- R7-6-601
- R7-6-758

Rulemaking Action

- Amend
- Amend
- Amend
- Amend
- Amend
- Amend
- 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. § 41-1003

Implementing statute: A.R.S. §§ 15-2011(F); 15-2041(A), (C), (D), (E), (F), (J); 15-2002(A)

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 1710, May 19, 2006

Notice of Rulemaking Docket Opening: 13 A.A.R. 1987, June 8, 2007 (*in this issue*)

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

Name: Monica Petersen, Deputy Director of Finance
School Facilities Board

Address: 1700 W. Washington, Ste. 230
Phoenix, AZ 85007

Telephone: (602) 364-0283

Fax: (602) 542-6529

E-mail: mpetersen@azsfb.gov

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

In 2005, the School Facilities Board was required to conduct a Five-Year-Rule Review and submit the results of that review to the Governor's Rule Regulatory Review Council. This proposed rulemaking implements actions found and reported by the School Facilities Board in the course of the Five-Year-Rule Review and contained within the report submitted to the Governor's Rule Regulatory Review Council, June 9, 2005. The proposed rules fix grammatical mistakes regarding the number of square feet required for administrative space in school district facilities as well as at the Arizona School for the Deaf and Blind to meet minimum adequacy standards; changes the payback period for energy saving measures from eight to 10 years; eliminates the computation methodology for expansion of core facilities since the School Facilities Board no longer funds core facilities; clarifies that the Board makes a determination on a school site rather than on square footage with respect to considering input from a military airport on school site selection; clarifies that a school district's acceptance of a project is indicated by its acceptance of the Terms and Conditions; clarifies that donations for land will be distributed at the start of construction which reflects Board practice rather than upon notification from the district to the Board that the land donation has been accepted by the district; reduces the percentage of a new construction project budget that will be set aside for contingency from five percent to three percent to reflect current practice. Other rule changes amend language to clarify meanings or correct grammar.

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:

The rule does not diminish a previous grant of authority of a political subdivision of this state.

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

The amended rules do not create a significant economic, small business, and consumer impact. The amended language clarify actual practice of the School Facilities Board and staff or they correct grammatical errors, but do not significantly change the economic impact to small business and consumers. The proposed rule that reduces the percentage of a new construction project budget that will be set aside for contingency from five percent to three percent reflects the practice that has been in place by the School Facilities Board for several years, so it will have no new fiscal impact. The contingency amount may not be used on a project unless unforeseen circumstances arise. The operational change from five to three percent allowed the additional two percent to be used on the project's cost. The proposed rule to change the payback period for energy saving measures from eight to 10 years has an unknown fiscal impact.

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: Monica Petersen, Deputy Director of Finance
School Facilities Board

Address: 1700 W. Washington, Ste. 230
Phoenix, AZ 85007

Telephone: (602) 364-0283

Fax: (602) 542-6529

E-mail: mpetersen@azsfb.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 rule:

Notices of Proposed Rulemaking

No proceedings are currently scheduled.

Persons requesting an oral proceeding may contact Monica Petersen at the School Facilities Board within 30 days of the date this notice of proposed rulemaking is published. When requesting an oral proceeding a person shall state the purpose of the proceeding in a written request, delivered to:

Arizona School Facilities Board
Monica Petersen, Deputy Director of Finance
Attention: 5-Year-Rule Adjustments
1700 W. Washington, Ste. 230
Phoenix, AZ 85007

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:

There are no incorporations by reference in the Proposed Rulemaking.

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 6. SCHOOL FACILITIES BOARD

ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES

Section

R7-6-258. Administrative Space
R7-6-261. Energy Saving Measures

ARTICLE 3. SQUARE FOOTAGE CALCULATIONS

Section

R7-6-301. Square Footage Calculations

ARTICLE 5. NEW SCHOOL AND LAND FUNDING

Section

R7-6-502. Funding for New Schools or Additional Square Footage
R7-6-504. Donations of Real Property

ARTICLE 6. CONTINGENCY FUNDS

Section

R7-6-601. Allocation and Use of Contingency ~~Funds~~ ~~Monies~~

ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE ARIZONA STATE SCHOOLS FOR THE DEAF AND BLIND

Section

R7-6-758. Administrative Space

ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES

R7-6-258. Administrative Space

- A. No change
- B. No change
- C. A school facility shall have work space available to the faculty. This space is in addition to any work area available to a teacher, that is in or near a classroom. The work space shall be one ~~one~~ square foot per student with a ~~maximum~~ minimum of 150 square feet and a maximum of 800 square feet is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.

R7-6-261. Energy Saving Measures

New school facility construction and, as required, building renovations in existing schools, shall include, where reasonable, energy conservation upgrades that will provide dollar savings in excess of the cost of the upgrade within ~~eight~~ 10 years of the installation.

ARTICLE 3. SQUARE FOOTAGE CALCULATIONS

R7-6-301. Square Footage Calculations

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. ~~The method of computing the funding and square footage for any expansion of a core facility previously funded by the School Facilities Board shall follow the same method that was used for computing the original core facility.~~

ARTICLE 5. NEW SCHOOL AND LAND FUNDING

R7-6-502. Funding for New Schools or Additional Square Footage

- A. No change
- B. ~~If the proposed new school facilities are located in territory in the vicinity of a military airport as defined in A.R.S. § 28-8461, the Board shall provide notice to the military airport of the request for public comment about the proposed new school facility construction and. The Board shall also seek the military airport's comments and analysis concerning compatibility of the proposed school facilities with the high noise or accident potential generated by military airport operations that may have an adverse effect on public health and safety. The Board shall consider and analyze the comments and analysis provided by the military airport prior to making a final determination to fund the new square footage site.~~
- C. No change
- D. A school district that is approved project funding for additional square footage shall ~~have within~~ within 60 days from the date of ~~notification to the Board's approval~~ officially accept, in writing through a signed Terms and Conditions, the project funding for the square footage approved by the Board or the project approval and funding shall expire ~~expire~~. For projects of \$500,000 or more, after a school district has accepted a project in writing and has signed the Terms and Conditions for new school funding, the Board shall provide allocate five percent of the project monies approved for architectural and engineering fees, ~~for projects of \$500,000 or more. The individual school district shall be responsible for establishing the actual A and E architect and engineering fees amount.~~
- E. A school district that receives a project approval and associated funding for additional square footage from the Board shall ~~develop proceed with the design development plan and design~~ specifications for the project. The school district shall submit to Board staff two copies of the proposed educational goals or specifications and schematic design, with budget estimates, ~~are required to be submitted to the Board's staff. The school district items required to be included shall include~~ in the estimated budget are all costs elements of new construction, excluding land acquisition. After Board staff review, the school district shall prepare a preliminary bid package. These elements Costs of new construction include, but are not limited to:
 1. Architectural and engineering fees;
 2. Costs for survey, testing, permits, advertising, and printing;
 3. Construction costs;
 4. Furniture, fixtures, and equipment costs;
 5. Any necessary project management costs; and
 6. A ~~five~~ three percent contingency amount.~~After Board staff review, the school district shall proceed with a preliminary bid package.~~
- F. If the school district includes reasonable upgrades to the new construction project for energy conservation purposes, the Board shall provide funding ~~upgrades~~ above the formula-based award to cover the full amount of the upgrade. Upgrades will only be funded if the upgrade receives ~~pre~~ approval by the Board staff prior to construction and the school district architect or engineer certifies that the upgrade will provide dollar savings in excess of the cost of the upgrade within ~~an~~ eight a 10-year period.
- G. Upon review of the submitted ~~schematic design construction documents~~, budget estimates and ~~preliminary final~~ bid package, the Board's staff shall make a recommendation ~~to the Board~~ regarding the appropriateness of the school district to proceed with the additional square footage and the efficiency and effectiveness of the plan. The staff recommendation shall be based on the following: 1. whether the project is within the original scope and Board-approved budget (including square footage and number of students), 2. the project meets the building adequacy standards, 3. initial comments from the local building authority, and 4. whether revised student population projections continue to justify the additional square footage. If the Board approves the project, the school district shall be authorized to proceed with the final bid package. Prior to authorization to contract, the school district shall document that it has obtained local (city, county or equivalent) building department approval. For projects outside of the original scope ~~and/or~~ Board-approved budget or that do not meet the minimum adequacy guidelines, the Board may instruct the school district to resubmit the project, or the Board may make an alternative decision. The school district may use local ~~Local~~ funds ~~may be used by the school district~~ in conjunction with the Board-approved funding.

Notices of Proposed Rulemaking

- H. Upon receipt of bids by the school district, the Executive Director shall authorize the district to proceed with the contract if the school district has documented that it has obtained local (city, county, or equivalent) building department approval, and the bid is within the original scope and Board-approved budget, and meets the building adequacy standards. The Executive Director may make an alternative recommendation to the ~~full~~ Board.
- I. The Board-approved funding for additional square footage shall be available to the school district for one year from the date of notification. The bid process shall be completed within the one year period. The Board shall consider requests for an extension beyond the one year and may grant an extension for good reason.
- J. No change

R7-6-504. Donations of Real Property

- A. No change
- B. No change
- C. No change
- D. If the Board approves the district request to accept the donation, the Board staff shall notify the district. The Board's staff shall distribute ~~distribution of~~ 20 percent of the value of the accepted donation pursuant to A.R.S. § 15-2041 ~~shall be awarded to the school district upon notification to the Board that the donation has been accepted by the district at the start of construction.~~ The district shall submit documentation of its governing board action and documentation that the property title has been transferred to the district. ~~Upon receipt of this documentation Board staff shall be authorized to distribute the approved 20 percent amount.~~
- E. No change
- F. No change
- G. No change
- H. No change

ARTICLE 6. CONTINGENCY FUNDS

R7-6-601. Allocation and Use of Contingency Funds Monies

- A. A sum equal to a percentage of the construction bid shall be set aside as a contingency fund to cover the cost of unknown conditions that could arise during construction. The School Facilities Board shall set aside an amount equal to ~~five~~ three percent of the base cost for new construction ~~to cover the cost of unknown conditions that could arise during construction, and ten percent of the base cost for renovation of a structure or system replacement to cover these potential costs.~~ Contingency funds are not part of the construction budget and shall not be ~~are to be used unless~~ only if needed. ~~For deficiency corrections projects, any contingency funds which are not used shall be returned to the deficiency corrections fund. For projects funded by the new school facilities fund, any contingency funds which that are not used may be used by the school district in accordance with A.R.S. § 15-2041.~~
- B. No change
- C. No change
- D. The following conditions apply to the use of all contingency funds monies allocated to a specific project approved by the School Facilities Board.
 - 1. If the district wishes to issue change orders that do not comply with this subsection ~~these rules~~, the associated costs shall be:
 - a. accounted for separately,
 - b. ~~and~~ not considered part of the approved project, and
 - c. ~~In other words, they would need to be paid out of separate monies and would not be considered part of the approved project, even though they might be if included in the same basic contract. These costs would be paid for using local funds.~~
 - ~~1-2.~~ The school district may use contingency funds monies only to cover change orders that are to correct unknown conditions.
 - ~~2-3.~~ A school district shall not use contingency funds ~~may not be used~~ to cover change orders for the other two types of situations discussed in subsection (B) ~~above where:~~ a. the district has determined to change the scope of work during construction by adding components as discussed under subsection (B)(2); or b. a change is required to correct a discrepancy created by the architect that could be considered an error or omission by the architect as discussed under subsection (B)(3).
 - 3. ~~For deficiency correction projects performed pursuant to A.R.S. § 15-2021 only, the Executive Director shall have the discretion to authorize the use of contingency funds for expansion of scope, to accommodate low budget estimates, and for all other project related costs.~~
 - 4. Contingency funds monies shall not be used to pay for "bid add alternates." These items are not part of the final approved project.
- E. ~~A school district whose deficiency correction projects are combined with the deficiency correction projects of one or more additional school districts pursuant to R7-6-401 shall have the contingency amount included as a percentage of the overall~~

set of projects that have been grouped together for such purposes. The Executive Director shall have the discretion to use, transfer, and/or combine the contingency amounts for any projects within such a group to any other project within the group of projects. The Executive Director's sections adjustment authority pursuant to R7-6-401 shall be considered as a percentage or sum of the overall group of projects.

~~F.E.~~ The Board may modify or waive the requirements of this ~~section~~ Section for good cause.

**ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE
ARIZONA STATE SCHOOLS FOR THE DEAF AND BLIND**

R7-6-758. Administrative Space

- A. No change
- B. No change
- C. A school facility shall have work space available to the faculty. This space is in addition to any work area available to a teacher, in or near a classroom. One square foot per student with a ~~maximum~~ minimum of 150 square feet and a maximum of 800 square feet is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.
- D. No change

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 5. DEPARTMENT OF HEALTH SERVICES
CHILD CARE FACILITIES**

[R07-170]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R9-5-101 | Amend |
| R9-5-301 | Amend |
| R9-5-303 | Amend |
| R9-5-310 | New Section |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 36-104(3) and 36-136(F)
Implementing statutes: A.R.S. § 36-898
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 12 A.A.R. 4105, November 3, 2006
Notice of Rulemaking Docket Opening: 13 A.A.R. 1988, June 8, 2007 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Lourdes B. Ochoa, State Licensing Manager |
| Address: | Arizona Department of Health Services
Division of Licensing Services
Office of Child Care Licensing
150 N. 18th Ave., Ste. 400
Phoenix, AZ 85007 |
| Telephone: | (602) 364-2539 |
| Fax: | (602) 364-4768 |
| E-mail: | ochoal@azdhs.gov |
| or | |
| Name: | Kathleen Phillips, Rules Administrator and Administrative Counsel |
| Address: | Arizona Department of Health Services |

Notices of Proposed Rulemaking

Office of Administrative Rules and Counsel
1740 W. Adams, Ste. 200
Phoenix, AZ 85007

Telephone: (602) 542-1264
Fax: (602) 364-1150
E-mail: phillik@azdhs.gov

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

Laws 2006, Ch. 390, § 2 created A.R.S. § 36-898, which requires the Arizona Department of Health Services (Department) to adopt a policy to provide parents, guardians, children, and personnel with at least 48-hours' notice before pesticides are applied to a licensed child care facility. The Department is amending the Child Care Facilities licensing rules to include a policy that is consistent with A.R.S. § 36-898.

The Department is deleting unnecessary and obsolete provisions and reorganizing the Child Care Facilities licensing rules to make the rules more clear, concise, and understandable to the reader.

Changes 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 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:

The Department did not review or rely on any study related to 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 rules for Child Care Facilities apply to the approximately 2,222 child care facilities currently licensed by the Department.

In this preliminary economic impact summary, "minimal" means less than \$1,000; "moderate" means \$1,000 to \$10,000; "substantial" means greater than \$10,000; and "significant" means meaningful or important, but not readily subject to quantification.

Cost Bearers

- The Department will incur a minimal cost from the rulemaking process, a minimal-to-moderate cost in notifying licensees of the changes to the rules, and a significant cost for inspecting facilities for the additional rule requirements.
- A licensee will incur a minimal cost implementing the new rules and a minimal cost for posting the notification of pesticide application.
- A parent may incur a minimal cost if a licensee passes on the cost to implement the rules to the parent.

Beneficiaries

- A child, a parent, or an employee that may be affected by a pesticide application. The notice allows a child, a parent, or an employee to make alternative arrangements to prevent from being affected by the pesticide application.

The Department does not believe that any other persons will be impacted by the changes in this rulemaking.

The Department has determined that the benefits outweigh the costs associated with this rulemaking.

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

Name: Lourdes B. Ochoa, State Licensing Manager
Address: Arizona Department of Health Services
Division of Licensing Services
Office of Child Care Licensing
150 N. 18th Ave., Ste. 400
Phoenix, AZ 85007
Telephone: (602) 364-2539
Fax: (602) 364-4768

Notices of Proposed Rulemaking

E-mail: ochoal@azdhs.gov
or
Name: Kathleen Phillips, Rules Administrator and Administrative Counsel
Address: Arizona Department of Health Services
Office of Administrative Rules and Counsel
1740 W. Adams, Ste. 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 rules, 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: July 10, 2007
Time: 9:00 a.m.
Location: 150 N. 18th Ave., Rm. 415C,
Phoenix, AZ 85007

A person may submit written comments on the proposed rules until the close of record at 5:00 p.m. on July 10, 2007, to either of the individuals listed in items #4 and #9.

A person with a disability may request a reasonable accommodation by contacting Thomas Salow at (602) 364-1935 or salowt@azdhs.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

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:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 5. DEPARTMENT OF HEALTH SERVICES
CHILD CARE FACILITIES**

ARTICLE 1. GENERAL

Section
R9-5-101. Definitions

ARTICLE 3. FACILITY ADMINISTRATION

Section
R9-5-301. General Licensee Responsibilities
R9-5-303. Posting of Notices
R9-5-310. Pesticides

ARTICLE 1. GENERAL

R9-5-101. Definitions

No change

1. No change
2. No change
 - a. No change
 - b. No change
 - c. No change
3. No change

4. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
 - a. No change
 - b. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
25. No change
26. No change
27. No change
 - a. No change
 - b. No change
 - c. No change
28. No change
29. No change
30. No change
31. No change
32. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
33. No change
34. No change
35. No change
36. No change
37. No change
38. No change

- a. No change
- b. No change
- c. No change
- d. No change
- 39. No change
- 40. No change
- 41. No change
- 42. No change
- 43. No change
- 44. No change
- 45. No change
- 46. No change
- 47. No change
 - a. No change
 - b. No change
- 48. No change
 - a. No change
 - b. No change
- 49. No change
- 50. No change
- 51. No change
- 52. No change
- 53. No change
- 54. No change
- 55. No change
- 56. No change
 - a. No change
 - b. No change
 - c. No change
- 57. No change
- 58. No change
- 59. No change
 - a. No change
 - b. No change
- 60. No change
- 61. No change
- 62. No change
 - a. No change
 - b. No change
 - c. No change
- 63. No change
- 64. No change
- 65. "Licensed applicator" has the same meaning as in A.R.S. § 32-2301.
- ~~65-66.~~No change
- ~~66-67.~~No change
- ~~67-68.~~No change
- ~~68-69.~~No change
- 70. "Material safety data sheet" means the information provided by a pesticide manufacturer describing chemical qualities, hazards, safety precautions, and emergency procedures to be followed in case of a spill, fire, or other emergency.
- ~~69-71.~~No change
- ~~70-72.~~No change
 - a. No change
 - b. No change
- ~~71-73.~~No change
- ~~72-74.~~No change
- ~~73-75.~~No change
- ~~74-76.~~No change
- ~~75-77.~~No change
- ~~76-78.~~No change

- a. No change
- b. No change
- ~~77-79.~~No change
- ~~78-80.~~No change
- ~~79-81.~~No change
 - a. No change
 - b. No change
 - c. No change
- ~~80-82.~~No change
- ~~81-83.~~No change
- ~~82-84.~~No change
 - a. No change
 - b. No change
- ~~83-85.~~No change
- 86. "Pesticide" has the same meaning as in A.R.S. § 32-2301.
- 87. "Pesticide label" means the written, printed, or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container.
- ~~84-88.~~No change
- ~~85-89.~~No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
- ~~86-90.~~No change
 - a. No change
 - b. No change
- ~~87-91.~~No change
- ~~88-92.~~No change
- ~~89-93.~~No change
- ~~90-94.~~No change
- ~~91-95.~~No change
- ~~92-96.~~No change
- ~~93-97.~~No change
- ~~94-98.~~No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
- ~~95-99.~~No change
- ~~96-100.~~No change
 - a. No change
 - b. No change
- ~~97-101.~~No change
- ~~98-102.~~No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
- ~~99-103.~~No change
- ~~100-104.~~No change
- ~~101-105.~~No change
- ~~102-106.~~No change
- ~~103-107.~~No change

- a. No change
- b. No change
- c. No change
- d. No change
- e. No change
- f. No change
- ~~104.108.~~No change
- ~~105.109.~~No change
- ~~106.110.~~No change
- ~~107.111.~~No change
- ~~108.112.~~No change
- ~~109.113.~~No change
- ~~110.114.~~No change
 - a. No change
 - b. No change
- ~~111.115.~~No change
- ~~112.116.~~No change
- ~~113.117.~~No change
- ~~114.118.~~No change

ARTICLE 3. FACILITY ADMINISTRATION

R9-5-301. General Licensee Responsibilities

- ~~A.~~ A licensee is responsible for the compliance of a facility with A.R.S. § 36-881 et seq. and these rules. The A licensee shall designate a facility director who acts on behalf of the licensee and is responsible for the daily ~~on-site~~ onsite operation of a facility.
 - ~~B.~~ A licensee shall ensure that ~~a facility director:~~
 - 1. ~~A facility director~~ Designates ~~designates~~ in writing, an individual to act on behalf of the facility director when the facility director is not present in the facility ~~and that:~~
 - 2. ~~the~~ The individual designated in subsection (B)(1):
 - ~~a.~~ has ~~Has~~ access to all records necessary for performance of the facility director's duties;
 - ~~a.b.~~ The individual shall be is 21 years of age or older, and ~~provide~~
 - ~~c.~~ Provides documentation of any of the following:
 - i. High school or high school equivalency diploma and six credit hours or more in early childhood, child development, or closely related field ~~in~~ from an accredited college or university, or 30 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in the areas of early childhood, child development, or closely related field, and 12 months or more of child care experience;
 - ii. N.A.C., C.D.A., C.C.P., or C.P.C. credential and at least 12 months of child care experience;
 - iii. A minimum of 24 credit hours from an accredited college or university, including at least six credit hours of course work in the areas of early childhood, child development, or closely related field, and 12 months of child care experience;
 - iv. Associate degree from an accredited college or university in the areas of early childhood, child development, or closely related field, and six months of child care experience; or
 - v. Bachelor degree from an accredited college or university in the areas of early childhood, child development, or closely related field, and 3 months of child care experience.
 - ~~b.~~ ~~A licensee has 12 months from the effective date of these rules to comply with this requirement.~~
 - ~~2.3.~~ Supervises ~~A facility director~~ supervises or assigns a teacher-caregiver to supervise each staff member that does not meet the qualifications of R9-5-401(2) and each student-aide; ~~and~~
 - ~~3.4.~~ Prepares ~~A facility director~~ prepares a dated attendance record for each day and ensures that each staff member records on the attendance record the time of each arrival and departure of the staff member.
- ~~B.C.~~ A licensee shall develop and implement written facility policies and procedures required for the daily ~~on-site~~ onsite operation of the facility as prescribed in A.R.S. § 36-881 et seq. and these rules.
- ~~C.D.~~ A licensee shall ensure that ~~parents are~~ a parent is informed ~~that they have:~~
 - 1. That the parent:
 - ~~a.~~ Has access to all areas of a facility where child care services are provided during hours of operation, ~~and that par-~~
~~ents are~~
 - ~~b.~~ Is permitted to participate in any child care activity- that the parent's child is participating in; and
 - 2. Of the procedures for notifying a parent at least 48 hours before a pesticide is applied on a facility's premises.

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~~D.E.~~ A licensee shall ensure that the following individuals are allowed immediate access to facility premises during hours of operation:

1. A parent or an individual designated in writing by the parent; or
2. A representative of:
 - a. The Department,
 - b. Local health department,
 - c. Child Protective Services, or
 - d. Local fire department or State Fire Marshal.

~~E.F.~~ A licensee shall, with the exception of individuals listed in subsection ~~(D)~~ ~~(E)~~, ensure that a staff member accompany and monitor any individual not registered with the Department, as prescribed by A.R.S. § 36-883.02, who is on facility premises to provide repair, maintenance, supplemental education, or other services where children are present.

~~F.G.~~ A licensee shall ensure that each staff member and individual who is a resident at the facility submits one of the following documents provided by a health care provider as evidence of current freedom from pulmonary tuberculosis:

1. A report of a negative Mantoux skin test administered to a resident at the facility or to a staff member no later than 12 hours after the starting date of employment; or
2. A physician's written statement that the staff member or the individual who is a resident in the facility is currently free from tuberculosis.

~~G.H.~~ If an enrolled child has an accident, injury, or emergency that requires medical treatment by a health care provider while attending a facility, the licensee shall ensure that a staff member:

1. Notifies the child's parent immediately after the accident, injury, or emergency;
2. Documents the date, time, and location of the child's accident, injury, or emergency, the method used to notify the parent, and the time the parent was notified; and
3. Maintains documentation of the accident, injury, or emergency on facility premises in a file that is separate from the current Emergency, Information, and Immunization card for 24 months from the date of the child's disenrollment.

~~H.I.~~ A licensee shall ensure that at least one staff member who has current training in first aid and at least one staff member who has current training in CPR, as required by R9-5-403(E), is present at all times on facility premises, on field trips or while transporting enrolled children in a facility's motor vehicle or a vehicle designated by the licensee to transport children. This requirement may be met by a single staff member who has current training in both first aid and CPR.

~~I.J.~~ A licensee shall prohibit the use or possession of the following items when an enrolled child is on facility premises, during hours of operation, or in any motor vehicle when used by the licensee for transportation of enrolled children:

1. Any beverage containing alcohol;
2. A controlled substance as listed in A.R.S. Title 36, Chapter 27, Article 2;
3. A dangerous drug as ~~listed~~ defined in A.R.S. § 13-3401~~(6)~~;
4. A prescription medication as defined in A.R.S. § 32-1901~~(63)~~ except where used in the manner prescribed; or
5. A firearm as defined ~~by~~ in A.R.S. § 13-105~~(17)~~.

~~J.K.~~ At least once ~~every 30 days~~ a month, and at different times of the day, a licensee shall ensure that an unannounced fire evacuation drill is conducted that includes each staff member and child at the facility.

1. If child care services for a child with special needs are provided at a facility, the licensee shall provide for the child's participation in each fire evacuation drill in accordance with the child's individualized plan as specified in R9-5-507(A)(1).
2. A licensee shall keep a written record of each fire evacuation drill on facility premises for 12 months from the date of the drill.

~~K.L.~~ A licensee shall ensure that a written performance evaluation of each staff member is conducted every 12 months from the date of employment.

R9-5-303. Posting of Notices

A. A licensee shall designate a wall area or notice board inside the facility's entrance, in a place that can be conspicuously viewed by individuals entering or leaving the facility, for the posting of the:

1. Current license;
2. Name of the facility director;
3. Name of the individual designated ~~as prescribed by R9-5-301(A)(1)~~ to act on behalf of the facility director when the facility director is not present in the facility, ~~as prescribed by R9-5-301(B)(1)~~;
4. Schedule of child care services fees and policy for the refund of fees as prescribed by A.R.S. § 36-882(K);
5. Breakfast, lunch, dinner, and snack menus for each calendar week at the beginning of the calendar week;
6. Notice of the presence of any communicable disease or infestation ~~described in R9-6-202(C)~~ listed in 9 A.A.C. 6, Article 2, Table 2, from the date of discovery through the incubation period of the communicable disease or infestation;
7. Notice of denial, revocation, or suspension as prescribed by A.R.S. § 36-888;
8. Notice of an intermediate sanction imposed as prescribed by A.R.S. § 36-891.01;

- 9. Notice of legal injunction imposed as prescribed by A.R.S. § 36-886.01; and
- 10. Notice of the availability of facility inspection reports for public viewing.
- B.** A licensee shall ensure that the licensed capacity of each activity area or room is posted in that activity area ~~or room~~.
- C.** A licensee shall post a notification of pesticide application in each activity area and in each entrance of a facility, at least 48 hours before a pesticide is applied on the facility's premises, containing:
 - 1. The date and time of the pesticide application, and
 - 2. A statement that written pesticide information is available from the licensee upon request.
- D.** A licensee is exempt from the provisions in subsections (C) and (D), as prescribed by A.R.S. § 36-898(C).

R9-5-310. Pesticides

- A.** A licensee shall make written pesticide information available to a parent, upon a parent's request, at least 48 hours before a pesticide application occurs on a facility's premises, containing:
 - 1. The brand name, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide;
 - 2. The date and time of the pesticide application;
 - 3. The pesticide label and the material safety data sheet; and
 - 4. The name and telephone number of the pesticide business licensee and the name of the licensed applicator.
- B.** A licensee is exempt from the provisions in subsection (A), as prescribed by A.R.S. § 36-898(C).

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 23. DEPARTMENT OF HEALTH SERVICES

ORAL HEALTH

[R07-168]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 1 | New Article |
| R9-23-101 | New Section |
| Article 2 | New Article |
| R9-23-201 | New Section |
| R9-23-202 | New Section |
| R9-23-203 | New Section |
| Article 3 | New Article |
| R9-23-301 | New Section |
| R9-23-302 | New Section |
| R9-23-303 | New Section |
| R9-23-304 | 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. §§ 36-136(A)(7) and 36-136(F)
 - Implementing statute: A.R.S. §§ 36-104(1)(c), 36-132(A)(10), and 36-138
 - 3. A list of all previous notices appearing in the Register addressing the proposed rules:**
 - Notice of Rulemaking Docket Opening: 13 A.A.R. 42, January 5, 2007
 - Notice of Expiration of Rules under A.R.S. § 41-1056(E): 13 A.A.R. 121, January 12, 2007
 - Notice of Rulemaking Docket Opening: 13 A.A.R. 793, March 9, 2007
 - 4. The name and address of the agency personnel with whom persons may communicate regarding the rulemaking:**
 - Name: Joyce Flieger, Office Chief
Office of Oral Health
 - Address: Department of Health Services
1740 W. Adams St., Ste. 205
Phoenix, AZ 85007

Notices of Proposed Rulemaking

Telephone: (602) 542-1866
Fax: (602) 542-2936
E-mail: fliegej@azdhs.gov

or

Name: Kathleen Phillips, Rules Administrator and Administrative Counsel
Address: Arizona Department of Health Services
Office of Administrative Rules and Counsel
1740 W. Adams, Ste. 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 reason for initiating the rules:

A.R.S. § 36-104(1)(c)(i) requires the Arizona Department of Health Services (Department) to administer community health services, including preventive dental care. A.R.S. § 36-132(A)(10) requires the Department to encourage, administer, and provide dental health care services, and to help coordinate local dental public health programs, in cooperation with the Arizona Dental Association. A.R.S. § 36-138 establishes the oral health fund consisting of money received by the Department as reimbursement from the Arizona Health Care Cost Containment System (AHCCCS) for dental services provided by the Department.

The Department is making oral health program rules at Title 9, Chapter 23, Articles 1 through 3 of the *Arizona Administrative Code*. Article 1 will contain definitions for the Department's oral health programs. Article 2 will contain the rules for the Arizona Dental Sealant Program. Article 3 will contain the rules for the Arizona Fluoride Mouthrinse Program. The rules will conform to current statutory authority, rulemaking format and style requirements, industry practice, and Department policy.

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:

The Department did not review any study and does not propose to rely on or not to rely on any study during this rule-making.

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 summary of the economic, small business, and consumer impact:

As authorized under A.R.S. §§ 36-104(1)(c)(i), 36-132(A)(10), and 36-138, the Department administers dental sealant and fluoride mouthrinse programs for some Arizona schoolchildren through participating schools. The Department is making rules for these oral health programs at 9 A.A.C. 23, Articles 1 through 3.

Currently, the Department is providing oral health services to Arizona's low-income school children by managing and funding the Arizona Dental Sealant Program and the Arizona Fluoride Mouthrinse Program. For the Arizona Dental Sealant Program, the Department contracts with county health departments and other entities to arrange for licensed dentists and dental hygienists to provide dental sealants and dental screenings at participating schools. The Arizona Fluoride Mouthrinse Program is a school-based program that supplies participating schools with fluoride mouthrinse for its students. For the Arizona Fluoride Mouthrinse Program, the Department purchases the fluoride mouthrinse and sends it to the participating schools.

In the 2005-2006 school year, the Department's Arizona Dental Sealant Program provided an estimated 8,461 children with dental sealants at 160 participating schools and the Department's Arizona Fluoride Mouthrinse Program provided approximately 20,875 children with fluoride mouthrinse at 85 participating schools. Under A.R.S. § 36-138, the Department receives reimbursement from AHCCCS for AHCCCS enrolled children that have dental sealants applied to their teeth. The Department receives approximately \$25.00 per tooth in AHCCCS reimbursement monies. On average, a participating child has three teeth sealed. In the 2005-2006 school year, 3,208 of the 8,461 children who received sealants were AHCCCS enrolled children. The Department was reimbursed \$240,000.00 by AHCCCS for an estimated 9,624 teeth sealed on AHCCCS enrolled children participating in the Arizona Dental Sealant Program. The AHCCCS reimbursement monies are used to sustain, maintain, and expand the Arizona Dental Sealant Program by paying for personnel for data entry, purchasing new equipment, maintaining equipment, and expanding the reach of the Arizona Dental Sealant Program to new areas and more schools.

Notices of Proposed Rulemaking

The proposed rules are consistent with the Department's current application process for approval in the Arizona Dental Sealant Program and the Arizona Fluoride Mouthrinse Program. Therefore, the Department believes that the proposed rules will impose a minimal burden on the following groups: county health departments contracted with the Department for the Arizona Dental Sealant Program, schools participating in the Arizona Dental Sealant Program, and schools participating in the Arizona Fluoride Mouthrinse Program, and the Department. These groups will benefit from clear, concise, and understandable rules for the Arizona Dental Sealant Program and the Arizona Fluoride Mouthrinse Program. Children receiving dental sealants or fluoride mouthrinse through the programs will continue to benefit from better oral health as a result of tooth decay prevention. The parents of these children, participating schools, the general public, and the state's health care system will continue to benefit from healthier Arizona children. The benefits from the rules outweigh the costs.

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: Joyce Flieger, Office Chief
Office of Oral Health

Address: Department of Health Services
1740 W. Adams St., Ste. 205
Phoenix, AZ 85007

Telephone: (602) 542-1866

Fax: (602) 542-2936

E-mail: fliegej@azdhs.gov

or

Name: Kathleen Phillips, Rules Administrator and Administrative Counsel

Address: Arizona Department of Health Services
Office of Administrative Rules and Counsel
1740 W. Adams, Ste. 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:

Date: July 10, 2007

Time: 9:00 a.m.

Location: Department of Health Services
1740 W. Adams St., Rm. 204
Phoenix, AZ 85007

A person may submit written comments on the proposed rules to either individual listed in items #4 or #9 until the close of record at 4:00 p.m., July 10, 2007. Persons with a disability may request reasonable accommodation by contacting Maria Herbert at herberm@azdhs.gov or (602) 364-0912. Requests should be made as early as possible to allow sufficient time to arrange for 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. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 23. DEPARTMENT OF HEALTH SERVICES

ORAL HEALTH

ARTICLE 1. ~~EXPIRED~~ GENERAL PROVISIONS

Section

R9-23-101. ~~Expired~~ Definitions

ARTICLE 2. ~~EXPIRED~~ ARIZONA DENTAL SEALANT PROGRAM

Section

R9-23-201. ~~Expired~~ Application Process

R9-23-202. ~~Expired~~ Approval Criteria for Participation

R9-23-203. ~~Expired~~ Participation Requirements

ARTICLE 3. ~~EXPIRED~~ ARIZONA FLUORIDE MOUTHRINSE PROGRAM

Section

R9-23-301. ~~Expired~~ Application Process

R9-23-302. ~~Expired~~ Approval Criteria for Participation

R9-23-303. ~~Expired~~ Participation Requirements

R9-23-304. ~~Expired~~ Continuing Participation

ARTICLE 1. ~~EXPIRED~~ GENERAL PROVISIONS

R9-23-101. ~~Expired~~ Definitions

In this Chapter, unless the context otherwise requires:

1. "Child" means an individual who is:
 - a. 18 years of age or less, or
 - b. More than 18 years of age and attending school.
2. "Contact person" means an individual in charge of an oral health program at a school.
3. "Department" means the Arizona Department of Health Services.
4. "National School Lunch Program" means the federally funded assisted meal program as established under 42 U.S.C. 1751 to 42 U.S.C. 1769h.
5. "Optimally fluoridated" means the level of fluoride in water recommended by the Centers for Disease Control and Prevention to prevent tooth decay.
6. "Parent" has the same meaning as in A.R.S. § 15-101(14).
7. "School" has the same meaning as in A.R.S. § 36-671.
8. "School year" means the period between July 1 and the following June 30.

ARTICLE 2. ~~EXPIRED~~ ARIZONA DENTAL SEALANT PROGRAM

R9-23-201. ~~Expired~~ Application Process

A. For a school to participate in the Arizona Dental Sealant Program, a contact person shall submit a completed application form provided by the Department to the Department that contains:

1. The contact person's name, title, telephone number, fax number, and if applicable, e-mail address;
2. The school's name, street address, and telephone number;
3. The school's mailing address if different than the school's street address;
4. The name of the school district and county where the school is located;
5. The percentage of children attending the school that participated in the National School Lunch Program during the current school year; and
6. The number of children attending second and sixth grades.

B. The Department accepts applications beginning on April 1 for the next school year.

R9-23-202. ~~Expired~~ Approval Criteria for Participation

The Department uses the following criteria when determining whether to approve a school for participation in the Arizona Dental Sealant Program:

1. The amount of funding available for the Arizona Dental Sealant Program.
2. The time and date the Department received the application.
3. The school's participation rate in the National School Lunch Program, and
4. If the school has at least 25 children in second and sixth grade when the number of children in each grade is added together.

R9-23-203. ~~Expired~~ Participation Requirements

The contact person for a participating school shall ensure that each child participating in the Arizona Dental Sealant Program has a parental consent form provided by the Department that includes:

1. The child's name, and

2. A parent's signature indicating permission to participate in the Arizona Dental Sealant Program.

ARTICLE 3. ARIZONA FLUORIDE MOUTHRINSE PROGRAM

R9-23-301. ~~Expired~~ Application Process

A. For a school to participate in the Arizona Fluoride Mouthrinse Program for three years, a contact person shall submit a completed application form provided by the Department to the Department that contains:

1. The contact person's name, title, telephone number, fax number, and if applicable, e-mail address;
2. The school's name, street address, mailing address, and telephone number;
3. The name of the school district and county where the school is located;
4. The grades in the school that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
5. The anticipated number of children that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
6. The percentage of children attending the school that participate in the National School Lunch Program during the current school year; and
7. The flavor and amount of fluoride mouthrinse needed.

B. The Department accepts applications beginning on March 1 for the next school year.

R9-23-302. ~~Expired~~ Approval Criteria for Participation

The Department uses the following criteria when determining whether to approve a school for participation in the Arizona Fluoride Mouthrinse Program:

1. The amount of funding available for the Arizona Fluoride Mouthrinse Program.
2. The time and date the Department received the application.
3. The school's participation rate in the National School Lunch Program.
4. Whether the school is located in a community, whose water is not optimally fluoridated.
5. Whether the school participated in the Arizona Fluoride Mouthrinse Program during the previous school year, and
6. If the school did participate in the Arizona Fluoride Mouthrinse Program, whether the school complied with R9-23-304.

R9-23-303. ~~Expired~~ Participation Requirements

The contact person for a participating school shall:

1. Ensure that each child participating in the Arizona Fluoride Mouthrinse Program has a parental consent form provided by the Department that includes:
 - a. The child's name, and age;
 - b. The school's name;
 - c. The child's grade;
 - d. A parent's signature indicating permission to participate in the Arizona Fluoride Mouthrinse Program; and
 - e. The date the parent signed the parental consent form;
2. Maintain the child's record of participation in the Arizona Fluoride Mouthrinse Program for a child as long as the child is attending the school;
3. Request fluoride mouthrinse;
4. Ensure that the fluoride mouthrinse packets are stored at room temperature in a locked storage area inaccessible to children; and
5. Ensure that the mixed fluoride mouthrinse is stored at room temperature and inaccessible to children.

R9-23-304. ~~Expired~~ Continuing Participation

A. By March 15 in each year of participation, the contact person for a participating school shall submit a written program evaluation on a form provided by the Department to the Department that includes:

1. The contact person's name, title, address, telephone number, fax number, and if applicable, e-mail address;
2. The school's name, street address, mailing address, and telephone number;
3. The name of the school district and county where the school is located;
4. The number of years the school has participated in the Arizona Fluoride Mouthrinse Program;
5. The percentage of children attending the school that participate in the National School Lunch Program during the current school year;
6. The grades in the school that participated in the Arizona Fluoride Mouthrinse Program;
7. The grades in the school that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
8. The number of children that participate in the Arizona Fluoride Mouthrinse Program during the current school year;
9. The estimated number of children that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;

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- 10. The number of packets or boxes of fluoride mouthrinse unused at the end of the current school year, if applicable;
- 11. The number of packets or boxes of fluoride mouthrinse needed for the next school year; and
- 12. The flavor of fluoride mouthrinse.
- B.** In addition to the requirements in R9-23-304, the Department may discontinue participation in the Arizona Fluoride Mouthrinse Program if:
 - 1. A participating school does not submit a program evaluation.
 - 2. Less than 70% of the children attending the school participated in the Arizona Fluoride Mouthrinse Program, or
 - 3. The Arizona Fluoride Mouthrinse Program was administered at the school for less than eight months.
- C.** At the end of the third year of participation, if a school wishes to continue participation in the Arizona Fluoride Mouthrinse Program, the school shall apply to participate according to the requirements in R9-23-301.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

[R07-172]

PREAMBLE

- 1. Sections Affected**

R17-4-301	<u>Rulemaking Action</u>
R17-4-302	New Section
R17-4-303	Amend
R17-4-304	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
 - Authorizing statute: A.R.S. § 28-366
 - Implementing statute: A.R.S. §§ 28-2058 and 28-2159
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**
 - Notice of Rulemaking Docket Opening: 12 A.A.R. 4904, December 29, 2006
 - Notice of Rulemaking Docket Opening: 13 A.A.R. 1989, June 8, 2007 (*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 Rules 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.mvd.azdot.gov/mvd/MVDRules/rules.asp.
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

This rulemaking action arises from a Five-Year-Review Report approved by the Governor's Regulatory Review Council on December 10, 1999. The Arizona Department of Transportation, Motor Vehicle Division, proposes to amend the existing rules to conform to current statute and remove and update related citations. Changes are also made to ensure conformity with the Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.
- 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 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 anticipated economic impact of these rules on the Division is minimal. The Division benefits from these rules by reducing the registration transaction frequency and improving customer flow.

The Division anticipates that the economic impact of these rules on small businesses is minimal. The small business benefits from these rules by reduced registration costs and plate credit transfer allowances.

The Division anticipates that the economic impact of these rules on the consumer is insubstantial. In fact, the consumer benefits from these rules by reduced registration costs and plate credit transfer allowances.

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 rules:

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit a written faxed or e-mail comments, please contact the Administrative Rule Analyst listed in #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. If no request for an oral proceeding is made, the public record will close on July 16, 2007 at 5:00 p.m.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rules 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
TITLE, REGISTRATION, AND DRIVER LICENSES**

ARTICLE 3. VEHICLE REGISTRATION

Section

- R17-4-301. ~~Reserved~~ Definitions
- R17-4-302. Staggered Registration for Apportioned Commercial Vehicles
- R17-4-303. Biennial Registration
- R17-4-304. Staggered Registration for Included Vehicles

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

ARTICLE 3. VEHICLE REGISTRATION

R17-4-301. ~~Transferred~~ Definitions

A. Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2231, and 28-5100, the following definitions apply to this Article, unless otherwise specified:

“Alternative form of registration” means an allocated registration, apportioned registration, interstate registration, and undersized mobile home plate registration.

“Apportioned commercial vehicle” means a commercial vehicle that is subject to the proportional registration provisions prescribed under A.R.S. § 28-2233.

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“Biennial” means once every two-years.

“Business day” means a day other than a Sunday or holiday.

“Calendar quarter” means the following time periods established by the Division: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

“Day” means the 24-hour period from one midnight to the following midnight.

“Disabled person” means a recipient of public monies as a disabled individual under Title 16 of the Social Security Act.

“Director” means the Assistant Director for the Arizona Department of Transportation’s Motor Vehicle Division or the Assistant Director’s designee.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Drop box” means a receptacle designated by the Division into which a person places vehicle registration forms and fees, and from which the Division retrieves these items daily.

“Effective date of registration” means the date the vehicle first becomes subject to registration fees in Arizona.

“Electronic delivery” means the transmission of registration and credit card information to the Division, by computer, through an Authorized Third-party Electronic Delivery Provider.

“Emergency Vehicle Permit” means a document issued by the Division’s Enforcement Services Program to a private fire department for a single fire engine that authorizes the driver of a permitted vehicle to exercise the privileges prescribed under A.R.S. § 28-624.

“Expiration date” means the day, month, and year in which a vehicle registration expires.

“Fire Engine” means a motor vehicle containing fire-fighting equipment capable of extinguishing fires.

“IM147 Test” means the emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Included vehicle” means a vehicle subject to annual or biennial Arizona registration unless otherwise excluded from the staggered registration prescribed under A.R.S. § 28-2159 and R17-4-304.

“Initial registration” means the first registration of an included vehicle in Arizona.

“OBD” means the On-Board Diagnostics emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Operator Requirements” means the requirements given in Chapter 2, Basic Driver/Operator Requirements, of the National Fire Protection Association Standard for Fire apparatus Driver/Operator Professional Qualification (NFPA 1002), 1998 edition, which is incorporated by reference and on file with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

“Private Fire Department” means a fire fighting business equipped to provide emergency fire-fighting devices for a private purpose that is neither a public service corporation nor a municipal entity.

“Private Fire Emergency Vehicle” means a fire engine operated by a private fire department for which an Emergency Vehicle Permit is issued.

“Registration” means the authorization, issued by the Division that allows a vehicle to use state highways.

“Registration fees” means the fees due at the time of registration and consisting of the general registration fees imposed by A.R.S. § 28-2003, the vehicle license tax imposed by A.R.S. § 28-5801, and the commercial registration and gross weight fees imposed by A.R.S. § 28-5433.

“Registration period” means the time-frame during which a vehicle registration is valid.

“Renewal registration” means the second and subsequent registration of an included vehicle.

R17-4-302. Staggered Registration for Apportioned Commercial Vehicles

A. Definitions. In this Section, unless the context otherwise requires: Apportioned commercial vehicle fleet registration periods. The Division shall assign a registration period to a newly registered apportioned commercial vehicle fleet. The fleet owner and the Director shall mutually agree to the registration period and expiration date.

1. “Apportioned commercial vehicle” means a commercial vehicle that is subject to the proportional registration provisions of A.R.S. § 28-2233. The Division shall:
 - a. Establish a registration period that expires on the last day of the furthest calendar quarter, not to exceed 12 months, from the date of the initial registration.
 - b. Apply the registration fee paid on a replaced vehicle towards the amount of the registration fee required on the replacement vehicle when an owner replaces a vehicle within a fleet.
 - c. Apply the registration fee paid upon the original fleet registration period towards the amount of the registration fee required based upon the registration period of the new fleet.
 - d. Refund any excess credit of registration fees in accordance with the provisions prescribed under A.R.S. § 28-2356.
2. “Commercial vehicle” has the same meaning as in A.R.S. § 28-2231.
3. “Director” means the Assistant Director for the Motor Vehicle Division of the Arizona Department of Transportation or the Assistant Director’s designee. The owner of an apportioned commercial fleet vehicle shall:
 - a. Ensure that all vehicles within a fleet have the same registration period.
 - b. Ensure that the fleet vehicle is not operated with an expired vehicle registration.

- c. Maintain the assigned or selected registration period for at least three consecutive registration periods.
- 4.3. “Division” means the Motor Vehicle Division of the Arizona Department of Transportation. The Division shall not provide a grace period for late registration or late payment of fees.
5. “Expiration date” means the last day of the month and year in which a vehicle registration expires.
6. “Fleet” means one or more apportioned commercial vehicles.
7. “Registration period” means the time frame during which a vehicle registration is valid.
- B.** Beginning on the effective date of this rule, the Division shall give the owner of a previously registered fleet the opportunity to select one of the following four registration periods and associated expiration dates for the fleet. The registration period and expiration date shall be mutually agreed to by the fleet owner and the Director. The registration periods are:
1. Register for January 1998 to March 1998; then register again for April 1998 to March 1999; and register each March thereafter.
 2. Register for January 1998 to June 1998; then register again for July 1998 to June 1999; and register each June thereafter.
 3. Register for January 1998 to September 1998; then register again for October 1998 to September 1999; and register each September thereafter.
 4. Register for January 1998 to December 1998; then register again for January 1999 to December 1999; and register each December thereafter.
- C.** An owner shall ensure that all vehicles within a fleet have the same registration period.
- D.** The owner of an apportioned commercial vehicle shall ensure that the vehicle is not operated with an expired vehicle registration. The Division shall not provide a grace period for late registration or late payment of fees.
- E.** The Division shall assign a registration period to a newly registered fleet. The expiration date for the assigned registration period shall be the last day of the furthest calendar quarter, not exceeding 12 months, from the date of the initial registration.
- F.** If an owner replaces a vehicle within a fleet, the Division shall credit the registration fee paid on the replaced vehicle towards the amount of the registration fee required on the replacement vehicle. The Division shall not refund any excess credit of registration fees.
- G.** If an owner transfers a vehicle between fleets, the Division shall credit the registration fee paid upon the original fleet registration period towards the amount of the registration fee required based upon the registration period of the new fleet. The Division shall not refund any excess credit of registration fees.
- H.** An owner shall maintain the registration period selected or assigned for at least three consecutive registrations.

R17-4-303. Biennial Registration

- A. Definitions.** In this Section, unless the context otherwise requires: Biennial registration.
1. “Alternative Form of Registration” means allocated registration, apportioned registration, interstate registration, and undersized mobile home plate registration. The Division may register any vehicle biennially, unless excluded.
 2. “Biennial” means once in every two year period. The Division shall register a newly licensed or newly leased vehicle biennially, unless the owner chooses to register the vehicle on an annual basis.
 3. “Director” means the Assistant Director of the Arizona Department of Transportation, Motor Vehicle Division, or a designee of the Assistant Director.
 4. “Division” means the Motor Vehicle Division of the Arizona Department of Transportation.
 5. “IM 240 Test” means the emissions test prescribed by A.R.S. § 49-542(F)(2)(a).
 6. “Nonqualified Vehicle” means a vehicle with an alternative form of registration, a vehicle required to have an annual emissions test, or a vehicle required to have an IM 240 test within 12 months from the date of registration.
 7. “Qualified Vehicle” means a vehicle that does not have an alternative form of registration and is either exempt from emissions testing or is required to have the IM 240 test for the upcoming registration year before its registration may be established or renewed.
 8. “Registration” means the authorization issued by the Division that allows a vehicle to use state highways.
- B. Biennial registration. Excluded vehicles.** The owner of a vehicle that meets any one of the following criteria is excluded from the biennial registration program:
1. Any vehicle not otherwise disqualified may be registered biennially. A vehicle required to have an IM147 or OBD test within 12 months after the date of registration.
 2. Beginning August 5, 1997, a qualified vehicle with a vehicle license tax for the current year equal to or less than \$75 will automatically be selected for biennial registration unless the owner chooses to register the vehicle annually. Beginning August 5 of each succeeding year through 2001, the Division shall increase by \$25 the amount of vehicle license tax that causes a qualified vehicle to be selected automatically for biennial registration. A vehicle that requires an annual emissions test.

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3. A newly licensed or newly leased vehicle will automatically be selected for biennial registration, unless the owner chooses to register the vehicle annually. A vehicle subject to any one of the following types of registration:
 - a. Allocated registration under A.R.S. § 28-2261.
 - b. Apportioned registration under A.R.S. § 28-2261.
 - c. Fleet registration under A.R.S. § 28-2202, or
 - d. Interstate registration under A.R.S. § 28-2052.
 4. A vehicle with an undersized mobile home plate registration.
 5. A vehicle that requires the owner to certify eligibility for a registration fee exemption on an annual basis; such as the registration exemption available to an active duty military member, a widow, widower, or disabled person other than a 100% disabled veteran.
- C.** The owner of a vehicle that meets one of the following criteria shall not have the option of registering the vehicle biennially:
1. A vehicle required to have an IM 240 test within 12 months after the date of registration.
 2. A vehicle that requires an annual emissions test.
 3. A vehicle with an allocated registration.
 4. A vehicle with an apportioned registration.
 5. A vehicle with an interstate registration.
 6. A vehicle with an undersized mobile home plate registration.
 7. A vehicle with a registration exemption that is required to be certified annually such as the exemption available to widows, widowers, and totally disabled persons other than totally disabled veterans.

R17-4-304. Staggered Registration for Included Vehicles

- A.** Definitions. In this Section, unless the context otherwise requires: Included vehicles. The Division shall assign one of the following staggered expiration dates when issuing an initial registration to an included vehicle:
1. “Day” means the 24 hour period from midnight to midnight. If a vehicle has an effective date of registration from the first day through the 15th day of the month:
 - a. Annual registration expires on the 15th day of the month 12 months from the month the vehicle is subject to Arizona registration; or
 - b. Biennial registration expires on the 15th day of the month 24 months from the month the vehicle is subject to Arizona registration.
 2. “Drop box” means a receptacle designated by the Motor Vehicle Division into which a person places vehicle registration forms and fees and from which the Motor Vehicle Division daily retrieves these items. If a vehicle has an effective date of registration from the 16th day through the last day of the month:
 - a. Annual registration expires on the last day of the month 12 months from the month the vehicle is subject to Arizona registration; or
 - b. Biennial registration expires on the last day of the month 24 months from the month the vehicle is subject to Arizona registration.
 3. “Effective date of registration” means the date the vehicle first becomes subject to registration fees in Arizona.
 4. “Electronic delivery” means a third party electronic delivery provider’s transmission of registration information and credit card information by computer to the Motor Vehicle Division.
 5. “Included vehicle” means a vehicle subject to annual or biennial Arizona registration unless otherwise excluded from the staggered registration implemented by this Section.
 6. “Initial registration” means the first registration of an included vehicle in Arizona.
 7. “Registration fees” means the fees due at the time of registration and consisting of the general registration fee imposed by A.R.S. § 28-2003, the vehicle license tax imposed by A.R.S. § 28-5801, and the commercial registration fee and gross weight fee imposed by A.R.S. § 28-5433.
 8. “Registration period” means the time frame during which a vehicle registration is valid.
 9. “Regular business day” means a day other than a Saturday, Sunday, or holiday.
 10. “Renewal registration” means the second and subsequent registrations of an included vehicle.
 11. “Third party electronic delivery provider” means an entity that receives vehicle registration information and credit card information from a person by computer or telephone, transmits the information to the Motor Vehicle Division by computer, and charges and collects a service fee from the person.
 12. “Third party provider of registration functions” means an entity authorized by A.R.S. Title 28, Chapter 13, Article 1 to process a vehicle registration for a person and to charge and collect a service fee.
- B.** Excluded vehicles. The staggered registration implemented prescribed by this Section excludes the following vehicles:
1. A vehicle exempt from registration;
 2. A vehicle subject to any one of the following types of registration:
 - a. Allocated registration in accordance with under A.R.S. § 28-2261,
 - b. Apportioned registration in accordance with under A.R.S. § 28-2261,

- c. Fleet registration ~~in accordance with~~ under A.R.S. § 28-2202,
 - d. Interstate registration ~~in accordance with~~ under A.R.S. § 28-2052; or
 - e. Seasonal agricultural registration under A.R.S. § 28-5436;
3. A vehicle subject to a one-time registration fee;
 4. A government vehicle, a vehicle owned by an official representative of a foreign government, or an emergency vehicle owned by a nonprofit organization as provided by under A.R.S. § 28-2511(A);
 5. A noncommercial trailer that is not a travel trailer as defined by A.R.S. § 28-2003(B) and is less than 6000 pounds gross vehicle weight ~~in accordance with~~ under A.R.S. §§ 28-2003(A)(7) and 28-5801(C);
 6. A moped;
 7. ~~A vehicle operated solely in seasonal agricultural work and subject to a reduced gross weight fee in accordance with A.R.S. § 28-5436. A motorized electric or gas powered bicycle or tricycle capable of reaching speeds of 20 to 25 miles per hour.~~
- C. ~~The initial registration of an included vehicle with an effective date of registration before January 1, 1999, shall expire as follows: Proration of fees. The Division shall prorate registration fees under A.R.S. §§ 28-2159, 28-5807, and 28-5434.~~
1. ~~If a vehicle weighs 8001 pounds or more and is subject to the gross weight fee:~~
 - a. ~~Annual registration expires on the last day of December the year the vehicle is subject to Arizona registration; or~~
 - b. ~~Biennial registration expires on the last day of December the year after the vehicle is subject to Arizona registration;~~
 2. ~~If a vehicle weighs less than 8001 pounds and is subject to the gross weight fee:~~
 - a. ~~Annual registration expires on the last day of the month 12 months from the month the vehicle is subject to Arizona registration; or~~
 - b. ~~Biennial registration expires on the last day of the month 24 months from the month the vehicle is subject to Arizona registration; or~~
 3. ~~If a vehicle is not subject to the gross weight fee:~~
 - a. ~~Annual registration expires on the last day of the month 12 months from the month the vehicle is subject to Arizona registration; or~~
 - b. ~~Biennial registration expires on the last day of the month 24 months from the month the vehicle is subject to Arizona registration.~~
 4. ~~Proration of registration fees shall be in accordance with A.R.S. §§ 28-2159, 28-5807, and 28-5434.~~
- D. ~~Expiration dates. Regardless of weight, the initial registration of an included vehicle with an effective date of registration after December 31, 1998, shall expire as follows: The Division shall utilize the following expiration dates, regardless of the effective date of the initial registration:~~
1. ~~If a vehicle has an effective date of registration from the first day through the 15th day of the month: Annual registration. Expires 12 months from the expiration of the previous registration period. or~~
 - a. ~~Annual registration expires on the 15th day of the month 12 months from the month the vehicle is subject to Arizona registration; or~~
 - b. ~~Biennial registration expires on the 15th day of the month 24 months from the month the vehicle is subject to Arizona registration; or~~
 2. ~~If a vehicle has an effective date of registration from the 16th day through the last day of the month: Biennial registration. Expires 24 months from the expiration of the previous registration period.~~
 - a. ~~Annual registration expires on the last day of the month 12 months from the month the vehicle is subject to Arizona registration; or~~
 - b. ~~Biennial registration expires on the last day of the month 24 months from the month the vehicle is subject to Arizona registration.~~
- E. ~~Regardless of the effective date of initial registration, the renewal registration of an included vehicle shall expire as follows: Application for registration. A person applying for an initial registration or renewal registration for an included vehicle shall submit the following items:~~
1. ~~Annual registration: Expires 12 months from the expiration of the previous registration period; or If a person physically submits the registration to the Motor Vehicle Division or a third-party provider an Authorized Third-party Provider of registration functions in person:~~
 - a. ~~The application for registration or registration card, and~~
 - b. ~~Payment of registration fees; or~~
 2. ~~Biennial registration: Expires 24 months from the expiration of the previous registration period. If a person submits the registration to an Authorized Third-party Electronic Delivery Provider:~~
 - a. ~~Required registration information, and~~
 - b. ~~Credit card information.~~
- F. ~~The initial registration or renewal registration of an included vehicle shall contain the following items:~~
1. ~~If a person physically submits the registration to the Motor Vehicle Division or a third-party provider of registration functions:~~

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- a. The application for registration or registration card, and
- b. Payment of registration fees; or
- 2. If a person electronically submits the registration of an included vehicle to a third-party electronic delivery provider:
 - a. Required registration information, and
 - b. Credit card information.
- ~~G.F.~~ **Timely submission of registration.** A person shall submit the renewal registration of an included vehicle not later than the day the prior registration period expires. If the prior registration period expires on a day other than a regular an established business day, a person shall submit the renewal registration of an included vehicle not later than the first ~~regular~~ business day after the prior registration period expires.
- ~~H.G.~~ **Penalties.** The penalties imposed by under A.R.S. § 28-2162 for delinquent renewal registration of an included vehicle shall apply when either of the following occurs:
 - 1. A person does not submit to the ~~Motor Vehicle~~ Division or a ~~third-party provider~~ an Authorized Third-party Provider of registration functions the items set forth ~~at in~~ subsection ~~(F)(E)(1)~~ so that the items are received by the due date; or
 - 2. A person does not electronically submit to a ~~third-party electronic delivery provider~~ an Authorized Third-party Electronic Delivery Provider the items ~~set forth at~~ required under subsection ~~(F)(E)(2)~~ so that the items are received by the due date.
- ~~I.H.~~ **Date of receipt.** The date of receipt ~~of for~~ the items ~~set forth at~~ required under subsection ~~(F)(E)(1)~~ or ~~(E)(2)~~ shall be the following:
 - 1. The date a person presents ~~in person~~ the items ~~set forth at~~ required under subsection ~~(F)(E)(1)~~ to a ~~Motor Vehicle~~ Division facility or the facility of a ~~third-party provider~~ an Authorized Third-party Provider of registration functions in person;
 - 2. ~~The date of the United States Postal Service postmark stamped on the envelope containing the items set forth at subsection (F)(1);~~ The date an Authorized Third-party Electronic Delivery Provider receives by computer or telephone the items set forth in subsection (E)(2);
 - 3. The date, ~~as indicated on the shipping package,~~ a private express mail carrier receives the package containing the items set forth ~~at in~~ subsection ~~(F)(E)(1)~~, as indicated on the shipping package;
 - 4. The date of the last ~~regular~~ business day ~~before prior to~~ the day the ~~Motor Vehicle~~ Division retrieves the items set forth at subsection (E)(1) from a designated ~~Motor Vehicle~~ Division drop box ~~the items set forth at subsection (F)(1);~~ or
 - 5. ~~The date a third-party electronic delivery provider receives by computer or telephone the items set forth at subsection (F)(2);~~ The date of the United States Postal Service postmark stamped on the envelope containing the items set forth in subsection (E)(1), unless the vehicle is not in compliance with the motor vehicle emissions testing requirements.
- ~~J.~~ The ~~Motor Vehicle~~ Division shall process renewal registrations presented in person at a ~~Motor Vehicle~~ Division facility only in accordance with A.R.S. § 28-2160.
- ~~K.I.~~ **Evidence of registration.** The ~~Motor Vehicle~~ Division or ~~third-party provider~~ Authorized Third-party Provider of registration functions shall assign and issue a number plate or plates to an included vehicle as evidence of registration.
 - 1. The assigned number plate or plates shall be attached and displayed on the rear of the assigned vehicle. When two plates are issued, the second plate may be attached to the front of the assigned vehicle.
 - 2. Improper number plate display shall subject the owner and operator of the vehicle to the sanctions imposed by under A.R.S. §§ 28-2531(B) and 28-2532.
 - 3. Any registration tabs or stickers issued by the ~~Motor Vehicle~~ Division or ~~third-party provider~~ Authorized Third-party Provider of registration functions shall be displayed on the appropriate number plate of the assigned vehicle.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

[R07-164]

PREAMBLE

1. Sections affected:

R17-4-701
R17-4-702

Rulemaking Action:

Amend
Amend

Notices of Proposed Rulemaking

R17-4-705
R17-4-712

Amend
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. § 28-3103

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 162, January 19, 2007

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

Name: Janette M. Quiroz

Address: Administrative Rules Unit
Department of Transportation
1801 W. Jefferson, MD 530M
Phoenix, AZ 85007

Telephone: (602) 712-8996

Fax: (602) 712-3081

E-mail: jmquiroz@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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

In accordance with 49 CFR 1572 and A.R.S. § 28-3103, the Motor Vehicle Division (Division) proposes to create rules requiring that an applicant transferring a driver license from another state to Arizona successfully pass a Security Threat Assessment (STA), conducted by the Transportation Security Administration, before the Division will issue a Hazardous Materials Endorsement (HME).

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:

The Division does not propose to review nor rely upon any study for this rulemaking.

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

Not applicable

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

The Division promulgated rules in accordance with 49 CFR 1572 and A.R.S. § 28-3103 last year regulating original and renewal applicants for HME. The Division proposes to add individuals applying to transfer an existing HME to this state.

The federal requirement governing the hauling of hazardous materials was an unfunded mandate. Therefore, ADOT incurred all cost associated with implementing the federal regulations.

The initial costs to ADOT in adopting these rules for original and renewal applicants which were substantial included: System programming, driver notification, public and industry education, and other associated costs.

However, as the Division has worked for some time in implementing rules for original and renewal applicants, the anticipated cost to include regulations for transfer applicants is minimal.

The cost to commercial drivers wishing to transfer an HME is minimal. Those drivers who have yet to successfully pass a STA will be required to pay an additional \$94 fee for fingerprint and background services obtained through a federal third party, as well as minimal costs for fees related to testing required under 28-3002.

These rules enhance the state's ability to identify and deter the shipment and use of hazardous materials by terrorists. Drivers who have been determined to pose a security threat will not be issued a hazardous materials endorsement.

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: Janette M. Quiroz

Address: Administrative Rules Unit
Department of Transportation
1801 W. Jefferson, MD 530M

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Phoenix, AZ 85007
Telephone: (602) 712-8996
Fax: (602) 712-3081
E-mail: jmquiroz@azdot.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 rule:

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit written, faxed, or e-mail comments, please contact the rules analyst listed in #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. If no request for an oral proceeding is made, the public record in this rulemaking will close on July 10, 2007.

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
TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENTS

Section

R17-4-701. Definitions
R17-4-702. Scope
R17-4-705. Required Testing
R17-4-712. Transfer Applicants

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENTS

R17-4-701. Definitions

In addition to the definitions contained in 49 CFR 1572.3, the following words and phrases apply to this Article:

1. "Applicant" means an individual who applies to obtain an original or renewal HME.
2. "CDL" means Commercial Driver License.
3. "HME" means Hazardous Materials Endorsement.
4. "Transfer applicant" means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.
- 4-5. "TSA" means the U.S. Transportation Security Administration.
- 5-6. "Security Threat Assessment" means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and final disposition.

R17-4-702. Scope

This Article applies to commercial drivers who are applying for an original HME or ~~renewal~~ to renew or transfer an existing HME, in accordance with 49 CFR Part 1572 (November 24, 2004) incorporated by reference, on file with the Arizona Department of Transportation and available from the U.S. Government Printing Office's web page at www.gpo.gov. This incorporation by reference contains no future additions or amendments.

R17-4-705. Required Testing

- A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
- B. A transfer applicant with an existing HME shall be required to comply with HME knowledge test requirements under A.R.S. 28-3223, and pay applicable fee under R17-4-706.

R17-4-712. Transfer applicant

- A. Applicability. A transfer applicant shall comply with the provisions of this Article except as provided in this Section.
- B. Upon application by a transfer applicant who has an existing HME and has who successfully passed a STA prior to application in Arizona, the Division shall:
 - 1. Issue a five-year Arizona CDL with an HME.
 - 2. Not require that a transfer applicant who has received STA approval undergo an additional STA prior to expiration of existing TSA approval, unless required under federal or state law or these rules.
 - 3. Validate the CDL with an HME upon verification of TSA approval, and the transfer applicant shall not be required to return to a designated CDL office unless otherwise required.
 - 4. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require applicant to undergo a new STA and testing requirements under R17-4-705.
- C. Upon application by a transfer applicant with an existing HME, who has not undergone a STA prior to application in Arizona, the Division shall:
 - 1. Require that the transfer applicant successfully undergo a STA.
 - 2. Upon verification of successful completion of STA, issue an Arizona CDL with an HME.
- D. If a transfer applicant fails to successfully complete a STA or the Division is unsuccessful in verifying successful completion of STA, the Division shall immediately cancel the HME.
- E. The Division shall mail to the transfer applicant a Notice of Action that the applicant has 15 days from the notice date to visit a designated CDL office to have the HME removed.
- F. If the applicant fails to comply with the Division's Notice of Action, the Division shall cancel the applicant's Arizona Driver License privilege.
- G. Upon removal of an HME by the Division under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.