

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 43. BOARD OF OCCUPATIONAL THERAPY EXAMINERS

PREAMBLE

1. Sections Affected

R4-43-101
R4-43-102
R4-43-201
R4-43-202
R4-43-202
R4-43-202
R4-43-203
R4-43-203
R4-43-204
R4-43-204
R4-43-205
R4-43-205
R4-43-206
R4-43-301
R4-43-404
R4-43-405
R4-43-406

Rulemaking Action

Amend
Amend
Amend
Repeal
Renumber
Amend
Renumber
Amend
Renumber
Amend
Renumber
Amend
Renumber
Amend
Amend
Amend
Amend
Amend

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

Authorizing statute: A.R.S. § 32-3404(A)(4)
Implementing statute: A.R.S. §§ 32-3423, 32-3427, 32-3428, and 32-3801

3. The effective date of the rules:

April 22, 1999

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

Notice of Rulemaking Docket Opening: 4 A.A.R. 598, February 27, 1998.
Notice of Rulemaking Docket Opening: 4 A.A.R. 838, April 3, 1998.
Notice of Proposed Rulemaking: 4 A.A.R. 3716, November 13, 1998, covering the rules in this rulemaking.

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

Name: Kenneth D. Fink
Address: Arizona Board of Occupational Therapy Examiners
1400 West Washington, Suite 240
Phoenix, Arizona 85007
Telephone: (602) 542-6784
Fax: (602) 542-5469

6. An explanation of the rule, including the agency's reason for initiating the rule:

Notice of Rulemaking Docket Opening: 4 A.A.R. 598, February 27, 1998

The above Notice of Rulemaking Docket Opening opened the docket to amend rules R4-43-101, R4-43-102, R4-43-201, R4-43-202, R4-43-203, R4-43-205, R4-43-206, R4-43-301 and R4-43-402. However, rule R4-43-402 is not being changed in this rulemaking. A separate Notice of Rulemaking Docket Opening was opened for rules R4-43-401 and R4-43-402.

Notice of Rulemaking Docket Opening: 4 A.A.R. 838, April 3, 1998

The above Notice of Rulemaking Docket Opening opened a docket to amend rules R4-43-103, R4-43-204, R4-43-302, R4-43-401, R4-43-404, R4-43-405, and R4-43-406. This Board asked that R4-43-302 be delayed to a subsequent GRRC hearing via letter dated March 26, 1999, because the Board needed more time to bring this rule into compliance with the recently issued Office of Administrative Hearings' rules. R4-43-103 and R4-43-401 are not being changed in this rulemaking. A separate Notice of Rulemaking Docket Opening was opened for R4-43-401 and R4-43-402, Supervision of Occupational Therapy Assistants and Supervision of Occupational Therapy Aides and Other Unlicensed Personnel respectively, and published in the 4 A.A.R. 1973, July 24, 1998. The Board plans to cancel the Notice of Rulemaking Docket Opening for R4-43-401 and R4-43-402 mentioned above and subsequently open a replacement Notice of Rulemaking Docket Opening that would include R4-43-103, R4-43-401, and R4-43-402, and any additional rules that might be identified for change relative to amending R4-43-401 and R4-43-402.)

Notice of Proposed Rulemaking: 4 A.A.R. 3716, November 13, 1998, covering the rules in this rulemaking.

This is an overall rule change to correct and change several rules in order to:

- a. Eliminate obsolete language;
- b. Bring the rules into agreement with the Arizona Board of Occupational Therapy Examiner's (Board) 5-year-review plan;
- c. Define some terms that are used interchangeably within the statutes and rules;
- d. Require that proof of passing the national examination is received directly from the National Board For Certification In Occupational Therapy, Incorporated instead of accepting a photocopy from the applicant;
- e. Bring the application forms into agreement with the mandates of the Arizona Revised Statutes;
- f. Change the application forms to allow an applicant an opportunity to designate a mailing address other than the applicants residential address as is authorized in Arizona Revised Statutes § 32-3801;
- g. Reduce the time-frame allowed for expired licenses to be reinstated;
- h. Clarify the procedure to renew or reactivate an inactive license;
- i. Correct typographical errors;
- j. Include statute references where necessary;
- k. Correct the time allowed for an aggrieved party to request a motion for a rehearing after the denial of a license;
- l. Clarify the language requiring the display of a license;
- m. Require that address changes be in writing;
- n. Provide an exception to the requirement that a limited permit application be complete before the Board may consider the application. The prior version of the rule required that all applications be fully complete before the Board could consider them. The problem for the limited permit applicant was that the applicant was required to have a signed supervisor's agreement as proof of supervision in the work space in order to have a complete application. However, supervisors will not sign such an agreement before the Board approves the application. Therefore, the procedure made it impossible to obtain a limited permit. The new language allows the Board to tentatively approve a limited permit application subject to the receipt of the signed supervision agreement. This change allows a limited permit application to be approved by the Board with the actual issue of the limited permit contingent upon the receipt of the signed supervision agreement. This procedure resolves the dilemma caused by the prior version of the rules.

7. 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, and analysis of the study and other support material:

None

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8. 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.

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

There is little to no impact to small business. The amended rules conform to the 2-year licensure law enacted during the 1997 legislative session effective on July 1, 1997. There might be some cost impact for an initial license applicant depending upon how the initial applicant decides to substantiate a passing score for the national examination. Copies of the documents substantiating a passing score on the national examination are no longer valid. The Board now requires direct notification from the National Board for Certification in Occupational Therapy Inc. OR from a state where an occupational therapy license was held if that state has substantially the same licensure requirements as the state of Arizona as are listed in The American Occupational Therapy Association, Inc. "Compilation of Occupational Therapy State Regulatory Information," March 1998. Most of the cost impact is to the Board to promulgate reprinted rules and forms caused by the rule adoption.

10. A description of the changes between the proposed rule, including supplemental notice, and final rule (if applicable):

a. R4-43-101, Definitions. R4-43-101(E), (F), and (G) are changed for clarity and amended to bring the definition rules into compliance with the Board's 5-year-review plan.

b. R4-43-102, Fees. This rule is amended for clarity and the removal of some obsolete language. The intent and meaning of the rule remain unchanged.

c. R4-43-201, Initial Application. Changes removed some items from the initial application that are not required on an application and streamlines and consolidates some of the language for better understanding and clarity in order to bring the rule into compliance with the 5-year-review plan. These changes have not changed the overall meaning or intent of the adopted rule.

d. R4-43-202, Examination. The contents of this rule are repetitive of A.R.S. § 32-3424. The entire rule is deleted and the remaining rules are renumbered. The Notice of Proposed Rulemaking had some amendments to this rule; however, it is repealed.

e. R4-43-203 was renumbered to R4-43-202. Renewal of License. This rule is changed throughout for clarity and to bring the rule into compliance with the 5-year plan. The intent and meaning of the amended rule have not changed.

f. R4-43-204 renumbered to R4-43-203. Continuing Education for Renewal of License. The rule is changed for clarity. The intent and meaning of the amended rule have not changed.

g. R4-43-205 renumbered to R4-43-204. Inactive License. The rule is changed for clarity. The intent and meaning of the amended rule have not changed.

h. R4-43-206 renumbered to R4-43-205. Procedures for Processing License Applications. Rule is changed for clarity and to bring the rule into agreement with the 5-year plan. Another reason this rule required amending was that previously the rule was written in such a way the Board did not have the authority to approve a limited permit application before the receipt of a form entitled Direct Supervision Agreement for a Limited Permit. That being the case, it was impossible for the Board to tentatively approve an application for a limited permit without 1st receiving a signed supervision form. The problem with that was, no occupational therapist would sign a supervision agreement form UNTIL the Board 1st approved the issue of the limited permit "subject to the receipt of a supervision agreement." People qualified for a limited permit could not find work. The intent and meaning of the amended rule have not changed.

i. R4-43-301, Hearing Procedures. This rule has been changed to bring the rule into compliance with the Arizona Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Articles 1 through 10. Recent changes to A.R.S. § 41-1092 et seq. clarify that these statutes and rules made by the Office of Administrative Hearings (O.A.H) apply to all "contested cases" and "appealable agency actions." A.R.S. § 41-1001(4) and 41-1092(3).

j. R4-43-302, Rehearing or Review of Decision. This rule has been delayed (not included in this packet) to allow the Board more time to bring the rule into agreement with the recently issued Office of Administrative Hearing rules and will be submitted later under separate cover. This rule will be changed to bring the rule into compliance with the Arizona Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Articles 1 through 10. The changes to this rule will bring the Board's hearing procedures into agreement with the above title. (see subsection (i))

k. R4-43-404, Limited Permit Practice. The rule has been changed for clarity. The intent and meaning of the amended rule have not changed.

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l. R4-43-405, Display of License Certificate. Changes are made for clarity and to bring the rule into agreement with the 5-year plan. The intent and meaning of the amended rule have not changed.

m. R4-43-406, Change of Name or Address. Changes made for clarity, to bring the rule into agreement with recent changes to the Administrative Procedure Act, and to require that a change of address be submitted in writing. The intent and meaning of the amended rule have not changed.

11. A summary of the principal comments and the agency response to them:

None were received.

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

None.

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

None.

14. Was this rule previously adopted as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 43. OCCUPATIONAL THERAPY

ARTICLE 1. GENERAL PROVISIONS

R4-43-101. Definitions

R4-43-102. Fees

ARTICLE 2. LICENSURE

R4-43-201. Initial Application

~~R4-43-202. Examination~~

~~R4-43-203. R4-43-202. Renewal of License~~

~~R4-43-204. R4-43-203. Continuing Education for Renewal of License~~

~~R4-43-205. R4-43-204. Inactive License~~

~~R4-43-206. R4-43-205. Procedures for Processing License Applications~~

ARTICLE 3. HEARINGS

R4-43-301. Hearing Procedures

ARTICLE 4. REGULATORY PROVISIONS

R4-43-404. Limited Permit Practice

R4-43-405. Display of License Certificate

R4-43-406. Change of Name and Address

ARTICLE 1. GENERAL PROVISIONS

R4-43-101. Definitions

A. No Change.

B. No Change.

C. No Change.

D. No Change.

E. "Licensee" means a person licensed by the state in Arizona as an occupational therapist or an occupational therapy assistant.

F. "Occupational therapy aide," "unlicensed personnel," and "occupational therapy technician" means mean a person who is not a licensed pursuant to the statutes and rules applicable to the practice of occupational therapy, therapist or occupational therapy assistant, who works under the direct supervision of a licensed occupational therapist who and assists in the practice of occupational therapy, and whose The person's activities may require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

~~**G.** "Party" shall be defined as provided in A.R.S. § 41-1001.~~

~~**H. G.** No Change.~~

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~~I.~~ **H.** No Change.

I. "Person" means the same as in A.R.S. § 41-1001.

R4-43-102. Fees

A. The Board shall charge the following fees to:

1. ~~One hundred dollars for an application for a license. This fee is in addition to the appropriate initial license fee. An applicant for licensure:~~
 - a. ~~Application fee: \$100. This fee is in addition to the initial license fee.~~
 - b. ~~Limited permit fee: \$35. Upon full licensure, the Board shall subtract \$35 from the initial licensure fee.~~
2. ~~Seventy-five dollars for an application for reinstatement filed within 180 calendar days of normal expiration of the license for failure to renew. This reinstatement fee is in addition to the appropriate renewal of license fee. A licensee:~~
 - a. ~~Reinstatement fee: \$75. This reinstatement fee is in addition to the appropriate license renewal fee.~~
 - b. ~~Duplicate license fee: \$10.~~
3. An occupational therapist:
 - a. ~~Initial license fee for a license issued on or before July 30, 1998: \$125.~~
 - b. ~~a. Initial license fee for a license issued on or after July 31, 1998: \$135.~~
 - e. ~~Renewal license fee for a license expiring on or before July 30, 1998: \$100.~~
 - d. ~~b. Renewal license fee for a license expiring on or after July 31, 1998: \$135.~~
 - e. ~~c. Inactive status renewal fee: \$25.~~
4. An occupational therapy assistant:
 - a. ~~Initial license fee for a license issued on or before July 30, 1998: \$75.~~
 - b. ~~a. Initial license fee for a license issued on or after July 31, 1998: \$70.~~
 - e. ~~Renewal license fee for a license expiring on or before July 30, 1998: \$50.~~
 - d. ~~b. Renewal license fee for a license expiring on or after July 31, 1998: \$70.~~
 - e. ~~c. Inactive status renewal fee: \$15.~~
5. ~~Thirty-five dollars for a limited permit. The last amount paid for a single limited permit shall be subtracted from the initial licensure fee.~~
6. ~~Ten dollars for a duplicate license.~~

B. No Change.

ARTICLE 2. LICENSURE

R4-43-201. Initial Application

- A.** An ~~applicant for initial application form provided by the Board for a~~ an initial license to practice as an occupational therapist or an occupational therapy assistant shall ~~be submitted~~ submit an application form provided by the Board to the ~~Board of Occupational Therapy Examiners office~~ Board's office. The application and all supporting documentation shall be received by the Board at least 7 days before a Board meeting to be considered at that Board meeting.
- B.** The initial application form shall include the following: The initial application form shall be signed by an applicant and include the following information on the applicant:
1. ~~Name and address of the Arizona Board of Occupational Therapy Examiners;~~
 2. ~~Applicant's full name and other names used;~~
 3. ~~How applicant's name is to be shown on licensure certificate;~~
 4. ~~Mailing address;~~
 5. ~~Type of license for which applying;~~
 6. ~~The amount of the application or license fees;~~
 7. ~~The applicant's American Occupational Therapy Certificate Board (AOTCB) certification number and the number of times the AOTCB examination was taken;~~
 8. ~~Employer's name, address, and telephone number;~~
 9. ~~Gender;~~
 10. ~~Education;~~
 11. ~~Professional experience and/or fieldwork within the last five years;~~
 12. ~~Current or previous licensure/certification;~~
 13. ~~Other states and foreign countries where licensed to practice occupational therapy;~~
 14. ~~Previous license numbers and current status;~~
 15. ~~Current and previous disciplinary actions;~~
 16. ~~Affidavit of applicant.~~
1. Applicant's last name, 1st name, and middle name;
 2. How applicant's name is to be shown on the licensure certificate;
 3. Other names used;
 4. Social security number;
 5. Residence address;

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6. Alternate mailing address if the residential address is to remain confidential;
 7. The type of license for which applying;
 8. The amount of the application and license fee to be submitted;
 9. Applicant's American Occupational Therapy Certification Board or National Board for Certification in Occupational Therapy, Inc. certification number, date of certification, and the number of times the applicant has taken the national examination;
 10. Education;
 11. Professional experience, field work, or both within the last 5 years;
 12. Employer's name, address, and telephone number;
 13. Current and previous occupational therapy or other professional license or certification numbers from other states and foreign countries and the status of the license or certification;
 14. Current and previous disciplinary actions;
 15. Affidavit of applicant.
- C. An initial application shall be typed or written in black ink, signed, accompanied by the following: An applicant shall submit or cause to be submitted on the applicant's behalf the following:
1. Application fee;
 2. Verification of having passed the American Occupational Therapy Certification Board examination; Written verification received from:
 - a. The National Board For Certification In Occupational Therapy, Incorporated or the American Occupational Therapy Certification Board of a passing score on the examination administered by these entities; or
 - b. Certified letters of good standing issued by each state that has previously issued the applicant an occupational therapy license, provided at least 1 of the states requires standards for licensure equivalent to the requirements for licensure in this Chapter and A.R.S. §§ 32-3401 et seq.
 3. Recommendation of good moral character for licensure from two (2) health care professionals on a form which that shall include the following:
 - a. Name and address of the Arizona Board of Occupational Therapy Examiners;
 - b. Name of the applicant; Applicant's last name, 1st name, and middle initial, and other names used by applicant;
 - c. Applicant's mailing address;
 - d. Applicant's American Occupational Therapy Certification Board or the National Board For Certification In Occupational Therapy certification number;
 - e. Period of time the person making the recommendation health care professional has known the applicant;
 - f. Period of time the person making the recommendation health care professional has worked with the applicant;
 - g. Does the person making the recommendation consider A statement that the health care professional considers the applicant to be of good moral character;
 - h. Where the person making the recommendation worked with the applicant; Address, city, state, and zip code where the health care professional worked with the applicant;
 - i. Describe their A description of the professional relationship or professional experience with the applicant and why they the health care professional recommend recommends the applicant for an occupational therapy license;
 - j. Name, address, and telephone number of the person making the recommendation for the applicant health care professional;
 - k. The professional license/certification, license or certification number and issuing agency of the person making the recommendation for the applicant health care professional;
 - l. The health care professional's signature and date signed by the person making the recommendation for the applicant.
- D. An applicant applying for a limited permit limited permit shall submit an the application application and information listed on the form prescribed in subsection subsections (B), and attach a form completed and signed by an Arizona licensed occupational therapist certifying that the therapist shall work in association with the applicant (C), and this subsection. The attached form shall be filed with the limited permit application and shall contain the following: An Arizona licensed occupational therapist assuming the professional and legal responsibility for supervision of a limited permit applicant shall complete and sign a Direct Supervision Agreement for a Limited Permit form with the Board. The occupational therapist shall file the Direct Supervision Agreement for a Limited Permit form with the Board before the Board shall issue a limited permit. The Direct Supervision Agreement for a Limited Permit form shall contain the following:
1. Name and address of the Arizona Board of Occupational Therapy Examiners;
 2. 1. Name of the limited permit applicant; Applicant's last name, 1st name, middle name, and other names used by the applicant;
 3. 2. Date the form is completed and signed by the associate supervising licensed occupational therapist;
 4. 3. Name of the associate supervising occupational therapist;
 5. 4. Arizona license number of the associate supervising occupational therapist;
 6. 5. Applicant's Limited permittee's employment address;

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7. ~~6.~~ Associate's Supervisor's mailing address;
 8. ~~7.~~ Associate's Supervisor's employment address and employment telephone number;
 9. ~~8.~~ Description of association, Description of supervision;
 10. ~~9.~~ Signature of the associate supervising licensed occupational therapist.
- E. ~~All applications and all documents filed in support thereof shall be retained by the Board. The Board may permit copies to be substituted for original documents. The Board shall retain the application and documents filed in support of the application.~~
- F. ~~The applicant shall inform the Board of any changes in the applicant's mailing address within ten days from the date of change.~~
- G. ~~F.~~ If the Board denies the an application, the applicant may, within ~~45~~ 30 days of service of the notice of denial, make a written request for a hearing to review the ~~results of the applicant's application~~ Board's decision. The hearing shall be conducted ~~pursuant to~~ under A.R.S. Title 41, Chapter 6, Article 10.
- H. ~~G.~~ No Change.

R4-43-202: Examination

- A. ~~The Board adopts the examination currently offered by the American Occupational Therapy Certification Board.~~
- B. ~~Arrangements and fees for the American Occupational Therapy Certification Board examination are the responsibility of the applicant.~~
- C. ~~The applicant shall have his examination score forwarded to the Arizona Board of Occupational Therapy Examiners directly from the American Occupational Therapy Certification Board's contracted examination service.~~
- D. ~~An applicant who fails to pass the exam may apply for re-examination directly to the American Occupational Therapy Certification Board.~~

R4-43-203 R4-43-202. Renewal of License

- A. ~~A license licensee may be renewed shall renew a license by submitting to the Board of Occupational Therapy Examiners office a renewal application, provided by the Board, payment of the renewal fee and presenting verifiable evidence of participation in relevant continuing education within one year of initial license or last renewal of license. proof of completion of the continuing education requirements in R4-43-203 and paying the renewal fee within 2 years of initial licensure or last license renewal date.~~
- B. ~~The renewal application form provided by the Board shall include the following:~~
1. ~~Name and address of the Arizona Board of Occupational Therapy Examiners;~~
 2. ~~Applicant's full last name, 1st name, middle initial, and other names used by the applicant;~~
 3. ~~2. How applicant's name is to be shown on the renewal license. license;~~
 4. ~~3. Mailing Residence address;~~
 4. ~~Alternate mailing address if the residential address is to remain confidential;~~
 5. ~~Current Arizona Board of Occupational Therapy Examiners license number, number;~~
 6. ~~Type of renewal license for which applying;~~
 7. ~~The amount of the renewal fee;~~
 8. ~~Disciplinary actions since initial licensure;~~
 9. ~~Hours and titles of continuing education completed;~~
 10. ~~Total hours of continuing education completed;~~
 11. ~~Social Security Number (optional) security number;~~
 12. ~~Employer's name, address, and telephone number;~~
 13. ~~Signature and date.~~
- C. ~~A renewal application shall be typed or written in black ink, signed, and accompanied by the following:~~
1. ~~Proof of completion of continuing education,~~
 2. ~~Renewal fee.~~
- D. ~~C. Unless otherwise required by A.R.S. § 32-3202, A a license that is not renewed within one year 2 years of the date of issuance expires by operation of the law, and A licensee may be reinstated reinstate within 180 calendar days of the expiration date only upon payment of the required renewal fee, an additional a reinstatement fee pursuant to under R4-43-102(A)(2)(a), and by submitting verifiable evidence of participation in relevant continuing education submittal of proof of completion of the continuing education requirements in R4-43-203.~~

R4-43-204 R4-43-203. Continuing Education for Renewal of License

- A. ~~Pursuant to A.R.S. § 32-3426, the A licensee shall complete continuing education requirement for renewal of a license is as follows:~~
1. ~~Occupational Therapist-;~~
 - a. ~~10 clock-hours for renewal of a 1-year license,~~
 - b. ~~20 clock-hours for renewal of a 2-year license-; and~~
 2. ~~Occupational Therapist Assistant-;~~
 - a. ~~6 clock-hours for renewal of a 1-year license,~~

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- b. 12 clock-hours for renewal of a 2-year license.
- ~~B.~~ A licensee shall complete continuing education clock hours during the licensure period immediately prior to the expiration of the license or by the date the licensee's application requesting return to active license, is received by the Board. A licensee shall complete the continuing education clock hours in subsection (A) within the 2-year period before the date the licensee's license expires or, if requesting a return to active status license, within the 2-year period before the date the licensee submits the return to active status request to the Board.
- ~~C.~~ Pursuant to the criteria established in these rules, the subject matter and number of clock hours for all types of continuing education subject to the approval of the Board.
- ~~D.~~ ~~C.~~ A licensee may accumulate continuing education clock hours by participating in education programs that contribute directly to professional competency and relate to the clinical practice of occupational therapy. Continuing education shall contribute to professional competency and the practice of occupational therapy. The Board shall determine if continuing education hours contribute directly to the professional competency and if the continued education hours relate to the clinical practice of occupational therapy.
- ~~E.~~ A licensee may fulfill continuing education hours by completing any combination of the following activities, if the activity or activities are related to the practice of occupational therapy:
1. Participation in a professional workshop, seminar, or conference.
 2. Self-study or formal study through course work.
 3. Viewing a video taped presentation.
 4. Completion of an undergraduate or graduate course at a college or university with proof of a grade of "C" or better and a personal statement describing how the course extends the licensee's professional skill and knowledge.
 5. Publication of an article, book, chapter of a book, film, or video tape. The maximum number of continuing education clock hours that can be accumulated for each type of publication is:
 - a. 10 clock-hours for a book.
 - b. 5 clock-hours for a chapter of a book.
 - c. 4 clock-hours for an article.
 - d. 6 clock-hours for a film or video tape.
- D.** A licensee may fulfill the licensee's continuing education requirement by completing any of the following:
1. A professional workshop, seminar, or conference and submitting proof of attendance as follows:
 - a. The American and Arizona Occupational Therapy Association's original check-in sheet displaying the organization's name, official stamp, hours, and licensee's name; or
 - b. Photocopy of a signed certificate or letter issued by the sponsoring organization or instructor displaying the clock-hours, date of attendance, name of the workshop, seminar, or conference, licensee's name, and information necessary to contact the sponsoring organization or instructor for verification of attendance;
 2. Self-study or formal study through course work and submitting a photocopy of a signed certificate or letter issued by the sponsoring organization or instructor displaying the clock hours, dates of attendance, name of the study or course work, licensee's name, and information necessary to contact the sponsoring organization or instructor for verification of attendance;
 3. Viewing a taped video presentation and submitting a photocopy of a signed certificate or letter issued by the sponsoring organization or instructor displaying the clock-hours, dates of attendance, name of the study or course work, licensee's name, and information necessary to contact the sponsoring organization or instructor for verification of attendance;
 4. Undergraduate, graduate college, or university course work of a grade "C" or better and submitting a course completion notification sheet and a statement describing how the course extends the licensee's professional skill and knowledge;
 5. Publishing:
 - a. A book, for a maximum credit of 10 clock-hours, and submitting a copy of the book;
 - b. An article, for a maximum credit of 4 clock-hours, and submitting a copy of the article;
 - c. A chapter of a book, for a maximum of 5 clock-hours, and submitting a copy of the chapter or book;
 - d. A film, for a maximum of 6 clock-hours, and submitting a copy of the film; or
 - e. A videotape, for a maximum of 6 clock-hours, and submitting a copy of videotape;
 6. Presenting a program, workshop, seminar, or conference of not less than 1.5 hours in duration for a maximum of 4 clock-hours and submitting a brochure, agenda, or similar printed material describing:
 - a. The content of the presentation, workshop, seminar, or conference;
 - b. The date, duration, and location of the presentation conference, workshop, or seminar; and
 - c. The name of the presenting licensee or a signed certificate or letter from the program organizer if other than the presenting licensee; or
 7. In-service training related to clinical occupational therapy services excluding safety, fire evacuation, and cardiopulmonary resuscitation (CPR), for a maximum of 4 clock-hours and submitting:
 - a. A letter from the supervising occupational therapist or other immediate supervisor; and

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- b. A licensee's statement consisting of:
 - i. Specific topics,
 - ii Presenters,
 - iii Dates,
 - iv Times,
 - v Location, and
 - vi How the training or in-service relates to the clinical practice of occupational therapy or contributes to professional competency.
- ~~F.~~ ~~To provide proof of completed clock hours, a licensee shall do 1 or more of the following:~~
 - 1. ~~Submit the original hours verification sheet displaying the licensee's name and an official stamp beside each class or course, indicating proof of attendance for continuing education sponsored by the American Occupational Therapy Association or Arizona Occupational Therapy Association.~~
 - 2. ~~Submit a photo copy of a signed certificate or letter, issued by the sponsoring organization or instructor showing the clock hours, date of attendance, name of and information necessary to contact the sponsoring organization and instructor for verification, name of the course or program, and the licensee's name.~~
 - 3. ~~Submit a copy of any published article, book, chapter, film, or videotape.~~
- ~~G.~~ ~~A licensee may accumulate a maximum of 4 continuing education clock hours for a program presented by a licensed occupational therapist or occupational therapy assistant for presentations that are not less than 1 and ½ hours in length and are related to the practice of occupational therapy. As proof of attendance, the licensee shall submit a brochure, agenda, or similar printed document describing the content of the presentation, date, location of the presentation, and names of the presenters, or a signed certificate of letter for the program organizer.~~
- ~~H.~~ ~~A licensee may accumulate a maximum of 4 continuing education clock hours for in-service educational training related to clinical occupational therapy services, excluding training for safety, fire evacuation, and cardiopulmonary resuscitation (CPR). As proof of completion, the licensee shall submit a letter from the supervising occupational therapist or other immediate supervisor. The licensee shall submit documentation of:~~
 - 1. ~~Specific topics,~~
 - 2. ~~Presenters,~~
 - 3. ~~Dates,~~
 - 4. ~~Times,~~
 - 5. ~~Location and,~~
 - 6. ~~How the training or in-service relates to clinical practice of occupational therapy and contributes to professional competency.~~

~~R4-43-205~~ R4-43-204. **Inactive License**

- A. ~~A license that has not expired and is in good standing may be transferred to inactive statute upon written request to the Board. Such request shall be made prior to the expiration of the license. A licensee may transfer an active license into inactive status if the licensee's license is current and in good standing.~~
- B. ~~No Change.~~
- C. ~~An inactive license may be renewed or reactivated upon submitting a renewal application pursuant to R4-43-203, payment of the license renewal fee pursuant to R4-43-102, and meeting the continuing education requirements for the year preceding active license application pursuant to R4-43-204. The license renewal fee shall be reduced by the amount of the inactive renewal fee paid during the licensee's current licensure year. A licensee may renew or reactivate an inactive license by:~~
 - 1. Submitting a renewal application under R4-43-202;
 - 2. Paying the licensure renewal fee under R4-43-102 or, if reactivating an inactive license, paying the renewal fee less the last inactive status fee paid by the applicant; and
 - 3. Meeting the continuing education requirements under R4-43-203.

~~R4-43-206~~ R4-43-205. **Procedures for Processing License Applications**

- A. Initial application for a license or permit.
 - 1. Within 60 calendar days after receipt of an initial application for a license or permit, the Board shall perform an administrative completeness review and notify the applicant in writing that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what documentation or information is missing.
 - 2. If the Board has notified an applicant that an application is incomplete within the 60-day administrative completeness review time-frame, the time-frame is suspended from the date of the notice.
 - 3. An applicant with an incomplete application shall submit all missing documentation and information within 60 days from the date of the notice. If the applicant fails to do so for an initial license or permit, the Board may close the applicant's file. An applicant whose file has been closed, and who later wishes to become licensed, shall apply anew.
 - 4. ~~The Board shall not process the application~~ Except for a limited permit application, an application is not complete until the applicant has fully complied with the application requirements of A.R.S. Title 32, Chapter 34 and this Arti-

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cle. A limited permit application is complete when the Board receives all of the information required in R4-43-201(D) except for the exam score in R4-43-201(C)(2)(a).

5. If an applicant for an initial license or permit cannot submit all missing documentation or information within 60 days from the date of the notice, the applicant may request an extension by submitting a written request to the Board post marked or delivered not later than 60 days from the date of the notice. The written request for an extension shall explain the reasons for the applicant's inability to meet the 60-day deadline.
 6. Under A.R.S. § 32-3403(A), the Executive Director's duties shall include review of requests for an extension. The Executive Director shall grant an extension request, if the extension will enable the applicant to submit the missing documentation or information, but shall not grant an extension of more than 60 days. The Executive Director shall notify the applicant in writing of the decision to grant or deny the request for an extension.
 7. If the applicant fails to submit all missing documentation and information within the extension period, the Board may close the applicant's file. An applicant whose file has been closed, and who later wishes to become licensed, shall apply anew.
 8. After receipt of all missing documentation or information within the administrative completeness time-frame specified in this Section, the Board shall notify the applicant in writing that the application is complete.
 9. The Board shall perform the substantive review and issue or deny the license or permit no later than 60 days after receipt of a complete application. For this subsection, the date of receipt is the date of the notice advising the applicant that the application is complete.
- B. Renewal license application, request to transfer into inactive status, or application to return to active status.**
1. Within 60 calendar days after receipt of an application ~~included~~ described in subsection (B)(2), the Board shall perform an administrative completeness review and notify the applicant in writing that the application is ~~either~~ complete or incomplete.
 2. The following applications are governed by this subsection ~~(B)~~:
 - a. A renewal license application ~~received from an occupational therapist;~~
 - b. A renewal license application ~~received from an occupational therapy assistant;~~
 - ~~e.b.~~ A request to transfer into inactive status by either an occupational therapist or occupational therapy assistant who has a licensee with an unexpired license; and
 - ~~d.c.~~ A renewal application to return to active status, submitted by a licensee.
 3. If the Board has notified an applicant that an application is incomplete within the 60-day administrative completeness review time-frame, the time-frame is suspended from the date of the notice.
 4. ~~An applicant with an incomplete application shall submit all missing documentation and information within 60 days from the date of the notice.~~
 5. ~~The Board shall not process the application~~ An application is not complete until the applicant has fully complied with all of the application requirements of A.R.S. Title 32, Chapter 34 and this Article.
 - ~~6.5.~~ After receipt of all missing documentation and information within the administrative completeness time-frame time-frame specified in this Section, the Board shall notify the applicant that the application is complete.
 - ~~7.6.~~ The Board shall perform the substantive review and grant or deny the renewal or transfer no later than 60 days after receipt of a complete application. For this subsection, the date of receipt is the date the notice advising the applicant that the application is complete. The substantive review time-frame runs from the date of the Board's notice advising the applicant that the application is complete until the Board grants or denies the renewal or transfer. The substantive review time-frame is 60 days.
 - ~~8.7.~~ If an applicant has submitted a complete renewal application on or before the expiration date, but the license will expire on or before the date of the Board's next scheduled meeting, the Executive Director shall advise the applicant that the Board will not consider their current license to have lapsed until the Board has an opportunity to consider the application for renewal at the Board's next scheduled meeting. A timely submitted renewal application causes the license to remain in effect until further notice by the Board.
 - ~~9.8.~~ If an applicant has not submitted a complete a licensee fails to submit a renewal application on or before the expiration date, the license expires by operation of law and the applicant may seek reinstatement under section R4-43-203(D) R4-43-202(C) if applicable or reapply under R4-43-201.
- C. No Change.**

ARTICLE 3. HEARINGS

R4-43-301. Hearing Procedures

- ~~A.~~ All hearings held pursuant to A.R.S. § 32-3441 et seq. shall be conducted in accordance with A.R.S. Title 41, Chapter 6. The Board shall conduct all hearings held under A.R.S. § 32-3442 et seq. in accordance with A.R.S. Title 41, Chapter 6, Article 10 and rules issued by the Office of Administrative Hearings.
- ~~B.~~ A notice of hearing shall be served upon all parties.
- ~~C.~~ A licensee served with a Complaint and Notice of Hearing shall file an answer within ten days of the service of the complaint, admitting or denying the allegations of the complaint.

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- ~~D.~~ A Complaint and Notice of Hearing may be amended to add new or additional grounds prior to hearing. The licensee is entitled to 20 days' notice prior to the hearing on the amended complaint. The licensee shall file an amended answer to the amended complaint within ten days of being served.
- ~~E.~~ If a party fails to appear, the hearing may be held in the party's absence.
- ~~F.~~ The chairperson of the Board or the designated presiding officer may continue, reschedule, or extend the hearing for good cause or for the performance of acts as required by law or the Board.
- ~~G.~~ Hearings conducted by the Board are open to the public.
- ~~H.~~ The designated presiding officer shall rule on the procedure for hearing and admissibility of evidence.
- ~~I.~~ All hearings shall be mechanically or stenographically recorded. The Board is not required to transcribe such record unless there is an appeal to the superior court. However, upon written request and receipt of a reasonable fee for transcribing such record, the Board may transcribe the record or allow for its transcription by the person requesting the record.
- ~~J.~~ In all cases determined by hearing, the Board shall issue a decision and order in accordance with A.R.S. Title 41, Chapter 6. The Board shall serve upon all parties this decision and order. Any party may seek rehearing of this order pursuant to R4-43-302.

ARTICLE 4. REGULATORY PROVISION

R4-43-404. Limited Permit Practice

- ~~A.~~ The licensed therapist practicing in associate with the designated limited permittee and the limited permittee shall notify the Board, in writing, of any change of employment status or associate relationship within five days.
- ~~B.~~ The last amount paid for a single limited permittee license shall be reduced from the initial occupational therapist or occupational therapy assistant licensure fee.
- ~~C.A.~~ Any change in the licensed therapist associate or addition of a supervising occupational therapist shall require requires the filing of a new Direct Supervision Agreement for a Limited Permit form acknowledging an association as required by the supervisor under R4-43-201(D). The supervisor shall submit the Direct Supervision Agreement for a Limited Permit form within 7 days of any change or addition of a supervising occupational therapist.
- ~~D.B.~~ On patient records, all documentation of patient treatment and progress shall be co-signed by the associate licensed occupational therapist. The supervising occupational therapist shall co-sign all patient records documenting patient treatment and progress.

R4-43-405. Display of License Certificate

Each licensed occupational therapist licensee shall display ~~the~~ a current license certificate ~~and the proof of renewal~~ issued by the Board in a prominent place in each facility of practice. A licensee may use a copy of the license certificate or the proof of renewal issued by the Board may be utilized to satisfy this requirement.

R4-43-406. Change of Name or Address

- ~~A.~~ A Licensees licensee shall notify the Board in writing within 30 days when their of a legal name has been legally change. A copy of the official document evidencing the name change shall be included. ~~The Board shall issue a duplicate license and current certificate of renewal shall be issued reflecting the name change. Pursuant to R4-43-102(A)(9), a duplicate license fee shall be paid by the licensee.~~
- ~~B.~~ Licensees A licensee shall notify the Board office in writing within 30 days of a change in mailing address.

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES
REGULATION

CHAPTER 4. CORPORATION COMMISSION
SECURITIES

PREAMBLE

- | | |
|--|---|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R14-4-105 | Amend |
| 2. <u>The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u> | |
| Authorizing statute: | A.R.S. § 44-1821(A) |
| Implementing statutes: | A.R.S. §§ 44-1898(A) and 44-1902(A) |
| Constitutional authority: | Arizona Constitution Article XV §§ 4, 6, and 13 |

3. **The effective date of the rule:**

April 19, 1999

4. **A list of all previous notices appearing in the Register addressing the final rule:**

1 A.A.R. 169, March 10, 1995, Notice of Rulemaking Docket Opening.

4 A.A.R. 1268, June 5, 1998, Notice of Proposed Rulemaking.

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

Name: Cheryl T. Farson, Associate General Counsel

Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, AZ 85007-2996

Phone: (602) 542-4242

Fax Number: (602) 594-7470

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

Prior to this amendment, R14-4-105 provided that certain promotional securities held by the promoters of a development stage company be placed in escrow for up to 4 years as a condition of registration of a public stock offering. This condition of registration was designed to ensure continued promoter commitment to a developmental stage company after the company conducted a public offering and to prevent price decreases in the secondary market that may be caused by the immediate sale of stock held by promoters, which was purchased for consideration significantly less than the initial public offering price.

The market place has changed substantially since Rule 105 was adopted 1986. The Securities Division (the "Division") of the Arizona Corporation Commission (the "Commission") is concerned that the intended protection of Rule 105 may have become a barrier to the public's opportunity to participate in initial public offerings of development stage companies because promoters are increasingly unwilling to register initial public offerings in Arizona if they must place their shares in an escrow account.

The Division proposed this amendment to Rule 105 to eliminate the escrow requirements. Instead, the promoters and the company will enter into a restrictive sales agreement, commonly referred to as a "lockup," pursuant to which the promoters will agree not to transfer or sell their stock for 3 years. After the 1st year, 1/8th of the securities will be released each quarter over the next 2 years. Rule 105 will continue to provide for the release of securities from transfer restrictions upon the occurrence of specific events.

Additionally, the amendment to Rule 105 narrows the definition of promotional securities so that stock that has been held by a promoter in excess of 3 years prior to the public offering will not be subject to the lockup. The consideration that promoters must have paid for their shares in order for the shares not to be deemed promotional securities continues to be a percentage of the initial public offering price, but the amended Rule 105 provides that the percentage decreases for shares held for longer periods of time.

The Division believes that the changes in the amended Rule 105 are essential to keep the intended investor protection in step with the marketplace so that investor protection does not preclude investor opportunity.

7. **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, and analysis of the study and other support material:**

None

8. **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 amendment to the rule is desirable to modify the current restrictions placed on promotional stock to reflect the current marketplace. The amended rule will assist businesses in capital formation in a manner that does not impose unduly burdensome restrictions and expenses and will provide Arizona investors with protected access to promotional stage company stock offerings. The amended rule benefits issuers by relieving them of the expenses of escrow accounts and the loss of physical retention of their stock certificates and by modifying the restrictions placed upon promotional shares to reflect the financial condition of, and the promoters' commitment to, the company. The amended rule adopts the concept, used by most underwriters in most public offerings, of a lockup of the promoters' shares for a specified period rather than escrowing the shares. This revision should make promoters more willing to register their offerings in Arizona. The amended rule continues to protect the investing public from potential abuse of promoters seeking to personally profit by developing a public market in which to immediately sell their personal shares, which were acquired for less than the public offering price. Thus, the state's interest in promoting capital for-

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mation and investment opportunities should be advanced without any significant loss of authority to the Commission or protection to the investor.

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

Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

10. A description of the changes between the proposed rule, including supplemental notices, and the final rule (if applicable):

The Commission made certain technical and grammatical changes to the rules in response to a June 19, 1998, memorandum from the Office of the Secretary of State. Additionally, the Commission made the following changes, which do not change the substance of the rule:

The phrase “except pursuant to A.R.S. § 44-1901” was added to subsection (A).

In the 2nd sentence of subsection (B)(3), the phrase “or an unaffiliated institutional investor” was moved from the end of the sentence to the middle of the sentence.

The last sentence of subsection (B)(3) was moved from following subsection (e) to preceding subsection (a).

The phrase “in form and substance acceptable to the Commission” was deleted from subsection (B)(3)(7) and the sentence “As a condition of registration, the issuer shall submit the agreement to the Commission for review” was added.

The last sentence of subsection (B)(8) was moved from following subsection (c) to preceding subsection (a).

In subsection (B)(9), the citations were corrected from 15 U.S.C. 80a-1 to 80a-64 (1997) to 15 U.S.C. 80a-1 to 80a-64 (1994), as amended; from 15 U.S.C. 80a-2(a)(48) (1997) to 15 U.S.C. 80a-2(a)(48) (1994 & Supp. II 1996); from 15 U.S.C. 681 (Supp. 1998) to 15 U.S.C. § 681 (1994), as amended; from 29 U.S.C. 1002(3) (Supp. 1998) to 29 U.S.C. 1002(3) (1994); and from 15 U.S.C. 80b-2(a)(22) (1997) to 15 U.S.C. 80b-2(a)(22) (1994).

Subsection (B)(6) was revised from:

~~6.7. “Public market” means a public place of exchange where securities are bought and sold, directly or through intermediaries. Public market excludes “thin markets” which that do not result in reliable prices. If doubt is raised as to the reliability of the market for an applicant issuer’s shares, the Commission may consider the market history, the public trading volume, the spread between the bid and asked prices, the number of market makers, the public float, the pricing formula, the length of time included for trading listing on the NASDAQ Nasdaq Small CapSMNational Marketing System, and other relevant factors.~~

to:

~~6.7. “Public market” means a public place of exchange where securities are bought and sold, directly or through intermediaries. Public market excludes “thin markets” which that do not result in reliable prices. If doubt is raised as to the reliability of the market for an applicant’s shares~~ To determine if the securities trade in a public market, the Commission may consider the market history, the public trading volume, the spread between the bid and asked prices, the number of market makers, the public float, the pricing formula, listing on the NASDAQ National Marketing System the marketplace in which the securities trade, the length of time the securities have been traded in that marketplace, and other relevant factors.

The last sentence of subsection (C) was moved from following subsection (3) to preceding subsection (1).

The language in subsection (E)(4) was replaced with an incorporation by reference of the federal statute from which the language was taken.

11. A summary of the principal comments and the agency response to them:

The Commission received a request from the Office of the Secretary of State for technical changes, which were made pursuant to that request. The Commission did not receive any comment in opposition to the amendment to the rule. The Commission received the following written comments:

Comment: The SmallCap Market is, by definition, a “reliable market” and the inclusion of the SmallCap Market in subsection (B)(6) implies that it is not.

Response: The Commission replaced the reference to the SmallCap Market in subsection (B)(6) with a generic reference to “the marketplace in which the securities trade.”

Comment: The terms of release in subsection (E)(4) discriminate between the New York Stock Exchange and American Stock Exchange and the NASDAQ National Market System because securities may be released from the restric-

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tive sales agreement upon listing for authorization for listing on the 2 exchanges and only upon listing on the National Market System.

Response: The Commission replaced the language contained in subsection (E)(4) with an incorporation by reference of the federal statute from which the language was taken to clarify that a release of securities from a restrictive sales agreement is dependant upon the securities becoming "covered securities" as that term is defined by federal statute.

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

None.

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

Subsection (B)(9) incorporates by reference the definitions of business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(48) (1994 & Supp. II 1996); employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3) (1994); and business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-2(a)(22) (1994). Subsection (E)(4) incorporates by reference subsection 18(b)(1)(A) of the Securities Act of 1933, 15 U.S.C. 77r(b)(1)(A) (Supp. II 1996).

14. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency rule and the adoption of the final rule.

Not applicable.

15. The full text of the rule follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES
REGULATION**

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section

R14-4-105. Promotional Securities; Definitions

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-105. Promotional Securities; Definitions

A. Promotional securities, held by promoters of a promotional stage corporation that proposes to make a public offering of its securities pursuant to Arizona Revised Statutes Title 44, Chapter 12, Article 7, except pursuant to A.R.S. § 44-1901, shall be subject to a restrictive sales agreement in accordance with the provisions of this Section.

A.B. General provisions As used in this Section, the following terms have the meaning indicated.

- ~~1.~~ If shares were issued by a promotional or development stage corporation and it is no longer in such stage, then the escrow provisions of Paragraph B of this Rule shall not apply.
Securities will be treated as promotional securities that are issued to promoters of the corporation for a price less than 85% of the consideration for which such securities are proposed to be sold to the public or issued for services rendered, patents, copyrights or other intangibles, the value of which has not been established to the satisfaction of the Commission by appraisals, by evidence of amounts paid by others for substantially similar services or property, by evidence of a bona fide offer to purchase such services or property, or by other evidence.
- ~~2.~~ Promotional securities shall ordinarily be limited in class to common shares, and such securities in an amount representing an ultimate right of participation in excess of 15 percent of the securities to be outstanding at the completion of the proposed public offering shall be subject to the escrow provision of Paragraph B of this Rule.
- ~~3.~~ "Affiliate" means a person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the persons specified in Subsection A. Paragraph 5. below.
 - ~~1.~~ "Consideration" includes cash, services rendered, and tangible or intangible property.
 - ~~2.~~ "Earnings per share" shall be means fully diluted earnings computed in accordance with generally accepted accounting principles.
 - ~~3.~~ "Promoters of the corporation," means any person who meets any 1 of the following conditions. Promoter does not include an unaffiliated institutional investor or a person who receives either securities or proceeds solely as underwriting compensation and who is not a promoter under subsection (B)(3)(a), (c), (d), or (e).
 - a. Alone or in conjunction with 1 or more persons, directly or indirectly, founded, organized, or controls the issuer;

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- b. Directly or indirectly receives, as consideration for service and property rendered, 5% or more of any class of the issuer's equity securities or 5% or more of the proceeds from the sale of any class of the issuer's equity securities;
 - c. Is an ~~officers~~ officer, or ~~directors~~ director of the issuer;
 - d. ~~or parties owning, directly~~ Directly or indirectly, legally or beneficially owns ten percent (10%) or more of the issuer's outstanding shares ~~of the corporation~~ before or immediately following the public offering;
 - e. ~~or any affiliate of the aforesaid persons.~~ Directly or indirectly, through 1 or more intermediaries, controls or is controlled by, or is under common control with, a promoter as defined in subsections (B)(3)(a) through (d). Promoters of the corporation shall not include any unaffiliated institutional investor who purchased its shares more than one year prior to the date of the public offering or an otherwise unaffiliated institutional investor by virtue of having a representative on the Board of Directors of the company.
- 6.4. "A promotional ~~Promotional~~ or development stage corporation" means a corporation which ~~that~~ has no public market for its shares and has no significant earnings.
5. "Promotional securities" means securities issued to a promoter, at any time during the 3-year period prior to the proposed public offering date, that meet the conditions of subsection (C). Promotional securities shall be limited to common stock unless securities other than common stock were issued for the primary purpose of evading this Section.
- 7.6. "Public market" means a public place of exchange where securities are bought and sold, directly or through intermediaries. Public market excludes "thin markets" which ~~that~~ do not result in reliable prices. If doubt is raised as to the reliability of the market for an applicant's shares To determine if the securities trade in a public market, the Commission may consider the market history, the public trading volume, the spread between the bid and asked prices, the number of market makers, the public float, the pricing formula, listing on the NASDAQ National Marketing System the marketplace in which the securities trade, the length of time the securities have been traded in that marketplace, and other relevant factors.
7. "Restrictive sales agreement" means an agreement between a promotional stage corporation and a promoter, for the benefit of the shareholders of the corporation, entered into prior to the proposed public offering of the promotional stage corporation's securities, subjecting the promotional securities to a sales restriction for up to 3 years following the proposed public offering and including the terms contained in subsection (H). As a condition of registration, the issuer shall submit the agreement to the Commission for review.
8. "Significant earnings" shall be deemed to exist if the corporation's earnings record over the past two years, or the shorter period of its existence, demonstrates that the earnings test set forth in Subsection B, Paragraph 2, of this Rule is met based upon its shares outstanding immediately before the proposed public offering capitalized at the proposed public offering price. means earnings per share, based upon the issuer's shares outstanding immediately before the proposed public offering, of at least 1 of the following. Such test shall not be deemed the exclusive test for the determination of "significant earnings."
 - a. 5% of the public offering price per common share for the prior fiscal year, or the period of the issuer's existence if less than 1 fiscal year;
 - b. 4% of the public offering price per common share for each of the prior 2 fiscal years; or
 - c. 3% of the public offering price per common share for each of the prior 3 fiscal years.Such test shall not be deemed the exclusive test for the determination of "significant earnings."
9. "An unaffiliated Unaffiliated institutional investor" means any unaffiliated bank; investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64 (1994), as amended; ~~or a~~ business development company as defined in ~~section~~ Section 2(a)(48) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(48) (1994 & Supp. II 1996), incorporated by reference; small business investment company licensed by the U.S. Small Business Administration under ~~section~~ Section 301 of the Small Business Investment Act of 1958, 15 U.S.C. 681 (1994), as amended; employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3) (1994), incorporated by reference; insurance company; private business development company as defined in ~~section~~ Section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-2(a)(22) (1994), incorporated by reference; or comparable business entity engaged as a substantial part of its business in the purchase and sale of securities and which ~~that~~ owns less than 20% of the securities to be outstanding at the completion of the proposed public offering. Copies of documents incorporated by reference do not contain any later amendments or editions, are on file in the Office of the Secretary of State, and are available from the Securities Division of the Corporation Commission and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
- C. Securities will be treated as promotional securities that are issued to promoters of the corporation for a price less than 85% of the consideration for which such securities are proposed to be sold to the public or issued valued at less than the following percentages of the proposed public offering price, in an amount that represents an ultimate right of participation in excess of 15% of the securities to be outstanding at the completion of the proposed public offering, shall be promotional securities. The value of consideration other than cash received by the issuer for shares shall be established to the Commission's satisfaction by appraisals, evidence of amounts paid by others for substantially similar services or property, evi-

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dence of a bona fide offer to purchase such services or property, evidence of significant services rendered or contractually required to be rendered to the issuer, which may take into account the relevant experience, special skills, and other qualifications of the person rendering the service, or any other evidence. The value of noncash consideration that cannot be established to the satisfaction of the Commission shall be 0.

1. For all securities issued to a promoter within 1 year prior to and including the date of the offering of securities to the public: 85%.
2. For all securities issued to a promoter within 2 years but not less than 1 year prior to and including the date of the offering of securities to the public: 75%.
3. For all securities issued to a promoter within 3 years but not less than 2 years prior to and including the date of the offering of securities to the public: 65%.

for services rendered, patents, copyrights or other intangibles, the value of which has not been established to the satisfaction of the Commission by appraisals, by evidence of amounts paid by others for substantially similar services or property, by evidence of a bona fide offer to purchase such services or property, or by other evidence.

D. A summary of the sales restriction terms shall be included in the offering documents, and a legend evidencing the sales restriction shall appear on each certificate representing the shares subject to the restriction.

B.E. Promotional securities subject to an escrow will be escrowed for a period up to four years. The escrowed In the event that any of the following occurs during the term of the restrictive sales agreement, the promotional securities will shall be released in accordance with the following provisions subsection (G):

1. For 60 consecutive trading days commencing at least 90 days after the date of the offering of the securities to the public, the issuer's securities trade in a public market at a price of not less than 150% of the offering price per share.

1.2. If for For ninety (90) consecutive trading days at any time during the term of the escrow agreement commencing at least twelve (12) months after the date of the offering of the securities to the public, commencement of the term of the escrow, the Company issuer's shares securities have traded trade in a public market at a price of not less than 110% of the initial offering price per share, then the escrow shall terminate, and all of the shares shall be released to the person, persons or entities then entitled thereto.

2.3. If, at the end of For any two consecutive fiscal years within the escrow period the Company ending after the date of the offering of the securities to the public, the issuer has had earnings per share of at least:

- a. equal to not less than 5% of the initial public offering price per common share for that fiscal year;
- b. 4% of the public offering price per common share for that fiscal year and for the prior fiscal year, calculated independently, whether or not such prior fiscal year ended after the date of the offering of the securities to the public; or
- c. 3% of the public offering price per common share for that fiscal year and for each of the 2 prior fiscal years, calculated independently, whether or not such prior fiscal years ended after the date of the offering of the securities to the public.

each of such two years, then the escrow shall terminate and all of the shares shall be released and delivered to the person, persons or entities then entitled thereto.

4. The securities become covered securities as that term is defined in subsection 18(b)(1)(A) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)(A) (Supp. II 1996)), incorporated by reference.

5. A bona fide tender offer or an offer to merge or otherwise acquire the issuer's equity securities by an unaffiliated purchaser, pursuant to a vote by the majority of the shareholders and in accordance with the following:

a. If the transaction occurs within 24 months of the effective date of the offering registered with the Commission, all public shareholders of the issuer will receive cash in the amount of at least 2 times the public offering price per share of equity securities at the effective date of the tender offer, merger, or other acquisition, or securities--listed or to be listed, or qualified in all respects for listing, on the New York Stock Exchange, the American Stock Exchange, or the National Market System of the National Association of Securities Dealers Automated Quotations System—in value equal to at least 2 times the public offering price per share of equity securities at the effective date of the tender offer, merger, or other acquisition.

b. If the transaction occurs more than 24 months after the effective date of the offering registered with the Commission, all public shareholders of the issuer will receive cash in the amount of at least 1 1/2 times the public offering price per share of equity securities, or securities in value equal to at least 1 1/2 times the public offering price per share of equity securities.

6. The securities are transferred by will or pursuant to the laws of descent and distribution or by court order. In all such cases, only the securities so transferred shall be released from the terms of the restrictive sales agreement.

3.F. If there has not been a release of escrowed the promotional shares securities, or any part thereof, have not been released pursuant to Paragraphs 1. or 2. above subsections (E)(1) through (6), by the end of the second year of the escrow, the then at the end of the 1st 12-month period after the date of commencement of the restrictive sales agreement, over each of the next 8 calendar quarters, Commission shall release one eighth 1/8 of the escrowed promotional shares shall be released from the restrictive sales agreement and the restrictive legend may be removed from the certificates representing such

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~~shares over each of the next eight calendar quarters. There is no filing requirement in connection with the securities released under this subsection.~~

- ~~4. The shares in escrow may be transferred by will or pursuant to the laws of descent and distribution or through appropriate legal proceedings but in all cases the shares shall remain in escrow and subject to the terms of the escrow agreement. In addition, upon the death of a promoter, such promoter's escrowed shares may be hypothecated, subject to all of the terms of the escrow agreement, to the extent necessary to pay the expenses of the estate. The securities in escrow may be transferred by gift to family members, provided the shares remain subject to the terms of escrow. Securities in escrow may not be pledged to secure a debt.~~
- ~~5. A summary of the terms of the escrow shall be included in the offering documents and in subsequent annual reports to shareholders.~~
- ~~6. The escrow agent must be satisfactory to the Commission and the escrow agent may not be affiliated with any promoter.~~

C. Rights of participants

- ~~1. The shares held under an escrow agreement required as a condition to registration of a public offering shall not have any right, title, interest, or participation in the assets of the corporation in the event of dissolution, liquidation, merger, consolidation, reorganization, sale of assets, exchange or any transaction or proceeding which contemplates or results in the distribution of the assets of the corporation, until the holders of all shares not escrowed have been paid, or have had irrevocably set aside for them an amount equal to one hundred percent (100%) of the purchase price per share in the public offering, adjusted for stock splits and stock dividends. Subsequently, the escrowed shares shall be entitled to receive an amount per share equal to the one hundred percent (100%) paid to or set aside for the non-escrowed shares and thereafter, all shares shall participate on a pro rata basis. A merger, consolidation, or reorganization may proceed on terms and conditions different than those stated above if a majority of shares held by persons other than promoters approve the terms and conditions by vote at a meeting held for such purpose.~~
- ~~2. Shares held under an escrow agreement shall continue to have all voting rights to which those shares are entitled. Any dividends paid on such shares shall be paid to the escrow agent and held pursuant to the terms of the escrow agreement. The escrow agent shall treat such dividends as assets of the corporation available for distribution under the provisions of Subsection C. Paragraph 1. The escrow agent shall place the dividends in an interest-bearing account. The dividends and interest earned thereon will be disbursed in proportion to the number of shares released from the escrow.~~

~~All certificates representing stock dividends and shares resulting from stock splits from escrowed shares shall be delivered to the escrow agent to be held pursuant to the escrow agreement.~~

D.G. ~~Promotional securities shall automatically be released~~ Release of securities in escrow from the restrictive sales agreement and the restrictive legend may be removed from the share certificates upon the filing with the Commission of any 1 of the following:

- ~~1. Petitions~~ requisitions release of securities in escrow will be considered:
 - ~~a. The terms and conditions of Subsection B. Paragraph 1. have been satisfactorily demonstrated to have been met or;~~ With respect to subsections (E)(1), (2), or (4), a written representation from the promoter indicating compliance with the applicable subsection;
 - ~~b.2. The terms and conditions of Subsection B. Paragraph 2. have been satisfied and the petition is~~ With respect to subsection (E)(3), a written representation from the promoter indicating compliance with such subsection accompanied by financial statements, prepared in accordance with generally accepted accounting principles applied on a consistent basis and audited and reported upon by an independent certified public accountant, that indicate compliance with the subsection;-
 - ~~e.3. Petitions may be submitted pursuant to Subsection B. Paragraph 3. With respect to subsection (E)(5), a written representation from the promoter indicating compliance with such subsection accompanied by any offering materials relating to the specified transaction; or~~
- ~~2.4. Requirements of Subsection D. Paragraph 1. Subparagraphs a. through e. above do not apply if there is an~~ With respect to subsection (E)(6), a certified copy of an order of issued by a court of competent jurisdiction which that orders the release or transfer of such promotional securities, a certified copy of an instrument of distribution filed with a court of competent jurisdiction, or a written representation from the issuer stating that the securities were transferred pursuant to a will or the laws of descent and distribution.

H. The restrictive sales agreement shall include the following terms and conditions:

1. Except as otherwise provided in the agreement, the promotional securities shall not be transferred, sold, pledged, hypothecated, or encumbered nor shall the issuer recognize any attempted transfer, sale, pledge, hypothecation, or encumbrance for 3 years following the conclusion of the proposed offering;
2. The number of promotional securities subject to the restriction;
3. The identity of owners of the promotional securities;
4. The terms of release under subsections (E), (F), and (G);

5. Any profits realized by a promoter who sells promotional securities in violation of the restrictive sales agreement shall inure to and be recoverable by the issuer;
 6. Promotional securities may be transferred by gift to family members, not more remote than 1st cousins, or to trusts or similar instruments of which the promoter is the beneficiary for estate-planning purposes, provided the securities remain subject to the terms of the restrictive sales agreement;
 7. Promotional securities may be transferred by any method or transaction approved by a majority of the shareholders other than the promoters, provided the securities shall remain subject to the terms of the restrictive sales agreement;
 8. Holders of promotional securities shall continue to have all voting and other rights to which they are entitled by ownership of the promotional securities; and
 9. All certificates representing stock dividends from promotional securities and all securities resulting from stock splits from promotional securities shall be subject to the terms of the restrictive sales agreement.
- I.** A breach of the restrictive sales agreement by a promoter shall be deemed a violation of this Section by such promoter.