

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

PREAMBLE

1. **Sections Affected**

Article 7	<u>Rulemaking Action</u>
R2-12-701	New Article
	New Section
2. **The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. § 19-124(D)
Implementing statutes: A.R.S. § 19-124(D)
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening; 5A.A.R. 2997, September 3, 1999.
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Jessica Funkhouser, State Election Director
Address: Office of the Secretary of State, Election Services
1700 West Washington, 7th Floor
Phoenix, AZ. 85007
Telephone: (602) 542-6167
Fax: (602) 542-6172
5. **An explanation of the rule, including the agency's reason for initiating the rule:**

In accordance with A.R.S. § 19-124(D), a person filing an "pro" or "con" argument shall deposit with the Office of the Secretary of State, at the time of the filing, an amount of money prescribed by the Office of the Secretary of State for the purpose of offsetting a portion of the proportionate cost of the paper and printing of the argument in the ballot measures publicity pamphlet.
6. **A reference to any study that the agency proposes to rely on 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 supporting material:**

None.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

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

The fee for filing a "pro" or "con" argument for the publicity pamphlet, published by the Office of the Secretary of

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State, has been \$100 for more than a decade. When the argument is filed on paper, staff members of the Office of the Secretary of State or temporary workers re-type the argument in the proper computer word processing program and then proofread the argument to ensure that it is reproduced exactly as it was submitted by the author.

A reduced fee of \$75 will be assessed for arguments submitted in a readable electronic format. This format will reduce the cost to small businesses, organizations, and consumers that wish to submit arguments for the pamphlet. The electronic format will reduce the time and effort put in to reproducing the argument that results in a reduction of cost.

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: Jessica Funkhouser, State Election Director
Address: Office of the Secretary of State, Election Services
1700 West Washington, 7th Floor
Phoenix, AZ. 85007
Telephone: (602) 542-6167
Fax: (602) 542-6172

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

A public hearing will be held October 6, 1999, from 9 a.m. to 11 a.m. in the conference room of the Secretary of State, 1700 West Washington, 7th floor, 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:

Not applicable.

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

Not applicable.

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

ARTICLE 7. BALLOT MEASURE PUBLICITY PAMPHLET ARGUMENT FEES

Section

R2-12-701. Ballot Measure Publicity Pamphlet Argument

ARTICLE 7. BALLOT MEASURE PUBLICITY PAMPHLET ARGUMENT FEES

R2-12-701. Ballot Measure Publicity Pamphlet Argument

The following fees have been established by the Office of the Secretary of State, for the purpose of offsetting the cost of printing "pro" and "con" arguments in the ballot measure publicity pamphlet as required by A.R.S. § 19-124(D).

1. Argument filed on paper only - \$100, and
2. Argument filed on paper and electronic format (computer disk) - \$75.

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TITLE 9. HEALTH SERVICES

**CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES**

PREAMBLE

1. Sections Affected
R9-6-701

Rulemaking Action
Amend

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cents are largely unvaccinated and are susceptible to the Hepatitis B virus. The Report also stated that a catch-up strategy for previously unvaccinated children would result in a more rapid decline in the incidence of hepatitis B virus infection.

In the Report, ACIP also reiterated its 1989 recommendation for a 2-dose measles vaccination schedule for students in primary schools, secondary schools, and colleges and universities. The Report stated that primary vaccine failure was considered the principal contributing factor in the measles outbreaks during the 1980s and that a 2-dose measles vaccination schedule would provide protection to at least 98% of persons vaccinated. ACIP has recommended in the Report that all states take immediate steps to ensure that all school-aged children be vaccinated with 2 doses of MMR by 2001. Due to current outbreaks of measles in Arizona, the Department has made a priority to require a 2nd dose of MMR to the school-aged children.

Despite these findings and recommendations, the Department can not immunize all the children lacking hepatitis B immunizations and 2nd dose of MMR at 1 time because of lack of adequate financial and human resources within the state's public and private health care infrastructure. Therefore, the Department has planned to phase in the requirements of 2-year cohorts at a time so that all children in Arizona will receive their 3-dose Hepatitis B and 2-dose MMR vaccines within 5 years.

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 materials:

Morbidity and Mortality Weekly Report (MMWR) "Immunization of Adolescents," November 22, 1996, Vol. 45, No. RR-13. Contact: Linda Faris at Arizona Department of Health Services, 3815 N. Black Canyon Hwy., Phoenix, Arizona 85015.

Morbidity and Mortality Weekly Report (MMWR) "Measles, Mumps, and Rubella – Vaccine Use and Strategies for Elimination of Measles, Rubella, and Congenital Rubella Syndrome and Control of Mumps," May 22, 1998, Vol. 47, No. RR-8. Contact: Linda Faris at Arizona Department of Health Services, 3815 N. Black Canyon Hwy., Phoenix, Arizona 85015.

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

Not applicable.

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

As used in this summary, "minimal" economic impact means less than \$1,000 per year, "moderate" means between \$1,000 and \$10,000 per year, and "substantial" means greater than \$10,000 per year.

The Department's cost for the preparation of the rule package is moderate and include writing and printing drafts, consulting stakeholders, attending public hearings, and copying and mailing materials. The Department's implementation cost for the initial 5-year catch-up period is substantial for purchasing vaccine for a portion of underinsured children not covered by federal funds. The Department's cost will decrease after the catch-up period due to decreased staff time to investigate suspected cases of vaccine preventable diseases and decreased amounts of vaccine purchase.

The estimated cost to the County Public Health Services for initial 5-year catch-up period is substantial. The counties will incur substantial cost for additional staffing, substantial cost for purchase of vaccine administration supplies, and minimal cost for printing educational materials. The counties' cost will decrease after the catch-up period due to decreased staff time to investigate suspected cases of vaccine preventable disease cases and to administer vaccinations.

The estimated cost to the Secretary of State's office is minimal, reflecting staff time to publish the amendments. The estimated cost to the Governor's Regulatory Review Council is minimal, reflecting staff time to review and approve the amendments.

The estimated cost for Department of Education (DOE) is moderate. DOE will incur cost for additional time for school nurses to assess student immunization records.

Cost to the federal government is substantial, through the "Vaccines for Children" (VFC) and other federal programs, which supply the funds to purchase vaccine to vaccinate uninsured, underinsured, Medicaid, and Native American children.

Small businesses that will be affected by the amendments include private health care providers including private physicians and clinics. Private health care providers will incur moderate expenses for additional supplies and staff time to administer immunizations. However, the cost will be offset by substantial revenues received from clinic and vaccine administration fees and insurance reimbursement.

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Large businesses that will be affected by the amendments include vaccine manufacturers and health care payers. Vaccine manufacturers will receive substantial revenue due to an increased demand for vaccine. Health care payers include Arizona Health Care Cost Containment System (AHCCCS) contracted health plans and private insurance/health plans. AHCCCS contracted health plans will incur substantial costs for administration fees paid to contracted physicians. Private insurance/health plans will incur substantial costs for the reimbursement of vaccine purchases for non-VFC eligible children and administration fees to private health care providers. Health care payers will realize substantial savings through reduction of medical care costs for vaccine preventable diseases.

The cost to each parent will be minimal, mainly comprised of lost work time for some parents to take their children to be immunized. Few parents will have to pay "out of pocket" expense since children who are underinsured for vaccinations are covered by federal or state funds. Given the large number of children to be immunized, however, the cost to parents as a group will be substantial. Society at large will substantially benefit by a reduction of illness and death from vaccine preventable diseases.

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: Linda Faris
Hepatitis Prevention Coordinator

Address: Arizona Department of Health Services
3815 N. Black Canyon Highway
Phoenix, AZ 85015

Telephone: (602) 230-5858

Fax: (602) 230-5817

E-mail: lfaris@hs.state.az.us

or

Name: Kathleen Phillips
Rules Administrator

Arizona Department of Health Services
1740 W. Adams, Room 410
Phoenix, Arizona 85007

Telephone: (602) 542-1264

Fax: (602) 542-1289

E-mail: kphillips@hs.state.az.us

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

<u>Place</u>	<u>Time</u>	<u>Date</u>
Arizona State Building 400 West Congress North Building, Room 254 Tucson, Arizona 85701	11 a.m.	October 5, 1999, Tuesday
State Capitol - Tower Building 1700 W. Washington 5th Floor Conference Room Phoenix, Arizona 85007	2 p.m.	October 7, 1999, Thursday
Coconino County Health and Community Services Bldg. Ponderosa Room 2625 North King Street	11 a.m.	October 14, 1999, Thursday

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Flagstaff, Arizona 86004

Written comments may be submitted until the close of record, October 15, 1999, at 5 p.m., to either of the persons listed in question 4.

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

Not applicable.

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

Not applicable.

13. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES**

ARTICLE 7. VACCINE PREVENTABLE DISEASES

Section

R-6-701.	Required Immunizations for Child Care or School Entry
Table 1	Immunization Requirements for Child Care or School Entry
Table 2	Catch-Up Immunization Schedule for Child Care or School Entry

ARTICLE 7. VACCINE PREVENTABLE DISEASES

R9-6-701. Required Immunizations for Child Care or School Entry

A. Except as permitted in R9-6-705:

1. Before entry in a school, or no later than 15 days following entry in a child care, a child, an individual more than 18 years of age, or an emancipated person shall be immunized against each of the following diseases:
 - a. Diphtheria,
 - b. Tetanus,
 - c. Hepatitis B,
 - d. Pertussis,
 - e. Poliomyelitis,
 - f. Measles (rubeola),
 - g. Mumps,
 - h. Rubella (German Measles), and
 - i. *Haemophilus influenzae* type b
2. A child aged 2 through 5 years old in child care in Maricopa County shall be immunized against the hepatitis A virus.

B. A child, an individual more than 18 years of age, or an emancipated person shall be immunized in accordance with the schedule in Tables 1 or 2. The Department or a school administrator may exempt a child, an individual more than 18 years of age, or an emancipated person from immunizations as authorized by A.R.S. § 15-873 or A.R.S. § 36-883(C).

C. A child, an individual more than 18 years of age, or an emancipated person who is entering a school and has not received a 2nd dose of MMR or has not finished the 3-dose Hep B series specified in Table 1 or Table 2, shall be immunized with a 2nd dose of MMR and the remaining doses of Hep B series, as applicable, according to the following:

1. Kindergarten through 2nd grade and 7th grade, by September 1, 2000;
2. Kindergarten through 3rd grade and 7th and 8th grades, by September 1, 2001;
3. Kindergarten through 4th grade and 7th through 9th grades, by September 1, 2002;
4. Kindergarten through 5th grade and 7th through 10th grades, by September 1, 2003;
5. Kindergarten through 11th grade, by September 1, 2004; and
6. Kindergarten through 12th grade, by September 1, 2005.

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Table 1

Table 1. Immunization Requirements for Child Care or School Entry

Age at Entry	Number of Doses Vaccine Required	Special Notes
<2 months	1 Hep B	(See Note ¹)
2 through 3 months	1 DTP, DTaP or DT 1 OPV or IPV 1 Hib 1 Hep B	(See Note ¹)
4 through 5 months	2 DTP, DTaP or DT 2 OPV or IPV 2 Hib 2 Hep B	(See Note ¹)
6 through 11 months	3 DTP, DTaP or DT 2 OPV or IPV 3 Hib 3 Hep B	(See Note ² for a child 7 months through 59 months of age.) (See Note ¹)
12 through 14 months	3 DTP, DTaP or DT 3 OPV or IPV 1- 4 Hib 1 MMR 3 Hep B	(See Note ²) (See Note ³) (See Note ¹)
15 through 59 months	4 DTP, DTaP or DT 3 OPV or IPV 1-4 Hib 1-2 MMR 3 Hep B	(See Note ²) (See Note ³) (See Note ¹)
2 through 5 years (Only required for Maricopa County child care)	2 Hep A	(See Note ⁴)
4 through 6 years	4 DTP, DTaP or DT 3 OPV or IPV 2 MMR 3 Hep B	A child shall receive a 5 th dose if the 4 th dose was received before the 4 th birthday. (See Note ⁵) (See Note ³) A child entering child care or kindergarten school shall receive a 2 nd dose 1 month or more after the date of the 1 st dose. A child initially entering school at the 1st grade level who has not already received a 2nd dose shall receive a 2nd dose 1 month or more after the date of the 1st dose. (See Note ⁴) A child entering child care or kindergarten school shall receive the Hep B series <u>according to Note¹</u> . A child initially entering school at the 1st grade level who has not already received the Hep B series shall receive the Hep B series.
7 years or older	4 DTP, DTaP or any combination of DTP/DT/Td 3 OPV or IPV 1-2 MMR 3 Hep B	A child shall receive a 4 th dose of Td before school entry if the 3 rd dose of diphtheria-tetanus containing vaccine was received before the 4 th birthday. A child or an individual more than 18 years of age shall receive a Td dose if 10 years or more have passed since the date of the last dose. (See Note ⁵) (See Note ³) (See Note ⁴) A child entering school at the kindergarten level shall receive the Hep B series <u>according to Note¹</u> . A child initially entering school at the 1st grade level who has not already received the Hep B series shall receive the Hep B series.

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1 A child shall receive the 1st dose of Hep B before kindergarten, ~~or 1st, 2nd, or 7th~~ grade entry, or no later than 15 days following child care entry. A child shall receive the 2nd dose of Hep B 4 weeks or more after the date of the 1st dose. A child who is 6 months of age or older shall receive the 3rd dose 2-5 months after the date of the 2nd dose and 4 months or more after the date of the 1st dose. A child in a grade other than listed above shall receive the Hep B immunization series in accordance with the time-line specified in R9-6-701(C).

2 A child 0 through 2 months old shall receive the 3-dose Hib series when the child is 2, 4, and 6 months old, with a 4th dose when the child is 12-15 months old. See Table 2, footnote 2, for a child who receives the 1st dose of Hib at 3 months of age or older.

3 A child who is 12 months of age or older, or an individual more than 18 years of age, shall receive measles, mumps, and rubella vaccines as individual antigens or as combined MMR vaccine. A child or an individual more than 18 years of age shall receive the 1st dose of MMR before school entry, or no later than 15 days following child care entry. A child aged 4 years of age or older through 6 years old who is entering child care, kindergarten, ~~or 1st, 2nd, or 7th~~ grade shall receive a 2nd dose 1 month or more after the date of the 1st dose. A child in any other grade shall receive the 2nd MMR in accordance with the time-line specified in R9-6-701(C).

4 A child 2 through 5 years old shall receive the 1st dose of hepatitis A vaccine no later than 15 days following child care entry in Maricopa County, in accordance with A.A.C. R9-5-305(C). A child shall receive a 2nd dose 6 months following the date of the 1st dose. If 6 months or more have passed since the date of the 1st dose, a child shall receive the 2nd dose no later than 15 days after entry. These rules apply to any child 2 through 5 years old who is entering or has already entered child care in Maricopa County on the effective date of these rules.

5 A child shall receive a 4th dose of OPV or IPV for school entry if the 3rd dose was received before the 4th birthday. OPV or IPV is not required for individuals more than 18 years of age for school entry.

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Table 2. Catch-Up Immunization Schedule for Child Care or School Entry

Vaccine	Dose	Time Intervals
1. DTP - Diphtheria, Tetanus and Pertussis		
a. For A Child Less Than 7 Years Of Age: DTP or any combination of DTP, DTaP and DT	1 st	A child shall receive the 1 st dose before school entry, or no later than 15 days following child care entry.
	2 nd	If 4 weeks or more have passed since the date of the 1 st dose, a child shall receive the 2 nd dose before school entry, or no later than 15 days following child care entry.
	3 rd	If 4 weeks or more have passed since the date of the 2 nd dose, a child shall receive the 3 rd dose before school entry, or no later than 15 days following child care entry.
	4 th	If 6 months or more have passed since the date of the 3 rd dose, a child shall receive the 4 th dose before school entry, or no later than 15 days following child care entry.
	5 th or more	If a child received the 4 th dose before the child's 4 th birthday, the child shall receive a 5 th dose before school entry, or no later than 15 days following child care entry. If a child received the 4 th dose after the child's 4 th birthday, the child shall receive a dose of Td 10 years after the date of the 4 th dose.
b. For A Child Aged 7 Years and Older, or An Individual More Than 18 Years of Age: Td - Tetanus Diphtheria (Pertussis not required.)	1 st	Before school entry.
	2 nd	If 4 weeks or more have passed since the date of the 1 st dose, a child or an individual more than 18 years of age shall receive the 2 nd dose before school entry.
	3 rd	If 6 months or more have passed since the date of the 2 nd dose, a child or an individual more than 18 years of age shall receive the 3 rd dose before school entry. A child or individual more than 18 years of age shall receive a dose of Td 10 years after the date of the 3 rd dose.
2. OPV or IPV - Polio (See Note 1 below.)	1 st	A child shall receive the 1 st dose before school entry, or no later than 15 days following child care entry.
	2 nd	If 4 weeks or more have passed since the date of the 1 st dose, a child shall receive the 2 nd dose before school entry, or no later than 15 days following child care entry.
	3 rd	For a child who has received 2 doses of IPV, OPV, or 1 dose of each, if 4 weeks or more have passed since the date of the 2 nd dose, the child shall receive the 3 rd dose of IPV or OPV before school entry, or no later than 15 days following child care entry.
3. MMR - Measles, Mumps, Rubella (See Note 3 below.)	1 st	A child who is 12 months of age or older, or an individual more than 18 years of age, shall receive the 1 st dose before school entry, or no later than 15 days following child care entry.
	2 nd	If 1 month or more have <u>has</u> passed since the date of the 1 st dose, a child who is 4 years of age or older shall receive the 2 nd dose before kindergarten school entry, or no later than 15 days following child care entry. A child initially entering school at the 1st grade level who has not already received a 2nd dose shall receive a 2nd dose.

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4. Hib - <i>Haemophilus influenzae</i> type b (See Note ² below.) (Not required for individuals aged 5 years and older.)	1	A child who is less than 5 years of age shall receive the vaccine before school entry, or no later than 15 days following child care entry.
5. Hep B - Hepatitis B (See Note ⁴ below.)	1 st	A child shall receive the 1 st dose before kindergarten <u>school</u> entry, or no later than 15 days following child care entry. A child initially entering school at the 1st grade level who has not already had the Hep B series shall also receive the Hep B series.
(See Note ⁴ below.)	2 nd	If 4 weeks or more have passed since the date of the 1 st dose, a child shall receive the 2 nd dose before kindergarten or <u>1st-grade school</u> entry, or no later than 15 days following child care entry.
(See Note ⁴ below.)	3 rd	If 2 months or more have passed since the date of the 2 nd dose, and 4 months or more have passed since the date of the 1 st dose, a child shall receive the 3 rd dose, before kindergarten or <u>1st-grade school</u> entry, or no later than 15 days following child care entry.
6. Hep A - Hepatitis A Only required for Maricopa County child care	1 st	A child who is 24 through 71 months of age shall receive the 1 st dose no later than 15 days following child care entry.
	2 nd	If 6 months or more have passed since the date of the 1 st dose, a child shall receive the 2 nd dose no later than 15 days following child care entry.

1 A child shall receive a 4th dose of OPV or IPV if the 3rd dose was received before the 4th birthday. OPV or IPV is not required for individuals more than 18 years of age for school entry.

2 A child 0 through 2 months old shall receive the 3-dose Hib series when the child is 2, 4, and 6 months old with a 4th dose when the child is 12-15 months old. A child 3 through 6 months old who is starting the Hib series shall receive 4 doses: 1 dose before entry, the 2nd dose 2 months after the date of the 1st dose, the 3rd dose 2 months after the date of the 2nd dose, and a 4th dose when 12-15 months old. A child 7 through 11 months old who is starting the Hib series shall receive 3 doses: 1 dose before entry, the 2nd dose 2 months after the date of the 1st dose, and a 3rd dose when 12-15 months old. A child 12 through 14 months old who is starting the Hib series shall receive 2 doses: 1 dose before entry, followed by a 2nd dose 2 months or more after the date of the 1st dose, but not before age 15 months. A child 15 through 59 months old who is starting the Hib series shall receive a single dose before entry and does not require another dose.

3 A child in kindergarten, 1st, 2nd, or 7th grade shall receive the 2nd MMR before entering school or no later than 15 days following child care entry. A child in any other grade shall receive the 2nd MMR in accordance with the time-line specified in R9-6-701(C).

4 A child in kindergarten, 1st, 2nd, or 7th grade shall receive the hepatitis B series before entering school or no later than 15 days following child care entry. A child in any other grade shall receive the hepatitis B series in accordance with the time-line specified in R9-6-701(C).

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

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

PREAMBLE

1. Sections Affected

R14-4-116
R14-4-116
R14-4-118
R14-4-119

Rulemaking Action

Repeal
New Section
Amend
New Section

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

Authorizing statute: A.R.S. §§ 44-1821

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Implementing statute: A.R.S. §§ 44-1891 and 44-1902

Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13

3. A list of all previous notices appearing in the Arizona Administrative Register.

Notice of Rulemaking Docket Opening: 5 A.A.R. 2179, July 9, 1998.

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

Name: Kurt Merritt, Assistant General Counsel

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

Phone: (602) 542-4242

Fax: (602) 594-7470

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

Current Section A.A.C. R14-4-116 is repealed as unnecessary and redundant given Arizona public record laws.

Proposed Section A.A.C. R14-4-116 formally identifies and incorporates by reference certain policy statements issued by the North American Securities Administrators Association ("NASAA") regarding the registration of securities. The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") requires issuers registering securities to follow these policy statements. The new Section 116 clarifies the Division's policy statement dated November 27, 1984, published in the CCH Blue Sky Reporter, that states that Arizona subscribes to statements of policy adopted by NASAA relating to the registration of securities, unless in conflict with a state statute or regulation.

Section A.A.C. R14-4-118 requires issuers registering securities in Arizona to include specific legends on the front cover page of prospectuses. The proposed amendments remove the precise wording and font requirements of the Section, and instead require concise and conspicuous disclosures without dictating form. The amendments are proposed to harmonize with federal law "plain English" disclosure rules for prospectuses.

New Section A.A.C. R14-4-119 codifies requirements for issuers applying to register preferred stock. Section 119 is based on a NASAA policy statement that the Division currently utilizes.

6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rules 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:

The proposed rule will 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:

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

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:

Not applicable.

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:

Date: October 15, 1999

Time: 10:15 a.m.

Location: Arizona Corporation Commission
1200 West Washington Avenue
Phoenix, Arizona 85007

Nature: Oral proceeding. Subsequent to the oral proceeding, the Arizona Corporation Commission will taken final action at an open meeting with respect to the making of the proposed rule.

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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:

All the following are policy statements issued by NASAA and published in CCH Blue Sky Reporter. All references to the policy statements are located in R14-4-116(A).

- Statement of policy regarding loans and other material affiliated transactions, amended November 18, 1997.
- Registration of asset-backed securities, adopted October 25, 1995.
- NASAA mortgage program guidelines, adopted September 10, 1996.
- Registration of commodity pool programs, adopted on September 21, 1983, effective January 1, 1984; amended and adopted August 30, 1990.
- Equipment programs, adopted on November 20, 1986, effective January 1, 1987, amended April 22, 1988, and October 24, 1991.
- Registration of oil and gas programs, adopted on September 22, 1976, amended October 12, 1977, October 31, 1979, April 23, 1983, July 1, 1984, September 3, 1987, September 14, 1989, and October 24, 1991.
- Statement of policy regarding real estate investment trusts, revised and adopted on September 29, 1993.
- Real estate programs, last revised September 29, 1993.
- Statement of policy regarding unequal voting rights, adopted and effective October 24, 1991.
- Omnibus guidelines, adopted on March 29, 1992.

13. The full text of the rules 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

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ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

~~R14-4-116. Inspection of registration information~~

~~All prospectuses for registration are available for public inspection during business hours at the principal offices of the Arizona Corporation Commission, Phoenix, Arizona. Such prospectuses which are available for public inspection are those which have an effective registration date.~~

R14-4-116. NASAA Statements of Policy

- A.** Securities or transactions that fall within 1 or more of the following North American Securities Administrators Association statements of policy shall comply with the requirements of those statements of policy to qualify for registration or renewal under A.R.S. Title 44, Chapter 12, Article 7. This Section shall not apply to the registration of securities under A.R.S. § 44-1901.
1. Statement of policy regarding loans and other material affiliated transactions, amended November 18, 1997.
 2. Registration of asset-backed securities, adopted October 25, 1995.
 3. NASAA mortgage program guidelines, adopted September 10, 1996.
 4. Registration of commodity pool programs, adopted on September 21, 1983, effective January 1, 1984; amended and adopted August 30, 1990.
 5. Equipment programs, adopted on November 20, 1986, effective January 1, 1987, amended April 22, 1988, and October 24, 1991.
 6. Registration of oil and gas programs, adopted on September 22, 1976, amended October 12, 1977, October 31, 1979, April 23, 1983, July 1, 1984, September 3, 1987, September 14, 1989, and October 24, 1991.

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7. Statement of policy regarding real estate investment trusts, revised and adopted on September 29, 1993.
 8. Real estate programs, last revised September 29, 1993.
 9. Statement of policy regarding unequal voting rights, adopted and effective October 24, 1991.
 10. Omnibus Guidelines, adopted on March 29, 1992.
- B.** The statements of policy listed in subsection (A) are incorporated by reference. The incorporated statements of policy do not contain later editions or amendments made after the effective date of this Section. The statements of policy are published in *NASAA Reports* by Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646. Copies are also available at the Office of the Secretary of State and the Commission.

R14-4-118. Statement Statements required Required in prospectuses Prospectus

A. This Section applies to securities subject to A.R.S. Title 44, Chapter 12, Articles 6 and 7.

B.A There shall be set forth on the outside front cover page of every prospectus, printed in capital letters in bold face Roman type at least as large as 10 point modern type and at least two points leaded, whichever of the following statements shall be applicable:

~~“THESE SECURITIES ARE REGISTERED UNDER THE SECURITIES ACT OF ARIZONA, BUT THE FACT OF SUCH REGISTRATION IS NOT TO BE DEEMED A FINDING BY THE ARIZONA CORPORATION COMMISSION NOR THE DIRECTOR OF SECURITIES THAT THIS PROSPECTUS IS TRUE OR ACCURATE, NOR DOES SUCH REGISTRATION MEAN THAT THE COMMISSION OR THE DIRECTOR HAS PASSED UPON THE MERITS OF OR OTHERWISE APPROVED THE SECURITIES DESCRIBED HEREIN. THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION.”~~

~~or~~

~~“THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.”~~

~~or~~

~~“THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION. THE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE.”~~

The outside front cover page of every prospectus shall include, in a concise and conspicuous manner, a disclosure that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or determined if the prospectus is truthful or complete, and that any representation to the contrary is a criminal offense.

C.B. ~~There shall be set forth on the outside front cover page of every prospectus relating to securities~~ If any of the following apply to an issuer, the outside front cover page of the prospectus also shall include, in a concise and conspicuous manner, a disclosure regarding the speculative or high-risk nature of the securities:

1. ~~The issuer of which has not been engaged for three years in the principal business in which it is then engaged, or in the business described in the prospectus for at least 3 years.~~
2. ~~The issuer of which has not had a net profit net income in any of its last three 3 fiscal years., or~~
3. ~~Which are of a value~~ The value of the security offered is materially dependent on proposed or promised future promotion or development, the fulfillment or accomplishment of a future condition, promotion, or development instead of the issuer's rather than upon present tangible assets or conditions., or
4. ~~In regard to a specific value of which the element of chance or hazard or speculative profit or possible loss equals or predominates over the element of reasonable certainty, safety and investment, or~~ A significant portion of the issuer's assets are intangible assets that have not been assigned a value in an audited financial statement according to generally accepted accounting principles.
5. ~~The issuer of which has included, or proposes to include in its assets as a material part thereof, speculative intangible assets, or has issued or proposes to issue a material part of its securities in payment for speculative intangible assets (the term “speculative intangible assets” as herein used to be interpreted as referring to patents, copyrights, formulae, good will, promotion, services rendered or other intangible assets, the book value of which has not been established to the satisfaction of the Commission or in consideration of the established value of which the contributors thereof have recently been or are to be issued securities at a price per unit substantially lower than the price per unit of similar securities offered by the prospectus), or~~ The issuer intends to exchange a significant portion of the securities for intangible assets at a per-unit price that is substantially lower than the per-unit price offered in the prospectus.
6. ~~Which are to be issued in furtherance or promotion of any enterprise or scheme for the sale, development or exploration of unimproved or undeveloped land or interests therein, unless the reasonable certainty, safety and investment quality thereof is established to the satisfaction of the Commission, or~~ The securities are issued as part of any project or plan for the sale, development, or exploration of any interest in unimproved or undeveloped land or oil, gas, or other mineral right.
7. ~~Which consists of any undivided interest or certificate of participation based on any undivided interest in oil royalties or oil leases where the value of such interests or certificates of participation materially depends on proposed or promised future development, a statement, printed in full face Roman type at least as large as 10 point modern type and at least two points leaded, reading as follows:~~

~~“THESE ARE SPECULATIVE SECURITIES”.~~

D. Issuers may comply with subsection (C) by using either of the following disclosures or other clear, plain language.

1. “These are speculative securities. You should purchase these securities only if you can afford a complete loss of your investment.”
2. “This investment involves a high degree of risk. You should purchase these securities only if you can afford a complete loss of your investment.”

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R14-4-119. Additional Registration Requirements for Preferred Stock.

- A.** This Section applies to a person proposing to register preferred stock under A.R.S. Title 44, Chapter 12, Article 7. This Section shall not apply to the registration of securities under A.R.S. § 44-1901.
- B.** As used in this Section, the terms “promoter” and “unaffiliated institutional investor” shall have the same meaning indicated in Section R14-4-105. As used in this Section, the following terms have the meaning indicated.
1. “Adjusted net earnings” means, after subtracting interest and dividends charges, the issuer’s net earnings adjusted on a pro forma basis to reflect all of the following:
 - a. The elimination of any required charges for debt, debt securities, or preferred stock that are to be redeemed or retired from the proceeds derived from the public offering of preferred stock.
 - b. The effect of any acquisitions or capital expenditures made by the issuer after its last fiscal year, or proposed or required to be made during the current fiscal year that materially affect the issuer’s net earnings.
 - c. The effect of charges or dividends on debt, debt securities, or preferred stock issued after the issuer’s last fiscal year.
 - d. The effect of any charges or dividends on debt, debt securities, or preferred stock issued during the issuer’s last fiscal year, but outstanding for only a portion of the year. The effect of the charges or dividends shall be treated as if the debt, debt securities, or preferred stock had been outstanding for the entire last fiscal year.
 - e. The effect of any other material changes to an issuer’s future net earnings.
 2. “Net earnings” means the issuer’s after-tax earnings that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, determined according to generally accepted accounting principles.
- C.** The Commission may deny an application if the issuer’s adjusted net earnings for the last fiscal year or its average adjusted net earnings for the last 3 fiscal years prior to the public offering were not sufficient to pay its fixed charges and preferred stock dividends, whether or not accrued, and to meet the redemption requirements, if applicable, of the preferred stock being offered.
- D.** As an alternative to subsection (C), the Commission may consider the issuer’s “statement of cash flows,” prepared in conformity with generally accepted accounting principles, if the statement demonstrates that the issuer has had positive “net cash provided by operating activities” for its last fiscal year. If the issuer will be redeeming or retiring debt securities using the proceeds from the public offering, the issuer shall make a pro forma adjustment for the elimination of the related interest charges, net of applicable income taxes. The Commission may require that the issuer submit a financial statement demonstrating an average positive “net cash provided by operating activities” for the last 3 fiscal years prior to the public offering. In either instance there must be sufficient cash to cover the preferred stock dividend whether or not declared.
- E.** Subsections (C) and (D) shall not apply to the registration of convertible preferred stock that is superior in right to payment of dividends, interest, and liquidation proceeds to any convertible debt and preferred stock that are legally or beneficially, directly or indirectly, owned by promoters. The issuer shall disclose the risks of failure to declare or pay dividends and the equity characteristics of the convertible preferred stock in the prospectus or offering document.