

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 7. BOARD CHIROPRACTIC EXAMINERS

##### PREAMBLE

- 1. Sections Affected**

R4-7-1001	<b><u>Rulemaking Action</u></b>
R4-7-1003	Amend
	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-904(B)(2)  
Implementing statute: A.R.S. § 32-926(B)(3)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 7 A.A.C. 2082, May 18, 2001
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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

The proposed rule amendments will further clarify the law pertaining to preceptor program participants. The first amendment will add a question to the application regarding convictions, sanctions, or investigations. The second amendment will clarify that the fee is non-refundable. The third will clarify that a student may remain in the program up to six months after the date of graduation or upon taking the NBCE Part IV exam.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

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

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

The economic impact is minor. The proposed amendments to R4-7-1001 and R4-7-1003 are technical in nature and will provide clarification of existing law. The amendments should not have any economic impact. The law already precludes participation in the preceptor program for applicants with a disciplinary history or under investigation for a

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violation of law; the agency has had only one instance of a requested refund on the \$75.00 fee; and externs are already precluded from participation in the program for more than 6 months following graduation.

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

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

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

Written comment will be accepted at the Board office, 5060 N. 19th Ave, #416, Phoenix, AZ, 85015 on a business day between the hours of 8:00 a.m. and 5:00 p.m. until July 20, 2001. An oral proceeding is not scheduled but may be requested.

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

Not applicable

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

Not applicable

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

**TITLE 4. COMMERCE, PROFESSIONS AND OCCUPATIONS**

**CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS**

**ARTICLE 10. PRECEPTORSHIP TRAINING PROGRAM**

Section

R4-7-1001. Eligibility; Application  
R4-7-1003. Regulation and Termination of the Preceptorship Program

**ARTICLE 10. PRECEPTORSHIP TRAINING PROGRAM**

**R4-7-1001. Eligibility; Application**

- A.** Both extern and preceptor shall submit a written application to the Board. The Board shall process the application within the time-frames provided in R4-7-502(J). The application shall be submitted on a form that contains the extern's photo; the extern's and preceptor's name, address, telephone number, and any other names of the extern and preceptor; the preceptor's license number, number of years in practice, and disciplinary history; a waiver of confidentiality and notarized signature from both the extern and preceptor; the beginning and ending date of the program; location, days, and hours of the proposed program; the name and contact number for the sponsoring college; the date of extern graduation; and identification of the proposed scope of the program and the eligibility of the applicants for approval. The application for both the extern and the preceptor shall also require each party to disclose whether they have had any convictions or sanctions or if they are currently under investigation for a violation of criminal or administrative law.
- B.** Except as provided in subsection (D), the Board may approve participation by an extern who:
1. Concurrently participates in an undergraduate or postgraduate preceptorship program offered by an accredited chiropractic college and provides verifiable proof of enrollment;
  2. Submits a written waiver of confidentiality that permits the Board access to any information, records, or documentation collected or used by the college to evaluate the extern's eligibility for or performance in the program;
  3. Provides a Certificate of Attainment on Parts I and II of the examination by the National Board of Chiropractic Examiners;
  4. Successfully completes and provides documentation of the coursework required by A.R.S. § 32-922.02 for practice of chiropractic specialties, if specialties are to be included in the training program; and
  5. Submits the non-refundable \$75.00 filing fee.
- C.** The Board shall not approve participation for an extern who:
1. Has been the subject of disciplinary sanction or convicted of a felony or a misdemeanor involving moral turpitude.

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2. Is currently under investigation for a licensing violation, felony or misdemeanor involving moral turpitude.
  3. Fails to demonstrate good character and reputation.
  4. Fails to demonstrate the physical and mental ability to practice chiropractic skillfully and safely.
  5. Has practiced chiropractic without a license or through participation in an approved preceptor program.
- D.** The Board may approve participation for a preceptor who:
1. Concurrently participates as a preceptor at the chiropractic college in which the extern is enrolled throughout the program and provides verifiable proof of participation;
  2. Submits a written waiver of confidentiality that permits the Board access to any information, records, or documentation collected or used by the college to evaluate the preceptor's eligibility for or performance in the program;
  3. Is licensed in Arizona for at least 5 years preceding the date the program is to begin and, if the program is to include practice of chiropractic specialties, is certified in those specialties for at least 3 years proceeding the date upon which the program is to begin; and
- E.** The Board shall not approve participation for a preceptor who:
1. Has been the subject of disciplinary sanction or convicted of a felony or a misdemeanor involving moral turpitude.
  2. Is currently under investigation for a licensing violation, felony or misdemeanor involving moral turpitude.
  3. Fails to demonstrate good character and reputation.
  4. Fails to demonstrate the physical and mental ability to practice chiropractic skillfully and safely.

**R4-7-1003. Regulation and Termination of the Preceptorship Program**

- A.** The Board, on its own initiative or upon receipt of a complaint, may investigate conduct of an extern or preceptor occurring within the program for compliance with these rules and A.R.S. § 32-924. The Board may, pursuant to A.R.S. § 32-929, obtain patient records as part of the investigation.
- B.** If after investigation, the Board determines that the conduct of the extern or preceptor imperatively requires emergency action, the Board shall suspend approval of the program pending proceedings for termination or other action. The Board shall promptly notify the extern, the preceptor, and the college of the suspension, the reasons for the suspension, and the conditions under which the suspension may be lifted, if any.
- C.** If after a hearing, the Board determines that the conduct of the preceptor or the extern constitute a violation of these rules or A.R.S. § 32-924, the Board shall terminate the program and may sanction the preceptor or deny licensure to the extern if the extern has applied for a license.
- D.** If the Board receives written verification from a chiropractic college that the extern or preceptor is no longer concurrently participating in the associated chiropractic college program, the Board shall terminate approval of the extern's training program.
- E.** An extern may participate in a preceptorship program until the results of the next scheduled Part IV of the National Board of Chiropractic Examiners examination are released or for up to 6 months immediately following the externs date of graduation, whichever occurs first.

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**TITLE 9. HEALTH SERVICES**

**CHAPTER 14. DEPARTMENT OF HEALTH SERVICES - LABORATORIES**

**PREAMBLE**

**1. Sections Affected**

R9-14-403  
R9-14-404  
Exhibit P-EN  
Exhibit PP-EN  
Exhibit Q-EN  
Exhibit QQ-EN  
Exhibit WWW-EN

**Rulemaking Action**

Amend  
Amend  
New Exhibit  
New Exhibit  
New Exhibit  
New Exhibit  
New Exhibit

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

Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(F)

Implementing statutes: A.R.S. §§ 28-1323 and 28-1324

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 2524, June 15, 2001

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

Name: Gary Shipley, Program Manager

Address: Arizona Department of Health Services  
Office of Laboratory Licensure and Certification  
1740 W. Adams Street  
Phoenix, AZ 85007

Telephone: (602) 542-0749

Fax: (602) 542-0759

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

or

Name: Kathleen Phillips  
Rules Administrator  
Arizona Department of Health Services  
1740 W. Adams Street, Room 102  
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

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

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

A.R.S. § 36-1324 requires the Department to adopt rules prescribing methods and procedures for the administration of breath tests to determine alcohol concentration of motor vehicle drivers, including the approval of quantitative breath-testing devices and procedures for ensuring the accuracy of results obtained from approved breath-testing devices. The purpose of the statute is to ensure the accuracy and reliability of breath testing devices and to facilitate the apprehension and prosecution of drivers who operate a motor vehicle under the influence of alcohol. R9-14-403 and R9-14-404 implement the statute by providing devices, methods, and procedures approved by the Department to detect the presence of alcohol in motor vehicle drivers. On May 26, 1999, under the authority of R9-14-403(K), the Director approved the Intoxilyzer 5000EN as a quantitative alcohol breath-testing device and approved a standard operational procedure, two standard calibration check procedures, and two standard quality assurance procedures for its operation. The Intoxilyzer 5000EN and the standard operational procedure, calibration check procedures and standard quality assurance procedures were added to the rules by the emergency rulemaking process, filed with the Secretary of State's office on May 24, 2001. The purpose of this rulemaking is to add the Intoxilyzer 5000EN and the standard operational procedure, calibration check procedures and standard quality assurance procedures to the rules by the regular rulemaking process.

**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:**

Not applicable

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant 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 includes writing and printing drafts, consulting stakeholders, and copying and mailing materials.

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 council members and staff time to review and approve the amendments.

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Neither large nor small businesses will be affected by the amendments. The Intoxilyzer 5000EN and the corresponding standard operational procedure, calibration check procedures and standard quality assurance procedures have been approved for use, and have been in use for two years. The amendments do not place any additional requirements on businesses, the state, or any political subdivisions of the state.

The public will benefit substantially by these amended rules, because jurisdictions that use the Intoxilyzer 5000EN will be able to continue to use the device. If the rules are not amended, when the emergency rules expire, jurisdictions that use the Intoxilyzer 5000EN will be required to switch to alternate breath-testing devices. The time and expense involved in that replacement process will significantly impair their ability to prosecute drivers who are operating a motor vehicle while under the influence of alcohol, thus affecting the safety of the driving public. Additionally the jurisdictions will incur moderate to substantial expense purchasing approved quantitative breath-testing devices, training personnel on those instruments, and preparing the instruments for use.

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

Name: Gary Shipley, Program Manager  
Address: Arizona Department of Health Services  
Office of Laboratory Licensure and Certification  
1740 W. Adams Street  
Phoenix, AZ 85007  
Telephone: (602) 542-0749  
Fax: (602) 542-0759  
E-mail: gshiple@hs.state.az.us

or

Name: Kathleen Phillips  
Rules Administrator  
Arizona Department of Health Services  
1740 W. Adams, Rm.102  
Phoenix, AZ 85007  
Telephone: (602) 542-1264  
Fax: (602) 542-1090  
E-mail: kphilli@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:**

The Department has not scheduled oral proceedings. However, pursuant to A.R.S. § 41-1023, a person may request an oral proceeding by making a written request to the agency personnel listed item #9 above, by 5:00 p.m., August 13, 2001. Additionally, a person may send written comments on the proposed rules to the agency personnel listed in item #9 above, by 5:00 p.m., August 13, 2001, which is the close of record date.

**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 14. DEPARTMENT OF HEALTH SERVICES - LABORATORIES**

**ARTICLE 4. DETERMINATION OF ALCOHOL CONCENTRATION**

Section  
R9-14-403. Breath-testing and Collection Devices

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- R9-14-404. Testing Procedures  
Exh. P-EN. Standard Quality Assurance Procedures, Intoxilyzer Model 5000 EN - Standard Calibration Check Procedure  
Exh. PP-EN. Standard Quality Assurance Procedures, Intoxilyzer Model 5000 EN - Standard Calibration Check Procedure  
Exh. Q-EN.  
Exh. QQ-EN. Standard Quality Assurance Procedures, Intoxilyzer Model 5000 EN - Standard Quality Assurance Procedure  
Exh. WWW-EN. Standard Operational Procedure, Intoxilyzer Model 5000 - Duplicate Test

**ARTICLE 4. DETERMINATION OF ALCOHOL CONCENTRATION**

**R9-14-403. Breath-testing and Collection Devices**

- A. No change  
 B. No change  
 C. No change  
 D. No change  
 E. No change  
 F. No change  
 G. The following quantitative breath-testing and collection devices are approved by the Director:

<u>Model</u>	<u>Manufacturer</u>
Breathalyzer 900/900A	Smith and Wesson Co.
Alco-Sensor III	Intoximeters, Inc.
Intoxilyzer Models 4011A	CMI, Inc./Federal Signal
Modified and 4011AS Modified with or without Beam Attenuator	
Intoxilyzer Models 4011A	CMI, Inc./Federal Signal
Modified and 4011AS Modified with Sample Preservation Modification with or without Beam Attenuator	
Intoxilyzer Model 5000	CMI, Inc./Federal Signal
Intoxilyzer Model 5000 with or without Vapor Recirculation and with or without Keyboard	CMI, Inc.
Intoximeter Model 3000	Intoximeters, Inc.
Mark IV GCI	Intoximeters, Inc.
GCI Field Collection Unit	Intoximeters, Inc.
PST-10 Silica Gel Tube (also known as SM-10 Silica Gel Tube)	Luckey Laboratories, Inc./U.S. Alcohol Testing of America, Inc.
RBT IV (Alco Sensor IV with a RBT IV printer microprocessor)	Intoximeters, Inc.
Toxtrap Silica Gel Tube	Toxtrap, Inc./ Federal Signal
<u>Intoxilyzer Model 5000EN</u>	<u>CMI, Inc.</u>

- H. No change  
 I. No change  
 J. No change  
 K. No change

**R9-14-404. Testing Procedures**

- A.** Law enforcement agencies or individuals acting independently of such agencies who conduct alcohol concentration determinations by means of breath-testing devices shall implement a quality assurance program conducted by a quality assurance specialist. This quality assurance program shall include:
1. Criteria for insuring the proper operation of devices by testing device controls and indicators to ensure that they are functioning as required by the Department quality assurance procedure for the devices. The examinations shall be performed and recorded within 90 days of each other following the appropriate Department quality assurance procedure set forth in Exhibits F, H, J, M, Q, Q-EN, QQ, QQ-EN, T, V, and Z or as approved by the Director in accordance with R9-14-403(K).
  2. Calibration checks of breath-testing devices which shall be performed and recorded in accordance with the requirements of the appropriate Department quality assurance procedure set forth in Exhibits F, J, L, P, P-EN, PP, PP-EN, S, V, and Y or as approved by the Director in accordance with R9-14-403(K).
  3. No change
  4. No change
  5. No change
  6. No change
- B.** Operator permit holders shall utilize the operator procedure approved by the Department for the device being operated in performing tests and collecting samples for the determination of alcohol concentration, as contained in Exhibits E, EE, G, I, II, K, KK, N, NN, O, OO, OOO, R, RR, U, UU, W, WW, WWW, WWW-EN, and X or as approved by the Director in accordance with R9-14-403(K).
- C.** No change

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**Exh. P-EN. Standard Quality Assurance Procedures, Intoxilyzer Model 5000 EN - Standard Calibration Check Procedure**

**THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R9-14-404(A)**  
**ARIZONA DEPARTMENT OF HEALTH SERVICES**  
**STANDARD QUALITY ASSURANCE PROCEDURES - INTOXILYZER MODEL 5000EN**  
**STANDARD CALIBRATION CHECK PROCEDURE**

AGENCY \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_

INTOXILYZER SERIAL NO. \_\_\_\_\_ LOCATION \_\_\_\_\_

Q A SPECIALIST \_\_\_\_\_  
(print name)

( ) 1. a. Ensure the dry gas tank is attached to the instrument and contains a known alcohol standard, \_\_\_\_\_AC.

OR

b. Pour a standard alcohol solution of known value, \_\_\_\_\_AC, into a clean dry simulator and assemble the simulator. Ensure that a tight seal has been made. Turn on the simulator and allow temperature to reach 34 C +/- 0.2 C.

( ) 2. Intoxilyzer 5000EN display reads "PUSH BUTTON ...".

( ) 3. Ensure Intoxilyzer 5000EN calibration standard is set for "G" for gas or "W" for wetbath.

( ) 4. Type "C" and press the ENTER key on the keyboard.

( ) 5. If display reads "INSERT CARD", do so.

( ) 6. Air blank completed.

( ) 7. Calibration check completed. Test results 0. \_\_\_\_\_AC.

( ) 8. Air blank completed.

( ) 9. When display reads "TEST COMPLETE" remove printed record. Attach the record to the completed checklist.

( ) 10. Type "Q" and press the ENTER key on the keyboard.

SIGNATURE \_\_\_\_\_

**Exh. PP-EN. Standard Quality Assurance Procedures, Intoxilyzer Model 5000 EN - Standard Calibration Check Procedure**

**THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R9-14-404(A)**

**ARIZONA DEPARTMENT OF HEALTH SERVICES**

**STANDARD QUALITY ASSURANCE PROCEDURES - INTOXILYZER MODEL 5000EN**

**STANDARD CALIBRATION CHECK PROCEDURE**

1. a. Ensure the dry gas tank is attached to the instrument and contains a known alcohol standard.  
OR
- b. Pour a standard alcohol solution of known value into a clean dry simulator and assemble the simulator. Ensure that a tight seal has been made. Turn on the simulator and allow temperature to reach 34C +/- 0.2 C.
2. Intoxilyzer 5000EN display reads "PUSH BUTTON ...".
3. Ensure Intoxilyzer 5000EN calibration standard is set for "G" for gas or "W" for wetbath.
4. Type "C" and press the ENTER key on the keyboard.
5. Air blank completed.
6. Calibration check completed.
7. Air blank completed.
8. When display reads "TEST COMPLETE", type "Q" and ENTER on the keyboard.

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**Exh. O-EN. Standard Quality Assurance Procedures, Intoxilyzer 5000EN - Standard Quality Assurance Procedure**

**THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. 49-14-404(A)**

**ARIZONA DEPARTMENT OF HEALTH SERVICES**

**STANDARD QUALITY ASSURANCE PROCEDURES - INTOXILYZER 5000EN**

**STANDARD QUALITY ASSURANCE PROCEDURE**

AGENCY \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_

INTOXILYZER SERIAL NO. \_\_\_\_\_ LOCATION \_\_\_\_\_

Q A SPECIALIST \_\_\_\_\_

(Print name)

( ) 1. Display reads "PUSH BUTTON ...".

**DIAGNOSTIC TESTS**

( ) 1. Display test check. Keyboard menu selection "V".

( ) 2. Clock time check. Keyboard menu selection "E".

( ) 3. Date check. Keyboard menu selection "E".

( ) 4. Barometric sensor check. Keyboard menu selection "G".

**OPERATIONAL TESTS**

( ) 1. Alcohol-free subject test result 0. \_\_\_\_\_ AC.

( ) 2. Error recognition logic system functioning.

Invalid test printed.

( ) 3. Proper sample recognition system.

Invalid test printed.

Deficient sample printed.

( ) 4. Calibration standard 0. \_\_\_\_\_ AC.      Result 0. \_\_\_\_\_ AC.

Instrument is operating properly and accurately. YES \_\_\_\_\_ NO \_\_\_\_\_

**COMMENTS**

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SIGNATURE \_\_\_\_\_

**Exh. OO-EN. Standard Quality Assurance Procedures, Intoxilyzer Model 5000 EN - Standard Quality Assurance Procedure**

**THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R9-14-404(A)**

**ARIZONA DEPARTMENT OF HEALTH SERVICES**

**STANDARD QUALITY ASSURANCE PROCEDURES – INTOXILYZER 5000EN**

**STANDARD QUALITY ASSURANCE PROCEDURE**

1. Display reads “PUSH BUTTON ...” .

**DIAGNOSTIC TESTS**

1. Display test check. Keyboard menu selection “V”.
2. Clock time check. Keyboard menu selection “E”.
3. Date Check. Keyboard menu selection “E”.
4. Barometric sensor check. Keyboard menu selection “G”.

**OPERATIONAL TESTS**

1. Alcohol-free subject test result.
2. Error recognition logic system functioning.  
Invalid test displayed.
3. Proper sample recognition system.  
Invalid sample displayed.  
Deficient sample displayed.
4. Known alcohol standard.

Instrument operating properly and accurately. Enter “P” or “F”.



## NOTICE OF PROPOSED RULEMAKING

### TITLE 17. TRANSPORTATION

#### CHAPTER 3. DEPARTMENT OF TRANSPORTATION, HIGHWAY DIVISION

##### PREAMBLE

- 1. Sections affected:**

R17-3-201	<b><u>Rulemaking Action:</u></b> Amend
R17-3-202	Amend
R17-3-203	Amend
R17-3-204	Amend
  
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. §§ 28-6923 and 41-2501(N)
  
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 4675, December 15, 2000
  
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Wendy S. LeStarge, Rules Analyst

Address: Arizona Department of Transportation  
Administrative Rules Unit, Mail Drop 507M  
3737 N. 7th Street, Suite 160  
Phoenix, AZ 85014-5017

Telephone: (602) 712-6007

Fax: (602) 241-1624

E-Mail: [wlestarge@dot.state.az.us](mailto:wlestarge@dot.state.az.us)

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters:  
[www.dot.state.az.us/about/rules](http://www.dot.state.az.us/about/rules).
  
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

Prequalification is part of the competitive bid process for awarding a contract for the construction or reconstruction of transportation facilities, and is a recognized procedure under the Arizona Procurement Code. A.R.S. § 41-2541. Prequalification usually involves evaluating a contractor's work experience, personnel, equipment, financial resources, and performance history. It increases the likelihood of selecting a competent contractor when using the competitive bidding process since only a contractor who passed the prequalification process may submit a proposal in the competitive bidding process. It also decreases the likelihood of a contractor failing to finish a project because it was not professionally competent or able to manage the size of the project. Contractor defaults lead to continued disruptions of traffic because a new contractor must be hired or the work is inferior and will not last as long.

While the federal government does not require a prequalification process in order to receive federal aid, the federal government recognizes that prequalification can be a useful process. 23 CFR § 635.110. Many states use some type of prequalification process to evaluate a contractor before the contractor submits a proposal on a state-funded project.

The Arizona Department of Transportation (ADOT) is authorized to adopt rules regarding procurement of construction or reconstruction of transportation facilities, since it is exempt from the Arizona Procurement Code's provisions. A.R.S. §§ 41-2501(J), 41-2401(N). A.R.S. § 28-6923 sets out the bidding procedures ADOT must follow for con-

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struction or reconstruction of transportation facilities. ADOT has general rulemaking authority to enforce the provisions the director administers or enforces. A.R.S. § 28-366.

ADOT prequalifies contractors by two criteria: 1) the type of work to be accomplished in the contract, and 2) the contractor's ability to manage a certain dollar value of projects. The 4 Sections of Article 2 accomplish the following objectives:

- Establish the Contractor Prequalification Board.
- Set forth the specific requirements a contractor must meet in order to become prequalified to bid on a construction contract.
- Set forth the conditions for reducing or canceling prequalification.
- Preserve the privacy of the contractor's financial information.

This rulemaking arises from proposed agency action in the five-year review report approved by the Governor's Regulatory Review Council on May 2, 2000 (F-00-0402). This rulemaking includes some of the following amendments:

- Amends the language so that it is clear, concise, and understandable, and complies with the Secretary of State's rule-making standards;
- Creates a Section for definitions;
- Eliminates the requirement that out-of-state corporations submit a letter from the Arizona Corporation Commission;
- Allows the Contractor Prequalification Board to grant a 60 day extension on expired financial statements;
- Increases the prequalification amounts;
- Adds failing to submit required documentation as a reason to reduce prequalification amount or disqualify a contractor; and
- Reinforces the authority that ADOT can waive the prequalification requirement if it is in the best interest of the state.

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

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 main benefit of the contractor prequalification rules is to prevent the possibility of a contractor defaulting on a contract, and leaving ADOT and the general public with additional costs and delays. The costs to contractors, in comparison, are small. Contractors must submit the same type of firm experience and financial information in different contexts, such as: financial statements for surety companies or tax returns, and firm resumes for advertising or public relations. Other benefits include: promoting contractor confidence in the competitive bidding process, and preventing duplicative prequalification processes in joint projects with political subdivisions. Other costs include: ADOT employee salaries and administrative costs for processing the prequalification applications and rulemaking process and publishing costs for the Secretary of State's office and G.R.R.C.

The rules are designed to minimally impact small business contractors. Although a contractor must pay a public accountant or CPA to prepare the financial statement, the rules do not require a contractor to submit a more costly examined financial statement. Instead a contractor may submit a compiled financial statement that does not give an accountant's professional opinion as to the contractor's financial stability.

**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: Wendy S. LeStarge, Rules Analyst  
Address: Arizona Department of Transportation  
Administrative Rules Unit, Mail Drop 507M  
3737 N. 7th Street, Suite 160

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Phoenix, AZ 85014-5017

Telephone: (602) 712-6007  
Fax: (602) 241-1624  
E-mail: wlestarge@dot.state.az.us

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

No oral proceeding is scheduled for this rulemaking. Written, faxed, e-mail comments, or requests for an oral proceeding may be made by contacting the officer listed in item #4 between 8:00 a.m. and 4:30 p.m., Monday through Friday. If no oral proceeding is requested, the public comment period shall continue for 30 days from this notice's publication date. This rulemaking's public record will close at 4:30 p.m. on August 15, 2001.

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

Not applicable

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

Not applicable

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

**TITLE 17. TRANSPORTATION**

**CHAPTER 3. DEPARTMENT OF TRANSPORTATION - HIGHWAYS DIVISION**

**ARTICLE 2. MANAGEMENT OF CONTRACTOR ~~BIDDING/AWARD~~ BIDDING AND AWARD**

Section

R17-3-201. General  
R17-3-202. Contractor prequalification  
R17-3-203. Reduced prequalification amounts or disqualifications  
R17-3-204. Access to Department prequalification files

**ARTICLE 2. MANAGEMENT OF CONTRACTOR ~~BIDDING/AWARD~~ BIDDING AND AWARD**

**R17-3-201. General**

**A. Definitions**

1. "Application" means a request for contractor prequalification, consisting of an application booklet available from the Department's office of Contracts and Specifications, and a financial statement prepared according to the requirements of this subsection and R17-3-202.
2. "Board" means the Contractor Prequalification Board.
3. "Compiled financial statement" means a financial statement prepared for form, appropriateness, and arithmetic accuracy. It does not express an opinion or provide any assurance regarding the financial statements.
4. "Contractor" means the individual, partnership, firm, corporation, joint venture, or any acceptable combination, that seeks to contract with the Department for constructing or reconstructing state transportation facilities, unless the context requires otherwise.
5. "Contractor prequalification" means the Department's process of review and evaluation of a contractor's work history and current financial condition before a contractor is allowed to submit a proposal for constructing or reconstructing state transportation facilities.
6. "Department" means the Arizona Department of Transportation.
7. "Examined financial statement" means a financial statement that includes the amounts and disclosures in the firm's financial statements, an assessment of the accounting principles used and the significant estimates made by management, and an evaluation of the overall financial statement presentation.
8. "Financial statement" means a financial report prepared according to generally accepted accounting principles by an independent certified public accountant or an independent public accountant. The financial statement shall include a cover letter on the accountant's letterhead, a balance sheet, a statement of cash flows, an income statement, and all notes and appropriate supporting schedules.
9. "Joint venture" means the combination of two or more contractors for the purpose of submitting a proposal to the Department and performing a contract for constructing or reconstructing state transportation facilities.

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10. “Prequalification amount” means the dollar limitation of each contract, based on the Department’s estimate of contract value, for which a contractor may submit a proposal to the Department for constructing or reconstructing state transportation facilities.
11. “Reviewed financial statement” means a financial statement that includes an inquiry of company personnel, and a review of the analytical procedures applied to the financial data. It does not express an opinion regarding the financial statement taken as a whole.
12. “State Engineer” has the meaning in A.R.S. § 28-6901(3).

~~A.B.~~ **Contractor Prequalification Board.**

1. ~~The State Engineer for the Arizona Department of Transportation, hereinafter the “Department”, will shall appoint a Contractor Prequalification Board, hereinafter the “Board” the Board to consider and decide on applications for contractor prequalification.~~
2. ~~The Board will be comprised of three Department employees, one of whom shall be a registered professional engineer, registered by the Arizona Board of Technical Registration, and one a certified or licensed public accountant.~~
3. ~~The Board will be empowered to administer the function of contractor prequalification within the scope of these rules. The Board’s authority to determine prequalification does not limit the Department’s ability to establish additional criteria for contracts.~~

~~B.~~ **Out-of-state corporations.** ~~Prior to the award of any contract, corporations chartered under the laws of any state other than Arizona shall provide to the Department a copy of the letter from the Arizona Corporation Commission authorizing them to do business in Arizona.~~

~~C.~~ **Licensing.** ~~License requirements to perform highway construction in Arizona are governed by the Arizona Registrar of Contractors.~~

**R17-3-202. Contractor prequalification**

~~A.~~ **Application Criteria.** The Board may consider the following information in determining the prequalification amount for a contractor:

1. Key personnel and their work experience.
2. Organizational structure.
3. History of past or current projects and contracts.
4. Company affiliations.
5. Equipment owned or controlled.
6. Any applicable licenses.
7. Type of work requested.
8. Individuals authorized to act on behalf of a contractor.
9. Any prequalification or bidding disputes with a government agency, and
10. Financial condition.

~~B.~~ **Application.**

1. ~~An application for contractor prequalification, hereinafter “Application”, shall include information concerning the applicant’s key personnel, organizational structure, major projects completed, any company affiliations, equipment owned or controlled, type of work requested and financial condition (application booklets are available at the Contracts and Specifications office of the Department). A financial statement shall accompany the application showing the firm’s current financial condition in accordance with the requirements of classification of financial statements found in subsection (D) of this rule. If a contractor submits a completed application at least 15 calendar days before the proposed bid opening date of any project for which a contractor is interested in submitting a proposal, the Board shall decide a completed application before the bid opening date.~~
2. ~~If the application or accompanying financial statement is incomplete or the Board determines that additional information is required, the Board will make a written shall request for the additional or missing information.~~
3. ~~All applications shall be filed at least 15 calendar days prior to the bid opening date of any project on which the applicant is interested in submitting a bid.~~
4. ~~Prequalifications will expire Prequalification expires 15 months from the date of the after the end of a contractor’s fiscal year, as reflected on the financial statement that accompanies the application. Due to the time necessary to prepare an examined financial statement, the Board may grant up to a 60 day extension on the financial statement’s expiration, if:~~
  - a. The contractor submits a letter from its accountant stating the reasons for delay in preparing the examined financial statement.
  - b. The letter from the accountant states the anticipated completion date of the examined financial statement, and
  - c. The contractor submits an interim compiled or reviewed financial statement that was prepared within the previous six months.
4. The Board will notify each contractor in writing of its decision on the contractor’s prequalification amount.

~~B.C.~~ **Joint ventures.**

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1. Each contractor in a proposed joint venture shall be prequalified, ~~in accordance with these rules and~~ The joint venture shall submit a ~~notarized~~ joint venture statement of intent at least ~~five~~ 5 calendar days ~~prior to~~ before the applicable bid opening date.
2. If one or more of the parties to the joint venture are corporations, a copy of a resolution from the Board of Directors authorizing the corporation to enter into the joint venture and execute all contract documents shall be submitted with the statement of intent.
3. Contractors operating as a joint venture on a continuing basis may file for prequalification as a joint venture entity.
4. The Board may allow a contractor operating as a joint venture to prequalify for a pro rata share of the entire contract amount. The percentage share of work shall not exceed each individual contractor's prequalification amount.

**C.D.** ~~Classification of contracting firms~~ contractors. Applicants will be categorized in accordance with ~~The Board shall categorize contractors into~~ the following classifications:

1. Inexperienced firms: Firms which have had no experience as ~~prime~~ prime contractors in highway transportation facilities construction work;
2. New firms: Recently organized firms that have officers with experience in positions of ~~responsible charge of highway responsibility for transportation facilities~~ responsible charge of highway responsibility for transportation facilities construction with other ~~prime contracting firms~~ prime contracting firms contractors;
3. Unknown firms: Firms which have experience as ~~prime~~ prime contractors but have not completed a highway transportation facilities construction contract as a ~~prime~~ prime contractor for the Department;
4. Known firms: Firms which have successfully completed at least one highway transportation facilities construction project contract within the past 5 years as a ~~prime~~ prime contractor for the Department.

**D.E.** ~~Classification of financial statements.~~

1. ~~The prequalification applicant shall attach, as a part of the application package, a copy of the firm's annual financial statement including a balance sheet, an operating statement, appropriate supporting schedules and the accountant's report or opinion.~~
2. 1. All financial statements shall be examined, reviewed, or compiled according to generally accepted accounting principles, by either an independent certified public accountant or an independent public accountant, registered and licensed under the laws of any state. The examination, review, or compilation of financial statements and their definitions shall be in accordance with the American Institute of Certified Public Accountants Professional Standards. In no case will a financial statement be considered acceptable if ~~A contractor shall not submit a financial statement prepared by either a certified or public accountant who is directly or indirectly interested in or affiliated with the business of the contracting firm submitting the application contractor.~~
3. 2. Any contracting firm ~~A contractor~~ that desires a prequalification amount in excess of \$700,000 \$1.5 million shall submit an examined financial statement ~~with a certified opinion.~~
4. 3. A contracting firm contractor that submits a reviewed financial statement ~~with a certified report~~ will be limited to a prequalification amount of \$700,000 \$1.5 million.
5. 4. A contracting firm contractor that submits a compiled financial statement will be limited to a prequalification amount of \$300,000.

**E.F.** ~~Prequalification limits. In determining the prequalification amount for each contractor, the amount set by the Board may be less than the maximum amount set out in this subsection due to the Board's evaluation of the contractor's information under R17-3-202(A).~~

1. Inexperienced firms. ~~Inexperienced firms~~ An inexperienced firm will be limited to a maximum prequalification amount ~~not to exceed~~ of \$300,000 until the contractor has satisfactorily completed at least one highway transportation facilities construction project has been satisfactorily completed as a prime contract contract for the Department or any other public agency.
2. New firms. ~~New firms~~ A new firm will be limited to a maximum prequalification amount of five times ~~their~~ the firm's net worth.
3. Unknown firms. ~~Unknown firms~~ An unknown firm will be limited to a maximum prequalification amount of five times ~~their~~ the firm's net worth or the amount of the largest highway transportation facilities construction project they have contract it has successfully completed as a prime contractor for any other public agency, whichever is larger.
4. Known firms. ~~Known firms~~ A known firm will be limited to a maximum prequalification amount of ten times ~~their~~ the firm's net worth. An unlimited prequalification amount may be granted if the product of ten times ~~their~~ the firm's net worth exceeds \$30,000,000 \$100 million.
5. All firms. Evidence of additional assets ~~that are~~ pledged in behalf of the contracting firm a contractor or letters from ~~the firm's a contractor's~~ a contractor's surety company may be considered in establishing higher prequalification amounts. ~~The approximate total contract amount of all uncompleted work from all sources, plus the estimated cost of work on which the contractor seeks to bid, shall not exceed the prequalification amount set by the Board. A parent company that pledges assets on behalf of a contractor shall submit a financial statement.~~

**F.G.** ~~Reconsideration of prequalification determination.~~

1. If ~~an applicant a contractor~~ a contractor is dissatisfied with the Board's decision, the ~~applicant contractor~~ applicant contractor may request in writing a reconsideration. The letter shall indicate the basis for the request and shall provide supportive data. The Board shall

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~~review the request and accompanying information will be reviewed and a decision given by the Board and decide on the request~~ within 30 calendar days ~~from the date of its receipt of the request.~~

2. If the ~~applicant contractor~~ is still dissatisfied with the decision of the Board, the ~~applicant contractor~~ may appeal in writing to the ~~state engineer~~ State Engineer who ~~will shall~~ review the information furnished and render a decision within 30 calendar days. The decision of the State Engineer ~~shall be is~~ final.

~~G.H.~~ Issuance of bidding documents. ~~Bidding documents will be issued upon request to prequalified firms in accordance with the type of work and dollar amount for which they are prequalified by the Department. The final responsibility for requesting bidding documents and for submitting bids in accordance with the requirements of these rules, shall lie with the contracting firm. A contractor shall not request bid documents for a contract for which it is not qualified.~~

**I.** The Department has the discretion to waive the prequalification requirement on an individual contract when it is in the best interest of the State. The advertisement for bids shall identify if prequalification is waived.

**R17-3-203. Reduced prequalification amounts or disqualifications**

**A.** ~~Contracting firms which have been prequalified to bid on Department contracts may receive a reduced prequalification amount or be disqualified~~ The Board may reduce the prequalification amount of a contractor already prequalified or disqualify a contractor from bidding if they a contractor:

1. ~~Falsify~~ Falsifies any document or ~~misrepresent~~ misrepresents any material fact in the information furnished to the Department, ~~or~~
2. ~~Fail~~ Fails to enter into a contract with the Department, ~~or~~
3. ~~Default~~ Defaults on a previous contract with any public agency, ~~or~~
4. ~~Have~~ Has an unsatisfactory work performance record with the Department on the basis of workmanship, competent superintendence, adequate and proper equipment, ~~or~~ timely completion, or failure to submit required documentation for closing out a contract, or
5. ~~Fail~~ Fails to provide notification to the Board, within 30 calendar days of occurrence, any ~~changes~~ change in ownership, corporate officers or general partners or any bankruptcy, receivership, court supervised reorganization or the entry of a judgment in a judicial or administrative proceeding adverse to the contractor.

**B.** ~~Notification of reduced prequalification or disqualification will be made in writing by the~~ The Board shall notify a contractor in writing of the reduced prequalification amount or disqualification. Such action ~~The Board's decision on the reduced prequalification amount or disqualification shall become final unless the contractor files a written appeal is filed with the Department by the contractor~~ Board within 20 calendar days after receiving such notification. The Board ~~will consider any such~~ shall review and decide on the appeal within 30 calendar days of its receipt. The Board may request additional written evidence or a personal interview.

**C.** ~~The contracting firm contractor may appeal the Board's decision in writing to the Arizona Department of Transportation Board, hereinafter "Transportation Board", State Engineer, who will act upon the appeal shall review the information furnished and render a decision~~ within 45 calendar days. The decision of the State Engineer is final.

**R17-3-204. Access to Department prequalification files**

Prequalification files ~~will be are~~ considered as to be strictly confidential ~~in nature.~~ The files will be available only to:

1. Members of the Board,
2. The Director of the Department or any authorized agents of the Department,
3. Members of the Arizona State Transportation Board,
4. The division administrator of the Federal Highway Administration or any authorized representatives,
5. Agents of surety upon the filing of an application for bond duly signed by an authorizing party of the prequalified ~~firm contractor,~~
6. Members of the Arizona State Board of Accountancy or their duly authorized representatives.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**PREAMBLE**

**1. Section Affected**  
R20-6-218

**Rulemaking Action**  
Repeal

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

Authorizing statutes: A.R.S. §§ 20-143 and 20-1110(F)

Implementing statutes: A.R.S. §§ 20-143 and 20-1110(F)

**3. List all previous notices appearing in the register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 7 A.A.R. 3055, July 13, 2001

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

Name: Margaret L. McClelland  
Address: Arizona Department of Insurance  
2910 North 44th Street, 2nd Floor  
Phoenix, AZ 85018  
Telephone: (602) 912-8456  
Fax: (602) 912-8452

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

This rulemaking will repeal R20-6-218 that sets forth exemption standards for life and disability forms delivered or issued for delivery in Arizona. Under A.R.S. § 20-1110(F), the director may, by order, exempt from prior approval filing requirements, any such form. The director intends to review insurance documents according to the standards in A.R.S. § 20-1110(F) and to issue appropriate orders.

**Specific Section-By-Section Explanation of This Proposal**

R20-6-218 sets forth exemption standards for life and disability forms issued or delivered in Arizona.

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

Not applicable

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

Not applicable

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

The economic impacts of this rulemaking will be minimal. There will be a minimal economic impact on the Department, the Secretary of State, and the Governor's Regulatory Review Council associated with the rulemaking process. The repeal of this rule will impose no economic burden on consumers or small businesses.

**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: Margaret L. McClelland  
Address: Arizona Department of Insurance  
2910 North 44th Street, 2nd Floor  
Phoenix, AZ 85018  
Telephone: (602) 912-8456  
Fax: (602) 912-8452

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

Persons may submit written comments to the Director for 30 days after the date of publication of this Notice of Proposed Rulemaking. The Department will not hold an oral proceeding to receive public comments on this rule unless the Department receives a request for an oral proceeding under A.R.S. § 41-1023 during that 30 day period.

The comment period will end and the record will close at 5:00 p.m. on August 14, 2001, unless a request for an oral proceeding is received. The Department will accept oral or written comments that are received by 5:00 p.m. or that are postmarked by August 14, 2001.

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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:**

Not applicable

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

None

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

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TITLE 20. COMMERCE, BANKING AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 2. TRANSACTION OF INSURANCE

Section

R20-6-218. ~~Exemption Standards for Life and Disability Forms~~ Repealed

ARTICLE 2. TRANSACTION OF INSURANCE

**R20-6-218. ~~Exemption Standards for Life and Disability Forms~~ Repealed**

**~~A.~~ Scope**

- ~~1. Except as hereinafter exempted, this rule shall apply to all life and disability insurance forms that are delivered or issued for delivery in this state except any such forms previously approved by the Department of Insurance prior to the effective date of this rule.~~
- ~~2. This rule shall not apply to:~~
  - ~~a. Credit life insurance.~~
  - ~~b. Credit disability insurance.~~
  - ~~c. Forms with indeterminate, adjustable or higher initial premiums, values or benefits based on other than guaranteed rates except as set forth in (C)(1)(d)(iii) of this rule.~~
  - ~~d. Mass marketed insurance under A.R.S. § 20-1661.~~
  - ~~e. Advertising forms.~~

**~~B.~~ Regulation of exempt forms**

- ~~1. Each year, on or before June 30, insurers shall file with the Life and Disability Division of the Department of Insurance a verified list of all forms which are available for issue in the State of Arizona as of June 1 for each year and which are exempt from the filing requirements of A.R.S. § 20-1110 by this rule.~~
- ~~2. The verified list of exempt forms shall set forth each such exempt form by its title and form number. If the form does not have a descriptive title, a brief explanation of the coverage provided shall be included.~~
  - ~~a. The list of exempt forms shall be accompanied by the certification as set forth in Exhibit A, executed by a designated representative of the insurer, unless such certifications have previously been filed for said forms.~~
  - ~~b. The list of exempt forms shall be accompanied by the actuarial certification as set forth in Exhibit B. The actuarial certification shall apply to all exempt life and annuity forms, unless such certifications have previously been filed for said forms.~~
- ~~3. Each insurer who does not use any exempt forms shall file a statement, executed by its president or by a designated officer, verifying that no exempt forms have been delivered or issued for delivery in the State of Arizona for the 12-month period ending June 30.~~
- ~~4. A list of exempt form riders, amendments, applications and endorsements which will be used with policy forms which are not exempt from the filing requirements of A.R.S. § 20-1110(A) shall be included with the policy form filing.~~
- ~~5. Rate certifications for individual disability policies as required by A.C.R.R. R20-6-607 shall be filed for exempt forms.~~

**~~C.~~ Exempt forms**

- ~~1. The following types of life insurance policy forms are exempt from filing:~~
  - ~~a. Individual permanent policies with fixed premiums, benefits and guaranteed values as follows:~~
    - ~~i. Ordinary whole life.~~
    - ~~ii. Limited pay life.~~
    - ~~iii. Life paid up at certain ages.~~
    - ~~iv. Endowments.~~
    - ~~v. Modified benefit whole life (only 1 decrease or increase in face amount at a certain age with no change in premium).~~
    - ~~vi. Modified premium whole life (only 1 change in premium with no change in benefit amount).~~
    - ~~vii. Single premium life and endowments.~~
    - ~~viii. Joint life without survivorship benefits.~~
    - ~~ix. Individual policies issued as a result of a group conversion privilege.~~
  - ~~b. Individual term policies with fixed premiums and benefits without guaranteed values as follows:~~
    - ~~i. Level term.~~
    - ~~ii. Decreasing term.~~
    - ~~iii. Renewable term.~~
    - ~~iv. Convertible term.~~

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- v. Single premium term.
- vi. Joint life term without survivorship benefits.
- e. Group life policies as follows:
  - i. Group annuities.
  - ii. Group permanent life.
  - iii. Group term life.
- d. Miscellaneous life forms as follows:
  - i. Industrial life.
  - ii. Immediate annuities.
  - iii. Variable life and annuity contracts which provide benefits according to the investment experience of a separate account pursuant to A.R.S. § 20-651.
  - iv. Applications, endorsements, amendments and riders issued in conjunction with (a), (b), (c) and (d) above.
- 2. The following type of disability insurance policy forms are exempt from filing:
  - a. Individual disability policies as follows:
    - i. Long term disability income including overhead expense.
    - ii. Short term disability income including overhead expense.
    - iii. Prescription drugs.
    - iv. Accident only.
    - v. Travel accident.
    - vi. Accidental death and disability.
    - vii. Overhead expense disability income.
    - viii. Individual policies issued as a result of a group conversion privilege.
  - b. Group disability policies, including blanket disability, except group policies issued to trustees where the trust situs is in this state.
  - c. Applications, riders, endorsements and amendments issued in conjunction with (a) and (b) above.
- D.** This rule shall in no way affect any insurer's duty to comply with all other requirements of Title 20, Arizona Revised Statutes, relating to all forms delivered or issued for delivery in the State of Arizona.
- E.** Severability. If any provisions of this rule or the application thereof to any person or circumstance is for any reason held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.
- F.** Effective date. This rule shall become effective upon filing with the Secretary of State.

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**Exhibit A**

STATE OF ARIZONA  
CERTIFICATION

ANNUAL LIST OF EXEMPT LIFE, ANNUITY, AND DISABILITY FORMS

I have reviewed or supervised the preparation of the enclosed list of exempt forms available for issue in Arizona. I hereby certify that to the best of my knowledge, information and belief, the information provided is correct and complete, that none of these forms are deceptive and misleading and none of these forms contain exceptions or conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverages of the policy. I certify that the forms listed comply with all applicable laws, regulations, and bulletins and that the use of any form listed in this report will be discontinued in the event of future changes in laws or regulations which would prohibit the use of such a form.

\_\_\_\_\_  
Signature of designated representative.  
Please type or print name of person whose  
signature appears above.

\_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit B**

STATE OF ARIZONA  
ACTUARIAL CERTIFICATION  
ANNUAL LIST OF EXEMPT LIFE AND ANNUITY FORMS  
CERTIFICATION

I have reviewed or supervised the review of the actuarial formulae for policies exempt from filing. I certify that the nonforfeiture benefits for these policies, for every age and face amount combination, meet the nonforfeiture requirements of the Arizona Insurance Code. I certify that to the best of my knowledge the policies are not actuarially deceptive or misleading and do not contain exceptions or conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policies.

\_\_\_\_\_  
Signature of Actuary  
Please type or print name of person whose  
signature appears above.

\_\_\_\_\_  
Date: \_\_\_\_\_