

# NOTICES OF FINAL RULEMAKING

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

## NOTICE OF FINAL RULEMAKING

### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

[R05-165]

#### PREAMBLE

- 1. Sections Affected**

R4-26-206	<b><u>Rulemaking Action</u></b>
R4-26-206	Repeal
	New Section
- 2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 32-2063  
Implementing statutes: A.R.S. §§ 32-2073(G) and 32-2074(B)
- 3. The effective date of the rule:**

July 2, 2005
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 2606, June 25, 2004  
Notice of Proposed Rulemaking: 10 A.A.R. 2918, July 23, 2004  
Notice of Supplemental Proposed Rulemaking: 11 A.A.R. 694, February 11, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Maxine McCarthy, Executive Director
Address:	Arizona Board of Psychologist Examiners 1400 West Washington, Room 235 Phoenix, Arizona 85007
Telephone:	(602) 542-8162
Fax:	(602) 542-8279
E-mail:	info@psychboard.az.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:**

The Board initiated this rulemaking in response to its Five-Year Review of Rules. It was originally submitted with the Board's rulemaking Docket No. 2004-01 and withdrawn due to unanticipated substantive changes. After further discussion, the Board decided to proceed with a Notice of Supplemental Proposed Rulemaking.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

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

Not applicable
- 9. A summary of the economic, small business, and consumer impact:**

An analysis of the inactive status licensee population shows that there are presently 323 inactive licensees who are directly affected by this change. A large proportion of these, 76%, have been on inactive status for longer than two years and would have to obtain more than 60 hours of continuing education ("CE") in order to reactivate. As many as 13% of the inactive licensees have been on inactive status since 1993 (the first year inactive status became an option)

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and would have to obtain at least 360 hours at the present time to be eligible to reactivate their licenses under the rule as currently proposed. We estimate that the average CE program costs approximately \$25 per hour of CE credit. Licensees may complete up to one-third of their CE hours under Category II, however, which most licensees usually complete on their own time at no monetary cost. It is possible that if several inactive status licensees found this rule change too onerous, the Board could lose them as licensees (and their renewal fees) should they choose not to renew their licenses.

10. **A description of the changes between the proposed rule, including supplemental notices, and final rule:**

Minor grammatical and format changes were made at the request of the Governor’s Regulatory Review Council staff.

11. **A summary of the comments made regarding the rule and the agency response to them:**

The agency did not receive comment.

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

None

13. **Any material incorporated by reference and its location in the text:**

None

14. **Whether the rule was previously made as an emergency rule:**

No

15. **The full text of the rule follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

ARTICLE 2. LICENSURE

Section

R4-26-206. ~~Inactive Status~~ Reinstatement of License from Inactive to Active Status

ARTICLE 2. LICENSURE

**R4-26-206. ~~Inactive Status~~ Reinstatement of License from Inactive to Active Status**

~~To determine whether a psychologist has maintained and updated the professional knowledge and capability to resume active practice as a psychologist when considering reinstatement of a psychologist on inactive status to active status, pursuant to A.R.S. § 32-2073(G), the Board shall determine whether the psychologist has satisfied the continuing education requirements applicable to psychologists on active status. Psychologists who have, while on inactive status, fulfilled the continuing education requirements of a psychologist on active status shall be presumed to have maintained and updated their professional knowledge and capability to practice as a psychologist, unless the Board is presented with evidence to the contrary.~~

**A.** ~~When considering reinstatement of a psychologist from inactive status to active status, the Board shall presume that the psychologist has maintained and updated the psychologist’s professional knowledge and capability to practice as a psychologist if the psychologist presents to the Board documentation of completion of a prorated amount of continuing education, calculated under subsection (B).~~

**B.** ~~To calculate the minimum number of continuing education hours required for reinstatement to active status, the Board shall divide the 60 hours of continuing education required by 24 and multiply that amount by the number of months that have elapsed since the licensee began inactive status.~~

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

[R05-170]

**PREAMBLE**

**1. Sections Affected**

R4-38-101  
R4-38-101  
R4-38-102

**Rulemaking Action**

Repeal  
New Section  
Repeal

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R4-38-102	New Section
R4-38-103	Repeal
R4-38-103	New Section
R4-38-104	Repeal
R4-38-104	New Section
R4-38-105	Repeal
R4-38-105	New Section
R4-38-106	Repeal
R4-38-106	New Section
R4-38-107	Amend
R4-38-108	Amend
R4-38-109	Amend
R4-38-110	Repeal
R4-38-111	Amend
R4-38-112	Amend
R4-38-113	Amend
R4-38-114	Amend
R4-38-115	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. § 32-2904

Implementing statutes: A.R.S. §§ 32-2904(B)(1); 32-2912, 32-2913, 32-2914, 32-2932; 32-2933

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

July 2, 2005

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 5241, December 5, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 5292, December 12, 2003

Notice of Public Information: 10 A.A.R. 4627, November 12, 2004

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

Name: Chris Springer, Executive Director

Address: 1400 W. Washington, Room 230  
Phoenix, Arizona 85007

Telephone: (602) 542-8154

Fax: (602) 542-3093

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

In R4-38-101, the Board seeks to define terminology used in the Article that may not be commonly used outside the profession. The Board deleted a definition for an approved school of medicine that was already defined in statute.

The criteria giving guidance to applicants who have not graduated from an approved school of medicine have been moved from R4-38-101 to R4-38-102.

The kinds of documentation an applicant must provide to the Board to verify postgraduate coursework and training are listed in R4-38-103 (previously in R4-38-102). In addition, the Board specifies in greater detail the method by which an applicant may provide proof of training in each specific treatment modality that is defined as making up the practice of homeopathic medicine in A.R.S. § 32-2901(22). The type of recognized certification or the number of post-graduate coursework hours an applicant must provide to demonstrate training in the specific modality are now clearly indicated for a prospective applicant.

Standards documenting completion of a preceptorship in one or more of the treatment modalities defined as the practice of homeopathic medicine in A.R.S. § 32-2901(22) are now designated in R4-38-104 (previously R4-38-103) and present an alternative method of acceptable training for an applicant who does not meet the criteria of the formal post-graduate coursework documented in R4-38-103.

All fees charged by the Board are now included in one convenient location in R4-38-105 (previously in R4-38-104). R4-38-105 lists fees authorized in A.R.S. §§ 32-2912, 2913, 2914, 2915, 2917, and 2951. The previous rule (R4-38-104) did not list all of the authorized fees. The new rule will place all fee information in one section. Certain of the fees reflect increases. The physician license application will increase by \$200. The application fee for registration as a homeopathic medical assistant will increase by \$50. Annual renewal for a physician will increase by \$75 and annual renewal for a homeopathic medical assistant will increase by \$50. The Board has not raised fees since 1995.

Standards regarding the written and oral examination are explained in R4-38-106 (previously in R4-38-105). The method by which an applicant can request a waiver of the written examination is described in R4-38-107. Clarifica-

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tion of the language providing guidance to the licensee when an address or telephone number is changed is incorporated into R4-38-108.

R4-38-109, R4-38-111, and R4-38-112 clarify what is considered an experimental form of diagnosis and treatment and provide guidance for an applicant to report at initial licensing and annual renewal which treatment modalities the applicant utilizes that may be considered experimental. Peer review of experimental treatment modalities is described in R4-38-111. The Board has eliminated an annual peer review requirement and has adopted a procedure for review every five years, which is the standard adhered to by the American Board of Chelation Therapy. Requirements for licensees that offer chelation therapy are explained in R4-38-113. Although the rule eliminates the detail contained in the original rule, the spirit of the recordkeeping requirements is reflected by the requirement that the licensee establish and maintain detailed records for each patient consistent with informed consents and protocols filed with the Board. R4-38-114 provides guidance to applicants that request a rehearing or review of an appealable agency action. R4-38-115 is amended to provide further guidance to the licensee regarding the use of the abbreviation, "MD(H)".

**7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Board did not review any study relevant to the rules.

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

Not applicable

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

R4-38-103 may have a moderate financial impact to the Board by increasing the pool of license applicants. The rule will not impact the consumer financially and will provide a larger pool of licensed homeopathic physicians to which the public will have access. Under the new rule each physician applying for a license will continue to provide evidence of 300 hours of post-graduate education in treatment modalities defined in A.R.S. § 32-2901(22) with the initial application. However, in the new rule, either evidence of a certification or the number of training hours that demonstrate adequate training needed to practice the modality are indicated. The new criteria do not impose additional economic requirements but instead clarify the minimum number of training hours or certification that would demonstrate compliance with the requirement.

During the last legislative session, the Board, as an outcome of budget discussions held during a legislative appropriations committee, determined that it must increase fees. The fee for an application for a license is increased from \$250 to \$500. The issuance of an initial licensee fee is increased from \$200 to \$250. Annual renewal of license is increased from \$525 to \$600 and the penalty for late renewal of a license is raised from \$250 to \$350. An application to supervise a medical assistant will increase from \$150 to \$200 and the annual renewal for registration of a medical assistant will increase from \$50 to \$100. Budget projections indicate that an additional \$8650 will be generated by the increase in fees. Fees will increase minimally to the applicant and licensee. If total revenues increase by \$8650, this would create a moderate economic impact to the Board's budget.

The increased fees reflect an increase in the cost of doing business (ie. complex complaints, legal challenges, additional staff time required to complete state-mandated administrative reports, and increases projected in rent costs). The Board has not raised fees since 1995. A physician may pass on the \$75 increase in annual renewal to the consumer, however the increase would be minimal. A homeopathic medical assistant may pass on the \$50 increase in annual renewal to the assistant's patients, however, once again, the increase is minimal. These increases may be offset by tax adjustments to income as a cost of doing business. The main increase will fall on the new applicant for a license (an increase of \$200). However, this must be considered from the perspective that the majority of applicants are practicing allopathic or osteopathic physicians. Typically, an increase of this amount would be a minimal burden to a licensee and may be passed on in a pro-rated amount to patients seeking homeopathic treatment. An applicant for homeopathic medical assistant may be impacted by the \$50 increase because medical assistants are typically not in practice at the time they seek registration with the Board. The increase would affect their business start-up costs but again, the amount is minimal.

Changes to R4-38-104, R4-38-106, R4-38-107 and R4-38-108 through R4-38-115 will not increase costs to the licensee or the consumer.

**10. A description of the changes between the proposed rules, including supplemental notices, and the final rules:**

Minor, non-substantive changes were made at the request of G.R.R.C. staff.

In Section R4-38-103(A), Approval of Postgraduate Coursework or Training, clarifying language was inserted to indicate that as part of the 300 hours of formal post-graduate training, at least 40 hours of training in a course of classical homeopathy is required. The addition of this clarification does not substantially change the meaning of the Section as published in the Notice of Proposed Rulemaking because the 40-hour requirement is currently in rule and is in keeping with the Board's statutory mandate. The Board believes that anyone reading the Notice of Proposed Rulemaking would understand that it was in inadvertent omission. The Notice of Proposed Rulemaking also included language in the Section that would have allowed an applicant to substitute three years of clinical utilization of the therapy verified by three individuals familiar with the applicants practice in lieu of the 300 hours of formal post grad-

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uate training. The Board removed this language after determining that it did not meet the statutory requirements of A.R.S. § 32-2912(D)(3).

**11. A summary of the comments made regarding the rules and the agency response to them:**

There were no written or oral comments regarding the rules.

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

None

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

None

**14. Were the rules previously adopted as emergency rules?**

No

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

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

ARTICLE 1. GENERAL

- R4-38-101. ~~Standards for Applicants Not Holding Degrees from a College or University Approved by the Board~~ Definitions
- R4-38-102. ~~Standards for Approval of Post Graduate Courses and Homeopathic Educational Institutions~~ Additional Requirements for Applicants Graduated from an Unapproved School of Medicine
- R4-38-103. ~~Standards for Approval of Internships and Preceptorships~~ Approval of Postgraduate Coursework
- R4-38-104. ~~Fees~~ Approval of Preceptorship
- R4-38-105. ~~Procedure for Conducting Licensing Examinations and Setting the Passing Grade~~ Fees
- R4-38-106. ~~Procedure for Conduct of Personal Interview~~ Examinations
- R4-38-107. Waiver of Written Examination
- R4-38-108. Notification of Address Changes
- R4-38-109. Experimental Forms of Diagnosis and Treatment
- R4-38-110. ~~Generally Accepted Experimental Criteria~~ Repealed
- R4-38-111. Peer Review
- R4-38-112. ~~Procedure for Registering Compliance of Use of Experimental Forms of Diagnosis and Treatment~~ Registering Use of Experimental Forms of Diagnosis and Treatment
- R4-38-113. ~~Protocol for Chelation Therapy~~ Practice Requirements
- R4-38-114. Rehearing or Review of Decision
- R4-38-115. Use of Title and Abbreviation

**R4-38-101. Standards for Applicants Not Holding Degrees from a College or University Approved by the Board Definitions**

**A.** ~~Approved school of medicine” means any school or college operating a course of study which upon successful completion results in a Degree of Doctor of Medicine or a Doctor of Osteopathy and whose course of study has been approved or accredited by the American Institute of Homeopathy, the Association of American Medical Colleges, the Association of Canadian Medical Colleges, the American Medical Association, or the American Osteopathic Association.~~

**B.** ~~An applicant who has graduated from an unapproved school of medicine shall meet the following requirements:~~

- ~~1. Be a holder of a standard certificate issued by the Educational Council for Foreign Medical Graduates, or~~
- ~~2. Successfully complete an approved Fifth Pathway Program of 12 months supervised clinical training under the direction of an approved school of medicine in the United States in addition to documentation granted by a foreign school of medicine signifying completion of all of the formal requirements for graduation from such foreign medical school except internship or social service training or both.~~

In addition to the definitions at A.R.S. § 32-2901, in this Chapter:

1. “Beneficial clinical usage” means that usage results of a therapy modality or treatment are documented by:
  - a. Clinical reports from national or international organizations;
  - b. Professionally recognized publications of clinical indications and contraindications;
  - c. National or international instructional courses providing training in the use of the therapy modality, or treatment;  
or
  - d. Professional peer review presentations of physicians’ usage results with the therapy modality or treatment at

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- local, county, state, national or international meetings.
2. “Classical homeopathy” means a system of medical practice expounded by Samuel Hahnemann in the *Organon of Medicine* that treats a disease by the administration of minute doses of a remedy that would in healthy persons produce symptoms of the disease treated.
  3. “Complex homeopathy” means a system of medical practice that combines one or more homeopathic remedies that are not described in the *Organon of Medicine*.
  4. “EAV” means electric acupuncture according to Reinhard Voll.
  5. “Fifth Pathway program” means an academic program created by the Council on Medical Education of the American Medical Association specifically for American medical students studying abroad.
  6. “Generally accepted experimental criteria in homeopathy” means:
    - a. A protocol in which a therapy modality or treatment is administered in the smallest amount necessary to stimulate a healing response with a minimum of clinical aggravation of symptoms or side effects;
    - b. A process of recording the clinical efficacy of a therapy modality or treatment reflected by measurements of symptom aggravation or improvement, laboratory testing, and changes in physiologic functioning; or
    - c. A process by which innovative diagnostic procedures and devices are analyzed and evaluated according to their ability to assist a physician in assessing the degree of electrical resistance or conduction disturbance in the totality of a patient’s presenting signs, symptoms, and physiologic responses and predict or monitor the totality of the patient’s responses to a therapy modality or treatment.
  7. “Homeopathic indication” means a recognized standard of practice of homeopathic practitioners that describes a sign, symptom, and physical finding that leads to the recommendation of a particular substance or therapeutic procedure.
  8. “Metal poisoning” means a level of toxic metals present in a patient that in the professional judgment of a licensee is inconsistent with the patient’s ability to achieve optimal health.
  9. “Proving method of administration” means testing a homeopathic drug on healthy volunteers by recording, compiling, and organizing symptoms that are developed into a repertory.
  10. “Repertory” means a compilation, usually in book form, of information categorized by the different systems of the body and providing an index of symptoms and a listing of corresponding homeopathic remedies.
  11. “Rubric” means a guiding symptom leading to a homeopathic remedy.

**R4-38-102. ~~Standards for Approval of Post-Graduate Courses and Homeopathic Educational Institutions~~ Additional Requirements for Applicants Graduated from an Unapproved School of Medicine**

- ~~A. Applicants for licensure who submit a diploma of Doctor of Medicine in Homeopathy issued by a homeopathic college or other educational institution shall submit a certified statement of their course work and content if their institution has not been previously approved by the Board or accredited for this course of study by an educational or professional association recognized by the Board including the Association of American Medical Colleges, the Association of Canadian Medical Colleges, or the American Institute of Homeopathy.~~
- ~~B. An applicant shall submit certificate of attendance and completion of post graduate courses and a summary of such work, as required by this Section, on the application form supplied by the Board.~~
- ~~C. Attendance at a course of homeopathic post graduate medical education consisting of 90 hours or more of formal training in homeopathy offered by an institution approved by the Board or the American Institute of Homeopathy will satisfy the post graduate course requirements for applicants.~~
- ~~D. Course work not previously approved by the Board will be evaluated upon submission by applicant according to the course content, which includes case-taking, repertory use, materia medica, homeopathic philosophy and history, acute remedies, constitutional prescribing,~~
- ~~E. An applicant whose previous homeopathic practice as defined in A.R.S. § 32-2901.A.4. has been devoted 50% or more to complementary modalities other than the classical homeopathy of micro-dose substances prescribed by the law of similars, shall submit evidence of a combined total of three hundred hours of post graduate training in one or more of these modalities including a minimum of 40 hours of formal training in an approved course in classical homeopathy. These modalities as defined in A.R.S. § 32-2901 include acupuncture, neuromuscular integration, orthomolecular therapy, nutrition or chelation therapy.~~
- ~~F. Applicants who have submitted a preceptorship in Homeopathic Medicine may submit documentation of such preceptorship for consideration by the Board according to the criteria in Subsection B. above as an approved course of post graduate training. A preceptorship is an extended period of individual study with one or more experienced homeopathic physicians or institutions.~~

In addition to the requirements for a license prescribed in A.R.S. § 32-2912, an applicant who has not graduated from an approved school of medicine shall meet the following:

1. Hold a standard certificate issued by the Educational Council for Foreign Medical Graduates; or
2. Complete a Fifth Pathway program of one academic year of supervised clinical training under the direction of an approved school of medicine in the United States and upon completion of the Fifth Pathway program complete a 24-month internship, residency, or clinical fellowship program accredited by the Accreditation Council on Graduate Medical Education (ACGME).

**R4-38-103. Standards for Approval of Internships and Preceptorships Approval of Postgraduate Coursework**

- ~~A.~~ An “approved internship” means that the applicant has completed training in a hospital which was approved for internship, fellowship or residency training by the Council on Medical Education in Hospitals of the American Medical Association, the Association of American Medical Colleges, the Royal College of Physicians and Surgeons of Canada, the American Osteopathic Association or any similar body in the United States or Canada whose function is that of approving hospitals for internship, fellowship or residency training.
- ~~B.~~ Completion of a preceptorship may not substitute for completion of an approved internship, residency or fellowship program.
- ~~A.~~ An applicant for licensure who does not have a degree of doctor of medicine in homeopathy shall identify on a form supplied by the Board completion of at least 300 hours of formal postgraduate education in one or more of the treatment modalities specified in subsections (C)(1) through (6) with at least 40 hours of the 300-hour requirement in a course of classical homeopathy. To receive credit for formal postgraduate coursework, the applicant shall submit the following with the application:
  - ~~1.~~ A statement showing completion of the coursework and a brief description of the content; and
  - ~~2.~~ A certificate of attendance showing evidence of the number of hours successfully completed.
- ~~B.~~ The Board shall approve a postgraduate course if the course content provides training in one or more of the treatment modalities specified in subsections (C)(1) through (6), the educational qualifications of the instructors demonstrate sufficient knowledge of the subject matter, and the sponsor is recognized within the homeopathic, osteopathic, or medical profession as a provider of postgraduate training and continuing education. The Board shall approve a course of classical homeopathy if the course includes case-taking, repertory use, materia medica, philosophy and history of homeopathy, acute remedies, constitutional prescribing, posology, homeopathy prescription policy, and remedy handling policy.
- ~~C.~~ An applicant who wishes to practice a specific treatment modality listed in subsections (C)(1) through (6) shall demonstrate proficiency in the modality by completing the indicated number of postgraduate course hours or certification by the indicated credentialing authority.
  - ~~1.~~ Acupuncture:
    - ~~a.~~ Classical acupuncture:
      - ~~i.~~ Certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), or
      - ~~ii.~~ Completing at least 220 hours of postgraduate courses recognized by the American Academy of Medical Acupuncture or other sponsor approved by the Board that provides equivalent training.
    - ~~b.~~ Electro-diagnosis: Completing at least 50 hours of postgraduate courses in electro-diagnosis that are approved by the Board.
  - ~~2.~~ Chelation therapy: Completing at least 16 hours of postgraduate courses offered by the American Board of Clinical Metal Toxicology, American College of Alternative Medicine, International College of Integrative Medicine, or the American Academy of Environmental Medicine or other sponsor approved by the Board that provides equivalent training.
  - ~~3.~~ Classical homeopathy: Completing at least 90 hours of formal postgraduate courses in classical homeopathy approved by the Board, or whose sponsor is recognized by the Council on Homeopathic Education, the American Institute of Homeopathy, the American Board of Homeotherapeutics, the Homeopathic Association of Naturopathic Physicians or the Council for Homeopathic Certification.
  - ~~4.~~ Complex homeopathy and electro-therapeutics, EAV and related: Completing at least 90 hours of formal postgraduate courses in complex homeopathy approved by the Board, or whose sponsor is recognized by the Council on Homeopathic Education, the American Institute of Homeopathy, the American Board of Homeotherapeutics, the Homeopathic Association of Naturopathic Physicians, or the Council for Homeopathic Certification.
  - ~~5.~~ Neuromuscular integration:
    - ~~a.~~ Completing a residency or fellowship in physical medicine or graduation from an osteopathic medical school; or
    - ~~b.~~ Completing at least 220 hours of formal postgraduate courses in neuromuscular integration therapies that are approved by the Board.
  - ~~6.~~ Orthomolecular therapy and nutrition: completing at least 300 hours of postgraduate courses in orthomolecular therapy and nutrition approved by the Board.

**R4-38-104. Fees Approval of Preceptorship**

- ~~A.~~ The fee for annual renewal of a license is \$525.00.
- ~~B.~~ The fee for issuance of a duplicate license is \$25.00.
- ~~C.~~ The fee for a dispensing permit is \$200.00 and the annual renewal of such permit \$150.00.
- ~~D.~~ The fee for a copy of minutes to all board meetings during the calendar year is \$75.00.
- ~~E.~~ The fee for the sale of lists of physicians licensed by the Board, 5¢ per name for private use and 25¢ per name for commercial use.
- ~~F.~~ The fee for copying records, documents, letters, minutes, applications, and files is .25¢ per page.
- ~~G.~~ The fee for copying audio tapes is \$35.00 per tape.

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~~H.~~ The fee for the sale of computerized tapes or diskettes not requiring programming \$100.00. Instead of evidence of formal postgraduate courses, an applicant may qualify for licensure based on completion of a preceptorship conducted by a preceptor qualified to provide instruction in one or more of the treatment modalities listed in A.R.S. § 32-2901(22) by submitting with the application the following:

1. A notarized affidavit from each preceptor on the preceptor's letterhead attesting to:
  - a. The educational qualifications of the preceptor to include the number of years the preceptor has been conducting preceptorships;
  - b. The dates of the preceptorship;
  - c. An outline of the training conducted and each treatment modality involved in the training;
  - d. The number of hours of didactic and clinical training in each treatment modality; and
  - e. The general nature of the services performed during the training.
2. A summary from the applicant of each preceptorship including:
  - a. The name of each preceptor;
  - b. The treatment modalities included in each preceptorship;
  - c. The total number of hours claimed instead of formal postgraduate courses.

**R4-38-105. Procedure for Conducting Licensure Examinations and Setting the Passing Grade Fees**

- ~~A.~~ The examination for licensure shall be a written exam with a specified time limit. The Board shall administer a standardized examination or examinations covering items expected to be included in an approved formal post graduate course in homeopathic medicine as defined in R4-38-102(D).
- ~~B.~~ The passing grade of the exam is 70%.
- ~~C.~~ Applicants shall bring a copy of Kent's Repertory for use as a reference during the examination. Applicants may use other repertories with clinically updated rubrics. In no case may other written material, notes or material medica references be brought in or used during the examination.

The Board may charge the following fees according to A.R.S. § 32-2914 and § 32-2916:

1. <u>Application for license:</u>	<u>\$ 500.00</u>
2. <u>Issuance of initial license:</u>	<u>\$ 250.00</u>
3. <u>Annual renewal of license:</u>	<u>\$ 600.00</u>
4. <u>Late renewal penalty:</u>	<u>\$ 350.00</u>
5. <u>Application for dispensing permit:</u>	<u>\$ 200.00</u>
6. <u>Annual renewal of dispensing permit:</u>	<u>\$ 150.00</u>
7. <u>Locum tenens registration application:</u>	<u>\$ 200.00</u>
8. <u>Locum tenens registration issuance:</u>	<u>\$ 100.00</u>
9. <u>Application for registration to conduct a practical education course for supervised medical assistants:</u>	<u>\$ 150.00</u>
10. <u>Annual renewal of registration to conduct a practical education course:</u>	<u>\$ 50.00</u>
11. <u>Initial application for supervision of medical assistant:</u>	<u>\$ 200.00</u>
12. <u>Triennial renewal of supervision of medical assistant:</u>	<u>\$ 50.00</u>
13. <u>Annual renewal for registration of medical assistant:</u>	<u>\$ 100.00</u>
14. <u>Annual directory:</u>	<u>\$ 25.00</u>
15. <u>Copies, per page:</u>	<u>\$ 0.25</u>
16. <u>Copies, per audio tape</u>	<u>\$ 35.00</u>
17. <u>Copies, per 1.44 M computer disk:</u>	<u>\$ 100.00</u>
18. <u>Mailing lists - non-commercial (per name)</u>	<u>\$ 0.05</u>
19. <u>Mailing lists - commercial (per name)</u>	<u>\$ 0.25</u>
20. <u>Mailing list labels (per name)</u>	<u>\$ 0.30</u>
21. <u>Copy of statutes or rules, each</u>	<u>\$ 5.00</u>

**R4-38-106. Procedure for Conduct of Personal Interview Examinations**

- ~~A.~~ The personal interview conducted by the Board shall be conducted so as to acquaint the Board with the applicant's personal history, philosophy and approach to homeopathic medical practice. To this end the Board may require the applicant to review a clinical case history drawn from a file established by the Board for this purpose and present to the Board a summary of how the applicant would proceed with the clinical management of the sample case.
- ~~B.~~ The Board shall ask any questions which will clarify to the satisfaction of the Board any issues regarding the applicant's practice record which may reflect on his or her competence to safely engage in the practice of medicine, clarify any ques-

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~~tions of unprofessional conduct in the applicant's professional record, and clarify whether the scope of the applicant's homeopathic practice falls within the definition of A.R.S. § 32-2901-A.4.~~

**A.** ~~The examination for a license consists of three parts:~~

- ~~1. A timed written examination with a passing grade of 70% that includes questions the Board deems appropriate for the category of treatment modality for which the applicant provides evidence under R4-38-103 that are similar to those expected to be included in an examination in an approved postgraduate course in the treatment modality under R4-38-103;~~
- ~~2. An oral examination on one or more of the treatment modalities in R4-38-103 based on an actual clinical case history. The applicant shall present to the Board a summary of the clinical management of the sample case; and~~
- ~~3. A personal interview with the Board to examine the applicant's personal and professional history as it applies to homeopathic medicine. The Board may ask questions to clarify issues regarding the applicant's competence to engage in the practice of medicine safely, unprofessional conduct in the applicant's professional record, and whether the scope of the applicant's practice falls within the definition of homeopathic medicine.~~

**B.** ~~An applicant who applies for licensure and provides evidence of postgraduate education under R4-38-103(C) may use a copy of Kent's Repertory or other repertory with clinically updated rubrics as a reference during the examination. An applicant shall not use a computer or other written material during the examination.~~

**R4-38-107. Waiver of Written Examination**

**A.** ~~No waiver may be issued without completion of a personal interview.~~

**B.** ~~For applicants requesting waiver under A.R.S. § 32-2912(C)(1)(a), Verification of competency, the Board will consider the nature of the applicant's previous three years of homeopathic practice and the nature of the treatment methodology (homeopathic modalities) used in that practice. If the Board so determines, based on information obtained in the personal interview, that this practice constitutes a primarily homeopathic practice experience under the definition of such practice in Arizona law, then waiver may be granted.~~

**C.** ~~In cases where applicant requests waiver under A.R.S. § 32-2912(C)(1)(b), Recognition of homeopathic licensure, the Board will consider the nature of the examination and testing procedures used in the licensing jurisdiction as well as the information obtained in the personal interview in determining whether the applicant qualifies for a waiver.~~

**A.** ~~The following applies to an applicant requesting waiver under A.R.S. § 32-2913(A).~~

- ~~1. The Board shall not issue a license based on a waiver of the written examination without completion of an oral examination and a personal interview.~~
- ~~2. At the Board's discretion, an oral examination and personal interview may be conducted by a telephone conference call with a majority of the Board present.~~

**B.** ~~Based on the application, oral examination, and personal interview, the Board shall determine whether the applicant qualifies for a waiver.~~

**R4-38-108. Notification of Address Changes**

~~Any licensee establishing a new office or changing his office address in the State of Arizona shall notify the Board in writing within 45 days of the opening of such new office and notify the Board within 45 days of any change in office or residence address, and office or residence telephone number.~~

~~A licensee shall advise the Board in writing within 45 days of opening an additional office address, a change in office address, change in home address, or change in telephone number.~~

**R4-38-109. Experimental Forms of Diagnosis and Treatment**

**A.** ~~The Board neither approves nor advocates specific innovative experimental therapies, but The Board recognizes considers the following standards in this Section in for determining if whether a licensees are licensee is in compliance with A.R.S. Section § 32-2933(27). Nothing in this Rule shall be interpreted to authorize activity-The Board considers a therapy that is in violation of applicable Arizona state or federal statutes, or state or federal rules or regulations regarding drugs and devices to be unprofessional conduct under A.R.S. § 32-2933(27).~~

**B.** ~~For the purposes of this Chapter, an experimental form Experimental forms of diagnosis or treatment, within the meaning subject to the restrictions and public protections of A.R.S. Section § 32-2933(27), includes include:~~

- ~~1. Administration of a pharmaceutical agent untested for safety in humans;~~
- ~~2. The use Use of a physical agents agent or electromagnetic currents or fields current or field in a manner not supported by established clinical usage; and~~
- ~~3. Innovative therapy Therapy modalities and diagnostic methods that are not included in the definition practice of homeopathic medicine as defined in A.R.S. Section § 32-2901-A. 32-2901(22) and do not meet the criteria of Subsection C. subsection (C) below.~~

**C.** ~~For the purposes of this Chapter, the The following are not considered to be an experimental forms form of diagnosis or treatment under A.R.S. § 32-2933(27):~~

- ~~1. A Substance substance or therapy modalities modality administered on a homeopathic indications- indication that have has been in beneficial clinical usage by professionally trained, legally qualified physicians for at least ten 10 years; ;~~

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2. Homeopathic ~~drugs~~ medications listed in the Homeopathic Pharmacopoeia of the United States;
  3. Homeopathic ~~drug preparations~~ medications which ~~that~~ have been characterized by toxicity studies or by the “proving” method of administration ~~to~~ on healthy volunteers to determine ~~their~~ the medication’s spectrum of action;
  4. Administration of a pharmaceutical ~~agents~~ agent for a therapeutic indication supported by clinical usage ~~where such if the agents have already~~ agent is received approval approved to be marketed publicly for other therapeutic indications by the appropriate regulatory agency; and
  5. A procedure used for patient education, preventative medicine, or general health assessment or enhancement such as bio-terrain analysis, live blood analysis, soft laser, magnetic therapy, oxidative therapy, and microelectric therapy, and other procedures considered by the Board to be in beneficial clinical usage.
- D.** For the purposes of the Chapter, beneficial clinical usage by physicians of therapy modalities means that such beneficial usage is documented by national or international clinical reports of therapeutic results, or by professionally recognized publications of clinical indications and contraindications, or by organized national or international instructional courses offered in the use of the modality or treatment, or by presentation of physicians’ experience with the therapy at national or international professional meetings.

**R4-38-110. Generally Accepted Experimental Criteria Repealed**

For the purposes of this Chapter, generally accepted experimental criteria in homeopathy means:

1. A protocol in which the treating modality is administered in the smallest amount necessary to stimulate a healing response with a minimum of clinical aggravation or “side effects.”
2. Records for documentation of clinical efficacy which reflect measurement of symptom improvement, laboratory testing, and improvement in parameters of physiologic functioning.

**R4-38-111. Peer Review**

- A. A Licensees who use licensee using an experimental forms form of diagnosis and treatment such as vaccine therapy for cancer without affiliation with a recognized research institution, institutional review board, or peer review agency committee may request or the Board may require review of the procedure in question the procedure by the Board or a Board-appointed peer review committee.
- B. In conducting the review, the Board or Board-appointed peer review committee shall examine The committee review shall include a review of protocols, record keeping, analysis recordkeeping, analyses of results, and informed patient consent forms and procedures. Based on the peer review report, the Board shall determine the licensee’s compliance with generally accepted homeopathic experimental criteria under A.R.S. § 32-2933(27).
- C. As used in A.R.S. § 32-2933(27), “periodic review by a peer review committee” means peer review for compliance with any form of experimental medicine occurs at a minimum of five-year intervals through a recognized research institution, institutional review board, or a peer review committee. The chairperson of a Board-appointed peer review committee shall be appointed by the Board president and approved by the Board.
- D. During a review of a licensee’s use of experimental forms of diagnosis and treatment or at any other time the Board deems appropriate, the licensee shall submit informed patient consent forms and protocols and other records indicating the licensee’s compliance with generally accepted experimental criteria designated in A.R.S. § 32-2933(27).

**R4-38-112. Procedure for Registering Compliance of Use of Experimental Forms of Diagnosis and Treatment Registering Use of Experimental Forms of Diagnosis and Treatment**

~~At the time of~~ As part of an initial licensing application and at subsequent annual renewal periods application, physicians an applicant shall designate on a form provided by the Board document the modalities of treatment used in their the applicant’s practice as well as any experimental and forms of diagnosis and treatment used by the applicant which that have been are defined as experimental by legislative action or Board action R4-38-109.

**R4-38-113. Protocol for Chelation Therapy Practice Requirements**

- A. Physicians Before a licensee engaging in may practice chelation therapy for other than the treatment of metal poisoning, as part of their homeopathic practice the licensee:
  1. Shall shall document post graduate completion of the postgraduate education requirements equivalent to those established for eligibility for certification by the American Board of Chelation Therapy required in R4-38-103(C)(2); and
  2. File a sample of the informed patient consent form and obtain approval of written disclosure from the Board as required by A.R.S. § 32-2933(27). As part of the documentation submitted with the informed patient consent form, the licensee shall include a copy of the therapy protocol.
- B. Physicians engaging in chelation therapy shall keep detailed records for patients undergoing chelation therapy, which shall include the following:
  1. Documentation of form and nature of pre-therapy counselling.
  2. Diagnostic and pathologic categorization of patient’s problem.
  3. Documentation of pre-therapy testing including history and physical, subjective symptomatology, laboratory evaluations and consultation reports appropriate to the patient’s pathologic diagnosis.
  4. Evidence of periodic monitoring of therapy at an intervals appropriate for the acuteness of patient’s condition at a

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~~minimum of every nine treatments or every two months. Such monitoring includes physiologic measurements, complications of treatment, progress in symptoms and additional comments.~~

~~5. Post therapy testing including subjective evaluation, physiologic testing and laboratory results appropriate for the patient's complaint to be done at three, six and twelve months following treatment or during the course of treatment.~~

**B.** ~~If the Board approves the written disclosure under A.R.S. § 32-2933(27), the licensee may practice chelation therapy. The licensee shall ensure that detailed records and periodic analysis of results on patients consistent with the most recent informed consent and protocol on file with the Board are maintained consistent with A.R.S. § 32-2933(27) and available for periodic review by a peer review committee designated by the Board. Retention of patient medical and treatment records shall also conform with the requirements of A.R.S. § 12-2297.~~

**C.** ~~Periodic analysis of chelation therapy results shall occur at six month intervals with at least the following analysis of results:~~

- ~~1. Minimal improvement~~
- ~~2. Marked improvement~~
- ~~3. Worse~~
- ~~4. Lost to follow up~~
- ~~5. Refused follow up~~

**D.** ~~Peer review for compliance with the above protocol shall occur at a minimum of annual intervals through an appropriate institutional review committee or a peer review committee designated by the Board.~~

**R4-38-114. Rehearing or Review of Decision**

**A.** ~~Except as provided in subsection (G), any party in a to an appealable agency action or a contested case before the board Board who is aggrieved by a decision rendered in such the case may file with the board Board not later than ten 30 days after service of the decision, a written motion for rehearing or review of the decision, specifying the particular grounds therefore for the motion. A decision shall be deemed to have been is served when personally delivered or mailed by certified mail five days after the date the decision is mailed to the party at his the party's last known residence or place of business.~~

**B.** ~~A motion for rehearing under this rule may be amended at any time before it is ruled upon by a ruling by the Board. A response may be filed within ten days after service of such motion or amended motion by any other party. Any other party may file a response within 15 days after the motion or amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.~~

**C.** ~~The Board may grant a A rehearing or review of the decision may be granted for any of the following causes reasons materially affecting the moving party's rights:~~

- ~~1. Irregularity in the administrative proceedings of the agency Board or its the hearing officer, or the prevailing party, or any order or abuse of discretion, whereby that results in the moving party was being deprived of a fair hearing;~~
- ~~2. Misconduct of the board Board or the prevailing non-moving party;~~
- ~~3. Accident or surprise which that could not have been prevented by ordinary prudence;~~
- ~~4. Newly discovered material evidence which that with reasonable diligence could not with reasonable diligence have been discovered and produced at the original hearing;~~
- ~~5. Excessive or insufficient penalties;~~
- ~~6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or~~
- ~~7. That the The decision is not justified by the evidence or is contrary to law.~~

**D.** ~~The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in Subsection C subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.~~

**E.** ~~Not later than ten 30 days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a the rehearing shall specify the grounds therefore for the rehearing.~~

**F.** ~~When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within ten days after such service serve the opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted. When a motion for rehearing is based upon an affidavit the party shall serve the affidavit with the motion. Within 10 days after service, an opposing party may serve an opposing affidavit. The Board may extend the period to serve an opposing affidavit for an additional 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.~~

**G.** ~~If in a particular decision the Board makes specific findings that the immediate effectiveness of such the decision is necessary for the immediate preservation of the public peace, health, and or safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity~~

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for rehearing, any ~~applicant~~ application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

H. For purposes of this Section, the terms "contested case" and "party" as used in this Section are defined in A.R.S. Section § 41-1001. The term "appealable agency action" is defined in A.R.S. § 41-1092.

R4-38-115. Use of Title and Abbreviation

- A. The use of abbreviations ~~the abbreviation~~ "H.P." and "M.D.(H.)" (with or without periods), ~~are is recognized~~ as equivalent to the full written designation, "Homeopathic Physician" and "Doctor of Medicine (Homeopathic)".
- B. Physicians practicing in Arizona under the auspices of the Homeopathic Board who are not also licensed by the Board of Medical Examiners or the Board of Osteopathic Examiners in Medicine and Surgery in this state, may only use the designation, "M.D." or "D.O." to indicate their educational training if such use of initials is uniformly accompanied by the full, written designation, "Homeopathic Physician".
- B. A Homeopathic physician practicing in this state who is not licensed by the Arizona Board of Medical Examiners or the Arizona Board of Osteopathic Examiners in Medicine and Surgery shall not use any designation other than the initials MD or DO to indicate a doctoral degree, which shall be followed by the full, written designation, "Homeopathic Physician."
- C. Physicians practicing under dual licensure between either the Allopathic or the Osteopathic Board and the Homeopathic Board shall use either the designation "Homeopathic Physician", "Doctor of Medicine (Homeopathic)", or one of the two approved abbreviation terms in all professional capacities, along with the appropriate "M.D." or "D.O." designation.
- C. A physician licensed by the Board and any state Board of Medical Examiners or the Board and any state Board of Osteopathic Examiners in Medicine and Surgery shall use one of the following designations, as appropriate (with or without periods):
  1. "MD, MD(H)" or "DO, MD(H)";
  2. "MD, Homeopathic Physician" or "DO, Homeopathic Physician"; or
  3. "MD, Doctor of Medicine (Homeopathic)" or "DO, Doctor of Medicine (Homeopathic)".
- D. All ~~A~~ physicians ~~licensee~~ practicing in Arizona ~~this state~~ under a license by the Arizona Board of Homeopathic Medical Examiners shall ~~display post~~ the license or an official duplicate license in a visible conspicuous location in the reception area of each office facility, a sign which states, "Dr. is licensed by the Arizona Board of Homeopathic Medical Examiners". Such sign shall be a minimum of four inches by six inches in size, and it may also state any additional licensures or certifications under which the Homeopathic Physician is practicing.
- E. ~~Deadline for compliance shall be six months after the effective date of this rule.~~

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

[R05-167]

PREAMBLE

- |                             |                          |
|-----------------------------|--------------------------|
| <b>1. Sections Affected</b> | <b>Rulemaking Action</b> |
| R4-46-101                   | Amend                    |
| R4-46-301                   | Amend                    |
| R4-46-302                   | Amend                    |
| R4-46-303                   | Amend                    |
| R4-46-306                   | New Section              |
2. **The statutory authority for the rulemaking, including both the authorizing statutes (general) and the implementing statutes (specific):**  
 Authorizing statutes: A.R.S. §§ 32-3605(B) and 32-3631  
 Implementing statutes: A.R.S. §§ 32-3605(B)(10), 32-3605(B)(11), and 32-3631
  3. **The effective date of the rules:**  
 July 2, 2005
  4. **A list of all previous notices appearing in the Register addressing the final rules:**  
 Notice of Rulemaking Docket Opening: 10 A.A.R. 1318, April 2, 2004  
 Notice of Proposed Rulemaking: 10 A.A.R. 4818, December 3, 2004
  5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
 Name: Deborah G. Pearson, Executive Director

Notices of Final Rulemaking

Address: 1400 West Washington, Suite 360  
Phoenix, AZ 85007

Telephone: (602) 542-1539

Fax: (602) 542-1598

E-mail: [deborah.pearson@appraisal.state.az.us](mailto:deborah.pearson@appraisal.state.az.us)

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

The rules were initiated by the Board to better define and explain the steps associated with the administrative procedures for the disciplinary process pursuant to A.R.S. § 32-3605(B)(10), and to implement better communication of useful information to the public and appraisers relating to actions for violations pursuant to A.R.S. § 32-3605(B)(11). The rules are consistent with the Board's approved Five-Year Review Report.

**7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Board did not review any study relevant to the rules.

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

Not applicable

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

The rules will better define and explain the steps associated with the administrative procedures for the disciplinary process, and provide for better communication of useful information to the public and appraisers relating to actions for violations. The Board, licensed and certified appraisers, property tax agents and the public should not experience an economic impact based on the clarification and improved communication.

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

The following substantive changes were made by the Board in response to comments made to the Board: (a) the word "written" was not removed from the rule to prevent the Board from accepting oral complaints [R4-46-301(A)(1)]; (b) "a copy of the report" was added to the minimum criteria for a complaint to help prevent the filing of frivolous complaints [R4-46-301(A)(1)(e)]; (c) a minimum time to mail notices to a respondent was added to improve the notice provision on behalf of a respondent [R4-46-301(B)(2)]; and (d) R4-46-302(E)(1) relating to default in the event of respondent failing to answer was deleted to ensure that respondent received full due process. The following substantive changes were made at the request of the Governor's Regulatory Review Council staff to be consistent with statutes or case law: (a) the definition of "Board counsel" by replacing "or any other attorney retained by the Board to provide" with "who provides" to be consistent with A.R.S. § 41-192(E); (b) the last sentence of R4-46-301(D)(3) by adding "and all witnesses" between "Board" and "regarding" to be consistent with recent case law; and (c) the last sentence of R4-36-301(D)(5) by replacing "mailed or otherwise served" with "received" to be consistent with A.R.S. § 41-1092.03(B). The following substantive change was made at the request of the Governor's Regulatory Review Council staff to remove duplicative language: Removal of R4-46-302(A)(1) because it is already addressed in R4-46-301(F). Minor grammatical and formatting changes were made at the request of the Governor's Regulatory Review Council staff.

**11. A summary of the comments made regarding the rules and the agency response to them:**

The Board received no comments at its public hearing on the rules amendment held on January 20, 2005, and at that time voted to close the record, adopt the proposed rules and proceed with the Notice of Final Rulemaking. Based on comments received by the Governor's Regulatory Review Council staff on February 9, 2005, the Board voted on February 17, 2005, to reopen the record and refer the rules to the Rules and Regulations Committee to receive further comments. The Rules and Regulations Committee met on March 8 and March 11, 2005, received comments and made its recommendations to the Board on March 17, 2005. The Board accepted the Rules and Regulations Committee's recommendations, and voted to close the record and proceed with the Notice of Final Rulemaking. The following oral comments were received: (a) Against acceptance of anonymous complaints. Response: The Board added back in that the complaint be written and added the requirement of a copy of the report to the minimum criteria [R4-46-301(A)(1) and R4-46-301(A)(1)(e)]. (b) Against the notice provision for initial reviews. Response: The Board added that the notice be sent not less than seven days before a scheduled meeting [R4-46-301(B)(2)]. (c) Against the motion to deem in formal hearings if respondent fails to answer. Response: The Board deleted this paragraph [R4-46-302(E)(1)]. One written comment was received against the requirement of a copy of the report in the minimum criteria. Response: The Board left the requirement in the rules to help prevent the filing of frivolous complaints [R4-46-301(A)(1)(e)].

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

Not applicable

**13. Any material incorporated by reference and its location in the text:**

None

**14. Were these rules previously made as emergency rules?**

No

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 46. BOARD OF APPRAISAL**

**ARTICLE 1. GENERAL PROVISIONS**

Section

R4-46-101. Definitions

**ARTICLE 3. HEARINGS AND DISCIPLINARY PROCEEDINGS**

Section

R4-46-301. Complaints; Investigations; Informal Proceedings; Summary Suspensions; Refusal to Appear

R4-46-302. Formal Hearing Procedures

R4-46-303. Rehearing or Review of the Board's Decisions

R4-46-306. ~~Renumbered~~ Complaint Information Availability

**ARTICLE 1. GENERAL PROVISIONS**

**R4-46-101. Definitions**

In these rules, unless the context otherwise requires:

"Arizona or State Certified General Appraiser" means ~~the a person classified by the Board as a State Certified General Real Estate Appraiser classification set forth in accordance with A.R.S. § 32-3612(A)(1), and corresponds to the Certified General Real Property Appraiser classification of the Appraisal Foundation.~~

"Arizona or State Certified Residential Appraiser" means ~~the a person classified by the Board as a State Certified Residential Real Estate Appraiser classification set forth in accordance with A.R.S. § 32-3612(A)(2), and corresponds to the Certified Residential Real Property Appraiser classification of the Appraisal Foundation.~~

"Arizona or State Licensed Appraiser" means ~~the a person classified by the Board as a State Licensed Real Estate Appraiser classification set forth in accordance with A.R.S. § 32-3612(A)(3), and corresponds to the Licensed Real Property Appraiser classification of the Appraisal Foundation.~~

"Appraisal Foundation" means the educational organization, defined in A.R.S. § 32-3601(3), which is the parent organization of the Appraiser Qualifications Board and the Appraisal Standards Board. ~~The Appraisal Foundation is located at 1029 Vermont Ave., N.W. Ste. 900, Washington, D.C. 20005.~~

"Appraiser" means ~~an Arizona Licensed Appraiser, an Arizona Certified Residential Appraiser, or an Arizona Certified General Appraiser.~~ a person licensed or certified by the Board to complete real estate appraisals or consulting assignments in accordance with A.R.S. § 32-3612(A)(1), (2), and (3).

"Board" means the Arizona Board of Appraisal established by A.R.S. § 32-3604. ~~For the purposes of Article 3, the term "Board" includes any administrative law judge used or contracted for by the Board.~~

"Board counsel" means the assistant attorney general who provides legal advice to the Board.

"Board staff" means the executive director and the executive director's designees.

"Complaint" means a written communication to the Board that meets the minimum criteria established in R4-46-301(A)(1) and alleges violations of A.R.S. Title 32, Chapter 36 or this Chapter.

"Consent agreement" means a written agreement between the Board and a respondent that concerns disciplinary or remedial action.

"Consulting assignment" means a real estate appraisal advisory engagement, the purpose of which is to develop, without advocacy, an analysis, recommendation, or opinion where at least one opinion of value is a component of the analysis leading to the assignment results.

"Conviction" means a judgment by any state or federal court of competent jurisdiction in a criminal case, regardless of whether an appeal is pending or could be taken, and includes any judgment or order based upon a plea of no contest.

"Course ~~Provider~~ provider" means any organization or individual offering ~~prerequisite~~ that offers qualifying or continuing education courses.

"Disciplinary action" means any regulatory sanction imposed by the Board, including a letter of due diligence, a consent agreement, probation, suspension, revocation, or an acceptance of surrender of a license or certificate.

"Dismissal" means termination of a complaint without further hearing.

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“Due diligence” means the diligence reasonably expected from, and ordinarily exercised by, a person regulated by the Board, in accordance with A.R.S. Title 32, Chapter 36 and this Chapter.

“Formal Complaint complaint” means a notice of allegations issued by the Board pursuant to under R4-46-302.

“Formal hearing” means an adjudication of a disputed matter, conducted by the Office of Administrative Hearings (OAH) or the Board, under R4-46-302.

“Informal hearing” means a voluntary hearing before the Board in which a respondent is asked to respond to a complaint under R4-46-301(D).

“Informational interview” means a voluntary appearance by a respondent at a public meeting before the Board to discuss a complaint that has been filed against the respondent.

“Initial review” means the Board’s first review of a complaint, the response to the complaint, if any, the relevant appraisal report or work product, and workfile.

“Investigation” means a fact-finding process initiated by a complaint concerning the practice of a named respondent.

“Investigator” means an appraiser or property tax agent operating under a contract with the Board to carry out independent investigations of alleged violations.

“Jurisdictional criteria” means the statutory standards used by the Board to determine whether a complaint falls within the Board’s jurisdiction.

“Letter of concern” means a nondisciplinary advisory letter to notify a respondent that the action that is the basis of a complaint does not warrant disciplinary action, but is nonetheless cause for concern on the part of the Board and that its continuation may result in disciplinary action.

“Letter of due diligence” means a disciplinary letter of agreement between the Board and a respondent that may or may not include remedial action when minor violations of A.R.S. Title 32, Chapter 36 or Articles 1, 2, or 3 of this Chapter have been found.

“Letter of remedial action” means a nondisciplinary letter issued by the Board that requires a respondent to take remedial action when any minor violation of A.R.S. Title 32, Chapter 36 or Articles 1, 2, or 3 of this Chapter has been found.

“Mentor” means a certified appraiser authorized by the Board to supervise the work product of an appraiser subject to disciplinary action.

“Order” means an administrative order that contains findings of fact, conclusions of law, and disciplinary action, issued by the Board after a formal hearing or by consent.

“Party” No change

“Probation” means a term of oversight by the Board, imposed upon a respondent as part of a disciplinary action, which may include submission of logs, working under the supervision of a mentor, or other conditions intended to protect the public and educate the respondent.

“Property tax agent” has the meaning in A.R.S. § 32-3651.

“Remedial action” means any corrective remedy ordered by the Board that is designed to assist the respondent in improving the respondent’s professional practice.

“Respondent” means Appraiser, Course Provider, Property Tax Agent, appraiser, course provider, or property tax agent against whom a complaint has been filed, or any other party responding to a motion or a proceeding before the Board.

“Rules” means the requirements set forth established under A.R.S. Title 32, Chapter 36, and found in the Arizona Administrative Code (A.A.C.), Title 4, Chapter 46.

“Summary suspension” means an immediate suspension of a license, certificate, or registration by the Board based on a finding that the public health, safety, or welfare imperatively requires emergency action.

“USPAP” means the Uniform Standards of Professional Appraisal Practice, issued and updated by The Appraisal Foundation and incorporated by reference in the rules of the Board.

“Workfile” means the documentation necessary to support the analysis, opinions, and conclusions of an appraisal, a consulting assignment, or a tax appeal.

**ARTICLE 3. HEARINGS AND DISCIPLINARY PROCEEDINGS**

**R4-46-301. Complaints; Investigations; Informal Proceedings; Summary Suspensions; Refusal to Appear**

**A. Complaints**

1. The Board shall investigate a written complaint, including an anonymous complaint or a complaint made on the Board’s own motion, alleging violations of A.R.S. Title 32, Chapter 36, or any of these rules; this Chapter, if the complaint provides information that meets the minimum criteria. Minimum criteria for a complaint include but are not limited to:

- a. The name of the respondent against whom allegations are being made;
- b. The action that is the basis of the complaint;
- c. The time-frame in which the action occurred;
- d. Each violation alleged to have been committed by the respondent; and
- e. A copy of the report, if the complaint includes allegations concerning an appraisal, consulting assignment, or property tax appeal.

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2. Upon receipt of a complaint:
  - a. Board staff shall review the complaint and determine, in consultation with Board counsel if necessary, whether the complaint meets jurisdictional criteria and if so, which edition of USPAP is applicable.
  - b. Within 14 days after receipt of a complaint the Board shall notify the Respondent and provide the Respondent the opportunity to submit respondent, as prescribed in A.R.S. § 41-1092.04, of the complaint and the requirement that the respondent file a written response within 21 30 days from the date of on the notice, of the complaint. The notice shall include Board shall provide a copy of the complaint with the notice and request that the respondent address the issues referred to in the complaint. In the notice, the Board shall require that the respondent additionally provide all of the following to the Board: the appraisal report, appraisal review, consulting assignment, or property tax appeal at issue; and the workfile.
  - c. The Respondent may request and If the respondent requests more time to respond, the Board may shall grant a continuance a single extension of time not to that does not exceed 30 days, upon a showing of good cause.
- B. Initial Review and Investigation
  1. After receipt of the response or expiration of 21 days, as extended, whichever is earlier, Within 75 days after receipt of a response or expiration of the time for response, the Board shall conduct an initial review of the complaint matter to determine if whether further investigation is necessary. If the Board determines further investigation is necessary the Board may employ an investigator or investigators and shall notify the Respondent respondent of the pending investigation.
  2. When If a Respondent's respondent's name appears is placed on an a public meeting agenda, the Respondent shall be notified according to A.R.S. Title 38, Chapter 3, Article 3-1. Board shall mail a letter to the respondent not less than seven days before the scheduled meeting, providing the respondent with a copy of the posted notice of the public meeting.
  3. If a matter is not resolved within 18 months of receipt of the response, it will be scheduled for review to determine if good cause exists to continue the investigation further. R4 46 301(B) is not retroactive. R4 46 301(B) only applies to investigations commenced after October 1, 1998. If, after completing its investigation, the Board finds that further action against the Respondent is not merited, the matter shall be dismissed. If the respondent is present at the initial review, the Board may request that the respondent participate in an informational interview. A respondent may refuse to participate in an informational interview. The Board may use any information presented at the informational interview in other proceedings related to the complaint.
  4. At the initial review, the Board shall consider the complaint; any response; the appraisal report, appraisal review, consulting assignment, or property tax appeal; and the workfile. The Board may dismiss the matter, request or subpoena additional information, order a limited or full investigation, or invite the respondent to an informal hearing, based on the information reviewed.
  5. Board staff shall assign each investigator according to the investigator's experience, expertise, contract terms, and availability. Board staff shall select an investigator who is not associated with the respondent. Each investigative report shall contain the signed certification specified in subsection (B)(6). An investigator's draft report is considered work product and is, therefore, confidential. The Board may ask for clarification or additional information after review of a draft report. Upon acceptance by the Board, an investigative report is considered final. The Board may adopt any or all of the findings in the final report at a public meeting and may consider any additional, relevant information that is discovered before the matter is resolved. The investigative report becomes nonconfidential upon resolution of the complaint involved.
  6. The following certification shall be included in every investigative report prepared for the Board and signed by the investigator: I certify that, to the best of my knowledge and belief:
    - a. The statements of fact contained in this report are true and correct.
    - b. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and they are my personal, impartial and unbiased professional analyses, opinions, conclusions, and recommendations.
    - c. I have no present or prospective interest in the property that is the subject of this investigation, and I have no personal interest with respect to the parties involved in this investigation.
    - d. I have no bias with respect to any property that is the subject of this investigation or to the parties involved in this investigation.
    - e. My engagement for this investigation was not contingent upon developing or reporting any predetermined result or outcome.
    - f. My compensation for this investigation is not contingent upon developing or reporting any predetermined result or outcome, nor have I been instructed as to any predetermined result or outcome by the Board, the Board staff, or other parties.
    - g. I have (or have not) made a personal inspection of the property that is the subject of this investigation.
- C. Settlement. Any time after a complaint has been filed against a Respondent, respondent, but not later than 15 days prior to a scheduled formal hearing, the matter may be resolved by a settlement in which the Respondent respondent agrees to

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accept ~~discipline~~ disciplinary or remedial action by consent in lieu of a disciplinary order. ~~Discipline may include, but is not limited to, surrender or suspension of a license or certificate, a requirement that the Respondent successfully complete education courses, a requirement that the Respondent limit his or her scope of practice, or a requirement that the Respondent submit work product for professional peer review.~~ If the Board determines that the proposed settlement will adequately protect the public, the Board may accept the offer, with or without admissions, and enter an order of discipline consented to by into a consent agreement with the Respondent, respondent, incorporating the proposed settlement into the agreement. ~~Statements~~ A statement made for the purpose of settlement ~~are~~ is not admissible in a formal hearing.

**D. Informal Hearing: Disciplinary Action**

1. ~~If, after evaluation of the complaint and any written response, in the opinion of the Board, it appears based on the initial review or its review of the investigative report, the Board determines that the Respondent~~ respondent is or may be in violation of the Board's rules or statutes; statutes or rules, the Board may request ~~an~~ a voluntary informal hearing with the ~~Respondent~~ respondent. The Board shall provide the ~~Respondent~~ respondent with ~~20 days~~ a copy of any final investigative report in the matter, any supporting documentation, and notice of the date, and time, and location of the informal hearing, from the date notice is mailed via certified mail or otherwise served as provided in the Arizona Rules of Civil Procedure, as prescribed in A.R.S. § 41-1092.04, at least 30 days before the informal hearing. The notice of informal hearing shall include all of the following:
  - a. ~~a~~ A statement of the matters asserted and issues involved;
  - b. Any request for additional information needed by the Board to prepare for the hearing;
  - c. An explanation of the Respondent's respondent's right to appear voluntarily with or without legal counsel; and
  - d. An explanation of the Respondent's respondent's right to a formal hearing, ~~held pursuant to under R4-46-302.~~
2. The Board shall provide a copy of the informational material "Introduction to Informal Hearing," which explains the rights and responsibilities of the Board and respondent during the informal hearing. (A copy is also available at the Board office).
3. ~~The Respondent~~ respondent may request and the Board may grant a continuance ~~not to that does not~~ does not exceed 30 days upon a showing of good cause. During the informal hearing the Board shall swear witnesses, question the ~~Respondent~~ respondent and witnesses, and deliberate. The respondent may respond to the Board's questions, present witnesses, and ask questions of the Board and all witnesses regarding the matter before it.
4. ~~If the Board finds a violation of the rules or statutes; statutes or rules,~~ but the violation is not of sufficient seriousness to merit suspension or revocation, it may take ~~any or all~~ one or more of the following actions:
  - 1-a. Issue a decree of censure letter of concern;
  - 2-b. Issue a letter of remedial action;
  - c. Issue a letter of due diligence, which may or may not include remedial action;
  - d. Set a time period and terms of probation sufficient to protect the public welfare and safety and to educate the Respondent concerned; respondent. The Board may require ~~the Respondent to:~~ one or more of the following as terms of probation:
    - a- Submit to an examination;
    - b-i. Obtain training Training or education;
    - e-ii. Submit to supervision or peer Supervision or mentor review; ~~or~~
    - d-iii. Accept restrictions Restriction on the nature and scope of the Respondent's respondent's practice; ~~or~~
    - iv. Other reasonable measures designed to protect the public and educate the respondent.
5. For any Board action other than a letter of concern or a letter of remedial action, the Board shall request that the respondent sign a consent agreement, which may include findings of fact and conclusions of law, depending on the severity of the violation, but shall identify and explain each violation found. If the respondent is aggrieved by the outcome of the informal hearing, the respondent may request a formal hearing in writing, within 30 days from the date the written notice of the outcome of the informal hearing is received.
6. In resolving a complaint, the Board shall consider mitigating and aggravating circumstances, including but not limited to:
  - a. Whether a violation is intentional;
  - b. Whether the respondent has a prior disciplinary history;
  - c. The time that has elapsed since the violation, and any prior violation;
  - d. Whether any prior violation is similar to the present violation;
  - e. The complexity of the assignment;
  - f. Whether the assignment was outside the respondent's competence; and
  - g. Whether the respondent has taken courses after a violation to prevent future violations.

- E. Summary Suspension. If the Board finds that the public health, safety, or welfare ~~or safety~~ imperatively requires emergency action, and incorporates a finding to that effect in its order, the Board may order a summary suspension pending proceedings for revocation or other action. If an order of summary suspension is issued, the Board shall serve the ~~Respondent~~ respondent with a written notice of summary suspension and formal hearing, listing the charges against the ~~Respondent~~ respondent and setting ~~a~~ the date for the formal hearing ~~within 30 days,~~ as soon as is reasonably possible, but in no

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event more than 60 days from service of the written notice.

- F. Refusal to Appear. A ~~Respondent~~ respondent may refuse a request to appear at an informal hearing. If the respondent refuses to appear or does not appear, the Board may schedule the matter for a formal hearing.
- G. 12-Month Review. If a matter is not resolved within 12 months from receipt of the response, the Board shall schedule the matter for review at each regularly scheduled Board meeting to determine whether good cause exists to continue the investigation. If, after completing its investigation, the Board finds that further action against the respondent is not warranted, the Board shall dismiss the matter.

**R4-46-302. Formal Hearing Procedures**

- A. The Board shall issue a notice of hearing and formal complaint for formal disciplinary proceedings if:
  - ~~1. The Respondent refuses an invitation to an informal hearing;~~
  - 21. After an informal hearing, the Board determines that suspension or revocation may be warranted;
  - ~~32. The Respondent respondent is aggrieved by the Board's decision in an informal hearing; or~~
  - 43. After completing its investigation, the Board finds that suspension or revocation may be warranted.
- B. Except as provided in R4-46-301(E), the Board shall provide notice of a formal hearing to a ~~Respondent~~ respondent at least 30 days ~~prior to~~ before the date set for the hearing. The Board shall notify the ~~Respondent~~ respondent by certified mail or personal service at the ~~Respondent's~~ respondent's last known address of record. Unless otherwise specified, any notice provided for in these rules is complete upon deposit in the U.S. mail or by service as permitted under ~~the Arizona Rules of Civil Procedure, A.R.S. § 41-1092.04.~~
- C. On its own motion or a the motion of a party, ~~and a showing of good cause,~~ the Board may hear a case or have the case heard by an administrative law judge. ~~The Board shall not deny the motion without good cause.~~ The Board may accept, reject, or modify the administrative law judge's recommended decision as prescribed by A.R.S. § 41-1092.08, and shall issue a final order.
- D. Board Hearings:
  - 1. The Board may conduct a hearing without adherence to the rules of evidence used in civil proceedings. The Board shall include the ~~Respondent's~~ respondent's application and disciplinary records as evidence in the hearing record.
  - 2. In all hearings required or permitted by statute, order of the Board, or these rules, the Party party seeking relief has the burden of proof and will present evidence first.
  - 3. The Board shall conduct each formal hearing according to A.R.S. Title 41, Chapter 6, Article 10.
- E. ~~Failure to answer or appear~~ Appear:
  - ~~1. Upon the motion of the State, the failure of a Respondent to answer within 20 days of the notice of a formal complaint without good cause may be deemed an admission by the Respondent of the commission of the acts charged in the formal complaint. The Respondent shall answer and defend within 10 days of the filing of the motion to for default. In the absence of an answer or response the Board may grant the motion for default, vacate the formal hearing, and impose any sanction provided by this Article.~~
  - ~~2. The failure of If a Party party fails to appear for a formal hearing without good cause, the Board shall leave the Board free to act upon the evidence and other information at hand without further notice.~~
- F. The Board shall make and keep a record of a the hearing and, in the case of disciplinary hearings or ~~where if~~ requested by a Party party or ordered by the Board, a transcript shall be prepared and filed with the Board. If the transcript is prepared at the request of a Party, ~~the cost of party, the party making the request shall pay for the transcript, shall be paid by the Party making the request,~~ unless the Board, for good cause shown waives assessment of this cost.
- G. A Party party may request and the Board may grant a continuance of a hearing date or any other deadline imposed by R4-46-302 upon a showing of good cause.

**R4-46-303. Rehearing or Review of the Board's ~~Decision~~ Decisions**

- A. ~~Except as provided in subsection (H) of this Section, any Party~~ Any party in a contested case or appealable agency action before the Board may file a motion for rehearing or review within 30 days after service of the final administrative decision. Service is complete upon personal service or five days after the date the decision is mailed by certified mail to the Party's party's last known address of record. The Party party shall attach a full supporting memorandum specifying the grounds for the motion. ~~For the purposes of this subsection, a decision is deemed to have been served when personally delivered or mailed by certified mail to the Party's last known address of record.~~
- B. The opposing Party party may file a response within 15 days after service of the motion for rehearing or review, or by a date ordered by the Board, whichever is later. The Party party shall support the response with a memorandum discussing legal and factual issues.
- C. Either Party party may request or the Board may order oral argument.
- D. The Board may grant rehearing or review for any of the following causes materially affecting a Party's party's rights:
  - 1. Irregularity in the administrative proceedings of the Board or any other abuse of discretion which deprived the moving Party party of a fair hearing;
  - 2. Misconduct of the Board or any Party; party;
  - 3. Accident or surprise which could not have been prevented by ordinary prudence;

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- 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient sanction;
  - 6. Error in the admission or rejection of evidence or other errors of law at the administrative hearing or during the progress of the proceedings or;
  - 7. Unjustified decision based upon the evidence, or a decision that is contrary to law.
- E. The Board may affirm or modify the decision or grant a rehearing to any ~~Party~~ party on all or part of the issues for any of the reasons set forth in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order. The rehearing, if granted, shall be limited to matters specified by the Board.
- F. Not later than 30 days after a decision is rendered, the Board may order a rehearing or review on its own initiative, for any reason which it might have granted relief on motion of a ~~Party~~ party.
- G. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing ~~Party~~ party may submit opposing affidavits with the response. Reply affidavits may be permitted.

**R4-46-306. Renumbered Complaint Information Availability**

- A. Every six months, the Board shall generate a report for publication on the Board’s web site or in a newsletter that indicates for that period the number of:
- 1. Complaints received,
  - 2. Complaints dismissed,
  - 3. Complaints referred for investigation, and
  - 4. Complaints referred for informal or formal hearing.
- B. In preparing the report, the Board shall include the severity level of violations found; the suggested complaint resolution according to the Board Complaint Resolution Chart (a copy is available at the Board office); the actual complaint resolution implemented by the Board; and any other information that the Board deems useful to appraisers, property tax agents, and the public.

**NOTICE OF FINAL RULEMAKING**

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

**CHAPTER 4. CORPORATION COMMISSION – SECURITIES**

[R05-179]

**PREAMBLE**

- |                                                 |                                          |
|-------------------------------------------------|------------------------------------------|
| <b>1. <u>Sections Affected</u></b><br>R14-4-116 | <b><u>Rulemaking Action</u></b><br>Amend |
|-------------------------------------------------|------------------------------------------|
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):**  
 Authorizing statute: A.R.S. § 44-1821  
 Implementing statute: A.R.S. § 44-1891  
 Constitutional authority: Arizona Constitution, Article XI §§ 4 and 13
- 3. The effective date of the rule:**  
July 4, 2005
- 4. A list of all previous notices appearing in the Register addressing the final rule:**  
 Notice of Rulemaking Docket Opening: 10 A.A.R. 4122, October 8, 2004  
 Notice of Proposed Rulemaking: 10 A.A.R. 4738, November 26, 2004
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |                                                                                                                  |
|------------|------------------------------------------------------------------------------------------------------------------|
| Name:      | Cheryl T. Farson, General Counsel                                                                                |
| Address:   | Arizona Corporation Commission, Securities Division<br>1300 W. Washington, Third Floor<br>Phoenix, AZ 85007-2996 |
| Telephone: | (602) 542-4242                                                                                                   |
| Fax:       | (602) 594-7470                                                                                                   |
| E-mail:    | cf@ccsd.cc.state.az.us                                                                                           |

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

A.A.C. R14-4-116 identifies the North American Securities Administrators Association ("NASAA") Statements of Policy used by the Arizona Corporation Commission (the "Commission") as its standard of review for applications for registration of specified types of securities transactions. In connection with church extension funds, A.A.C. R14-4-116 previously incorporated and the Commission applied the guidelines for general obligation financing by religious denominations, adopted by NASAA in April 1994. NASAA amended the guidelines and renamed them the Statement of Policy Regarding Church Extension Fund Securities. The Commission amended A.A.C. R14-4-116 to reflect the revised name and to incorporate the amended Statement of Policy.

Generally, the NASAA amendment increases investor protection, addresses developing industry practices, and modernizes the 1994 guidelines. The new statement of policy imposes enhanced financial standards, increases requirements for disclosure of information relevant to the industry, including identification of risks specific to the industry that must be disclosed, and modernizes accounting terminology and standards for nonprofit entities.

Prior to proposing the amendment to the NASAA guidelines, a NASAA project group solicited comments from all of the state securities regulatory agencies and the industry trade association, the Denominational Investment and Loan Association. NASAA adopted the project group's recommended amendment April 18, 2004.

The Commission amended A.A.C. R14-4-116 to incorporate the NASAA amended Statement of Policy to enhance investor protection, to reflect current industry practices, and to enhance uniformity among the states with respect to the standard of review applied to applications for registration of debt securities issued by a church extension fund.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None.

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

Not applicable.

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

The economic, small business, and consumer impact statement for A.A.C. R14-4-116 analyzes the costs, savings, and benefits that accrue to the Commission, the regulated public, and the general public. The amendment to A.A.C. R14-4-116 has minimal impact on established Commission procedures, Commission staff time, and other administrative costs. The benefits provided by the amendment to A.A.C. R14-4-116 are not quantifiable. The amendment of A.A.C. R14-4-116 should benefit the Commission by improving the efficiency of the review process for applications for registration by church extension funds. The amendment should improve the Commission's relations with the regulated public because of clarification and specificity of standards for registration and increased uniformity with other state registration standards. The public should benefit from the continuation and enhancement of standards on debt offerings by church extension funds. The Commission anticipates that the rulemaking will not significantly increase monitoring, recordkeeping, or reporting burdens on businesses or persons. The Commission does not anticipate that the rulemaking will significantly impact costs of implementation or enforcement.

**10. A description of the changes between the proposed rule, including supplemental notices, and the final rule:**

The amendment to A.A.C. R14-4-116 has been revised since the publication of the Notice of Proposed Rulemaking to delete the phrase "and the Office of the Secretary of State" from the first sentence of subsection (B). The revision is in response to comments from the Office of the Secretary of State. The variance between the rule as made and the rule as published in the Notice of Proposed Rulemaking is not substantially different.

**11. A summary of the comments made regarding the rule and the agency response to them:**

The Commission did not receive written comments to the rule following publication of the Notice of Proposed Rulemaking.

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

None

**13. Any material incorporated by reference and its location in the text:**

The following NASAA materials are incorporated by reference in A.A.C. R14-4-116(A):

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 September 21, 1983, effective January 1, 1984; amended and adopted August 30, 1990.
5. Equipment programs, adopted November 20, 1986, effective January 1, 1987, amended April 22, 1988, and October 24, 1991.
6. Registration of oil and gas programs, adopted September 22, 1976, amended October 12, 1977, October 31,

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1979, April 23, 1983, July 1, 1984, September 3, 1987, September 14, 1989, and October 24, 1991.

7. Statement of policy regarding real estate investment trusts, revised and adopted 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 March 29, 1992.
11. Statement of policy regarding church extension fund securities, adopted April 17, 1994, entitled guidelines for general obligation financing by religious denominations, amended April 18, 2004.
12. Statement of policy regarding church bonds, adopted April 14, 2002.

**14. Whether the rule was previously made as an emergency rule and, if so, whether the text was changed between the making as an emergency and the making of the final rule:**

Not applicable

**15. The full text of the rule follows:**

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

**CHAPTER 4. CORPORATION COMMISSION – SECURITIES**

**ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT**

Section

R14-4-116. NASAA Statements of Policy

**ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT**

**R14-4-116. NASAA Statements of Policy**

- A.** Unless otherwise provided in A.R.S. Title 44, Chapter 12, Article 7, transactions that fall within one or more of the following North American Securities Administrators Association (NASAA) 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.
  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.
  11. Guidelines for general obligation financing by religious denominations; Statement of policy regarding church extension fund securities, adopted April 17, 1994, entitled guidelines for general obligation financing by religious denominations; amended April 18, 2004.
  12. Statement of policy regarding church bonds, adopted April 14, 2002.
- B.** The statements of policy material listed in subsection (A) are is incorporated by reference and on file with the Commission. The incorporated statements of policy do material does not contain later editions or amendments. The statements of policy are material is published in NASAA Reports by Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646. Copies are also available from NASAA, 10 G Street, N.E., Suite 710, Washington D.C. 20002, and at the Office of the Secretary of State and the Commission.



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**TABLE 1  
Lottery Time Allocation for Assignment Cases**

<u>Duties performed by Administrative Services Officer:</u>	
<ul style="list-style-type: none"> <li>• Verifies information requests and faxes reply to Assistant Attorney General.</li> <li>• Upon receiving final judgment from court, composes and mails instruction letter to insurance company.</li> <li>• Prepares new file folder for winner, updates computer information, and adds to winner notebook.</li> <li>• Upon receipt of confirmation letters from insurance companies, faxes copies to Attorney General's Office and representing attorneys, then files letters.</li> </ul>	
<u>Cost Calculation:</u>	
Estimated average time to perform duties:	1.5 hours
Administrative Services Officer hourly salary:	\$20.29
Average Lottery cost per allocation case:	<b>\$30.43</b>
(Note: supply costs such as letterhead, paper copies, and envelopes are considered minimal and are not included).	

**TABLE 2  
Attorney General Time Allocation for Assignment Cases**

Case No.	Assistant Attorney General	Legal Assistant	Total
ALS02-0013	0.3	6.9	7.2
ALS02-0039	0.5	8.5	9.0
ALS02-0089*	34.0	92.0	126.0
ALS02-0203	2.0	9.2	11.2
ALS02-0244	3.8	12.4	16.2
ALS02-0382*	0.4	31.3	31.7
ALS02-0383	0.7	8.0	8.7
ALS02-0431	6.6	8.8	15.4
ALS02-0465	0.3	7.7	8.0
ALS02-0566	0.2	6.6	6.8
ALS02-0616	3.7	8.0	11.7
ALS02-0622	0.4	6.6	7.0
ALS03-0045	1.1	8.1	9.2
ALS03-0066	0.7	12.0	12.7
ALS03-0095	0.5	5.8	6.3
ALS03-0171	0.8	6.0	6.8
ALS03-0172	0.2	7.4	7.6
ALS03-0182	0.8	6.8	7.6

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ALS03-0207	0.2	3.7	3.9
ALS03-0254	0.8	5.9	6.7
ALS03-0385	0.7	6.2	6.9
ALS03-0413	1.1	4.0	5.1
ALS04-0004	2.2	3.8	6.0
ALS04-0016	0.9	2.3	3.2
TOTAL HOURS	62.9	278	340.9
AVERAGE	2.62	11.58	14.20
HOURS (Less 2 Unusual Cases)	28.5	154.7	183.2
AVERAGE (Less 2 Unusual Cases)	1.30	7.03	8.33
HOURLY SALARY	\$47.55	\$20.83	
<b>COST PER CASE</b>	<b>\$61.81</b>	<b>\$146.43</b>	<b>\$208.24</b>

\* denotes unusual cases

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

Not applicable

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

This rulemaking establishes a fee associated with the voluntary assignment of a Lottery annuity to another party and is in direct response to the Auditor General's 2002 performance audit of the Lottery which recommended establishing such a fee. The Lottery anticipates that this rulemaking will impact the agency and the prize winner (or assignee of the prize winner) requesting an annuity assignment.

A. *The Arizona State Lottery.* Costs to the Lottery related to this rulemaking include time spent by Lottery administrative staff and the Attorney General's Office to process the assignment. These costs will be recouped through this rulemaking. Once an assignment fee is established, there will be nominal administrative costs related to processing the assignment of the annuity.

The state of Arizona is named as a defendant in Lottery annuity actions when a winner desires to assign annuity payments to another party under A.R.S. § 5-513. The Lottery studied its costs related to annuity assignments and requested a cost study from the Attorney General. The average cost to process each annuity assignment is estimated at \$235, which reflects Lottery staff time to compose and distribute correspondence, and the Attorney General's time to represent the case. The Lottery cost of \$30.43 (Table 1) was determined by estimating the average time spent by staff to process required documentation. The Attorney General cost of \$208.24 (Table 2) was derived by averaging the actual time required to process assignment cases filed since 2002. The Lottery contracts with the Attorney General to provide legal services at the rate of \$47.55 per hour for an attorney and \$20.83 for a legal assistant. Of the 24 total cases, two were unusually high with respect to time commitment. These were removed from cost calculations because they skewed the cost of a typical assignment case.

B. *Businesses Directly Affected by this Rulemaking.* Businesses potentially affected by this rule are the assignment companies that buy out the prize winner's annuity. It is the responsibility of either the prize winner or assignee of the prize winner to pay the fee due to the Lottery. The law requires both the prize winner and the assignment company to be named as plaintiffs. The fee will be \$235 as established by this rulemaking - the rule allows the plaintiffs to determine how the fee will be paid. This fee represents a minimal business cost to the assignment company or the prize winner.

C. *Consumers and the Public.* This rulemaking will impact the prize winner electing to assign a Lottery annuity in the event the assignment company does not pay the fee due to the Lottery. The cost will be \$235 to the Lottery to process the assignment. The rule has no impact on the general public.

Notices of Final Rulemaking

Other than a nominal cost to the Lottery, all costs will be borne by the parties seeking the service. This rulemaking is not expected to have an economic impact on political subdivisions of the state, private and public employment, or Lottery retailers. The impact on state revenues is expected to be minimal.

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

Minor technical and grammatical changes were made at the request of G.R.R.C. staff. There are no substantive changes between the final rule and the proposed rule.

**11. A summary of the comments made regarding the rule and the agency response to them:**

No oral or written comments were received regarding the proposed rule.

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

Not applicable

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

None

**14. Were these rules previously made as emergency rules:**

No

**15. The full text of the rule follows:**

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION**

**ARTICLE 6. ~~REPEALED~~ ANNUITY ASSIGNMENTS**

Section

R19-3-601. ~~Repealed~~ Voluntary Assignment of Prizes Paid in Installments

**ARTICLE 6. ~~REPEALED~~ ANNUITY ASSIGNMENTS**

**R19-3-601. ~~Repealed~~ Voluntary Assignment of Prizes Paid in Installments**

**A.** A prize winner may request a voluntary assignment of an annuity or a portion of the remaining installments of the annuity by filing an action in a court of competent jurisdiction requesting judicial approval of the assignment. The prize winner and the purchaser of the annuity shall name the state of Arizona as a defendant in the action and shall bear all costs associated with filing the request for judicial approval of the assignment.

**B.** A prize winner shall include in the request for judicial approval under subsection (A) the following:

1. The affidavit required under A.R.S. § 5-513(A)(3);

2. A copy of the signed assignment agreement between the prize winner and the assignee; and

3. Proof that the fee under subsection (D) has been paid to the Lottery.

**C.** After the court approves the assignment, the prize winner shall send the written judicial approval to the Lottery. Upon receipt of judicial approval of the voluntary assignment, the Director shall direct the insurance company to make future annuity payments as provided in the Court order.

**D.** The prize winner or assignee shall pay a fee of \$235.00 to the Lottery to process the voluntary assignment.

**NOTICE OF FINAL RULEMAKING**

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

**CHAPTER 4. BANKING DEPARTMENT**

[R05-173]

**PREAMBLE**

**1. Sections Affected**

R20-4-1701  
R20-4-1702  
R20-4-1703  
R20-4-1704

**Rulemaking Action**

Amend  
Amend  
Repeal  
Amend

Notices of Final Rulemaking

R20-4-1705  
R20-4-1706

Repeal  
Repeal

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

Authorizing statute: A.R.S. § 6-123(2)

Implementing statutes: A.R.S. §§ 6-123(3), 6-322(B), 6-326(4), and 6-327(G)

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

July 2, 2005

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

Notice of Rulemaking Docket Opening: 10 A.A.R. 1400, April 9, 2004

Notice of Proposed Rulemaking: 11 A.A.R. 54, January 3, 2005

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

Name: John P. Hudock  
Address: Banking Department  
2910 N. 44th St., Suite 310  
Phoenix, AZ 85018  
Telephone: (602) 255-4421, ext. 167  
Fax: (602) 381-1225  
E-mail: jhudock@azbanking.com

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

These Sections, in the Department's original 1986 rulemaking, implemented the Arizona Interstate Bank and Savings and Loan Association Act, A.R.S. § 6-321 *et seq.*, ("the Act"). Since 1986, the federal Congress has enacted the Riegle-Neal Interstate Banking and Branching Efficiency Act ("Riegle-Neal Act," 12 U.S.C. § 1831 *et seq.*). Riegle-Neal changed the legal framework and procedure regulating banks' and bank holding companies' interstate branching transactions. The Riegle-Neal Act also preempted much of Arizona's Act. As a result, parts of Article 17 are now dated and in need of revision.

On November 7, 2000, the Council approved the Department's Five-Year-Rule-Review report. In that report, the Department promised to amend or repeal several Sections of Article 17 in response to the new federal statutes and the Arizona legislature's acknowledgement that the federal banking authorities have modernized and streamlined interstate branching. This rulemaking is to fulfill the Department's promise to harmonize these Sections of the Administrative Code with the modern federal trend to ease interstate branching.

**7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study, and other supporting material:**

The Department did not rely on any study as an evaluator or justification for the rules.

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

Not applicable

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

**A. The Banking Department**

Income and expenses to this Agency are negligible.

**B. Other Public Agencies**

The state will incur normal publishing costs incident to rulemaking.

**C. Private Persons and Businesses Directly Affected**

Costs of services will not increase to any measurable degree.

**D. Consumers**

No measurable effect on consumers is expected.

**E. Private and Public Employment**

There is no measurable effect on private and public employment

**F. State Revenues**

This rulemaking will not change state revenues.

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

Minor grammatical and format changes were made at the request of G.R.R.C. staff.

**11. A summary of the comments made regarding the rule and the agency response to them:**

Notices of Final Rulemaking

The public was invited to comment in the Notice of Proposed Rulemaking. That invitation contained an agency contact name, address, telephone number, and fax number. The Department has had several very helpful informal discussions with stakeholders about preliminary drafts of this rulemaking. However, no written comments were received and no arguments against adoption of the rules as they appear in this Final Rulemaking have been raised.

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

Not applicable

**13. Any material incorporated by reference and its location in the text:**

There is no material incorporated by reference in these final rules.

**14. Were the rules previously adopted as emergency rules?**

No

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

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT

- R20-4-1701. Definitions
- R20-4-1702. ~~Notice to the Superintendent of Intent Application for Approval to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution's Charter~~
- R20-4-1703. ~~Completion of Acquisition Repealed~~
- R20-4-1704. Public Notice
- R20-4-1705. ~~Application Fee Repealed~~
- R20-4-1706. ~~Amendment or Supplement to Application Repealed~~

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT

**R20-4-1701. Definitions**

In this Article, unless the context otherwise requires:

"Acquire" has the meaning stated at A.R.S. § 6-321(1).

- 1. ~~"Applicant" means an out-of-state financial institution a state or national bank or savings and loan association with its home office in a state other than this state, that which intends to acquire control of an in-state financial institution a state or national bank or savings and loan association located in this state.~~
- 2. ~~"Affiliate" means an entity which directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the entity specified.~~

"Control" has the meaning stated at A.R.S. § 6-321(2).

"In-state financial institution" has the meaning stated at A.R.S. § 6-321(5).

"Out-of-state financial institution" has the meaning stated at A.R.S. § 6-321(6).

- 3. ~~"Subsidiary" means a company which is controlled by another specified company.~~
- 4. ~~"Target Company" means a state or national bank or savings and loan association with its home office in this state the control of which is proposed to be acquired by the applicant.~~

**R20-4-1702. Notice to the Superintendent of Intent Application for Approval to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution's Charter**

~~A. Application for approval to acquire control of an in-state bank or savings and loan association pursuant to Title 6, Chapter 2, Article 7, Arizona Revised Statutes, shall be made by filing with the Superintendent of Banks an original and one copy of an application as provided in this rule.~~

~~B. By mutual consent of the applicant and the Superintendent of Banks, the 60-day failure to act provision of A.R.S. § 6-325, may be waived or extended, if agreed to in writing.~~

~~C. Any application filed under this rule is exempt from the provisions of A.A.C. R20-4-1602, et seq.~~

~~D. The application shall be in writing or printed on 8-1/2" x 11" paper and the first page shall be in the following form:~~

Notices of Final Rulemaking

APPLICATION FOR APPROVAL TO ACQUIRE CONTROL OF AN IN-STATE FINANCIAL INSTITUTION

This application is hereby submitted to the Superintendent of Banks pursuant to Title 6, Chapter 2, Article 7, Arizona Revised Statutes, for approval to acquire control of the in-state financial institution described below. This application is based upon the information contained herein, and the attachments hereto.

Name of Acquiring Party

Name of Target Company

Date of Application

~~E: Immediately following the information required under subsection (D), the application shall contain a verification signed by a designated executive officer authorized by applicant's Board of Directors.~~

VERIFICATION

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

I, \_\_\_\_\_, being first duly sworn, upon oath, depose and say  
(Name of person signing the verification)

that I have knowledge, or have made inquiry of persons who have knowledge, of the matters contained in the foregoing application, consisting of one page, and in the attachments hereto, consisting of \_\_\_\_\_ pages; and that everything contained therein is true and correct to the best of my knowledge and belief; and that I have signed this application as \_\_\_\_\_

(Official capacity)

of the above named applicant, having full authority to sign such application in said capacity.

Signature

Subscribed and sworn before me this day \_\_\_\_\_ of \_\_\_\_\_, 19 \_\_\_\_.

Notary Public

My Commission expires: \_\_\_\_\_

~~F: Attached as Exhibit "A" is a certified copy of the resolution of the applicant's Board of Directors, authorizing submission of the application, and those executive officers authorized to sign such application and enter into those agreements necessary to obtain approval of such transaction.~~

~~G: Attached as Exhibit "B" is a copy of the application filed with the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, or the appropriate application that is required by another federal regulatory authority with concurrent jurisdiction over banks and savings and loan associations.~~

~~H: To the extent that it does not duplicate information contained in the appropriate federal application subsection (G), the applicant shall submit the following information, identified with tabs, and the appropriate attachment exhibit letter.~~

- ~~1: A draft of any proxy statements or offering circulars or letters prepared in connection with the applicant's proposed acquisition. The applicant shall also submit final copies of written materials to be transmitted to shareholders to consummate any transaction which has been the subject of an application under this rule, marked to indicate changes from the draft.~~
- ~~2: An organizational chart of the applicant, detailing all current affiliates, subsidiaries and pending acquisitions.~~
- ~~3: An informative description of the business operations of the applicant and its affiliates and subsidiaries during the past three years. In addition, describe any proceedings by which the applicant or any subsidiary or affiliate was placed in bankruptcy or receivership or by which its corporate charter was revoked or its license or permit to engage in any business was suspended or revoked.~~

Notices of Final Rulemaking

4. ~~The source, nature, and amount of the consideration used or to be used in making the acquisition of the voting shares of an in-state financial institution referred to in A.R.S. § 6-321(1)(a) through (d), including a full description of any transaction wherein funds were or are to be obtained for the purpose of this acquisition, including the identity of the persons furnishing the funds, and any arrangements, agreements, or understanding of such persons, and a complete description of all such funds obtained directly or indirectly from the target company or subsidiary.~~
  5. ~~A full description of all extensions of credit made or intended to be made within the next three months to the applicant by the target company or any subsidiaries directly related to the acquisition which are over and above banking transactions made in the ordinary course of business.~~
  6. ~~A full description of any plans or proposals which the applicant may have to liquidate, merge, consolidate or sell the assets of the target company or any subsidiaries thereof, or to make any material change in the corporate structure, business or management, of the target company or subsidiary thereof.~~
  7. ~~A copy of the most recent quarterly and annual reports prepared for shareholders, and if not included in the annual report, a copy of the last independent audit.~~
  8. ~~Unless included in the annual report, consolidated balance sheets and income statements for the past three fiscal year-ends, as well as for the most recent fiscal quarter, compared to the preceding year's quarter.~~
  9. ~~A letter from the applicant's legal counsel containing a definitive statement concerning whether any securities to be issued in the proposed transactions are subject to registration under state and/or federal securities laws and stating that, in the opinion of such counsel, the applicant is taking the necessary action to comply with applicable state and federal securities laws and regulations.~~
  10. ~~A list of all formal complaints filed against the applicant or any subsidiaries in the past five years evidencing failure to comply with the provisions of the Community Reinvestment Act of 1977, a 12 U.S.C. 2901. Pursuant to A.R.S. § 6-327(C), the Superintendent may also request, from the appropriate federal supervisory agency, the most recent assessment of the applicant or subsidiaries performance pursuant to the provisions of the Act. All records of the Department shall be deemed confidential as provided by A.R.S. § 6-129.~~
  11. ~~A discussion of the financial impact of the merger or acquisition on the target company. Discussion shall include:~~
    - a. ~~Any potential negative effects of the proposal on the target company's depositors, beneficiaries, creditors, and shareholders.~~
    - b. ~~The fairness and reasonableness of any plans to liquidate, merge or consolidate, or make any other major changes, in the structure or management of the target company.~~
    - e. ~~The character and integrity of the applicant, its management and ownership, indicating their fitness to control the target company, and operate it in the best interest of the depositors, beneficiaries, creditors and shareholders of the target company.~~
  12. ~~If the proposed transaction involves a merger, the applicant shall file the Articles of Merger and the merger applications required by the appropriate federal regulatory authorities, either simultaneously with this filing or upon the filing with the Corporation Commission of the certificate of merger.~~
- A.** ~~An applicant shall give written notice of an acquisition to the Superintendent in the form of a courtesy copy of its federal application. The acquiring entity shall ensure that the notice is delivered to the Superintendent not less than ten days before the effective date of the acquisition. No other application is required under the provisions of A.R.S. Title 6, Chapter 2, Article 7, the Arizona Interstate Bank and Savings and Loan Association Act. The Superintendent may impose conditions on an acquisition under the authority of A.R.S. §§ 6-324 and 6-328.~~
- B.** ~~An acquired in-state financial institution shall surrender, by delivery to the Superintendent, all permits and certificates issued by the Superintendent within ten days after the effective date of the acquisition unless the acquired institution intends to continue operating, after the acquisition, as a stand alone subsidiary under the authority of its existing Arizona banking permit.~~

**R20-4-1703. Completion of Acquisition Repealed**

Approval of an application pursuant to this rule shall be valid for a period of twelve months and shall expire at that time unless the acquisition has been completed prior to such expiration or unless extended for good cause by the Superintendent of Banks.

**R20-4-1704. Public Notice**

- A. ~~An~~ The applicant shall transmit to the Superintendent of Banks two copies of each notice and ~~the~~ publisher's affidavit of publication required by the Federal Reserve Board, Federal Home Loan Bank Board, ~~the Federal Deposit Insurance Corporation,~~ or other regulatory authority ~~that has~~ having concurrent jurisdiction.
- B. ~~An~~ The applicant shall provide the Superintendent of Banks copies of any protests known to have been received by the Federal Reserve Board, Federal Home Loan Bank Board, ~~the Federal Deposit Insurance Corporation,~~ or other regulatory authority ~~in regard to the applicant for approval to acquire control of a bank, savings and loan association, or holding company that has concurrent jurisdiction.~~

**R20-4-1705. Application Fee Repealed**

~~A \$2,500.00 nonrefundable application and examination fee shall be paid to the Department with the filing of the application for approval to acquire control of an in-state financial institution.~~

**R20-4-1706. ~~Amendment or Supplement to Application~~ Repealed**

- ~~**A.** An applicant desiring to amend or supplement an application filed with the Superintendent of Banks pursuant to R20-4-1702 shall file with the Superintendent an original and one copy of an amendment in the manner provided in R20-4-1702(D) for original applications except the title shall read "Amendment Number \_\_\_\_\_" and the words "amendment to application" shall be substituted for the word "application".~~
- ~~**B.** Commencing on the second page, the Amendment shall contain reference to the paragraph number of each provision in the application which is amended or supplemented, followed by the amendment or supplemental information.~~
- ~~**C.** Immediately following the Verification, there shall be attached, any documents to be added to the application and the identity of any documents previously filed which are intended to be deleted.~~