NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

[R16-35]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R4-45-101	Amend
R4-45-102	Amend
R4-45-105	Amend
R4-45-201	Amend
R4-45-203	Amend
R4-45-205	Amend
R4-45-213	Repeal
R4-45-218	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 32-3504

Implementing statute: A.R.S. §§ 32-3504, 32-3506(C), 32-3521, 32-3522, 32-3523, 32-3524, 32-3526

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rules:

Notice of Rulemaking Docket Opening: 20 A.A.R. 2808, October 17, 2014

Notice of Rulemaking Docket Opening: 21 A.A.R. 3085, December 4, 2015

4. The agency's contact person who can answer questions about the rulemaking:

Name: Jack Confer, Executive Director
Address: Board of Respiratory Care Examiners
1400 W. Washington, Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-5990
Fax: (602) 542-5900
E-mail john@rb.az.gov
Website: www.respiratorycare.az.gov

5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Board is amending and repealing some of its rules in Articles 1 and 2 to make them conform to current changes in Board policy. The Board has determined that the Registered Respiratory Therapist (RRT) credential will be required for licensure as a respiratory therapist in Arizona instead of the Certified Respiratory Therapist (CRT) credential. The Commission on Accreditation for Respiratory Care has adopted new accreditation standards for respi-

ratory care therapists that set the standard of minimum level of competency by examination pursuant to A.R.S. § 32-3504(D). The RRT examination is a higher level of competency than the CRT examination and contains clinical questions. The CRT examination does not contain clinical questions. The rules will allow respiratory therapists with a CRT credential who apply for a license before January 1, 2017 to be "grandfathered", which allows the respiratory therapist to continue to practice or obtain a license without earning the RRT credential.

R4-45-213 for temporary licenses is being repealed because its statutory authority has been repealed and the Board no longer issues them. References to temporary licenses in the rules have been repealed throughout the rules.
The Board sent a copy of the rules to the Arizona Society of Respiratory Care and the American Association of Respiratory Care and posted the rules on the Board's website to solicit comments on the rules and the rules' economic impact. The Board did not receive any comments from these solicitations.

The Board is submitting this rulemaking to the Secretary of state's office in accordance with the exemption authorization under item (2)(b) of Executive Order 2015-01, State Regulatory Rulemaking Moratorium. The rulemaking exemption was approved by the Governor's office on February 13, 2015 and May 22, 2015.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or 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 or rely on any study.

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

None

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

Annual cost/revenue changes are designated as minimal when less than $1,000, moderate when between $1,000 and $5,000, and substantial when greater than $5,000.

The changes to the rules may affect the Board, an applicant, a licensee, schools that provide a respiratory care program, health care institutions, and consumers.

The Board has determined that the RRT credential will be required for licensure as a respiratory care therapist in Arizona. Thus, the Board is changing the credential it requires of a respiratory care therapist from the CRT to the RRT. The Registry Examination system was developed to objectively measure knowledge, skills, and abilities required of advanced respiratory therapists and to set uniform standards for measuring such knowledge. Many health care institutions expect services at the RRT level, but there are no costs to them. The Board is eliminating all references to temporary licenses throughout the rules. One of these rules is R4-45-102 for Fees. The Board is not increasing or decreasing any of its fees, but is removing the reference to temporary license. The Board is not increasing costs for an application or application renewal, so all fees for applicants remain the same. Costs should not increase to schools because schools have already updated their curriculum in the accreditation process. Respiratory therapists who apply for license before January 1, 2017 may be "grandfathered" into licensing, which allows the respiratory therapist to continue to practice without earning the RRT credential. The Board should experience moderate costs for writing the rules and economic impact statement.

The Board currently licenses about 4,100 individuals. Costs should not increase to a licensee due to amendment or repeal of the rules.

Consumers benefit from rules that require respiratory therapists to qualify at a higher level. Consumers should not experience increased costs. The Board, applicants, licensees, and consumers should benefit from rules that are clearly and consistently written.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Jack Confer, Executive Director
Address: Board of Respiratory Care Examiners
1400 W. Washington, Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-5990
Fax: (602) 542-5900
E-mail john@rb.az.gov
Website: www.respiratorycare.az.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

The Board will hold an oral proceeding regarding the proposed rules as follows:
Date: April 11, 2016

Time 10:00 a.m.
Location: 1400 W. Washington, Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-5990
Fax: (602) 542-5900
Website www.respiratorycare.az.gov

The rulemaking record will close at 5:00 p.m. on April 11, 2016.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

No, the Board is issuing an individual license to each person who qualifies for licensure as proof of being licensed. Because the qualifications of each applicant are different, the Board must act on each license separately.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not applicable to the subject of the rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

The Board did not receive such an analysis from any person.

12. A list of any incorporation by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Section
R4-45-101. Definitions
R4-45-102. Fees
R4-45-105. Electronic Communication

ARTICLE 2. LICENSURE

R4-45-201. Application
R4-45-203. Examinations
R4-45-205. Application Based on Licensure By Another State
R4-45-213. ~~Temporary Licensure~~ Repeal
R4-45-218. Reinstatement Following Revocation; Modification of Probation

ARTICLE 1. GENERAL PROVISIONS

R4-45-101. Definitions

In addition to the definitions in A.R.S. § 32-3501, in this Chapter, unless otherwise specified:

"Applicant" means an individual who meets the qualifications of A.R.S. § 32-3523 and applies for licensure under A.R.S. § 32-3522.

"Approved continuing education" means a planned course or program that the Board confirms meets the criteria in R4-45-210 or is approved by the American Association for Respiratory Care or the Arizona Society for Respiratory Care.

~~"Contested case" has the same meaning as prescribed in A.R.S. § 41-1001.~~

"Continuing education unit" or "CEU" means a segment of an approved continuing education.

"CRT examination" means the objective measure of essential knowledge, skills, and abilities required of an entry-level respiratory therapist, which is approved by the Board and administered by the NBRC.

"Day" means calendar day.

"Direct supervision" means that a licensed respiratory care practitioner, or physician licensed under A.R.S. Title 32, Chapters 13 or 17, is physically present at a work site and readily available to provide respiratory care to a patient ~~or observe and direct the practice of a temporary licensee~~**.**

"Executive Director" means the officer employed by the Board to perform administrative and investigative functions.

"Grandfathered" means to license a respiratory therapist who has a CRT credential and applies for licensure before January 1, 2017 without meeting the qualifications required by these rules.

~~"Individual," as used in A.R.S. § 32-3521(B)(4), means only those persons listed with current, valid certifications, registrations, or licenses acting within the scope of their authorized practice.~~

"License" means the document issued by the Board to practice respiratory care in Arizona.

"License application package" means a license application form and any documents required to be submitted with the license application form.

"Licensee" means an individual who holds a current license issued under A.R.S. Title 32, Ch. 35.

"National Board for Respiratory Care, Inc." or "NBRC" means the national credentialing board for respiratory therapy.

~~"Party" has the same meaning as prescribed in A.R.S. § 41-1001.~~

"Pharmacological, diagnostic, and therapeutic agents," as used in A.R.S. § 32-3501(5), means medications that are aerosolized and given through artificial airways or vascular access.

"RRT credential" means an award issued to a respiratory therapist by the NBRC who passes the RRT examination.

"RRT examination" means the objective measure of essential knowledge, skills, and abilities at a level that is higher than the CRT examination and that is required of a respiratory therapist and approved by the Board.

~~"Temporary license" means the document issued by the Board under A.R.S. § 32-3521 that allows an applicant to practice respiratory care under direct supervision before the Board issues the applicant a license.~~

"Verification by a licensed respiratory therapist," as used in A.R.S. § 32-3521(B)(7) and (C), means a licensee's written confirmation, before equipment is delivered, that the equipment is consistent with the patient's prescription and needs.

"Verification of license" means a form the Board provides to an applicant to submit for completion by a state to confirm that the applicant currently holds or previously held a license, certification, or registration from that state.

R4-45-102. Fees

A. No change
1. No change
2. No change
3. No change
4. No change
~~5. Renewal of a temporary license, $75;~~
~~6.~~5. No change
~~7.~~6. No change
~~8.~~7. No change
~~9.~~8. No change
~~10.~~9.No change
~~11.~~10.No change

B. No change

R4-45-105. Electronic Communication

A. No change
1. No change
2. No change
3. No change
~~4. Temporary license renewal application;~~
~~5.~~4. No change
~~6.~~5. No change
~~7.~~6. No change

B. No change
C. No change
D. No change

ARTICLE 2. LICENSURE

R4-45-201. Application

A. In addition to meeting the qualifications listed in A.R.S. § 32-3523(A), an applicant for a license to practice as a respiratory care practitioner shall submit the following information on the Board's license application form:

1. ~~Applicant's~~ The applicant's full name and Social Security number;
2. ~~Applicant's~~ The applicant's current mailing, permanent and e-mail addresses;
3 ~~Current~~ The applicant's current employer's name, address, and telephone number;
4. ~~Current~~ The applicant's current employment position and beginning date of employment;
5. ~~Applicant's Current~~ The applicant's current supervisor's name and telephone number;
6. ~~Applicant's~~ The applicant's area of care or specialty;
7. ~~Applicant's~~ The applicant's birth date;
8. ~~Applicant's~~ The applicant's home and work telephone numbers;
9 No change
10. A statement of the facts entitling the applicant to take the ~~CRT~~ RRT examination, ~~or~~ to receive a license without examination under R4-45-206;
11. ~~Name~~ The name of any state or province in which the applicant has been granted a certification, registration, or license as a respiratory care practitioner; including the number, date issued, expiration date, and a statement whether that certificate, registration, or license has ever been the subject of discipline, censure, probation, practice restriction, suspension, revocation, or cancellation;
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. ~~Applicant's~~ The applicant's physical description, including height, weight, and eye and hair color;
20. ~~Highest~~ The highest level of education completed by the applicant;
21. Evidence of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.;
22. No change
23. No change
24. ~~Applicant's~~ The applicant's certification that the information provided is true and complete and that the applicant has not engaged in any act prohibited by Arizona law or this Chapter.

B. An applicant shall submit or have submitted on the applicant's behalf the following with the license application form:

1. If NBRC-~~certified or~~ registered, a copy of the applicant's:
   a. NBRC-issued ~~certification or~~ registration; ~~or~~
   b. ~~CRT~~ RRT examination results; or
   c. If grandfathered, CRT examination results.
2. No change
3. No change
4. No change
5. No change
6. No change

~~**C.** The Board shall issue a temporary license to an applicant who is qualified under R4-45-213.~~

~~**D.**~~**C.** An applicant shall inform the Board in writing of a change in the applicant's address or other contact information within 10 days from the date of the change.

~~**E.**~~**D.** No change

1. No change
2. No change
3. No change

R4-45-203. Examinations

A. Except when a license may be issued without an examination under A.R.S. § 32-3524 or grandfathered, an applicant shall pass the ~~CRT~~ RRT examination. The passing score is the scaled score set by the NBRC.

B. An applicant shall inform the Board as soon as possible by one of the following methods that the applicant passed the ~~CRT~~ RRT examination:

1. No change
2. No change

R4-45-205. Application Based on Licensure by Another State

If an application for a license is based on licensure by another state, the applicant shall cause the state that issued the license to deliver to the Board:

1. No change
2. No change
3. Either a copy of the results of the ~~CRT~~ RRT examination or a copy of another examination administered to the applicant, the results of the other examination, and any information necessary to enable the Board to determine whether the other examination is equivalent to the ~~CRT~~ RRT examination.

R4-45-213. ~~Temporary Licensure~~ Repeal

~~**A.** To be considered for a temporary license, an applicant shall submit a license application package, as described in R4-45-201, and pay the application fee. The Board shall issue a temporary license, valid for eight months, to the applicant only if the Board's Executive Director determines, after reviewing the license application package, that the applicant has never held a temporary license and is eligible to receive a license except that one or more of the following documents are missing from the license application package:~~

~~1. Passing score on the CRT examination,~~
~~2. Verification of license from another in which the applicant is or was licensed,~~
~~3. Certified copy of course transcripts and descriptive information regarding the applicant's course of study at a foreign respiratory therapy school, or~~
~~4. Completed federal and state criminal background check.~~

~~**B.** An applicant who is issued a temporary license shall:~~

~~1. Perform respiratory care services only under direct supervision,~~
~~2. Not supervise a licensee or another temporary licensee, and~~
~~3. Work as an instructor or in a management position only if issued the temporary license under A.R.S. § 32-3524.~~

~~**C.** A temporary licensee who applied for licensure under A.R.S. § 32-3524 may renew the temporary license for an additional 120 days by submitting a request for renewal to the Board on a form prescribed by the Board.~~

~~**D.** A temporary licensee who is required by A.R.S. § 32-3523 and R$45-201 to pass the CRT examination before becoming licensed may renew the temporary license for an additional 120 days by submitting to the Board:~~

~~1. A request for renewal on a form prescribed by the Board, and~~
~~2. Evidence that the temporary licensee has either:~~
~~a. Passed the CRT examination, or~~
~~b. Attempted to pass the CRT examination and is registered to take the next scheduled CRT examination.~~

~~**E.** The request for a renewal temporary license shall:~~

~~1. Include an address of record,~~
~~2. Be typed or written in black ink,~~
~~3. Be signed by the applicant,~~
~~4. Be accompanied by the following:~~
~~a. The fee prescribed in R4-45-102(A)(5), and~~
~~b. A statement under oath that the temporary license has not expired.~~

~~**F.** A temporary licensee who is required but unable to submit the evidence under subsection (D)(2) may request an opportunity to explain this inability to the Board.~~

~~**G.** The Board shall administratively close an application for licensure if the applicant fails to apply for renewal of the applicant's temporary license. The temporary licensee shall apply for renewal no more than 60 days before expiration of the temporary license. An individual who wishes to be considered for licensure after the individual's file is administratively closed shall reapply.~~

~~**H.** Reapplication under subsection (G) does not qualify an individual for a second temporary license. The Board shall not issue more than one temporary license to an individual.~~

~~**I.** A temporary licensee is subject to disciplinary action by the Board under A.R.S. § 32-3553.~~

R4-45-218. Reinstatement Following Revocation; Modification of Probation

A. No change

B. If a former licensee wishes to have a revoked license reinstated after the time stated in subsection (A), the former licensee shall meet the qualifications in A.R.S. § 32-3523(A) and comply with R4-45-201. ~~The Board shall not issue a temporary license to a former licensee who applies for reinstatement.~~

C. No change

1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
2. No change

D. No change