

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 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

PREAMBLE

- 1. Sections Affected** **Rulemaking Action**
R3-4-805 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. §§ 3-107(A)(1), 3-445
Implementing statute: A.R.S. §§ 3-445, 3-446
- 3. The effective date of the rules:**
November 8, 2001
- 4. A list of all previous notices appearing in the Register addressing the adopted rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 2013, May 4, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 3088, July 20, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Sherry D. Blatner, Rules Specialist
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1688 West Adams, Room 235
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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rulemaking strengthens the Department's standards for serious defects in grapefruit product sold in Arizona. The new standards for serious defects are modeled on those listed in the United States Standards for Grades of Grapefruit (California and Arizona), effective December 27, 1999. A.R.S. § 3-442 states that it is the policy and purpose of Article 2, Citrus Fruit Standardization, to enable and encourage producers and shippers to develop uniform grades and standards for citrus fruit and to allow inspections of citrus fruit produced or sold in this state. Article 2 maintains domestic markets for citrus fruit grown in this state by protecting against importing and selling substandard citrus fruit and by ensuring that inferior produce does not compete with quality citrus fruit produced in this state.
The Department initiated this rulemaking in response to a petition from grapefruit shippers.
- 7. A reference to any study that the agency relied on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None

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

Not applicable

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

A. *The Arizona Department of Agriculture.*

The Department will inspect grapefruit under the standards for serious defects established in this rulemaking. Staff training is planned to cover the new standards and proper inspection methods.

B. *Political Subdivision.*

It is not anticipated that the adoption of this rule will have any impact on political subdivisions.

C. *Businesses Directly Affected By the Rulemaking.*

Businesses shipping grapefruit into Arizona will be required to meet the same standards for serious defects for their product that apply to grapefruit grown in-state by Arizona growers.

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

Minor technical and grammatical changes were made in response to suggestions from Council staff.

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

No comments were received.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 8. CITRUS FRUIT STANDARDIZATION

Section

R3-4-805. Serious Defects in Citrus Fruit

ARTICLE 8. CITRUS FRUIT STANDARDIZATION

R3-4-805. Serious Defects in Citrus Fruit

A. A defect is serious in citrus fruit, ~~other than grapefruit, when~~ if the following conditions occur:

1. Any part of the fruit is affected with decay;
2. Damage by freezing or drying, ~~from any cause,~~ if 20% or more of the pulp or edible portion of the fruit shows evidence of drying or a mushy condition or, in a lemon, of staining (except membranous stain). Evidence of damage shall be determined by making as many cuts on each fruit as may be necessary;
3. Injury, ~~from any cause,~~ if the skin (rind) is broken and the injury is not healed;
4. Scars, including those caused by insects, if they are dark, rough, or deep, and if an aggregate area of 25% or more of the fruit surface is affected;
5. Scale, if 50% or more of the fruit surface shows scale infestation in excess of 50 scales per square inch;
6. Dirt, smudge stain, sooty mold, rot residues, or other foreign material, if an aggregate area of 25% or more of the fruit surface is affected;
7. Staining, if 50% or more of the fruit surface is affected with a pronounced discoloration;
8. Greenish or brownish rind oil spots (oleocellosis), if an aggregate area of 25% or more of the fruit surface is affected;
9. Spotting or pitting, if the spots or pits are sunken and an aggregate area of 10% or more of the fruit surface is affected;
10. Sunburn in oranges ~~or grapefruit,~~ if it causes ~~decided~~ flattening of the fruit, ~~or with~~ drying ~~and~~ or discoloration of the skin (rind), ~~or if it affects~~ ~~affecting~~ more than 1/3 of the fruit surface;

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11. Sunburn in lemons, if 25% or more of the pulp or edible portion of the fruit shows evidence of drying, staining (except membranous stain), or a mushy condition. Evidence of damage shall be determined by making as many cuts ~~of on~~ each lemon as may be necessary;
12. Aging, if 1/3 or more of the fruit surface is dried and hard;
13. Roughness in oranges ~~or grapefruit~~, if 90% or more of the fruit surface is rough, ~~course~~ coarse, or lumpy;
14. Softness in oranges, ~~or grapefruit~~, if the fruit is flabby, ~~or, in the case of oranges~~, if the orange is spongy and puffy over 90% or more of the fruit surface;
15. Water spot in oranges, if the affected skin (rind) is soft or not healed;
16. Protruding or enlarged navel end in oranges, if the navel end protrudes beyond the general contour of the orange to such extent, or the navel opening is so wide considering the size of the orange, or the navel growth is so folded or ridged, that it detracts from the appearance of the orange;
17. Damage to a lemon by internal decline, from any cause, if 20% or more of the pulp or edible portion shows evidence of drying, staining (except membranous stain), or a mushy condition, or if the core shows gumming for its entire length. Evidence of damage shall be determined by making as many cuts ~~of on~~ each lemon as may be necessary;
18. Peteca in lemons, if the spots or pits are sunken and ~~cover~~ an aggregate area of 10% or more of the fruit surface is affected;
19. Deformities in lemons, if 50% or more of the individual fruit is excessively misshapen, ridgy, or lumpy; or
Red blotch in lemons, if ~~the affected areas affect~~ an aggregate area of 10% or more of the fruit surface is affected.

B. A defect is serious in grapefruit if the following conditions for serious damage, as referenced in the United States Standards for Grades of Grapefruit (California and Arizona), effective December 27, 1999, occur:

1. Dryness or mushy condition, if it affects all segments for more than half of an inch at the stem end, or the equivalent of this amount by volume when it occurs in other portions of the fruit;
2. Sprayburn, if it changes the color to such an extent that the appearance of the fruit is seriously injured, or if it causes scarring that affects an aggregate area of more than 10% of the fruit surface;
3. Fumigation injury, if it causes small, thinly scattered spots over more than half of the fruit surface, or solid scarring or depressions that affect an aggregate area of more than 5% of the fruit surface;
4. Exanthema that occurs as small, thinly scattered spots over more than half of the fruit surface, or solid scarring that is not cracked, that affects an aggregate area of more than 5% of the fruit surface;
5. Scars that are very deep, or scars that are very rough or very hard if an aggregate area of more than 1 inch in diameter is affected;
6. Scars that are dark, rough, or deep, if an aggregate area of more than 5% of the fruit surface is affected;
7. Scars that are fairly light in color, slightly rough, or of slight depth, if an aggregate area of more than 15% of the fruit surface is affected;
8. Scars that are light colored, fairly smooth, with no depth, if an aggregate area of more than 25% of the fruit surface is affected;
9. Green spots, oil spots (oleocellosis), or other similar injuries that are soft, or that affect an aggregate area of more than 10% of the fruit surface;
10. Scale, if California red or purple scale is concentrated in a ring or blotch, or if it is more than thinly scattered over the fruit surface, or if the scale affects the appearance of the fruit to a greater extent;
11. Sunburn, if it causes flattening of the fruit, or drying or dark discoloration of the skin (rind), or if it affects more than 1/3 of the fruit surface;
12. Skin breakdown, if it exceeds a circle 5/8 of an inch in diameter;
13. Bruising, if segment walls are collapsed, or the albedo and juice sacs are ruptured;
14. Any part of the fruit is affected with decay;
15. Injury, from any cause, if the skin (rind) is broken and the injury is not healed;
16. Dirt, smudge stain, sooty mold, rot residues, or other foreign material, if an aggregate area of 25% or more of the fruit surface is affected; or
17. Any injury, by any means, if it seriously affects the appearance, or the edible or shipping quality of the fruit.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

**CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION**

PREAMBLE

- 1. Sections Affected**
R3-4-248
- Rulemaking Action**
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. § 3-107
Implementing statute: A.R.S. § 3-201.01(A)
- 3. The effective date for the rule:**
November 8, 2001
- 4. A list of all previous notices appearing in the Register addressing the adopted rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 1617, May 28, 1999; republished at 6 A.A.R. 3114, August 18, 2000
Notice of Proposed Rulemaking: 6 A.A.R. 3692, September 29, 2000
Notice of Supplemental Proposed Rulemaking: 7 A.A.R. 1069, March 9, 2001
Notice of Supplemental Proposed Rulemaking: 7A.A.R. 3093, July 20, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Sherry D. Blatner, Rules Specialist
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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rulemaking updates the Japanese beetle rule to add definitions, broaden the area under quarantine, and to bring the rule in line with the guidelines of the U.S. Domestic Japanese Beetle Harmonization Plan, adopted by the National Plant Board on August 19, 1998 and revised September 5, 2000. An exception is made to the Plan to permit sod shipment to Arizona.
The plan establishes a framework to encourage states:
 - to consistently and appropriately characterize Japanese beetle pest risk and infestation status based on up-to-date scientific and field information, and
 - to pursue more uniform adoption and implementation of pest risk mitigation measures to reduce pest risk to a level acceptable to receiving states.Adult Japanese beetles feed on foliage, flowers, and fruits of hundreds of different plants while the larvae feed on plant roots. It is an economic pest of growers of turf, pastures, fruit trees, and ornamental plantings.
- 7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material.**
None
- 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

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

A. *The Arizona Department of Agriculture.*

This rulemaking should not have adverse economic effects for the Department.

B. *Political Subdivision.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking. Out-of-state shipping nurseries.*

This rulemaking will have an effect on the out-of-state shipping nurseries in counties not previously included in the area under quarantine. They will be required to obtain certificates from the state of origin affirming compliance with the rule's restrictions. Nurseries seeking to ship sod to Arizona will be required to enter into an agreement with the origin state and the Department ensuring inspection of the sod prior to shipment to Arizona.

D. *Private and public employment.*

Private and public employment is not directly affected by the implementation and enforcement of this rulemaking.

E. *Consumers and the Public.*

None

F. *State Revenues.*

This rulemaking will have no impact on state revenues.

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

A. *Changes between the Proposed Rulemaking and the Supplemental Proposed Rulemaking of March 9, 2001.*

In subsection (A), a definition was added for the "JBHP", the U.S. Domestic Japanese Beetle Harmonization Plan, adopted by the National Plant Board on August 19, 1998, and revised September 5, 2000, which is incorporated by reference in the definition subsection. The definitions of "free from soil" and "pest" were modified. A definition for "soil" was added.

Subsections (B) and (C) were merged. The area under quarantine was revised to include specifically infested areas instead of all states and districts in the United States.

The language in subsections (D)(1) and (D)(2), commodities covered, was modified.

Subsection (E), Treatments, in the Proposed Rulemaking was corrected to read (F),

Treatment. The phrase "beetle flight" was replaced with "adult flight period". The dip treatment plan was slightly modified and the details of the methyl bromide fumigation for both long term and short term exposure were deleted. The authority of the Associate Director to approve additional treatments was deleted.

B. *Changes between the Supplemental Proposed Rulemaking of March 9, 2001 and the Supplemental Proposed Rulemaking of July 20, 2001.*

In subsection (A), the following definitions were deleted: Bareroot, Bulk density, Free from soil, and Soil.

In subsection (B), the area under quarantine was changed from a listing of specific states and counties to a reference to those areas listed in the JBHP.

Subsection (D) was renumbered to subsection (C) and the specific listing of commodities covered was replaced with a reference to all commodities, except grass sod, listed in the JBHP.

Subsection (E) was renumbered to subsection (D). Restrictions on commodities entering Arizona were changed to require conformance with the JBHP, Appendix 1, Shipment to Category 1 States. Former subsection (E)(3) relating to plants with soil was deleted. A new subsection, (D)(2), permits importation of grass sod under specific conditions. The exemptions listed in former subsection (E)(3) are now in subsection (D)(3). The exemption for grass sod was eliminated as that is now discussed in (D)(2). A new exemption was added for treatments beyond those prescribed in the JBHP in cases where prior approval of the Associate Director is received.

C. *Changes between the Supplemental Proposed Rulemaking of July 20, 2001 and the Final Rulemaking.*

In subsection (A), a definition was added for "Host commodities" and the Latin name for the pest is italicized. The incorporation by reference of the JBHP is removed from this Section.

In subsection (B), the area under quarantine remains that listed in the JBHP, which is now incorporated by reference in this subsection. Two changes to the incorporated material were made in Appendices 1 and 5, deleting references to sod and grass sod.

In subsection (C), commodities covered was changed to host commodities covered.

A new subsection (D) was added. It requires out-of-state growers importing host commodities into Arizona to comply with the JBHP or the requirements in subsection (E).

Subsection (D) was renumbered to subsection (E) and now reads “Restrictions on importation”, instead of “Restrictions”. Subsection (E)(1) contains new language and was reorganized, but the requirements on the out-of-state grower are unchanged. References to the origin state’s “Department of Agriculture” were replaced with use of the term, “plant regulatory official”. In subsection (E)(3), minor language changes were made to clarify the rule.

Minor technical and grammatical changes have been made to the proposed rule based on suggestions from G.R.R.C. staff.

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

No comments were received regarding the 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. Incorporations by reference and their location in the rules:

U.S. Domestic Japanese Beetle Harmonization Plan, adopted by the National Plant Board on August 19, 1998, and revised September 5, 2000, in R3-4-248(B)

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

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION**

ARTICLE 2. QUARANTINE

Section

R3-4-248. Japanese beetle

ARTICLE 2. QUARANTINE

R3-4-248. Japanese beetle

~~A.~~ Notice of quarantine. It has been determined that the Japanese beetle, *Popillia japonica* (Newman), is a dangerous insect pest not known to occur in the state of Arizona; that the Japanese beetle is a serious threat to forest trees, agricultural crops, turf grass and certain ornamental plants. In order to prevent the introduction into the state of Arizona, and the spread within the state of this serious pest, it is hereby ordered and declared that the entry of quarantined articles into the state of Arizona shall be governed by the following regulation.

~~B.~~~~A.~~ Pest: Definitions.

“Host commodities” means the commodities listed in the JBHP, Appendix 5.

“JBHP” means the U.S. Domestic Japanese Beetle Harmonization Plan, adopted by the National Plant Board on August 19, 1998, and revised September 5, 2000.

“Pest” means the Japanese beetle, *Popillia japonica* (Newman).

~~C.~~~~B.~~ Area under quarantine: All areas listed in the JBHP, which is incorporated by reference, does not include any later amendments or editions, and is on file with the Department, the Office of the Secretary of State, and the National Plant Board at www.aphis.usda.gov/npb. The incorporated material includes the following changes:

1. Appendix 1, delete the words “(except sod)”.
2. Appendix 5, definition of host commodities, delete the words “grass sod”.

~~Entire states of Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.~~

~~1. Portions of the states listed below:~~

~~Alabama — Counties of Cleburne, Jefferson, and Lee.~~

~~Georgia — Counties of Banks, Barrow, Bartow, Bibb, Burke, Carroll, Cherokee, Clarke, Clayton, Cobb, Coweta, Columbia, Dawson, DeKalb, Douglas, Elbert, Fannin, Fayette, Forsyth, Fulton, Franklin, Gilmer, Gordon, Greene, Gwinnett, Habersham, Hall, Hart, Henry, Jackson, Jones, Lumpkin, Madison, McDuffie, Monroe, Muscogee, Murray, Newton, Oconee, Oglethorpe, Paulding, Pickens, Rabun, Richmond, Rockdale, Spalding, Stephens, Towns, Union, Walker, Walton, and White.~~

~~Illinois — Counties of Coles, Cook, DuPage, Edgar, Effingham, Fayette, Iroquois, Kankakee, LaSalle, Macon, Madison, Rock Island, St. Clair, Tazewell, Vermilion, and Will.~~

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Indiana—Counties of Allen, Benton, Boone, Carroll, Cass, Clark, Clay, Clinton, Daviess, Dearborn, DeKalb, Delaware, Dubois, Elkhart, Franklin, Fulton, Greene, Henriks, Huntington, Jackson, Jasper, Jefferson, Jennings, Koscusko, LaGrange, Lake, La Porte, Lawrence, Marion, Marshall, Martin, Miami, Montgomery, Newton, Noble, Ohio, Orange, Parke, Porter, Pulaski, Putnam, St. Joseph, Starke, Steuben, Sullivan, Switzerland, Tippecanoe, Vermillion, Vanderburgh, Vigo, Wabash, Washington, Wayne, Wells, White, and Whiteley.

Kentucky—Counties of Bath, Bell, Boone, Bourbon, Boyd, Bracken, Breathitt, Campbell, Carroll, Carter, Casey, Clark, Clay, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Floyd, Gallatin, Garrard, Grant, Greenup, Hardin, Harlan, Jackson, Jefferson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Madison, Magoffin, Martin, Mason, McCreary, Menifee, Montgomery, Morgan, Nicholas, Oldham, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Trimble, Wayne, Whitley, Wolfe, and Woodford.

Maine—Counties of Androscoggin, Cumberland, Kennebec, Lincoln, Oxford, Sagadahoc, and York.

Michigan—Counties of Allegan, Barry, Berrien, Calhoun, Cass, Kalamazoo, Lenawee, Macomb, Monroe, Oakland, Washtenaw, and Wayne.

Missouri—City of St. Louis, County of St. Louis.

Ohio—Counties of Adams, Allen, Ashland, Ashtabula, Athens, Auglaize, Belmont, Brown, Butler, Carroll, Champaign, Clark, Clermont, Clinton, Columbiana, Coshocton, Crawford, Cuyahoga, Defiance, Delaware, Erie, Fairfield, Fayette, Franklin, Fulton, Gallia, Geauga, Green, Guernsey, Hamilton, Hancock, Hardin, Harrison, Henry, Highland, Hoeking, Holmes, Huron, Jackson, Jefferson, Knox, Lake, Lawrence, Licking, Logan, Lorain, Lucas, Madison, Mahoning, Marion, Medina, Meigs, Miami, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Ottawa, Perry, Picaway, Preble, Pike, Portage, Putnam, Ross, Richland, Sandusky, Scioto, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Vinton, Washington, Warren, Wayne, Williams, Wood, and Wyandot.

South Carolina—Counties of Aiken, Anderson, Calhoun, Cherokee, Chester, Chesterfield, Darlington, Dillon, Fairfield, Florence, Greenville, Horry, Lancaster, Lexington, Marion, Marlboro, McCormick, Newberry, Oconee, Pickens, Richland, Spartanburg, Union, and York.

Tennessee—Counties of Anderson, Blount, Campbell, Carter, Claiborne, Coe, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, McMinn, Monroe, Morgan, Polk, Roane, Sevier, Sullivan, Union, Washington, and Weakley.

~~D.C. Commodities~~ Host commodities covered: All commodities, except grass sod, listed in the JBHP.

1. Soil separately or with other things (except potting soil).
2. Plants with roots (except houseplants grown in the home and not for sale, greenhouse grown plants, soil free aquatic plants, moss, and hycopodium known as clubmoss or ground pine or running pine).
3. Grass sod.
4. Aircraft (during months of June, July, and August whenever there is swarming of adult Japanese beetles in the area under quarantine).
5. Any other products, articles, or means of conveyance, of any character whatsoever when it is determined by an inspector that they present a hazard of spread of Japanese beetle and the person in possession thereof has been so notified.

~~D.~~ An out-of-state grower who imports a host commodity into Arizona shall comply with the JBHP, except as provided under subsection (E).

~~E.~~ Restrictions on importation.

1. An out-of-state grower shall not import into Arizona a host commodity under subsection (C) from an area under quarantine unless the commodity is accompanied by an original certificate issued by an official of the origin state ensuring compliance with the requirements of the JBHP, Appendix 1.
1. ~~Movement of regulated articles. Regulated articles may be moved from the area under quarantine into the state of Arizona only when such articles are accompanied by a valid certificate from an authorized inspector of the state of origin or Federal Certificate issued by a United States Department of Agriculture inspector giving evidence of the following conditions:~~
 2. ~~Certificates:~~
 - a. ~~When, in the judgment of the inspector, they have not been exposed to infestation.~~
 - b. ~~When they have been examined by the inspector and found to be free of infestation.~~
 - c. ~~When they have been treated under the observation of an inspector and in accordance with a method selected by him to bring about a successful treatment for the presence of Japanese beetles.~~
 - d. ~~Aircraft and other conveyances arriving in the state of Arizona from the area under quarantine, which have not been properly treated and certified at origin may be held for inspection during the months of June, July and August at the place of inspection until either found free of live Japanese beetles or treated by an approved manner and released by an inspector of the Arizona Commission of Agriculture and Horticulture.~~
2. The Associate Director may admit grass sod from an out-of-state grower for shipment to Arizona if:
 - a. The out-of-state grower requests an exception agreement from the Department;

- b. The out-of-state grower, the state plant regulatory official of the origin state, and the Associate Director sign an agreement that includes the following terms:
 - i. The out-of-state grower shall ship sod grown only in a Japanese beetle-free county;
 - ii. The origin state’s plant regulatory official shall place and monitor Japanese beetle traps on the grass sod farm during the agreement period. At least 1 trap shall be placed on each 10 acres of land. A buffer zone of a 1-mile radius shall be established around the grass sod farm, and 2 traps per square mile shall be placed in the buffer zone. The Department shall revoke the agreement if the origin state documents that 1 or more Japanese beetles are detected in any trap;
 - iii. The origin state’s plant regulatory official or designee shall inspect sod before shipment to ensure it is free of the pest; and
 - iv. The out-of-state grower shall ship sod to Arizona only through the ports of entry on I-10 or I-40.
 - c. Both the out-of-state grower and the origin state’s plant regulatory official shall perform any other requirement established by the Associate Director to ensure the grass sod is free from all life stages of Japanese beetle.
3. Exemptions from importation ban:
- a. Privately-owned houseplants grown indoors; and
 - b. Commodities that are treated by the grower for Japanese beetle may be imported into Arizona if the Associate Director approves the treatment method before shipment.
- ~~F.~~ Disposition of violations. Any shipment, conveyance or lot of quarantined articles as herein defined arriving in Arizona in violation of this quarantine shall be immediately sent out of the state or destroyed at the option and expense of the owner or owners, his or their responsible agents, and under the direction of the Entomologist or his inspector.
- ~~G.~~ General rules. See “General Rules and Definitions, Article 1”.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

PREAMBLE

1. Sections Affected

Article 2
R4-19-201
R4-19-202
R4-19-203
R4-19-204
R4-19-205
R4-19-206
R4-19-207
R4-19-208
R4-19-209
R4-19-210
R4-19-211
R4-19-212
R4-19-213
R4-19-214

Rulemaking Action

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

Authorizing statutes: A.R.S. §§ 32-1606(A)(1) and 32-1606(B)
Implementing statutes: A.R.S. § 32-1644

3. The effective date for the rule:

November 8, 2001

4. List of all previous notices appearing in the register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 6 A.A.R. 4610, December 8, 2000
Notice of Proposed Rulemaking: 7 A.A.R. 1598, April 20, 2001
Notice of Supplemental Proposed Rulemaking: 7 A.A.R. 3096, July 20, 2001

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

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Notices of Final Rulemaking

Nurse Practice Consultant
State Board of Nursing

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

The Board of Nursing initiated this rulemaking on R4-19-201 through R4-19-214 to comply with the recommendations in the Board's last five-year rules review. In addition, due to significant changes in the health care and nursing educational environment, changes are proposed to the rules addressing: nursing program administration, program resources, program administrator qualifications and duties, faculty qualifications and duties, student policies and admissions, curriculum, program approvals, curriculum changes for Board-approved programs, rescission of program approval, requirements for nationally-accredited programs, voluntary termination of a program, and approval of re-entry update programs. Many of the changes to R4-19-201 through R4-19-214 involve clarifying the language of the rule, adding measurable criteria, and including specific grounds for adverse action by the Board. Specific changes are detailed below.

1. The qualifications for faculty in professional nursing programs and administrators of practical nursing programs are changed to reflect hiring patterns in the community.
2. Programs will be required to submit "mission and goals" rather than a "philosophy" and curriculum requirements are amended to reflect current trends in education.
3. Educational materials and resources will be required rather than a library to reflect the movement toward electronic sources of information.
4. The duties of the administrator of a nursing program are refined to reflect current role expectations of the position.
5. References to appeals and hearing are revised consistent with A.R.S. Title 41 Chapter 6 and 4 A.A.C. 19, Article 6.
6. The approval period for Board-approved nursing programs is lengthened to a maximum of five years and the approval period for refresher courses is lengthened to four years.
7. The requirements for an annual report from programs and for a Board representative to accompany site visitors from national accrediting agencies when renewing accreditation status are deleted.
8. A provision is added requiring programs to appoint an administrator in a timely manner when a vacancy exists.
9. A passing standard for NCLEX® is added to reflect outcome-based criteria.
10. The time to respond to a notice of deficiency is lengthened to allow programs a more reasonable time to formulate a plan of correction.
11. Provisions have been added to clarify the responsibilities of the administrator of the program.

The Board believes that the changes to Article 2 will enhance the safety and welfare of the public by providing clear and concise language and reasonable standards for Arizona nursing programs

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

Not applicable

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:

Some amendments to R4-19-201 through R4-19-214 are expected to result in substantial savings for both the Board and nursing programs. The Board will save staff resources by not having to survey programs that are nationally accredited. Currently there are 17 nationally-accredited programs in Arizona. Surveying one program involves 40 to 60 hours of the Nurse Practice Consultant's time with overnight travel and per diem expenses. The consultant currently averages two to three nationally-accredited program surveys per year. This change will also save program resources by not requiring accredited programs to mail copies of studies to the Board.

The change in the educational preparation required for an administrator of a practical nursing program could result in savings to the program by allowing it to hire an administrator with a baccalaureate degree at a lower salary than a masters-prepared director would command.

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The flexibility the rules allow in hiring of faculty for professional nursing programs is expected to result in a positive economic benefit for professional programs by potentially expanding the pool of faculty applicants and allowing programs to hire a less expensive, more available, baccalaureate-prepared nurse for clinical teaching. This change may help programs that are currently prevented from expanding by the inability to hire qualified faculty.

The supplemental amendments are not expected to result in direct costs to the programs. Programs may have some expenses relating to revising some procedures for evaluation and inclusion of the nurse administrator when making decisions affecting the nursing program. The salary of the nurse administrator would not be expected to increase as a result of the rule. The duties of the nurse administrator within some programs may need revision to accommodate a more authoritative role.

Small businesses will not be directly affected by the rule. All parent institutions of programs in Arizona fail to meet the definition of small business as defined in A.R.S. § 41-1001(19). Specifically, all but one is publicly owned and all employ more than 100 persons on a full-time basis. Currently no small businesses in the state sponsor refresher courses. Small businesses wishing to offer refresher courses would have an economic benefit from the proposed revisions to R4-19-214 because they allow for a longer period of approval. A possible indirect benefit to small businesses could occur if a program is able to expand due to the ability to secure qualified faculty thereby increasing the pool of qualified job applicants for small businesses that employ nurses.

Consumers will not be directly affected by the rules. The rules may indirectly benefit consumers of health care by making the expansion of nursing programs more economically feasible and therefore increasing the supply of nurses in this period of nursing shortage. Because the changes will allow programs to hire less expensive faculty, they should not result in tuition increases in nursing programs. Nursing students will benefit from the improved specific criteria for resources that must be present in all nursing programs.

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

In R4-19-201(A) a clerical error was made striking the word ~~parent~~.

The rule should read: "The parent institution of a nursing program shall be regionally accredited."

R4-19-207 was reorganized substantially to better reflect stricken language of the current rule and increase understanding.

R4-19-203(A), R4-19-204(D) and R4-19-204(E)(2) have been changed to reflect the nurse licensure compact provisions enacted during the Forty-fifth Legislature, first regular session, 2001. Under the compact provisions a nurse cannot hold a license in 2 party states. The nurse can only hold a license in the state of residence. There are current faculty members and could be administrators of nursing programs that reside in a party state and therefore could not obtain an Arizona nursing license under the compact provisions. These individuals are qualified to practice nursing in this state under A.R.S. §§ 32-1668 and 32-1669. By leaving this rule as originally proposed, the sole two nursing faculty members teaching on the Colorado City Campus of Mohave Community College and residing in Utah (a compact party state) would be ineligible to teach upon giving up their Arizona licenses as required by the compact. The nursing program would face closure because of inability to attract qualified faculty. The change would not take away a "right" of currently licensed nurses to be considered first when hiring faculty because they do not have that right today nor was the rule proposed for the purpose of giving them that right. In an attempt to attract a diverse faculty, nursing programs typically advertise for faculty both locally and nationally. The changes in language are not substantial changes to the rule because holding a current Arizona license is not an issue in the hiring decision. All programs and most applicants are aware that the Board can issue a same-day temporary license to a nurse with an active license in good standing from another state. There is currently a faculty shortage in all programs and qualified faculty are offered positions as long as they are able to legally practice in Arizona.

R4-19-203(A) is changed to: "A nursing program shall appoint an administrator who ~~shall hold a~~ holds a graduate degree with a major in nursing and shall have a current Arizona professional nursing license that is active and in good standing under A.R.S. Title 32, Chapter 15 and;

R4-19-204(D) has been changed to: "The parent institution of a nursing program shall ensure that every ~~Each~~ professional nursing program faculty member ~~has shall have:~~ a professional nurse license that is active and in good standing under A.R.S. Title 32, Chapter 15 and that every faculty member meets one of the following:"

R4-19-204(E)(2), the qualifications to teach in a practical nursing program, has been changed to: "A Current licen- ~~sure as a professional nurse~~ license that is active and in good standing under A.R.S. Title 32, Chapter 15 in the state of Arizona, and."

Various technical and grammatical changes were made at the suggestion of G.R.R.C. staff and to comply with rule-writing procedures of the Secretary of State.

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

On August 20, 2001, a public oral proceeding was held regarding the Supplemental Notice of Proposed Rulemaking for Article 2. It was attended by three persons with none of them testifying. Several written comments were received during the course of the rulemaking process. A letter was received from the Practical and Associate Council of Nurse Educators supporting the entire rules package after the first notice was published. Some members of that group had concerns over the evaluation requirement for faculty and the proposed supplement was amended to respond to their

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concerns before being submitted for publication. Many comments were received regarding the requirements for faculty. Some of the comments were in response to an e-mail sent out to nurses by the Arizona Nurses Association (AzNA) questioning the rules. That e-mail contained several inaccuracies. Board staff met with the Executive Director of the Arizona Nurses Association and ultimately received a letter of support from the Arizona Nurses Association for the Supplemental Proposed rules. Four primary areas of concern were expressed in the communications received.

Clinical Faculty (R4-19-204(D)(2)): The rules allow for clinical faculty to teach if they have a BSN in nursing and three years experience. This is a change from the current requirement for all faculty to have a graduate degree with a major in nursing. The following comments were sent to the Board.

Mary Killeen (Associate Dean at ASU): Speaks in opposition to “letting the market dictate current standards”. She states that teaching clinical requires high level thinking skills that are based on graduate level education. Dr. Killeen questions the Board data used to support the change. She suggests that the Board develop mechanisms whereby the Board could grant exemptions to the rule.

Pam Fuller (Assistant Dean at University of Phoenix): States that she supports the proposed rule for clinical faculty of associate degree and LPN programs, not baccalaureate programs.

Nancy Cisar (Clinical Nurse Specialist): States that all faculty should have master’s degrees.

Arizona Nurses Association: Stated that they initially had concerns that were alleviated through discussion with Board staff. Support rules package.

Sharon Hays (Director Mohave Community College Nursing Program): Supports clinical faculty qualifications in proposed rules.

Didactic Faculty (R4-19-204 (D)(1)): The rules allow for the hiring of didactic faculty with a master’s degree in an area other than nursing if they have a baccalaureate degree in nursing and as long as over half of the didactic faculty in any program hold a graduate degree with a major in nursing. Comments were received from the following individuals.

Arizona Nurses Association: Originally expressed concern when there was an impression that the Board was only “suggesting” a master’s degree. The association later supported the rules package.

Pam Fuller (University of Phoenix): Feels graduate faculty teaching didactic should have master’s degrees in response to the AzNA e-mail that a masters degree was “suggested”.

Raymond Lysyk (Faculty Mohave Community College): Expresses support for allowing didactic instructors to have a master’s degree in an area other than nursing.

Qualifications for administrator of a Practical Nurse Program (R4-19-203(A)(2)). The Board is proposing that the requirement for the director of a practical nursing program be reduced from a graduate degree with a major in nursing to a baccalaureate degree with a major in nursing. Comments were received from the following individuals and groups.

Arizona Nurses Association (AZNA): Originally were concerned about the change then sent letter of support for whole package.

Pam Fuller (University of Phoenix): Feels that all administrators and leaders of nursing programs should be prepared at the graduate level to lead faculty, students, and community.

Nancy Cisar (Clinical Nurse Specialist): This suggestion is “not the answer”. Urges Board not to “dumb down” requirements. The baccalaureate degree does not educate one in program planning, evaluation, and curriculum development.

Teaching experience as a faculty requirement (R4-19-204 (D) and (E)). The Board proposes to delete the requirement that individuals have teaching experience in nursing courses before being hired to teach nursing courses. Comments were received from the following individuals.

Pam Fuller (University of Phoenix): States that “current work experience should be preferred, and three to five years should be required in the last 10 years”.

Arizona Nurses Association (AzNA): Initially expressed concern then sent a letter supporting the package.

Mary Killeen (Associate Dean Arizona State University): Admitted that ASU has violated current rule by hiring faculty without teaching experience and that the integrity of the curriculum was compromised because of this. Dr. Killeen does not appear to suggest a change to the proposed rule.

Other Comments. The following comments were also received.

Yavapai Community College Nursing Faculty: Sent letter of support for changes in the supplemental proposed rules package.

Pamela Reed (Associate Dean University of Arizona): Sent letter of support for changes in supplemental proposed rules package.

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Sharon Hays (Director Mohave Community College Nursing Program): Sent a letter of support for supplemental rules package.

Lucy Flaaten (Practical and Associate Council of Nurse Educators): Sent a letter of support for the original rules package.

After careful consideration of all the comments, the Board is not proposing to change the proposed rules. The apparent lowering of the requirement for clinical faculty is a problem in perception rather than an actual decrease from current standards. The rule was previously interpreted to mean full-time didactic faculty only and the Board approved many programs in the last 10 years that utilize clinical faculty prepared at the baccalaureate level. A recent assistant attorney general opinion in response to a request by a program to hire a baccalaureate-prepared clinical faculty precipitated a change in Board policy. The Board determined that all future surveys of nursing programs were to use the criteria that all faculty members have a graduate degree with a major in nursing. Programs where any faculty members do not hold a graduate degree with a major in nursing will be cited. Two out of three associate degree programs subsequently surveyed were served with a Notice of Deficiency for not meeting the current rule requirement. Those programs are rural and have assured the Board that they cannot comply with the current rule. The Board has since become aware that nearly all associate degree nursing programs utilize baccalaureate-prepared clinical nursing faculty and have done so for years thinking they had an "exemption" from the Board. As they are surveyed for review, these programs will receive deficiency notices. A deficiency that is not corrected in the time specified by the Board causes the Board to withdraw approval of the program. It can be readily seen from the distribution of masters-prepared nurses in this state (chart enclosed) that it would be impossible for rural programs to comply with the current rule. It would be expensive and hinder expansion of nursing education to insist that urban programs comply with the current rule. Dr. Killeen questions the "data" the Board used to determine that associate degree programs that utilize less than master's prepared individuals for clinical instruction are preparing quality nurses. The Board Education Consultant used NCLEX (National Council Licensing Exam) passing rate data that shows no significant differences for associate-and baccalaureate-prepared nurses in the state. Baccalaureate programs utilize clinical instructors prepared at the graduate level. The consultant also gathered information from interviews with health care agency personnel who state that their perception is that both baccalaureate and associate degree graduates are prepared to meet the demands of nursing in a similar manner. They both need similar periods of orientation and function in an identical manner during the first months of employment. In response to Ms. Fuller's request for the Board to establish different requirement for baccalaureate programs, both associate degree and baccalaureate programs prepare individuals for the same license. The Board duty is to establish minimum standards for programs preparing persons for licensure. The statutes do not specify differing standards based on the educational credential (A.R.S. § 32-1606(B)(1)). While the Board agrees that it would be ideal to require that all faculty members be prepared at the graduate level with a major in nursing, this is an impossible rule to enforce and would result in program closures and exacerbate the nursing shortage. The Board considered and decided against Dr. Killeen's suggestion of an exemption clause. The Board clarified during discussion that its role should be setting minimum standards that every program is required to meet and not become involved in hiring decisions of institutions. The rules allow nursing programs to set higher standards than the Board dictates and the Board would encourage them to do so. Keeping the current rule would potentially harm many programs.

After careful consideration of the comments, the Board opted not to change the amendment that allows programs to hire faculty with graduate degrees in areas other than nursing for didactic teaching. Several programs have asked the Board if they could hire faculty with master's degrees in business to teach management or midwifery to teach maternity nursing. The current rules do not allow for this flexibility. The Board feels that programs need the freedom to determine program needs and hire the best-prepared faculty for that position. For some programs that will be all faculty prepared with a graduate degree in nursing. The Board thinks that a majority of the faculty members need the graduate degree in nursing to ensure that the program has expertise in nursing, nursing education, and nursing curriculum development.

After careful consideration of the comments, the Board elected to retain the requirement for a baccalaureate degree for the administrator of a practical nursing program to replace the current requirement for a graduate degree with a major in nursing. All Board members agree that it would be ideal to have a master's-prepared individual with extensive experience and managerial skills in such a position. The experience in Arizona of enforcing this requirement, however, has not shown it to be beneficial to the health and safety of the public. The requirement for a graduate degree was put in rule in 1995. At that time, several practical nursing programs had administrators without the required degree. Salaries for administrators did not rise as anticipated to attract master's prepared individuals. Arizona currently only has three LPN programs. In one program, the long-time administrator obtained her degree then resigned. She was replaced with a "qualified" individual that was not prepared to meet the demands of the programs. Subsequently a medical assistant was administering the program and the Board became involved because of multiple student complaints. The program was served with a notice of deficiency and subjected to two site visits. Fortunately, the program is operating well now with a master's-prepared nurse serving as administrator. In the second program, the administrator retired and was difficult to replace and this program went through a period where a non-nurse was administering the program. Due to a multiplicity of issues, this program is under a notice of deficiency and may elect to close. The third program is under a deficiency notice because their long-term administrator does not have the degree. This program has consistently maintained passing rates for NCLEX® near the national average while serving an at-risk population. There appears to be no relationship between stability of an LPN program and this requirement.

Some school administrators stated that they felt pressured to hire the only master's prepared individual that applied for a particular position because of the Board's rule. The Board's rule allows parent institutions to hire the person most qualified for the position based on a number of factors, not only the degree.

The Board is retaining the deletion of teaching experience for faculty before being hired to teach. All programs that hire new instructors could potentially violate this rule. It also puts programs in a catch-22 situation where a program cannot hire a teacher to gain the experience because she does not have the experience to be hired. As Dr. Killeen pointed out, hiring of inexperienced faculty takes a commitment to mentor on the part of the program just as the hiring of new graduates takes an extensive orientation.

The Board is requesting that the Governors Regulatory Review Council approve the rules as presented.

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 rules:

Not applicable

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

This rule was never made as an emergency rule.

15. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

ARTICLE 2. ARIZONA PROFESSIONAL AND PRACTICAL NURSING PROGRAMS

Section

- R4-19-201. Organization and Administration
- R4-19-202. Resources, Facilities, Services, and Records
- R4-19-203. Administrator; Qualifications and Duties
- R4-19-204. Faculty; Personnel Policies; Qualifications and Duties
- R4-19-205. Students; Policies and Admissions
- R4-19-206. Curriculum
- R4-19-207. Application for ~~Provisional Initial~~ Approval of a Nursing Program
- R4-19-208. Application for Full Approval
- R4-19-209. ~~Nursing Program Change Curriculum Changes for Board-approved Programs~~
- R4-19-210. ~~Renewal of Approval of Board-approved Nursing Programs; Continuing Approval~~
- R4-19-211. ~~Rescission of Approval of a Nursing Program or a Refresher Program~~
- R4-19-212. ~~Nationally Accredited Nursing Programs; Continuing Approval~~
- R4-19-213. ~~Voluntary Termination of a Nursing Program or a Refresher Program~~
- R4-19-214. Approval of ~~Refresher Reentry Update~~ Programs

ARTICLE 2. ARIZONA PROFESSIONAL AND PRACTICAL NURSING PROGRAMS

R4-19-201. Organization and Administration

- A. The parent institution of a nursing program shall be regionally accredited.
- B. A nursing program shall have a written statement of ~~mission philosophy and goals objectives~~, consistent with those of the parent institution, ~~which serves as a basis for curriculum structure.~~
 - 1. ~~The statement shall take into consideration the individual differences of students, including their cultural and ethnic background, learning styles, goals, and support systems.~~
 - 2. ~~The statement shall express the fundamental beliefs and basic educational principles to which the faculty subscribe. The statement shall include the faculty's beliefs in relation to:~~
 - a. ~~Nursing;~~
 - b. ~~Nursing education;~~
 - e. ~~The teaching and learning process, including the role of the faculty and students in this process; and~~
 - d. ~~The role of the graduate within the totality of nursing practice.~~
- C. A nursing program shall be an integral part of the parent institution and shall have comparable status with other academic units of the parent institution.
- D. ~~The parent institution shall center the administrative control of the nursing program in the nursing program administrator.~~
- ~~D.E.A~~ The nursing program shall maintain an organizational chart ~~that which~~ identifies the relationships, lines of authority, and channels of communication within the program, and between the program, and the parent institution.

~~E.F.A~~ The nursing program shall have a written agreement between the program and each clinical facility where at which clinical experience is provided to the program's students that: which

1. Defines defines the rights and responsibilities of both the clinical facility and the nursing program each party,
2. Lists including agreements on the role and authority of the governing bodies of both the clinical facility and the nursing program;
3. Allows faculty members of the program the right to select learning experiences for students, and
4. Contains a termination clause that provides sufficient time for enrolled students to complete the clinical experience upon termination of the agreement.

~~E.G.A~~ The nursing program shall have written policies that provide a mechanism for assure student input into the development of participation in determining academic policies and procedures, curriculum planning, and participation in the evaluation plan of faculty effectiveness through student membership on policy and evaluation committees and through policy statements and evaluation procedures.

~~G.H.~~ An administrator of a nursing program shall provide evidence that The nursing program shall have written policies and procedures of the program are reviewed on a regular schedule. ~~which are consistent with those of the parent institution and shall provide a regular schedule for their review.~~

~~H.I.A~~ The nursing program shall have a written plan for the systematic evaluation of the total program. The plan shall include the methodology, frequency of evaluation, assignment of responsibility, and evaluative criteria. The following areas shall be evaluated:

1. Organization and administration of the program;
2. Mission and goals ~~Philosophy and objectives;~~
3. Curriculum;
4. Education facilities, resources, and services;
5. Clinical resources;
6. Student ~~Students'~~ achievement of program educational outcomes;
7. Graduate ~~Graduates'~~ performance on the licensing examination;
8. ~~Graduates' nursing competence;~~
- 9-8. Faculty ~~The performance of the faculty; and~~
- 10-9. Protection of patient safety; ~~and~~
11. ~~The methods and instruments used for evaluative purposes.~~

~~J.~~ A nursing program shall notify the Board of a vacancy or pending vacancy in the position of nursing program administrator within 15 days of the program's awareness of the vacancy or pending vacancy and do the following:

1. Appoint an interim administrator or a permanent administrator who meets the requirements of R4-19-203(A) within 15 days of the effective date of the vacancy, and
2. Notify the Board of the appointment of an interim or permanent administrator within 15 days of appointment and provide a copy of the administrator's credentials to the Board.

R4-19-202. Resources, Facilities, Services, and Records

~~A.~~ The parent institution shall provide financial and administrative support and resources to the nursing program, including the following:

1. Physical facilities for the nursing program;
2. A library and instructional materials; and
3. Secretarial, clerical, and other support personnel services.

~~B.A.~~ The parent institution of a nursing program shall consider the size of the program faculty and number of program students and shall provide facilities for the program that meet the following requirements: ~~provided for the program shall meet the requirements of the nursing program in relation to the size of the faculty and the number of students.~~

1. A The administrator shall have a private office for the administrator of the nursing program;
2. Faculty offices that are shall be conveniently located and comparable to other faculty offices of the parent institution; and of such number and size to provide the faculty with the ability to work uninterrupted and shall provide have privacy for conferences with students;
3. Space for private faculty-student conferences;
- 3-4. Space ~~There shall be space for clerical staff, records, files, and equipment;~~
- 4-5. Classrooms, learning laboratories, and conference rooms that provide seating for students enrolled in a course, accommodate audio-visual materials, are free of distractions, and are of shall be provided in such number, the size, and type necessary to meet the needs of the number of students and the educational purposes for which the rooms are used;
- 5-6. Secretarial ~~There shall be secretarial and clerical support personnel to assist the administrator and faculty; and~~
- 6-7. Access ~~There shall be a library which shall have holdings or access to a collection of educational materials and resources holdings which that are current and sufficient to meet program goals - at the level of content of the curriculum, and of such number to meet the needs of the students and faculty. The parent institution shall establish reason-~~

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able hours for access to the collection and ensure a convenient location for viewing the educational materials and resources.

- a. ~~There shall be provision made for regular additions to and deletions from the library collection.~~
- b. ~~The library facilities and policies of operation shall promote effective use in its environment, accessibility, and hours of operation.~~

~~C.B.A~~ The nursing program shall maintain current and accurate records of the following:

- 1. Student records, including admission materials, courses taken, grades received, scores in any standardized tests taken, and health and performance records. ~~Records of the students;~~
- 2. Faculty records, including Arizona professional nursing license number, evidence of fulfilling the requirements in R4-19-204, and performance evaluations for faculty employed by the parent institution for one or more years;
- 3. Minutes of faculty and committee meetings;
- 3-4. ~~Administrative records, including minutes of faculty meetings and reports from accrediting agencies, annual reports of the program, and school bulletins; and~~
- 4-5. The statement of mission and goals, current curriculum, including philosophy, objectives, and course outlines; and,
- 5. ~~Agreements with other agencies which provide learning experiences for the students.~~

R4-19-203. Administrator; Qualifications and Duties

A. A nursing program shall appoint an administrator who ~~shall hold a~~ holds a graduate degree with a major in nursing and ~~shall have a current Arizona professional nursing license that is active and in good standing under A.R.S. Title 32, Chapter 15 and; -~~

- 1. For professional nursing programs, a graduate degree with a major in nursing; or
- 2. For practical nursing programs, a baccalaureate degree with a major in nursing.

B. The administrator shall have comparable status with other program administrators in the parent institution and shall report directly to an academic officer of the institution.

~~B.C.~~ The administrator shall be responsible for:

- 1. Administer the nursing education program;
- 1. ~~Maintaining relationships with administrative authorities and other academic and support units of the parent institution;~~
- 2. Providing leadership for faculty and staff;
- 3-2. Facilitate and coordinate activities related to academic policies, personnel policies, curriculum, resources, facilities, services, and program evaluation; Developing, implementing, and evaluating the program of learning;
- 4-3. Prepare ~~Preparing and~~ administer ~~administering~~ the budget;
- 5-4. Recommend ~~Screening and recommending~~ candidates for faculty appointment, retention, and promotion;
- 6. ~~Developing and maintaining relationships with local, state, regional, and national health and professional organizations and regulatory agencies;~~
- 7. ~~Ensuring that written agreements for use of clinical facilities are mutually developed by the parent institution and health care providers;~~
- 5. In addition to any other evaluation used by the parent institution, ensure that faculty are evaluated:
 - a. At least every three years.
 - b. By the nurse administrator or a nurse educator designated by the nurse administrator, and
 - c. In the areas of teaching ability and nursing knowledge and skills.
- 8. ~~Ensuring that written agreements with health care providers that allow faculty members the control and freedom to select learning experiences for students;~~
- 9. ~~Ensuring that written agreements with health care providers contain termination clauses which provide sufficient time for enrolled students to complete the course upon termination of the agreement; and,~~
- 10-6. Maintain ~~Ensuring~~ policies or procedures that promote safe patient care during student clinical experiences safety; ; ~~and~~
- 7. Participate in activities that contribute to the governance of the parent institution.

~~C.D.~~ The administrator of the nursing program shall not teach more than ~~three~~ 45 contact hours per week academic session.

R4-19-204. Faculty; Personnel Policies; Qualifications and Duties

A. ~~A~~ The nursing program shall implement personnel policies for full- and part-time nursing faculty members that which shall conform with to those for other faculty members of the parent institution or provide a written explanation of any differences. Any differences in policy shall be explained in writing.

B. ~~A~~ The nursing program shall have written policies concerning the teaching load for nursing faculty that consider the following factors;: ~~The number of faculty shall be determined by the following factors:-~~

- 1. The number and level of students enrolled,
- 2. The curriculum plan,
- 3. The activities ~~Activities~~ and responsibilities required of the faculty including student contact hours, and
- 4. The number and geographic locations of clinical laboratory facilities.

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- C. ~~The parent institution of a nursing program shall ensure that the~~ The ratio of students to nursing faculty while involved in the direct care of patients shall be no more than 10 to one.
- D. ~~The parent institution of a nursing program shall ensure that every~~ Each professional nursing program faculty member has shall have: a professional nurse license that is active and in good standing under A.R.S. Title 32, Chapter 15 and that every faculty member meets one of the following:
1. ~~If providing didactic instruction: A graduate degree with a major in nursing,~~
 - a. At least two years of experience as a professional nurse providing direct patient care; and
 - b. A graduate degree. The majority of the faculty members of a professional nursing program shall hold a graduate degree with a major in nursing. If the graduate degree is not in nursing, the faculty member shall hold a minimum of a baccalaureate degree in nursing; or
 2. ~~If providing clinical instruction only:~~
 - a. The requirements for didactic faculty, or
 - b. A baccalaureate degree with a major in nursing and at least three years of experience as a professional nurse providing direct patient care.
 2. ~~Current licensure professional nurse in the state of Arizona;~~
 3. ~~At least two 2 years' experience as a professional nurse providing direct patient care, and~~
 4. ~~Completion of at least two years' experience teaching courses related to nursing or nursing education.~~
- E. ~~The parent institution of a nursing program shall ensure that each~~ Each practical nursing program faculty member has shall have:
1. ~~A minimum of a baccalaureate degree with a major in nursing,~~
 2. A Current licensure as a professional nurse license that is active and in good standing under A.R.S. Title 32, Chapter 15 in the state of Arizona, and
 3. ~~At least two one year's years of experience as a professional nurse providing direct patient care, and~~
 4. ~~Completion of at least one year's experience teaching courses related to nursing or nursing education.~~
- F. ~~The nursing faculty shall participate in the following:~~
1. ~~Developing, implementing, and evaluating the program of learning;~~
 2. ~~Developing standards for the admission, progression, and graduation of students; and~~
 3. Providing for the supervision of ~~Supervising~~ students in all clinical experiences; †
 4. ~~Advising students; and~~
 5. ~~Professional scholarly activities.~~
- G. ~~The program shall recruit, appoint, and promote faculty without discrimination as to age, race, sex, national origin, or marital status.~~

R4-19-205. Students; Policies and Admissions

- ~~A.~~ A nursing program shall have written policies available to students and the public regarding admission, readmission, transfer, advanced placement, progression, graduation, withdrawal, or dismissal that consider the following:
1. Faculty-to-student ratio.
 2. Educational facilities and resources to accommodate the number of students, and
 3. Capacity of clinical agencies to provide learning experiences.
- ~~A.~~ The nursing program shall admit students to the program based upon the number of faculty, available educational facilities and resources, and the availability of clinical learning experiences for the students.
- ~~B.~~ Students shall be admitted without discrimination as to age, race, religion, sex, national origin, or marital status.
- ~~C.~~ The program shall establish written policies for admission, readmission, transfer, advanced placement, promotion, graduation, withdrawal, or dismissal.
1. ~~The policies shall be consistent with those for students in the parent institution.~~
 2. ~~The policies shall be provided to program applicants.~~
- ~~D.~~ A nursing program shall have establish written policies available to students that address for student rights, responsibilities, grievances, health, and safety, and welfare.

R4-19-206. Curriculum

- ~~A.~~ A nursing program for preparing professional nurses shall implement a curriculum which provides student instruction in the areas set forth in the Guidelines of NCLEX-RN Item Writers, National Council of State Boards of Nursing, Inc., 676 North St. Clair Street, Suite 550, Chicago, Illinois 60611, 1988, and no later editions, which is incorporated by reference and on file with the Secretary of State.
- ~~B.~~ A nursing program for licensed preparing practical nurses shall implement a curriculum which provides student instruction in the areas set forth in the Guidelines for NCLEX-PN Item Writers, National Council of State Boards of Nursing, Inc., 676 North St. Clair Street, Suite 550, Chicago, Illinois 60611, 1990, and no later editions, which is incorporated by reference and on file with the Secretary of State.
- ~~A.~~ A nursing program shall implement a curriculum that:
1. Reflects its mission and goals;

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2. Is logically consistent between and within courses; and
3. Is designed so that a student who completes the program will have the knowledge and skills necessary to function in accordance with the scope of practice specified in R4-19-401 for a practical nurse or R4-19-402 for a professional nurse.

B. A nursing program shall provide for progressive sequencing of classroom and clinical instruction sufficient to meet the goals of the program.

C. A nursing program shall maintain at least a 75% NCLEX® passing rate for graduates taking the NCLEX-PN® or NCLEX-RN® for the first time within 12 months of graduation. The Board shall issue a notice of deficiency to any program that has a NCLEX® passing rate less than 75% for two consecutive calendar years.

R4-19-207. Application for Provisional ~~Initial~~ Approval of a Nursing Program

A. ~~Before establishing a nursing program a~~ A parent institution seeking to establish a nursing program shall submit an application for proposal approval to the Board that includes the following information and documentation: make application to the Board for initial approval. The initial application for approval shall include the following information:

1. Name and address of the parent applicant institution;
2. Statement of intent to establish a nursing Purpose and classification of nursing program, including the level of the program; and
3. Evidence of compliance or plan for complying with R4-19-201 through R4-19-206;
4. Proposal that includes, but is not limited to, A feasibility study and results indicating the following information:
 - a. Documentation of the present and future need Need for the program in the state community including availability of potential students and need for entry level nurses;
 - b. Need for graduates of the proposed program;
 - e. Availability of students;
 - ~~d.~~ Potential effect ~~Impact~~ on existing nursing programs in a 50-mile radius of the proposed program;
 - c. Organizational structure of the educational institution documenting the relationship of the nursing program within the institution;
 - d. Accreditation status of the parent institution;
 - e. Purpose, mission, and goals of the nursing program;
 - e. Potential for qualified faculty;
 - f. Availability of qualified administrator and faculty;
 - f. Financial commitment to support the initial and continuing program;
 - g. Number of budgeted faculty positions;
 - h. Community support of the scope and philosophy of the program; and
 - ~~g.~~ Source and description of clinical Adequacy of the clinical practicum and academic resources; for the program;
 - i. Anticipated student population;
 - j. Documentation of adequate academic facilities and staff to support the nursing program;
 - k. Evidence of financial resources adequate for the planning, implementation, and continuation of the nursing program; and
 - ~~i.~~ Tentative time schedule for planning and initiating the nursing A timetable for development of the program and the intended date for entry of the first of the first class, beginning;
5. Listing of resources available to fund the program and a projected budget for operation;
6. Number and qualifications of proposed faculty and staff;
7. Anticipated student population;
8. Description of available physical facilities and description of proposed facilities with dates of availability; and
9. Listing of available and suitable clinical facilities within the geographic area, including facility type; size, by number of beds; and type of patients.

B. Representatives of the parent institution shall meet with the Board for review of the application.

B. The Board shall grant proposal approval to any regionally-accredited parent institution that demonstrates:

1. The need for a program.
2. The resources to operate a program.
3. The availability of students, and
4. The availability and resources to secure a qualified administrator and faculty.

C. Upon the Board determining that the application is complete and the requirements of subsection (A) have been met, an applicant for initial approval shall, not less than 3 months prior to the proposed admission of students, do the following:

1. Appoint an administrator;
2. Appoint administrative staff;
3. Appoint nursing faculty for the first year of operation;
4. Submit final program plans, including curriculum, to the Board;
5. Submit to a survey of the educational and clinical facilities by authorized representatives of the Board to determine compliance with R4-19-201 through R4-19-206 and this subsection.

- C.** A parent institution that is denied proposal approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for proposal approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.
- D.** The Board shall grant initial approval to a nursing program upon receipt of the written survey report to the Board from its authorized representatives and a determination by the Board that the program has complied with subsections (A) through (C).
- D.** A parent institution that receives proposal approval may submit an application to the Board for provisional approval that includes the following information and documentation:
1. Name and address of parent institution; and
 2. Plan for compliance with R4-19-201 through R4-19-206, including but not limited to the following:
 - a. Name and qualifications of appointed administrator;
 - b. Names and qualifications of nursing faculty for the first year of operation;
 - c. Final program implementation plan;
 - d. Curriculum, including course outlines, program objectives, and learning outcomes;
 - e. Descriptions of available and proposed physical facilities with dates of availability; and
 - f. List of available clinical facilities within the geographic area, including facility type, size, number of beds, and type of patients.
- E.** Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall grant provisional approval to a parent institution that meets the requirements of R4-19-201 through R4-19-206 if approval is in the best interest of the public. A parent institution that is denied provisional approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.
- E.F.** The provisional initial approval of for a nursing program shall expire expires 12 18 months from the date of the grant of provisional initial approval if a class of nursing students is not admitted by the nursing program within that time.
- G.** If a nursing program fails to apply for full approval within two years of graduating its first class of students, the Board shall rescind its provisional approval. A nursing program whose provisional approval is rescinded may request a hearing by filing a written request with the Board within 30 days of service of the Board's order rescinding the provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.

R4-19-208. Application for Full Approval

- A.** A nursing program seeking full approval shall submit an a-completed application on a form provided by the Board. The application shall that includes provide the following information and documentation:
1. Name The name and address of the parent applicant institution,
 2. Date The date the nursing program graduated its first class of students, and
 3. 15 copies of a self-study report that contains evidence Evidence that the program is in compliance with R4-19-201 through R4-19-206, and evidence that the results received by its graduates on the NCLEX average a passing rate of 80% or better.
- B.** Upon receipt of an application for full approval, the Board or its authorized representatives shall survey the educational and clinical facilities to determine compliance with this Section. The Board shall grant full approval to a nursing program upon receipt of the written survey report to the Board from its authorized representatives and a determination by the Board that the program has complied with the requirements of this Section.
- B.** Following an onsite evaluation conducted according to A.R.S § 41-1009, the Board shall grant full approval to a nursing program that meets the requirements of R4-19-201 through R4-19-206 if approval is in the best interest of the public. A nursing program that is denied full approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for full approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.
- C.** A nursing program shall apply for full approval within a 2- two-year period after graduating its first class or its initial approval may be rescinded by the Board following notice and an opportunity for hearing.

R4-19-209. Nursing Program Change Curriculum Changes for Board-approved Programs

- A.** A nursing program An administrator shall receive approval from notify the Board prior to before implementing any of the following nursing program changes in curriculum or alterations of a current curriculum:
1. Changing the A-change in philosophy, mission or goals, -or objectives which alter present curriculum;
 2. Increasing An-increase or decreasing decrease in the length of the program, -or
 3. Adding or deleting a geographical location of the program. A reorganization of the curriculum.
 4. Increasing the student enrollment capacity by more than 20%.
 5. Changing the level of educational preparation provided, or
 6. Transferring the nursing program from one institution to another.
- B.** The administrator shall submit the The following materials shall be submitted with the request for curriculum nursing program changes:

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1. The rationale for the proposed change and the anticipated effect on the program administrator, faculty, students, resources, and facilities;
2. A summary presentation of the difference the differences between the current practice and proposed curriculum change; and the proposed curriculum change;
3. A timetable for implementation of the change; and
4. The methods of evaluation to which shall be used to determine the effect of the change.

C. The Board shall approve a request for a nursing program change if the program demonstrates that it has the resources to implement the change and the change is consistent with R4-19-201 through R4-19-206. A nursing program that is denied approval of program changes may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for full approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.

R4-19-210. Renewal of Approval of Board-approved Nursing Programs; Continuing Approval

- A.** An approved A nursing program which is approved by the Board but which that is not accredited by an approved national nursing accrediting agency shall annually submit to the Board the following reports and records submit an application packet to the Board at least four months before the expiration of the current approval that includes the following:
1. Name and address of the parent institution.
 2. Current regional accreditation status.
 3. Copy of the current catalog of the parent institution.
 4. Copy of current nursing program policies, and
 5. 15 copies of a self-study report that contains evidence of compliance with R4-19-201 through R4-19-206.
1. A copy of the current college catalog and a report completed by October 31 which shall contain the following information:
- a. Changes in mission and philosophy, goals, and objectives since the last annual report;
 - b. Faculty complement and qualifications of new faculty;
 - e. Changes in curriculum since the last annual report;
 - d. Student enrollment, anticipated number of graduates for the academic year; and,
 - e. Changes in resources and clinical facilities being used since the last annual report.
2. A list of students who have completed all the requirements for graduation, except the successful completion of courses in which they are currently enrolled. The list shall be submitted to the Board not less than three months prior to graduation.
- B.** The nursing program shall submit to a visit and evaluation every four years by the Board or designated Board representatives to determine whether the program continues to be in compliance with the requirements of this Article. The administrator shall submit, not less than 30 days before the visit, the following:
1. One copy the self study report, one copy of the college catalog to each of the site visitors,
 2. Nine copies of the self study report to the Board.
- B.** Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall renew program approval for a maximum of five years if the nursing program meets the criteria in R4-19-201 through R4-19-206 and if renewal is in the best interest of the public. The Board shall determine the term of approval that is in the best interest of the public.
- C.** Between survey visits, if the Board has reasonable cause to believe that a nursing program is not in compliance with this Article, the Board may require a nursing program to submit a summary report addressing the areas of Board concern or submit to a visit by Board representatives to determine continuing compliance with the requirements of this Article.
- C.** If the Board denies renewal of approval, the nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6 and 4 A.A.C. 19, Article 6.
- D.** The administrator shall report in writing to the Board, within 30 days, when a nursing program is transferred from one institution to another. The report submitted to the Board shall contain the following information:
1. Feasibility study substantiating need for change;
 2. Administration and organizational plans;
 3. Anticipated effect on students, faculty, and resources; and
 4. Plans for filing of an application for initial approval by the Board of the nursing program by the institution to which the program was transferred.

R4-19-211. Rescission of Approval of a Nursing Program or a Refresher Program

- A.** The Board shall immediately, upon determining that a nursing program or a refresher program is not in compliance with R4-19-201 through R4-19-214 R4-19-206, R4-19-209, or R4-19-210, provide to the administrator a written notice of deficiencies that which also establishes a reasonable time, based upon the number and severity of deficiencies, to correct the deficiencies. The time No period for correction may not shall exceed 18 months.

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1. The administrator shall, within ~~30~~ 40 days from the date of service receipt of the notice of deficiencies, file a plan of ~~correction with the Board to correct each of the identified deficiencies after consultation with the Board or designated Board representative.~~
 2. The administrator may, within ~~30~~ 40 days from the date of service receipt of the notice of deficiencies, submit a written request for a hearing before the Board to appeal the Board's determination of deficiencies. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.
 3. If the Board's determination is not appealed or is upheld upon appeal, the ~~Board program shall be subject to conduct~~ periodic evaluations by of the program Board during the period time of correction to determine if whether the deficiencies ~~have been~~ are corrected.
- B.** The Board shall, following a Board-conducted survey and report, rescind the approval of a nursing program or refresher program if the nursing program fails to comply with R4-19-201 through ~~R4-19-214~~ R4-19-206, R4-19-209, or R4-19-210, within the time ~~period~~ set by the Board in the notice of deficiencies served upon the program.
1. The Board shall serve the administrator with a written notice of proposed rescission of approval that which shall states the grounds detail the reasons for the rescission. The administrator shall have ~~30~~ 40 days to submit a written request for a hearing ~~before the Board~~ to show cause why approval should not be rescinded. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.
 2. ~~If, following hearing, the Board determines that approval shall be rescinded, Upon the effective date of a decision to rescind program approval,~~ the nursing program shall immediately cease operation and be removed from the official approved-status listing. A nursing program which that has been ordered to cease operations shall assist currently enrolled students in to transfer transferring to an another approved nursing program.
- C.** In addition to the cause ~~set forth~~ in subsection (A), if the Board determines that the effectiveness of instruction to students is impaired, the Board may rescind approval of a nursing program for any of the following causes:
1. For a program which that has been served with a notice of deficiencies within the preceding ~~three~~ 3 years which were thereafter and timely corrected the noticed deficiencies, subsequent noncompliance with the ~~minimum~~ standards in R4-19-201 through ~~R4-19-206, or failure to comply with R4-19-209, or R4-19-210~~ R4-19-214; or
 2. ~~Willful failure to comply with R4-19-209 or R4-19-210; or~~
 - 3-2. Failure to comply with orders of or stipulations with the Board within the time ~~period~~ determined by the Board.

R4-19-212. Nationally Accredited Nursing Programs; Continuing Approval

- A.** ~~An A approved~~ nursing program that which is approved by the Board and which is accredited by an approved national nursing accrediting agency shall submit to the Board evidence of initial accreditation and thereafter shall submit evidence of continuing accreditation status after each successive reaccreditation review.
1. ~~A reaccreditation review shall require a joint visit by a representative of the Board with the national accrediting team. The nursing program administrator shall notify the Board of the scheduled review at least 90 days before the review to allow the Board representative time to schedule the visit.~~
 2. ~~The administrator shall submit to the Board ten copies of the self-study which was prepared for the reaccreditation review and provided to the approved national nursing accrediting agency.~~
 3. ~~A report by the Board representative shall be submitted to the Board for review.~~
- B.** The In addition to the information required in subsection (A), the administrator shall submit the following to the Board any report from a national accrediting agency citing deficiencies or recommendations at the time the report is received by the nursing program.:
1. ~~A copy of all reports supplied to the national accrediting agency at the time of filing with such agency;~~
 2. ~~A copy of the current school catalog;~~
 3. ~~Any report from the national accrediting agency citing deficiencies or recommendations shall be submitted to the Board at the time such report is received by the nursing program.~~
 4. ~~A list of the students who have completed all the requirements for graduation except the successful completion of the courses in which they are currently enrolled. The list shall be submitted to the Board not less than three months prior to graduation.~~
- C.** ~~The administrator shall submit an annual report which shall contain student and graduate enrollments for the year. The report shall be submitted by October 31 of each calendar year.~~
- C.** The administrator of a nursing program shall notify the Board within 10 days of any change in accreditation status.
- D.** The administrator of a nursing program that loses its accreditation status or allows its accreditation status to lapse shall file an application for renewal of approval under R4-19-210 within 30 days of loss of or lapse in accreditation status.
- D.E.** Unless otherwise notified by the Board following receipt and review of the documents required by subsections (A) and (B) through (C), a nursing program shall have continuing continues to have full-approval status. The administrator of a nursing program that has its continuing approval-status rescinded by the Board may request a hearing by filing a written request with the Board within 30 days of service of the Board's order rescinding continuing full-approval status. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.

R4-19-213. Voluntary Termination of a Nursing Program or a Refresher Program

- A. The administrator of a nursing program or a refresher program shall notify ~~submit written notification to~~ the Board within 15 days of when a decision has been made to voluntarily terminate a the nursing program. The administrator shall, at the same time, submit a written plan for terminating the nursing program or refresher program.
- B. The administrator shall assure ~~ensure~~ that the nursing program or refresher program is maintained, including the nursing faculty, until the last student is transferred or has completed ~~completes~~ the nursing program.
- C. Within 15 days after ~~After~~ the termination of a nursing program or refresher program, the administrator shall notify the Board ~~provide to the Board a written notification~~ of the permanent location and availability of all program records.

R4-19-214. Approval of Refresher Reentry Update Programs

- A. An applicant for ~~A person who desires Board~~ approval of a refresher reentry update program for nurses whose licenses have been inactive or expired for five or more years or nurses under Board order to enroll in a refresher program shall submit a completed application ~~apply to the Board on a form furnished by the Board which that~~ provides the following information and documentation:
 - 1. Applicant's ~~The~~ name, address, and telephone number ~~of the applicant;~~
 - 2. Proposed ~~The proposed~~ starting date for the program;
 - 3. Name ~~The name~~ and curriculum vitae of all instructors ~~instructor;~~
 - 4. Complete ~~A complete~~ program course outline;
 - 5. Statement ~~A statement~~ describing ~~detailing~~ the facilities, staff, and resources that the applicant will use ~~shall utilize~~ to conduct the refresher reentry update program; and
 - 6. Evidence of compliance with the requirements of subsection (B).
 - 6. Program curriculum that consists of a minimum of 40 hours of theory and 112 hours of supervised clinical practice for a licensed practical nurse or a minimum of 60 hours of theory and 160 hours of supervised clinical practice for a professional nurse, including:
 - a. A comprehensive review of basic nursing care concepts and skills to include nursing process and theory, medication calculation and administration, and communication;
 - b. Medical and surgical nursing;
 - c. Update of new nursing care concepts and skills;
 - d. Planned and supervised clinical practice experience consistent with course theory and course objectives; and
 - e. Program and participant evaluation.
- B. A reentry update program shall provide the following:
 - 1. A program curriculum which consists of a minimum of 40 hours of theory and 112 hours of supervised clinical practice for a licensed practical nurse, and a minimum of 60 hours of theory and 160 hours of supervised clinical practice for a professional nurse, including:
 - a. A comprehensive review of basic nursing care concepts, nursing process, principles, and skills;
 - b. Medical and surgical nursing;
 - e. Update of new nursing care concepts and skills;
 - d. Planned and supervised clinical practice experience consistent with course theory and course objectives; and
 - e. Program and participant evaluation.
 - 2. Written notification to the Board, within five days of completion of the program by a participant, of the following:
 - a. Name of the participant and whether the participant has successfully completed or failed the program,
 - b. The license or permit number for the participant, and
 - e. Date of completion for the participant.
- ~~C.~~ B. The Board shall approve a refresher reentry update program that meets the requirements of subsection (A), if approval is in the best interest of the public, which meets the requirements of this Section for a term of four two years. An applicant who is denied refresher program approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.
- ~~D.~~ C. The refresher program sponsor shall apply for renewal of approval reapproval in accordance with subsection (A) not later than 90 days before prior to the expiration of the current approval. The sponsor of a refresher program that is denied renewal of approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.
- D. The sponsor of an approved refresher program shall provide written notification to the Board within five days of a participant's completion of the program of the following:
 - 1. Name of the participant and whether the participant successfully completed or failed the program.
 - 2. Participant's license or permit number, and
 - 3. Date of participant's completion of the program.

- ~~E. A program which is denied approval or reapproval may file a written request for hearing with the Board not later than 10 days following receipt of the notice denying approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6.~~

NOTICE OF FINAL RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R7-2-305 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 15-203(A)
- 3. The effective date of the rule:**
November 7, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 6 A.A.R. 4511, December 1, 2000
Notice of Proposed Rulemaking: 7 A.A.R. 1527, April 13, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**
- | | |
|------------|--|
| Name: | Corinne L. Velasquez, Executive Director |
| Address: | 1535 W. Jefferson, Room 418
Phoenix, AZ 85007 |
| Telephone: | (602) 542-5057 |
| Fax: | (602) 542-3046 |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The State Board of Education is proposing to add a new rule, R7-2-305, to implement Senate Bill 1216, amending A.R.S. § 15-203. The law, as amended, requires the State Board of Education to ensure that students in grades 4 through 6, at the commencement of the first class of the day, recite a specified passage from the Declaration of Independence.
- 7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the 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. The summary of the economic, small business and consumer impact:**
There will be no economic or small business impact related to this rule.
- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
None
- 11. A summary of the principal comments and the agency response to them:**
There were no written comments received related to 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 rules:**
None

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

No

15. The full text of the rule follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS

Section

R7-2-305. ~~Repeated~~ Declaration of Independence

ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS

R7-2-305. ~~Repeated~~ Declaration of Independence

The governing board of each common school district shall adopt policies that:

1. Require pupils to recite the following passage from the Declaration of Independence for pupils in grades 4 through 6 at the commencement of the first class of the day in the schools: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."; and
2. Enables the pupil or the parent or legal guardian of the pupil to object to reciting the passage of the Declaration of Independence, and that specifies that a pupil shall not be required to participate if the pupil or the pupil's parent or guardian objects.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

PREAMBLE

1. Sections Affected

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

Rulemaking Action

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

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

Authorizing statute: A.R.S. §§ 36-136(A)(7), and 36-136(F)
Implementing statutes: A.R.S. §§ 28-1323 and 28-1324

3. The effective date of the rules:

November 9, 2001

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 2524, June 15, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 3018, July 13, 2001

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

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

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Telephone: (602) 542-0749
Fax: (602) 542-0759
E-mail: gshiple@hs.state.az.us
or
Name: Kathleen Phillips
Rules Administrator
Address: Arizona Department of Health Services
1740 W. Adams Street, Room 102
Phoenix, AZ 85007
Telephone: (602) 542-1264
Fax: (602) 364-1150
E-mail: kphilli@hs.state.az.us

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

A.R.S. § 28-1324 requires the Department to adopt rules prescribing methods and procedures for the administration of breath tests to detect the amount of alcohol in the blood of an individual, including the approval of quantitative breath-testing devices and procedures for ensuring the accuracy of results obtained from approved breath-testing devices. The purpose of the statute is to ensure the accuracy and reliability of breath testing devices and to facilitate the apprehension and prosecution of drivers who operate a motor vehicle under the influence of alcohol. R9-14-403 and R9-14-404 implement the statute by providing devices, methods, and procedures approved by the Department to detect the amount of alcohol in the blood of an individual. On May 26, 1999, under the authority of A.A.C. R9-14-403(K), the Director approved the Intoxilyzer 5000EN as a quantitative alcohol breath-testing device and approved a standard operational procedure, two standard calibration check procedures, and two standard quality assurance procedures for its operation. The Intoxilyzer 5000EN and the standard operational procedure, calibration check procedures and standard quality assurance procedures were added to the rules by the emergency rulemaking process, filed with the Secretary of State's office on May 24, 2001. The purpose of this rulemaking is to add the Intoxilyzer 5000EN and the standard operational procedure, calibration check procedures, and standard quality assurance procedures to the rules by the regular rulemaking process.

7. A reference to any study that the agency relied on its evaluation of or justification for the rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Not applicable

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:

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

The Department's cost for the preparation of the rule package is moderate and includes writing and printing drafts, consulting stakeholders, and copying and mailing materials.

If this regular rulemaking does not proceed, a jurisdiction that currently uses the Intoxilyzer 5000EN would bear the costs of purchasing approved devices, training personnel on the approved devices, and preparing the devices for use. These costs would be substantial. Additionally, the time and expense involved in that replacement process will significantly impair their ability to prosecute drivers who are operating a motor vehicle while under the influence of alcohol.

Operators who are currently approved only to use the Intoxilyzer 5000EN may be minimally to moderately affected if the jurisdictions that employ them are not able to temporarily move them to other positions until they have been trained and tested on another approved device, and applied for and received approval from the Department to operate another approved device.

The public will benefit substantially by these amended rules, because jurisdictions that use the Intoxilyzer 5000EN will be able to continue to use the device. The public will not be required to subsidize the costs incurred by the jurisdictions to replace the device and retrain the operators, and the safety of the driving public will be maintained.

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

The Department made several minor technical and grammatical changes in order to conform to the Secretary of State's requirements for form. The Department has also made the following changes:

1. The table of contents to Article 4, which was inadvertently left out of the proposed rulemaking, was added. This is a clarifying, and not a substantive change.
2. In exhibit Q-EN, the word "model" was added between the words "Intoxilyzer" and "5000EN", in the heading. This is a clarifying, and not a substantive change.
3. In exhibit QQ-EN the word "model" was added between the words "Intoxilyzer" and "5000EN", in the heading. This is a clarifying, and not a substantive change.
4. In exhibits Q-EN and QQ-EN, the term at the end of the heading, "STANDARD QUALITY ASSURANCE PROCEDURE" is removed because it is redundant. This is not a substantive change.
5. In exhibit WWW-EN, "EN" was added after the phrase "Intoxilyzer 5000", in the heading. This was a typographical error, and is not a substantive change, as it is clear from the text and from the rest of the exhibit, that the exhibit relates to the Intoxilyzer 5000EN.

The Department has not made any substantial change in the text of the final rules from that in the proposed rules.

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

The Department did not receive any written or oral comments.

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 rules:

None

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

Yes. The Intoxilyzer 5000EN and the standard operational procedure, calibration check procedures and standard quality assurance procedures were added to the rules by the emergency rulemaking process, filed with the Secretary of State's office on May 24, 2001. The emergency rules will expire on November 20, 2001 unless they are renewed pursuant to A.R.S. § 41-1026(D).

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 4. DETERMINATION OF ALCOHOL CONCENTRATION

Section

R9-14-403. Breath Testing and Collection Devices

R9-14-404. Testing Procedures

Exhibit P-EN. Standard Quality Assurance Procedures - Intoxilyzer Model 5000EN - Standard Calibration Check Procedure

Exhibit PP-EN. Standard Quality Assurance Procedures - Intoxilyzer Model 5000EN - Standard Calibration Check Procedure

Exhibit Q-EN. Standard Quality Assurance Procedures - Intoxilyzer Model 5000EN

Exhibit QQ-EN. Standard Quality Assurance Procedures - Intoxilyzer Model 5000EN

Exhibit WWW-EN. Standard Operational Procedure - Intoxilyzer Model 5000EN - Duplicate Test

ARTICLE 4. DETERMINATION OF ALCOHOL CONCENTRATION

R9-14-403. Breath Testing and Collection Devices

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

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

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

R9-14-404. Testing Procedures

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

EXHIBIT P-EN

THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. R9-14-404(A)

ARIZONA DEPARTMENT OF HEALTH SERVICES

STANDARD QUALITY ASSURANCE PROCEDURES - INTOXILYZER MODEL 5000EN

STANDARD CALIBRATION CHECK PROCEDURE

AGENCY _____ DATE _____ TIME _____

INTOXILYZER SERIAL NO. _____ LOCATION _____

Q A SPECIALIST _____
(print name)

1. a. Ensure the dry gas tank is attached to the instrument and contains a known alcohol standard. _____ AC.
- OR
- b. Pour a standard alcohol solution of known value, _____ AC, into a clean dry simulator and assemble the simulator. Ensure that a tight seal is made. Turn on the simulator and allow temperature to reach 34 C +/- 0.2 C.
2. Intoxilyzer 5000EN display reads "PUSH BUTTON ...".
3. Ensure Intoxilyzer 5000EN calibration standard is set for "G" for gas or "W" for wetbath.
4. Type "C" and press the ENTER key on the keyboard.
5. If display reads "INSERT CARD", do so.
6. Air blank completed.
7. Calibration check completed. Test results 0. _____ AC.
8. Air blank completed.
9. When display reads "TEST COMPLETE" remove printed record. Attach the record to the completed checklist.
10. Type "Q" and press the ENTER key on the keyboard.

SIGNATURE _____

DHS/BLS/Form C144

EXHIBIT PP-EN

THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. R9-14-404(A)

ARIZONA DEPARTMENT OF HEALTH SERVICES

STANDARD QUALITY ASSURANCE PROCEDURES - INTOXILYZER MODEL 5000EN

STANDARD CALIBRATION CHECK PROCEDURE

1. a. Ensure the dry gas tank is attached to the instrument and contains a known alcohol standard.

OR

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

DHS/PLS/Form C145

EXHIBIT Q-EN

THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. 49-14-404(A)

ARIZONA DEPARTMENT OF HEALTH SERVICES

STANDARD QUALITY ASSURANCE PROCEDURES - INTOXILYZER MODEL 5000EN

AGENCY _____ DATE _____ TIME _____
INTOXILYZER SERIAL NO. _____ LOCATION _____
Q A SPECIALIST _____
(Print name)

1. Display reads "PUSH BUTTON ...".

DIAGNOSTIC TESTS

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

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

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

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

OPERATIONAL TESTS

1. Alcohol-free subject test result 0. _____ AC.

2. Error recognition logic system functioning.

Invalid test printed.

3. Proper sample recognition system.

Invalid test printed.

Deficient sample printed.

4. Calibration standard 0. _____ AC. Result 0. _____ AC.

Instrument is operating properly and accurately. YES _____ NO _____

COMMENTS

SIGNATURE

DHS/BLS/Form C146

EXHIBIT QQ-EN

THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. R9-14-404(A)

ARIZONA DEPARTMENT OF HEALTH SERVICES

STANDARD QUALITY ASSURANCE PROCEDURES – INTOXILYZER MODEL 5000EN

1. Display reads “PUSH BUTTON ...”.

DIAGNOSTIC TESTS

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

OPERATIONAL TESTS

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

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

DHS/BLS/FORM C147

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EXHIBIT WWW-EN

OPERATIONAL CHECKLIST

ARIZONA DEPARTMENT OF HEALTH SERVICES

STANDARD OPERATIONAL PROCEDURE – INTOXILYZER MODEL 5000 EN

DUPLICATE TEST

AGENCY

NAME OF SUBJECT _____ DATE _____

INSTRUMENT SERIAL NO. _____ LOCATION OF TEST _____

OPERATOR _____

<u>TEST RESULTS</u>	<u>0.</u> _____ <u>AC</u>	<u>TIME</u> _____
	<u>0.</u> _____	_____
	<u>0.</u> _____	_____

Immediately preceding the administration of the tests, the subject underwent a 15-minute deprivation period from _____ to _____ by _____.

- 1. Display reads "PUSH BUTTON TO START TEST" or "PRESS START TEST BUTTON TO START NEXT TEST". Ensure breath tube is warm to touch.
- 2. Press Start Test button.
- 3. If display reads "INSERT CARD", do so.
- 4. Input information in response to display.
- 5. Air blank completed.
- 6. If the display reads "IS SIMULATOR SOLUTION TEMPERATURE 34 C +/- 0.2 C?", check temperature using thermometer, type Y or N; verify reference standard check completed.
- 7. Insert the mouthpiece into the breath tube. Have the subject blow as long as possible. Record AC result above.
- 8. Air blank completed.
- 9. a. If display reads "WAIT", go to step 11
 OR
 b. If display reads "TEST COMPLETE", go to step 10
 OR
 c. If display reads "IS SIMULATOR SOLUTION TEMPERATURE 34 C +/- 0.2 C?", check temperature using thermometer, type Y or N; verify reference standard check completed, go to step 10.
- 10. When the display reads "TEST COMPLETE", remove the test record.
- 11. Repeat steps 1 through 9, as necessary (see note below).

Note: Duplicate tests shall be administered at intervals of not less than 5 minutes nor more than 10 minutes apart. Two consecutive tests shall agree within 0.020 alcohol concentration.
DHS/BLS/Form C148

NOTICE OF FINAL RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

PREAMBLE

- 1. Section Affected**
- | | <u>Rulemaking Action</u> |
|-----------|---------------------------------|
| R13-5-101 | Amend |
| R13-5-302 | Amend |
| R13-5-304 | Amend |
| R13-5-305 | Amend |
| R13-5-312 | Amend |
| R13-5-314 | Amend |
| R13-5-316 | Amend |
| R13-5-506 | Amend |
| R13-5-804 | 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. § 41-1830.12(A)(3)
Implementing statutes: A.R.S. §§ 41-1714, 41-1830.12, 41-1830.14, and 38-842(19)(a)
- 3. The effective date of the rules:**
November 6, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 3488, August 10, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 3456, August 10, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Commander C. H. Johnston, Business Manager |
| Address: | Law Enforcement Merit System Council
P.O. Box 6638
Phoenix, AZ 85005 |
| Telephone: | (602) 223-2286 |
| Fax: | (602) 223-2096 |
| E-mail | Cjohnston@dps.state.az.us |
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**
The Law Enforcement Merit System Council (Council) completed a major rewrite of its rules on May 10, 2000. It was anticipated that some minor revisions would be needed following such a major rewrite. These revisions are intended to clarify the rules.

The previous rules contained a provision for special limited term employment. This rule allowed an agency to hire and train officers and retain them in a probationary status for one full year after graduation from the Peace officer Standards and Training (P.O.S.T.) Academy. When the new rules were made, this rule was deleted. A part of this rule-making will reestablish this rule. This also necessitates a number of revisions to the definitions.

R13-5-314 is amended to clarify the rule dealing with an intermittent employee.

The Arizona Legislature amended the statutes during the 2001 legislative session authorizing the Council to make rules that permit the transfer of annual leave from an employee within an agency under the rules of the Council to a family member who works for another state agency. This rulemaking includes the rule necessary for this to occur.

There are some minor changes in other areas of the rules in order to meet the needs of the Council and the agencies affected by Council rules.
- 7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
Not applicable

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 revision in R13-5-302 merely moves a subsection from a specific rule (R13-5-304) into the general rule (R13-5-302). This rule was intended to apply to all examinations. This does not create any additional costs.

The revision in R13-5-305(I) is intended to establish a time limit for an employee to request the Council to review the business manager's decision. This should have a positive impact on everyone involved because it more clearly defines the parameters for filing a request but should have no cost impact.

The hiring and retention of good candidates to serve as police officers is one of the greatest responsibilities of the Department of Public Safety. The Council rules governing this process must provide the agency with the ability to hire, train, and promote an employee into the classification of officer and still retain the ability to use a full probationary period to determine whether the employee is qualified to be an officer. The revisions to R13-5-305(R), R13-5-312, and R13-5-136 all relate to the hiring of a cadet officer and the movement of that cadet officer into the classification of officer. This should result in a cost saving to the agency hiring the new officer by giving that agency ample time to evaluate the worth of the officer. It should also provide a major impact upon the citizens of Arizona by giving the agency ample time to verify the employee's ability to function as a police officer in the state of Arizona.

The revision to R13-5-314 clearly defines the method of hiring an intermittent employee, the status of an intermittent employee, and the eligibility of an intermittent employee to receive benefits. This rule should result in a cost saving to the agency. It allows the agency to retain a pool of intermittent employees who can respond on short notice. This relieves the agency from the need to have a greater number of full-time employees. There is a negative impact on the intermittent employee by declaring an intermittent employee ineligible to receive benefits. However, this is a positive impact to the agency. The agency will not be responsible for paying sick leave and annual leave benefits to the intermittent employee.

The revision to R13-5-506 brings the Council rules in line with the intent of the legislature. The legislature enacted legislation during the 2001 legislative session authorizing the Council to adopt rules allowing for the transfer of annual leave between agencies of the state. This will have a positive impact on employees of the state of Arizona who need donated leave. Family members may donate annual leave to another family member in another agency. There does not appear to be a major impact on the agencies involved because the agencies would have to pay the cost of the annual leave in any event. Any costs involved would be transferred with the annual leave to the agency of the receiving employee.

There is no cost involved with the revision to R13-5-804. This is merely a change to accommodate the classification title changes that have occurred.

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

There are no substantive changes between the proposed rules and the final rules. Minor technical and grammatical changes have been made at the suggestion of the G.R.R.C. staff.

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

The Council did not receive any comments on the 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 rules:

None

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

No

15. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

ARTICLE 1. GENERAL PROVISIONS

Section

R13-5-101. Definitions

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ARTICLE 3. EMPLOYMENT

Section

- R13-5-302. Examinations
- R13-5-304. Employment
- R13-5-305. Promotion
- R13-5-312. Limited Term Appointments
- R13-5-314. Intermittent Appointments
- R13-5-316. Probation

ARTICLE 5. EMPLOYEE LEAVE

Section

- R13-5-506. Donated Annual Leave

ARTICLE 8. SEPARATION FROM EMPLOYMENT

Section

- R13-5-804. Public Safety Personnel Retirement System Eligibility

ARTICLE 1. GENERAL PROVISIONS

R13-5-101. Definitions

In this Chapter, unless otherwise specified, the following terms mean:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
25. No change
26. No change
27. No change
28. No change
29. No change
30. No change
31. No change
32. No change
33. No change
34. No change
35. No change
36. No change
37. No change
38. No change
39. No change

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40. No change
41. No change
42. No change
43. No change
44. No change
45. No change
46. “Initial probation” means a probationary period required of a new employee to an agency, an employee appointed to a classification as a special limited term employee, or an employee appointed to the classification of officer who has completed the terms of a special limited term appointment.
47. No change
48. No change
49. No change
50. No change
51. No change
52. No change
53. No change
54. No change
55. No change
56. No change
57. No change
58. No change
59. No change
60. No change
61. No change
62. No change
63. No change
64. No change
65. No change
66. No change
67. No change
68. No change
69. No change
70. No change
71. No change
72. No change
73. No change
 - a. No change
 - b. No change
 - c. No change
74. No change
75. No change
76. No change
77. No change
78. No change
79. No change
80. No change
81. No change
82. “Special limited term appointment” means an appointment to the classification of cadet officer or officer trainee pending the completion of requirements for the classification of officer.
- ~~82-83.~~ “State” means the state of Arizona.
- ~~83-84.~~ “Standard performance” means a rating given to an employee who meets the expected level of performance needed to accomplish the objectives of a position.
- ~~84-85.~~ “Standardized scoring” means a statistical method used to ensure that the various components of a multi-phased examination receive their proper weights.
- ~~85-86.~~ “Suspension of pay” means the disciplinary action of withholding an employee’s pay for a specified period.
- ~~86-87.~~ “Telecommuting” means an employee performing assigned work at a location other than the employee’s regular work location, working from a site away from the office using a telephone or a telephone connection to operate a computer to carry on the function of the job.

~~87-88.~~ "Transfer" means the movement of an employee from the employee's current position to another position in the same classification.

~~88-89.~~ "Uncovered appointment" means an appointment to a job or function by the Governor or by an agency head with the concurrence of the Governor.

~~89-90.~~ "Uncovered employee" means an employee who serves at the pleasure of the Governor.

~~90-91.~~ "Veteran" means an individual who served in the armed forces of the U.S. and was discharged from military service under honorable conditions after more than 6 months of active duty and as defined in 37 U.S.C.A. § 101 and A.R.S. § 38-492.

~~94-92.~~ "Work week" means a 40-hour time period an employee is assigned to work between Saturday and Friday, including actual time worked and any leave time taken.

R13-5-302. Examinations

- A. No change
- B. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- D. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- G. No change
 - 1. No change
 - 2. No change
- H. No change
 - 1. No change
 - 2. No change
- I. No change
- J. No change
- K. Correcting a manifest error. The business manager shall correct a manifest error that occurs in developing, using, or maintaining an eligibility list. The business manager shall not change the effective date of an eligibility list to correct a manifest error discovered after posting the list.

R13-5-304. Employment

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
- ~~G. Correcting a manifest error. The business manager shall correct a manifest error that occurs in developing, using, or maintaining an eligibility list. The business manager shall not change the effective date of a list in order to correct an error discovered after posting the eligibility list.~~

R13-5-305. Promotion

- A. No change

- B. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - 2. No change
- C. No change
- D. No change
- E. No change
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- G. No change
- H. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. Within 10 days of a review, a competitor may file a written notice with the business manager questioning examination results on the basis of irregularity, bias, fraud, or scoring error and explaining the basis for any challenge. The business manager shall correct any error in the scoring of the examination. ~~An employee may request that the Council review the business manager's decision.~~
- I. Grievance of business manager's decision. An employee who is aggrieved by a decision of the business manager may grieve the decision to the Council. A grievance of the business manager's decision shall be filed with the Council office no later than 20 days after notice of the decision is given. The Council shall review the grievance as outlined in R13-5-602 (E).
- ~~I.~~J. Military leave. Human Resources shall allow an employee returning from military leave to take any examination that the employee could have taken if military service had not intervened. If the employee passes the examination, the business manager shall add the employee's name to the appropriate internal eligibility list.
- ~~J.~~K. Establishing an internal list. Human Resources shall prepare an internal list for a promotional classification with competitor's names arranged in descending order of the competitor's final score.
- ~~K.~~L. Establishing a list in case of a tie. If 2 or more competitors receive the same rating in an examination, the competitor's names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest weight. If a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.
- ~~L.~~M. Approval of list. Human Resources shall submit the internal list to the business manager for approval and certification.
- ~~M.~~N. Notifying a candidate. When the list is certified by the business manager, Human Resources shall notify a candidate of the exam results and the candidate's relative ranking on the list.
- ~~N.~~O. Duration of a list. A list shall remain in force consistent with R13-5-304(E).
- ~~O.~~P. Revising a classification. If the Council orders that a classification be revised, Human Resources shall establish a new list for the revised classification and cancel any existing list.
- ~~P.~~Q. Removing a candidate from an internal list. The business manager shall remove a candidate from an internal list if:
 - 1. The candidate fails to maintain required qualifications for the classification,
 - 2. The candidate resigns from agency service, or
 - 3. The internal list expires.
- R. Promotion to the classification of officer. An employee shall be promoted to the classification of officer upon certification by the Peace Officer Standards and Training Board.
- ~~Q.~~S. Promotion for a commissioned classification. An agency may establish a job-interest card system for a promotion in a commissioned classification. If a candidate submits a job-interest card indicating interest in only a specified position, that candidate shall not be considered for any other position except as outlined in this subsection.
 - 1. An agency head shall offer a promotional position to a candidate ranking highest on the promotional eligibility list who filed a job-interest card for that position.
 - 2. If there are no job-interest cards for a specific position, an agency head shall offer a promotional position to the candidate ranking highest on the promotional eligibility list. If the employee highest on the promotional list declines the promotion, the agency head shall offer the position to the employee next highest on the list until all candidates on the promotion list are offered the position.
 - 3. For a location that has 2 or fewer positions, an agency head may appoint any promotional candidate residing in that location.

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4. If a candidate declines an offer of promotion, the business manager shall move that candidate's name to the bottom of the promotional eligibility list.
5. If all candidates on a promotional eligibility list decline a promotion, an agency head shall make a second offer to all candidates on the list.
6. If all candidates on the list decline the second offer, the business manager shall cancel the list. Human Resources shall then initiate a process to create a new list for the classification.

~~R.T.~~Promotion for a civilian classification. Civilian promotions are conducted under R13-5-308 and R13-5-309.

R13-5-312. Limited-Term Appointments

- A. No change
- B. No change
- C. No change
- D. No change
 1. No change
 2. No change
- E. Special limited term. A candidate for the classification of officer may be employed in a special limited term position as a cadet officer or officer trainee for a maximum of three years pending completion of requirements for the classification of officer.
 1. Cadet officer. A candidate who is appointed to attend an agency's training academy shall be employed as a cadet officer. Upon successful completion of the training academy and certification as a peace officer by the Peace Officers Standards and Training Board, the candidate shall be reclassified to the classification of officer.
 2. Officer trainee. A candidate who is not appointed to a training academy shall be employed as an officer trainee if:
 - a. The candidate is between 18 and 21 years of age. If while employed as an officer trainee, the candidate reaches the age of 21 years, and has achieved a performance rating of standard or above for the prior year, the employee shall be promoted to the classification of cadet officer when an opening in the training academy is available.
 - b. The candidate is 21 years of age or older, is on the employment list for the classification of cadet officer, and is waiting for an opening in the agency's training academy. The candidate shall remain on the cadet officer employment list and shall be appointed to the classification of cadet officer when an opening in the training academy is available.

R13-5-314. Intermittent Appointment

- A. Intermittent position. When an agency head needs a person to work on an intermittent or irregular basis, the agency head shall request a list of candidates for intermittent appointment. An applicant who meets the minimum qualifications and indicates willingness to accept the terms of intermittent employment shall be placed on an eligibility list for selection to an intermittent position.
- B. For the purposes of this Section, an intermittent employee means an employee in an intermittent position.
- C. Establishing an intermittent employment list. The business manager shall establish an intermittent employment list, as follows:
 1. An employee who leaves an agency may be placed on an intermittent employment list for a classification the employee previously held. The employee shall not be required to take an examination to be placed on an intermittent employment list if the request is received within one year from the time the employee left that classification and the employee's last evaluation in that classification was standard or above.
 2. An employee who is reassigned or promoted to another classification may be placed on an intermittent employment list for the classification previously held. The employee shall not be required to take an examination to be placed on an intermittent employment list if the request is received within one year from the time the employee left that classification and the employee's last evaluation in that classification was standard or above.
 3. The business manager shall establish an intermittent employment list in the same manner as an employment eligibility list.
- D. Benefits for an intermittent employee. An employee in an intermittent position shall not receive the benefits afforded a full or part-time employee. An intermittent employee shall not acquire annual or sick leave benefits and shall not receive credit for time in the intermittent position for the purposes of pay adjustments in the classification.
- E. Eligibility for promotion. An intermittent employee shall not compete in a promotional process.
- F. Rate of pay. The agency head shall determine the rate of pay for an intermittent employee.

R13-5-316. Probation

- A. Initial probation. An employee shall serve an initial probationary period of 12 months. Time spent in a special limited term position does not count toward the initial probation in an officer classification.
- B. No change
- C. No change
- D. No change
- E. No change

- F. No change
- G. No change
- H. No change
- I. No change
- J. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- K. No change
- L. No change
- M. No change
- N. No change
 - 1. No change
 - 2. No change

O. Probation for a special limited term employee. An employee in a special limited term position pending completion of requirements for the classification of officer shall serve an initial probation throughout the duration of the special limited term appointment. An employee promoted to officer from a special limited term position shall serve a 1 year initial probation in the officer classification.

R13-5-506. Donated Annual Leave

- A.** Definitions. In this Section “Recipient employee” means an agency employee who meets the eligibility requirements in A.R.S. § 41-1830.12(C).
- B.** Qualifications. An employee may give accrued annual leave to a recipient employee.
- C.** Requesting donated leave. An employee may submit a written request for donated annual leave under the agency’s policy.
- D.** Donating and converting leave. When notified of an employee’s need, an employee may donate accrued annual leave by submitting a written notice to Human Resources with the required information under the agency’s policies. The donated hours are converted by multiplying the donor’s hourly pay by the number of hours donated, and dividing the product by the hourly pay of the recipient employee. Converted hours are added to the recipient’s sick leave balance as needed.
- E.** Surplus donations. When the need for donated leave passes, Human Resources shall return any unused donated leave to the donors on a pro rata basis, unless the donors give written notice to Human Resources to deposit their unused hours into an agency “donated leave bank” to help other employees in the future.
- A.** Definitions for purposes of this Section:
 - 1. “Recipient” means an employee in the same agency as a donating employee or a family member of the donating employee who is employed in another agency, department, board, or commission.
 - 2. “Family member” means a spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.
 - 3. “Immediate family” means a spouse, child, brother, sister, natural parent, stepparent, adoptive parent, or an individual for whom a recipient has legal guardianship.
 - 4. “Extended illness or injury” means an employee is unable to perform the employee’s job duties for between 3 consecutive weeks and 6 consecutive months.
- B.** Donating leave. An employee may donate accrued annual leave to a recipient who qualifies for donated leave under the personnel rules of the agency where the recipient is employed and who has exhausted all available leave balances. An employee may donate accrued annual leave by submitting a written notice to the Human Resources section of the donating agency with the information required under the agency’s policies.
- C.** Qualifying for donated leave. An employee may request and use donated annual leave if the employee has an extended illness or injury or a member of the employee’s immediate family has an extended illness or injury and the employee has exhausted all available leave balances.
 - 1. An employee requesting donated leave shall submit a written request for donated leave under the agency’s policy.
 - 2. An employee receiving donated leave shall not use more than six consecutive months of donated leave per illness or injury. If the employee who is ill or injured applies for long-term disability (LTD) insurance by the end of the 5th month of leave, the employee may continue to use donated leave until an LTD determination is made.
- D.** Calculating donated leave. An agency shall convert the number of hours of annual leave donated in proportion to the hourly rate of pay of the donating employee and the recipient. Donated hours are converted by multiplying the number of hours donated by the donating employee’s hourly rate of pay and dividing the result by the recipient employee’s hourly rate of pay. An agency shall add hours converted to the recipient’s sick leave balance as needed.
- E.** Distributing unused leave. If a recipient separates from state service before the recipient uses all donated leave, no longer qualifies for donated leave, or otherwise no longer needs donated leave, the agency shall return unused leave to the con-

tributor of the donated leave on a pro-rata basis, unless a contributor gives written notice to Human Resources to deposit the unused leave into an agency "donated-leave bank" for use of other employees in the future.

R13-5-804. Public Safety Personnel Retirement System Eligibility

A. Membership in the Arizona Public Safety Personnel Retirement System is designated by the Council under A.R.S. § 38-842 (19)(a). Commissioned employees in the following classifications are eligible for membership in the Public Safety Personnel Retirement System:

1. Director,
2. Deputy Director,
3. Assistant Director,
4. Bureau Chief,
5. Commander, Major
- ~~6. Captain~~
- ~~7-6. Lieutenant,~~
- ~~8-7. Sergeant II, Sergeant I~~
- ~~9-8. Sergeant I, Sergeant H~~
- ~~10-9. Officer,~~
- ~~11-10. Fixed Wing Pilot, and~~
- ~~12-11. Rotary Wing Pilot,~~

- B. No change
1. No change
 2. No change

NOTICE OF FINAL RULEMAKING

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

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

PREAMBLE

- 1. Section Affected** **Rulemaking Action**
R14-4-114 Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. §§ 44-1821 and 44-1844
Implementing statute: A.R.S. § 44-1844
Constitutional authority: Arizona Constitution Article XV, §§ 6 and 13
- 3. The effective date of the rule:**
November 5, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 6 A.A.R. 4273, November 13, 2000
Notice of Proposed Rulemaking: 7 A.A.R. 1300, March 23, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Sharleen A. Day, Associate General Counsel
Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, AZ 85007-2996
Phone: (602) 542-4242
Fax: (602) 594-7421
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Arizona Corporation Commission (Commission) amends Section R14-4-114 (rule 114) to specify the recognized manuals of securities for purposes of the exemption in A.R.S. § 44-1844(A)(11). A.R.S. § 44-1844(A)(11) exempts from registration requirements a transaction in securities listed in a recognized manual of securities designated by the

Commission by rule or order. Rule 114 designates those manuals of securities recognized by the Commission for purposes of the exemption. The Commission amends rule 114 to reflect the name changes in many of the manuals from Moody's to Mergent's, and to eliminate reference to manuals that are no longer in print.

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

Not applicable

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

The economic, small business, and consumer impact statement for rule 114 analyzes the costs, savings, and benefits that accrue to the Commission, the office of the attorney general, the regulated public, and the general public. With the adoption of the rule, the impact on established Commission procedures, Commission staff time, and other administrative costs doesn't change. The estimated additional cost to the office of the attorney general doesn't change. The benefits provided by rule 114 are nonquantifiable. Rule 114 should benefit the Commission's relations with the regulated public because of specified exemption standards. The public will benefit from the continuation of certain standards for exemptions. The Commission anticipates that the rulemaking will not increase monitoring, recordkeeping, or reporting burdens on businesses or persons. The costs of implementation or enforcement are not increased or are only marginally increased. Please provide comment regarding the accuracy of this summary to the individual named in item #5 above.

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

Not applicable

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

The Commission received one comment letter in support of the Commission's efforts to amend the rule to reflect the change in ownership of the securities manuals from Moody's to Mergent's.

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

None

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

Not applicable

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

Not applicable

14. 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

R14-4-114. ~~Listing of certain publications as constituting~~ Recognized ~~recognized~~ manuals of securities, ~~as used in A.R.S. § 44-1844(A)(11)~~

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-114. ~~Listing of certain publications as constituting~~ Recognized ~~recognized~~ manuals of securities, ~~as used in A.R.S. § 44-1844(A)(11)~~

A. For purposes of A.R.S. § 44-1844(A)(11), each ~~Each~~ of the following publications is approved by the Commission as a recognized manual of securities, ~~within the meaning of that term as used in A.R.S. § 44-1844(A)(11):~~

1. ~~Mergent's~~ Moody's Industrial Manual,;
2. ~~Mergent's~~ Moody's Municipal and Government Manual,;
3. ~~Mergent's~~ Moody's Transportation Manual,;
4. ~~Mergent's~~ Moody's Public Utility Manual,;
5. ~~Mergent's~~ Moody's Bank and ~~Finance~~ Financing Manual,;
6. Standard & Poor's Corporation Records,;
7. ~~Walker's Manual of Western Corporations.~~

B. A "publication" for purposes of this Section includes electronic publication formats that are as readily available to the general public as the printed version, including CD-ROM and electronic dissemination over the Internet.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE - GENERAL ADMINISTRATION

PREAMBLE

- 1. Sections Affected**

Article 5	<u>Rulemaking Action</u>
R15-10-501	New Article
R15-10-502	New Section
R15-10-503	New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 42-1005
Implementing statutes: A.R.S. §§ 42-1103.03, 42-1105, 42-1105.01, 42-1105.02, 42-1125.01
- 3. The effective date of the rules:**

November 8, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 7 A.A.R. 3491, August 10, 2001
Notice of Rulemaking Docket Opening: 7 A.A.R. 3615, August 17, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 3527, August 17, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Robyn Cotrona, Chief Income Tax Counsel
Address: Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007
Telephone: (602) 542-3345, ext. 7506
Fax: (602) 542-3258
E-mail: CotronaR@revenue.state.az.us
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Department decided to initiate this rulemaking package to enhance the Department's electronic filing program for individual income tax and make it similar to the Internal Revenue Service's electronic filing program for individual income tax. The rulemaking package provides definitions of terms that are used in the Department's electronic filing program for individual income tax. The rulemaking package also authorizes electronic return preparers to maintain paper documents that are part of an electronic individual income tax return and would otherwise be sent to the Department. Finally, the rulemaking package provides taxpayers with information regarding the use of the taxpayer's electronic signature to the taxpayer's federal return to sign the taxpayer's Arizona individual income tax return.
- 7. Reference to any study that the agency relied on in its evaluation of or justification for the final rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None
- 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:**

Generally, the benefits of the rulemaking package will outweigh the burdens. For some taxpayers, there will be no benefit or burden because the electronic filing program procedures have not changed for them. Electronic return preparers will find that the benefits of the rulemaking package outweigh the burdens. Small businesses should find that the benefits of the rulemaking package will outweigh the burdens. Consumers should experience no impact from the rulemaking package.

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

Minor grammatical or stylistic changes were made at the request of the G.R.R.C. staff.

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

The Department did not receive any written or verbal comments on the rule action after the publication of the rule-making in 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. Incorporations by reference and their location in the rules:

None

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

No

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE - GENERAL ADMINISTRATION

ARTICLE 5. ELECTRONIC FILING PROGRAM

Section

R15-10-501. Definitions

R15-10-502. Recordkeeping Requirements

R15-10-503. Electronic Signatures for Individual Income Tax

ARTICLE 5. ELECTRONIC FILING PROGRAM

R15-10-501. Definitions

In addition to the definitions provided in A.R.S. §§ 42-1103.01, 43-1103.02, 43-1103.03 and 42-1105.02, unless the context provides otherwise, the following definitions apply to this Article:

1. "Electronic return, statement, or other document" means all data entered into a return, statement, or other document that is prepared using computer software and transmitted electronically to the Department.
2. "Electronic return transmitter" includes a person who is part of the chain of transmission of an electronic return, statement, or other document from the taxpayer or electronic return preparer to the Department even though the person did not receive the transmitted return, statement, or other document directly from the taxpayer or electronic return preparer.

R15-10-502. Recordkeeping Requirements

For each electronic return of individual income tax filed with the Department, the electronic return preparer shall keep the documents listed in A.R.S. § 42-1105(F) for four years following the later of the return's due date or the date the return was filed with the Department.

R15-10-503. Electronic Signatures for Individual Income Tax

A. If a taxpayer electronically signs the taxpayer's federal individual income tax return, the taxpayer may elect to use the electronic signature from the federal return to sign the taxpayer's Arizona individual income tax return. By electing to use the federal electronic signature for the Arizona electronic return, the taxpayer is declaring, under penalties of perjury, that the electronic return is, to the best of the taxpayer's knowledge and belief, true, correct, and complete.

B. A taxpayer makes an election under subsection (A) by doing the following:

1. If the taxpayer is preparing the taxpayer's Arizona electronic return, the taxpayer makes the election by signifying the election during the electronic filing process.
2. If the taxpayer uses an electronic return preparer to prepare the taxpayer's Arizona electronic return, the taxpayer makes the election by:
 - a. Signifying the election during the electronic filing process, or
 - b. Authorizing, in writing on a form prescribed by the Department, the electronic return preparer to make the election on behalf of the taxpayer.

C. A taxpayer that does not elect to electronically sign the taxpayer's federal income tax return shall not electronically sign the taxpayer's Arizona electronic return.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

- 1. Sections Affected**

R20-4-701 R20-4-702 R20-4-703 R20-4-704 R20-4-706 R20-4-708	<u>Rulemaking Action</u> Amend Amend Amend Amend Repeal New Section
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- 2. The specific authority for the rulemaking, including both the authorizing statute (general), and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 6-123(2)
Implementing statutes: A.R.S. §§ 6-123(1), 6-126, 6-811, 6-817, 6-831, 6-834(A)

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

November 9, 2001

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 4613, December 8, 2000
Notice of Proposed Rulemaking: 7 A.A.R. 3675, August 24, 2001

- 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 Street, 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 rule, including the agency's reason for initiating the rule:**

In a Five-year Rule Review Report that the Governor's Regulatory Review Council approved on September 14, 1999, the Department promised to overhaul each of the Sections in Article 7. Most of those Sections were slated for amendment; one was to be considered for repeal. This proceeding is intended to fulfill that promise and remove dated statutory references in these Sections, reorganize text, remove passive constructions and pointless legalisms, streamline the writing, and rewrite each Section using modern rule writing standards.

This rulemaking does not revise Section R20-4-707 because that work is still in progress. The Department expects to submit a completely revised version of R20-4-707 for approval on the Council's December agenda.

In addition, this rulemaking will add an express recognition of the escrow agents' right to create and maintain records electronically.

Finally, in implementation of A.R.S. §§ 6-817(A)(3) and 6-817(A)(10), this proceeding will establish a set of criteria used by the Superintendent in evaluating an applicant's or escrow agent's financial condition and resources.

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

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

- 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:**
 - A. The Banking Department**

Notices of Final Rulemaking

The revision of these Sections will have some beneficial economic effect on the Department. The rewriting of the Sections will make the rules easier for escrow agents to understand and, therefore, easier for the Department to enforce.

The repeal of R20-4-706 will have a marginally beneficial effect on the Department because it will do away with the enforcement task for a Section that is of questionable legality.

The addition of R20-4-708 will benefit the Department because it will clarify the Department's analysis under A.R.S. § 6-817. Any changes in 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. Nor should these revisions increase any escrow agent's cost of doing business in compliance with these rules.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

The Department expects 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):

Council staff made numerous suggestions to streamline the writing of these Sections and to clarify their meaning. The Department has used those suggestions to change the text of the proposed Sections, transforming them into the text contained in this Notice of Final Rulemaking. None of the changes between the proposed language and the final language have any substantive effect on the compliance requirements imposed by these Sections. Rather, the changes clarify the Sections and make it easier to understand the steps required for compliance.

Finally, the proposed rules contained a revision of R20-4-707 that has been removed from this rulemaking because that work has proven problematic and is still in progress.

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

A single commentator wrote to the Department before the Notice of Proposed Rulemaking was published in the *Arizona Administrative Register*. The Department's letters to the Southern Arizona Escrow Association, the Central Arizona Escrow Association, and the Land Title Association of Arizona solicited that comment. Each of them was invited to provide its membership's comments after review of the Notice of Proposed Rulemaking on the Internet. The public was invited to make further comment in the Notice of Proposed Rulemaking. That invitation contained an agency contact name, address, telephone number, and fax number. However, no comments were received after publication of the Notice of Proposed Rulemaking, and no arguments against adoption 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. Incorporations by reference and their location in the rules:

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

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 7. ESCROW AGENTS

Section

R20-4-701. Change in Location of Business —A.R.S. § 6-814(A)

R20-4-702. Account Practices and Records —A.R.S. § 6-831

R20-4-703. Preservation of Records —A.R.S. § 6-831

R20-4-704. Subsidiary Account Records —A.R.S. § 6-834(A)

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R20-4-706. ~~Exemption of Impound Accounts — A.R.S. § 6-811(5) Repealed~~
R20-4-708. Financial Condition and Resources

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 7. ESCROW AGENTS

R20-4-701. Change in Location of Business — ~~A.R.S. § 6-814(A)~~

~~Any licensee under this Act who shall change the location of his place of business shall notify the Superintendent in writing, not later than five calendar days before such change of address. The notification required by this provision must be accompanied by the escrow license issued to the former place of business and, if approved by the Superintendent, such license will be amended and returned.~~

An escrow agent shall mail the Superintendent written notice of any change in the location of the escrow agent's business. The escrow agent shall ensure that the Superintendent receives the notice at least five days before the escrow agent conducts business at the new location. The escrow agent shall mail the fee required by A.R.S. § 6-126(A), together with the current escrow license, to the Superintendent with the notice of the location change. The Superintendent shall change the submitted license to reflect the new business location and return it to the escrow agent.

R20-4-702. Account Practices and Records — ~~A.R.S. § 6-831~~

~~Each licensee under this Act shall maintain such records as will enable the Superintendent to reconstruct the details of each escrow transaction. Such records must contain, but are not necessarily limited to, the following:~~

- ~~1. Names of Seller, Buyer, Lender and/or Borrower and respective addresses as filed with the licensee.~~
- ~~2. Name and address of Real Estate Agent, if any.~~
- ~~3. Complete instructions under which the escrow is accepted.~~
- ~~4. Records and supporting documentation of all receipts and disbursements made through escrow.~~
- ~~5. Copy of the Escrow Settlement.~~

An escrow agent shall maintain records to enable the Superintendent to reconstruct the details of each escrow transaction. The records shall include the following:

1. The seller's name and address;
2. The buyer's name and address;
3. The lender's name and address, if any;
4. The borrower's name and address, if any;
5. The real estate agent's name and address, if any;
6. Complete escrow instructions;
7. Records and supporting documentation for each receipt and disbursement made through the escrow; and
8. A copy of the escrow settlement.

R20-4-703. Preservation of Records — ~~A.R.S. § 6-831~~

~~No licensee under this Act shall destroy, remove or secrete any records, books, or accounts pertaining to any escrow transaction for a period of at least three years following the final settlement date of such escrow transaction.~~

An escrow agent shall preserve the records, books, and accounts pertaining to each escrow transaction for at least three years following the final settlement date of the transaction. An escrow agent may use an electronic recordkeeping system. The Department shall not require an escrow agent to keep a written copy of the records, books, and accounts if the escrow agent can generate all information and copies of documents required by A.R.S. § 6-831 in a timely manner for examination or other purposes.

R20-4-704. Subsidiary Account Records — ~~A.R.S. § 6-834(A)~~

~~An escrow agent Every licensee under this Act shall maintain subsidiary account records that identify the funds deposited on deposit in each escrow. The total and the aggregate of all the credit balances in the such subsidiary accounts account records shall always at all times be equal to the balance of balances in the general ledger control account or accounts.~~

R20-4-706. Exemption of Impound Accounts — ~~A.R.S. § 6-811(5) Repealed~~

~~Any person who shall be responsible for the collection and maintenance of impound accounts for the purpose of paying taxes, special assessments and insurance shall not be subject to the provisions of this Act PROVIDED such person is not otherwise within the definition of an escrow agent.~~

R20-4-708. Financial Condition and Resources

The Superintendent shall consider the following criteria in evaluating an escrow agent's, other escrow agent's, or applicant's financial condition and resources under A.R.S. § 6-817:

1. Amount of positive net worth.

2. Amount of tangible net worth.
3. Amount of liquid assets.
4. Amount of cash provided by operations.
5. Ratio of debt to net worth.
6. Owner's personal financial resources.
7. Outside resources available.
8. Profitability.
9. Projected operating results.
10. Status as agent for a title insurance company, and
11. Sources of new business.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R20-4-209 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. § 6-123(2)
Implementing statute: A.R.S. § 6-190(D)
3. **The effective date of the rules:**
November 9, 2001
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 6 A.A.R. 1811, May 19, 2000
Notice of Rulemaking Docket Opening: 7 A.A.R. 2052, May 11, 2001
Notice of Proposed Rulemaking: 6 A.A.R. 4312, November 17, 2000
Notice of Proposed Rulemaking: 7 A.A.R. 3091, July 20, 2001
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 Street, 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 rule, including the agency's reason for initiating the rule:**
The rules in this Article govern the organization and regulation of state-chartered banks. Specifically, R20-4-209 requires banks to give notice of the intention to close a banking office permanently.
The Department proposes to amend R20-4-209 so it more precisely reflects the actions required of banks to give the Department notice of their intent to close a branch.
7. **A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**
The Department did not rely on any study as an evaluator or justification for the rule.
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:

A. The Banking Department

This proceeding will not increase the income of the Department. The expense of the proceeding is a normal operating expense of the Department. No new employees will be required to enforce the revised rule. The Department expects to benefit from the increased ease of communication with banks resulting from the rule being rewritten in plain English.

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. Banks are directly affected and will realize the benefit of the increased clarity of R20-4-209.

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):

Council staff made several suggestions to streamline the writing of the revised rule and clarify its meaning. The Department has used those suggestions to change the text of the proposed rule, transforming it into the text contained in this Notice of Final Rulemaking. None of the changes between the proposed rules and the final rules have any substantive effect on the compliance requirements imposed by the rule. Rather, they have the effect of clarifying the rule and making it easier to understand the steps required for compliance.

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

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. In addition, the Department solicited comment from the regulated community before publishing the Notice of Proposed Rulemaking. However, no comments were received and no arguments against adoption 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. Incorporations by reference and their location in the rules:

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

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 2. BANK ORGANIZATION AND REGULATION

Section

R20-4-209. Notice of Permanent Closing of Banking Office --A.R.S. § 6-190 (D)

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-209. Notice of Permanent Closing of Banking Office --A.R.S. § 6-190 (D)

~~A bank may permanently close less than all of its banking offices on giving notice of such closing by giving written notice of such closing to the superintendent, and such closing shall terminate the authority to maintain any office which is closed.~~

A bank may close fewer than all of its banking offices. Before closing any office, a bank shall deliver a letter to the Superintendent specifying the banking office it plans to close and the closing date. The bank shall ensure that the Superintendent receives the letter at least 10 days before the closing date. Closing the banking office shall terminate the bank's authority to maintain that banking office on the date of the actual closure.