

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

[R06-397]

PREAMBLE

- 1. Sections Affected**

R3-4-220	<u>Rulemaking Action</u>
R3-4-226	Amend
R3-4-238	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-107(A) (1)
Implementing statute: A.R.S. §§ 3-201.01 and 3-202
- 3. The effective date of the rules:**

December 4, 2006
- 4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 1341, April 21, 2006
Notice of Proposed Rulemaking: 12 A.A.R. 1304, April 21, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Rebecca A. Nichols, Rules Analyst, Director of Marketing
Address:	Arizona Department of Agriculture 1688 W. Adams, Room 235 Phoenix, AZ 85007
Telephone:	(602) 542-0962
Fax:	(602) 542-5420
E-mail:	rnichols@azda.gov
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

R3-4-220 is being amended to accomplish the following:

 - (1) Remove Vein Enation from the list of "Viral diseases" since it is no longer considered a threat to the Arizona citrus industry.
 - (2) Remove all whitefly and scale pests from the list of "Arthropods," now covered in R3-4-226 and R3-4-238.
 - (3) Revise the language of the "Restriction" section in order to clarify the requirements and bring them in line with other states' quarantines.

R3-4-226 is being amended to provide flexibility in treatment options.

Currently, the chemicals used for regulatory treatments are listed in rule, which does not allow for rapid changes in options when more effective treatments become available. With this rule amendment, rather than being restricted to a chemical listed in rule, rule language was changed to allow the use of any chemical that will kill the pest in question. The certifying authority must then attest that the commodity is free of all live life stage of the pest.

R3-4-238 is being amended to accomplish the following:

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- (1) Remove the common names from the list of regulated commodities;
- (2) Allow for certification of certain commodities by visual inspection;
- (3) To provide flexibility in treatment options.

Currently, the chemicals used for regulatory treatments are listed in rule, which does not allow for rapid changes in options when more effective treatments become available. With this rule amendment, rather than being restricted to a chemical listed in rule, rule language was changed to allow the use of any chemical that will kill the pest in question. The certifying authority must then attest that the commodity is free of all live life stage of the pest.

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

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:

A. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to educating staff and the regulated community regarding the new regulations.

B. *Political Subdivisions.*

None

C. *Businesses Directly Affected By the Rulemaking.*

Out-of-state nurseries will incur modest expenses to meet the certification process outlined in these rules. These expenses will include the cost of chemical treatment, virus testing, and implementation of pest management programs. The cost to in-state nurseries is negligible.

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

Minor formatting and grammatical changes suggested by the G.R.R.C. staff were made between the proposed rules and final rule.

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

None

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

None

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

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

R3-4-220. Citrus Nursery Stock Pests

R3-4-226. Scale Insect ~~Pest~~ Pests

R3-4-238. Whitefly Pests

ARTICLE 2. QUARANTINE

R3-4-220. Citrus Nursery Stock Pests

A. Definitions. "Pest" means any of the following viral diseases or arthropods:

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1. Viral diseases:
 - Cachexia (CVd-II)
 - Citrus Exocortis Virus (CEVd)
 - Citrus Psorosis Virus (CPsV) or
 - Citrus Tristeza Virus (CTV).
 - ~~Vein Enation, also known as Woody Gall, or~~
 2. Arthropods. All life stages of:
 - Aceria sheldoni*, Citrus bud mite;
 - Aleurothrixus floccosus*, Woolly whitefly;
 - Aonidiella aurantii*, California red scale;
 - Aonidiella citrina*, Yellow scale;
 - Chrysomphalus aonidum*, Florida red scale;
 - Dialeurodes citri*, Citrus whitefly;
 - Dialeurodes citrifolii*, Cloudy-winged whitefly;
 - Maconellicoccus hirsutus*, Pink hibiscus mealybug;
 - Phyllocoptruta oleivora*, Citrus rust mite; or
 - Pseudococcus comstocki*, Comstock mealybug; ~~or,~~
 - Pulvinaria psidii*, Green shield scale.
- B.** Area under quarantine. All states, territories, and districts of the United States, except the state of Arizona.
- C.** Regulated commodities and appliances.
1. Commodities. A plant or plant part, except seed or attached green fruit, of all species, varieties, or hybrids of the genera *Citrus*, *Eremocitrus*, *Fortunella*, *Poncirus*, and *Microcitrus*.
 2. Appliances. An appliance used in a citrus grove, citrus nursery, or other area to handle citrus nursery stock listed in subsection (C)(1).
- D.** Restrictions.
1. A person may ship a regulated commodity into Arizona from an area under quarantine if the regulated commodity is accompanied by ~~an original a~~ certificate issued by a plant regulatory official ~~of the state of~~ from the origin state, attesting that the commodity:
 - ~~a. The regulated commodity originated from an area:~~
 - ~~i. Designated free from every disease listed in subsection (A)(1); or~~
 - ~~ii. Where a designated suppression or eradication program for the diseases listed in subsection (A)(1) exists; and~~
 - ~~b. The regulated commodity:~~
 - ~~i. Originated from a source tree that was tested annually at a state of origin approved laboratory;~~
 - ~~ii. Is free from every disease listed in subsection (A)(1);~~
 - ~~iii. Was propagated from a bud, cutting, or scion from a tested and disease free source tree; and~~
 - ~~iv. Is free from every arthropod listed in subsection (A)(2), in accordance with a method approved by the Director.~~
 - a. Originates from an area not under quarantine for citrus tristeza virus, and
 - b. Originates from a source tree that is:
 - i. Tested for Cachexia, citrus exocortis virus, and citrus psorosis virus; or
 - ii. From budwood tested for Cachexia, citrus exocortis virus, and citrus psorosis virus; and
 - iii. Tested annually for citrus tristeza virus; and
 - c. Was treated within five days before shipment with a chemical to kill the arthropod pests listed in subsection (A)(2), and that the commodity is free of all live life stages of the arthropod pests listed in subsection (A)(2).
 2. A person shall not ship a Meyer lemon plant or plant part, except fruit, into Arizona. An exception is allowed for the selection Improved Meyer lemon plant or plant part, which may be shipped into Arizona in compliance with this Section.
 3. A person shipping a regulated commodity into Arizona shall attach a single tag or label to each plant or plant part, or to each individual container containing a plant or plant part, that is intended for resale by an Arizona receiver. The tag or label shall contain the following information separately provided for each scion variety grafted to a single rootstock:
 - a. Name and address of the nursery that propagated the plant,
 - b. Scion variety name,
 - c. Scion variety registration number, and
 - d. Rootstock variety name.
 4. A person shipping a regulated commodity into Arizona shall ensure the commodity complies with the entry requirements prescribed in R3-4-226 and R3-4-238.
 5. A person may ship a regulated appliance into Arizona if the appliance is accompanied by a certificate issued by a

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plant regulatory official from the origin state. The certificate shall state that the appliance was treated within five days before shipment with a chemical to kill the arthropod pests listed in subsection (A)(2), and that the appliance is free of all live life stages of the arthropod pests listed in subsection (A)(2).

- E. Disposition of regulated commodity or appliance not in compliance. A regulated commodity or appliance shipped into Arizona in violation of this Section shall be destroyed, treated, or transported ~~out-of-state~~ out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

R3-4-226. Scale Insect ~~Pest~~ Pests

A. Definitions.

“Pest” means all life stages of the following:

- Aonidiella aurantii*, California red scale;
- Aonidiella citrine*, Yellow scale;
- Chrysomphalus aonidum*, Florida red scale; or
- Pulvinaria psidi*, Green shield scale.

- B. Area under quarantine. The entire states of Alabama, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, and Texas, and the Commonwealth of Puerto Rico.

- C. Regulated commodities. Plants and all plant parts, except seed, of the genera listed below:

- Camellia* spp.;
- Chrysalidocarpus* spp.;
- Citrus* spp.;
- Cycas* spp.;
- Dracaena* spp.;
- Eremocitrus* spp.;
- Euonymus* spp.;
- Ficus* spp.;
- Fortunella* spp.;
- Ilex* spp.;
- Ligustrum* spp.;
- Microcitrus* spp.;
- Poncirus* spp.; and
- Rosa* spp.

- D. Restrictions. A person ~~shall not~~ may ship ~~into Arizona~~ a regulated commodity to Arizona from an area under quarantine ~~unless if~~ each shipment is accompanied by ~~an original~~ a certificate issued by a plant regulatory official of the origin state or commonwealth of origin attesting that the commodity was ~~treated as prescribed in subsection (F).~~ treated as prescribed in subsection (F). within five days before shipment attesting that one of the following is true:

1. A regulated commodity of the genera *Citrus*, *Eremocitrus*, *Fortunella*, *Microcitrus*, and *Poncirus* was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A);
2. A regulated commodity not listed in subsection (D)(1):
 - a. Was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A); or
 - b. Originated from a nursery with a pest management program recognized and monitored by the origin state to control the pests listed in subsection (A), and was visually inspected and found free of all live life stages of the pests listed in subsection (A).

E. Exemptions:

1. ~~A bare root rose free of all soil and foliage is exempt from treatment if a regulatory official of the state or commonwealth of origin visually inspected the commodity and found it free from the pests in subsection (A).~~
2. ~~A miniature rose is exempt from treatment if a regulatory official of the state or commonwealth of origin visually inspected the commodity and found it free from the pest.~~
3. ~~The Director shall issue a permit to allow a regulated commodity from an area under quarantine to enter Arizona without treatment as prescribed in subsection (F) if:~~
 - a. ~~A plant regulatory official of the state or commonwealth of origin attests that the area is free from the pests in subsection (A) based on a detection survey, and~~
 - b. ~~The applicant complies with all conditions of the permit.~~

- F. Treatment.** A foliar application of a narrow range oil and one of the following chemicals, applied at label rates:

1. ~~Acephate;~~
2. ~~Buprofezin;~~
3. ~~Imidacloprid;~~
4. ~~Pyriproxyfen, or~~
5. ~~Thiamethoxam.~~

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~~GE.~~ Disposition of regulated commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed, treated, or transported ~~out-of-state~~ out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

R3-4-238. Whitefly Pests

A. Definition.

“Pest” means:

1. Citrus whitefly, ~~Dialeurodes citri~~ *Dialeurodes citri* (Ashm.);
2. Cloudy-winged whitefly, *Dialeurodes citrifolii* (Morgan);
3. Woolly whitefly, *Aleurothrixus floccosus* (Maskell).

B. Area under quarantine. Alabama, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia.

C. Commodities covered. Plants and all plant parts, except fruit and seed, of the following genera and species:

- ~~*Ailanthus* spp. (Tree of Heaven);~~
~~*Amplopsis* spp. (Boston Ivy);~~
~~*Bignonia capreolata* spp. (Cross Vine);~~
~~*Choisya ternata* (Mexican Orange);~~
~~*Citrus* spp.;~~
~~*Diospyros* spp. (Persimmon);~~
Eremocitrus
~~*Feijoa* spp. (Pineapple guava);~~
~~*Ficus macrophyll* (Ficus);~~
~~*Fortunella* spp. (Kumquat);~~
~~*Gardenia* spp. (Gardenia or Cape Jasmine);~~
~~*Ilex* spp. (Holly);~~
~~*Jasminum* spp. (Jasmine);~~
~~*Lagerstroemia* spp. (Crape Myrtle);~~
~~*Ligustrum* spp. (Privet);~~
~~*Maclura pomifera* (Osage Orange);~~
~~*Melia* spp. (Chinaberry);~~
Microcitrus
~~*Musa* spp. (Banana Shrub);~~
~~*Osmanthus* (Osmanthus) (Not tolerant to methyl bromide fumigation);~~
~~*Plumaria* spp. (Frangipani, temple tree);~~
~~*Poncirus* spp. (Trifoliate orange);~~
~~*Prunus caroliniana* (Carolina Cherry Laurel);~~
~~*Psidium* spp. (Guava);~~
~~*Punica granatum* (Pomegranate);~~
~~*Pyrus communis* (Pear);~~
~~*Sapindus mukorossi* (Chinese Soapberry);~~
~~*Smilax* spp. (Sarsparilla);~~
~~*Syringa vulgaris* (Common Lilac);~~ and
~~*Viburnum* spp. (Viburnum).~~

D. Restrictions. A person may ship a regulated commodity to Arizona from an area under quarantine if the shipment is accompanied by a certificate issued by a plant regulatory official of the origin state attesting that within five days before shipment:

1. ~~All covered commodities with foliage listed in subsection (C) shall be treated as prescribed in subsection (E) immediately before shipment and certified by an authorized official from the state of origin; or~~
2. ~~The Director may issue a permit admitting a covered commodity subject to specific limitations, conditions, and provisions which eliminate the risk of the pest.~~
 1. A regulated commodity of the genera *Citrus*, *Eremocitrus*, *Fortunella*, *Microcitrus*, and *Poncirus* was treated with a chemical to kill the pests listed in subsection (A), and was visually inspected and found free of all live life stages of the pests listed in subsection (A).
 2. A regulated commodity not listed in subsection (D)(1):
 - a. Was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A), or
 - b. Originated from a nursery with a pest management program recognized and monitored by the origin state and to control the pests listed in subsection (A), and was visually inspected and found free of all live life stages of the pests listed in subsection (A), or
 - c. The regulated commodity is completely devoid of foliage and is exempt from treatment for the pests listed in

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subsection (A).

E. Treatment-

1. Methyl bromide fumigation. 2 1/2 pounds of methyl bromide per 1000 cu. ft. of chamber space for two hours at 80° F or more.
2. Sodium cyanide 99% chamber fumigation. 25cc HCN gas per 100 cu. ft. for one hour at not less than 18.3° C (60° F) or more than 29.4° C (85° F). Circulation shall be maintained during the entire fumigation period. Fruit fumigated with HCN gas shall be dry.
3. Chlorpyrifos. 4 lb. per gallon of Chlorpyrifos (4E) formulation in an emulsion of narrow range spray oil (petroleum) oil, NR 415, emulsive.
 - a. 4.7 ml of Chlorpyrifos (4E), plus 19 ml of narrow range 415 oil per gallon of water, or
 - b. 16 fl. oz. of Chlorpyrifos (4E), plus 64 fl. oz. narrow range 415 oil per 100 gallons water.
 - c. Methods of treatment:
 - i. Dip. Totally submerge plant material for two minutes, remove for one minute, and submerge again for one minute. Then remove and let dry.
 - ii. Spray. Apply to all plant parts. Thoroughly drench all surfaces of leaves and all other aerial plant parts.

E. Disposition of regulated commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

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TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

[R06-398]

PREAMBLE

1. Sections Affected

R3-11-101
R3-11-108
R3-11-401
R3-11-502
R3-11-807
R3-11-901

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend

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

Authorizing statute: A.R.S. § 32-2207(8)

Implementing statutes: A.R.S. §§ 32-2201, 32-2207(2), 32-2207(8), 32-2218, 32-2234, 32-2237, 32-2281, 41-1072 through 41-1079

3. The effective date of the rules

December 4, 2006

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 1786, May 26, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 2068, June 16, 2006

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

Name: Jenna Jones, Executive Director

Address: 1400 W. Washington, Suite 240
Phoenix, AZ 85007

Telephone: (602) 364-1739

Fax: (602) 364-1039

E-mail: jenna.jones@vetbd.state.az.us

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

The Board is making technical corrections to its rules by correcting rule or statutory citations, and correcting the reference in the time-frame rule in R3-11-108(E)(2) from the national, or clinical competency veterinary examination, to the North American Veterinary Licensing Examination, a national veterinary technician examination, or the Arizona

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Veterinary Technician Examination. The Board is also adding a provision in R3-11-401 for continuing education for licensees who graduate within 11 months preceding initial licensure. The Board is correcting references to route of administration for medications in R3-11-502.

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

The Board did not review or rely on any study.

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:

Annual cost/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

The rulemaking affects the Board, applicants, licensees, certificate holders, and consumers seeking veterinary medical services.

The Board bears minimal costs for writing the rule and related economic, small business, and consumer impact statement and mailing the new rules to interested persons.

The Board does not believe that the technical changes in the rules impose additional costs on a licensee, applicant for a veterinary medical license or certificate, or a certificate holder. The rules benefit a licensee by allowing the licensee who graduated from a veterinary medical college within 11 months before the license application date to apply 10 credit hours of college course work toward the continuing education requirement in R3-11-401. A provider of continuing education may lose minimal revenue because of the new provision in R3-11-401 that allows a licensee who graduated from a veterinary medical college within 11 months before the license application date to apply 10 credit hours of college course work toward the continuing education requirement. A veterinary medical premise that chooses to pay for continuing education for its licensees may benefit because it will not have to pay for continuing education for these licensees.

The corrections to route of administration for medications in R3-11-502 should minimally affect a business.

The rules should not increase costs to consumers of veterinary medical services but should benefit the consumer by providing clear, concise, and understandable standards.

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

The Board made minor technical changes suggested by G.R.R.C. staff.

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

The Board did not receive any comments regarding the rules.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

ARTICLE 1. GENERAL PROVISIONS

Section

R3-11-101. Definitions

R3-11-108. Time-frames for Licensure, Certification, and Permit Approvals

ARTICLE 4. CONTINUING EDUCATION REQUIREMENTS

Section
R3-11-401. Continuing Education

ARTICLE 5. STANDARDS OF PRACTICE

Section
R3-11-502. Standards of Practice

ARTICLE 8. DRUG DISPENSING

Section
R3-11-807. Dispensing a Controlled Substance or Prescription-only Drug

ARTICLE 9. INVESTIGATIONS AND HEARINGS

Section
R3-11-901. Investigations of Alleged Violations

ARTICLE 1. GENERAL PROVISIONS

R3-11-101. Definitions

1. No change
2. No change
3. No change
 - a. No change
 - b. 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. "Veterinary medical services" means the acts listed in A.R.S. § ~~32-2201(16)~~ 32-2201(21).

R3-11-108. Time-frames for Licensure, Certification, and Permit Approvals

- A.** In addition to the definitions in R3-11-101, the following definitions apply to this Chapter unless otherwise specified:
1. "Administrative completeness review" means the Board's process for determining that an individual has provided all of the information and documents required by A.R.S. §§ 32-2201 through ~~32-2282~~ 32-2296 and this Chapter for an application.
 2. No change
 3. No change
 4. No change
- B.** No change
- C.** No change
1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change

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- e. No change
- 2. No change
- 3. No change
- 4. No change
- D. No change
 - 1. No change
 - 2. No change
 - 3. No change
- E. No change
 - 1. No change
 - 2. Take the state, ~~national, or clinical competency~~ veterinary examination, ~~or the North American Veterinary Licensing Examination, a national~~ veterinary technician examination, or the Arizona Veterinary Technician Examination.
- F. No change
- G. No change

ARTICLE 4. CONTINUING EDUCATION REQUIREMENTS

R3-11-401. Continuing Education

- A. No change
 - 1. No change
 - 2. No change
- B. A licensee receiving an initial license in an even-numbered year is required to complete 10 credit hours of continuing education before the licensee's initial renewal date.
 - 1. If the licensee graduated from a veterinary college within 11 months before the license application date, the licensee may apply 10 credit hours of veterinary college course work to fulfill the continuing education requirement.
 - 2. ~~Thereafter, After the initial renewal~~ the licensee shall complete 20 credit hours of continuing education ~~for the licensing period as required in subsection (A).~~
- C. No change
- D. No change

ARTICLE 5. STANDARDS OF PRACTICE

R3-11-502. Standards of Practice

- A. No change
- B. No change
 - 1. No change
 - 2. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
- I. No change
- J. No change
 - 1. No change
 - 2. No change
- K. No change
 - 1. No change
 - 2. No change
 - a. No change

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- b. No change
- c. No change
- d. No change
- e. No change
- f. No change
- 3. No change
 - a. No change
 - b. Strength ~~and route of administration~~ of the controlled substance,
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
- L. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. Name of each medication administered including concentration, amount, ~~and~~ frequency, and route of administration, except when the medication is only offered in one size and strength;
 - 7. No change
 - 8. No change
 - 9. No change
 - 10. No change
- M. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- N. No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
- O. No change
 - 1. No change
 - 2. No change

ARTICLE 8. DRUG DISPENSING

R3-11-807. Dispensing a Controlled Substance or Prescription-only Drug

- A. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - 3. No change
- B. No change
 - 1. No change

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- a. No change
- b. No change
- c. No change
- d. No change
- 2. The dispensing veterinarian authorizing the dispensing shall ensure that records are maintained according to ~~R3-11-502(H)~~ and R3-11-502(K) and R3-11-502(L) and all state and federal laws are followed.

ARTICLE 9. INVESTIGATIONS AND HEARINGS

R3-11-901. Investigations of Alleged Violations

- A. A person may notify the Board of an alleged violation of A.R.S. §§ 32-2201 through ~~32-2282~~ 32-2296 and this Chapter. The Board also may initiate a complaint on its own motion.
- B. No change
- C. No change
- D. No change

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

[R06-400]

PREAMBLE

1. Sections Affected

Rulemaking Action

R4-33-101	Amend
R4-33-102	Amend
R4-33-103	Amend
R4-33-104	Amend
R4-33-105	New Section
R4-33-106	Re-number
R4-33-106	Amend
R4-33-107	New Section
R4-33-108	New Section
Table 1	Amend
R4-33-201	Re-number
R4-33-201	Amend
R4-33-202	Re-number
R4-33-202	Amend
R4-33-203	Re-number
R4-33-203	Amend
R4-33-204	Re-number
R4-33-204	Amend
R4-33-205	Re-number
R4-33-205	Amend
R4-33-206	Amend
R4-33-207	Amend
R4-33-208	Amend
R4-33-209	Re-number
R4-33-210	Repeal
R4-33-210	New Section
R4-33-211	Amend
R4-33-212	Re-number
R4-33-213	Repeal
R4-33-214	Repeal
Article 4	Amend
R4-33-401	Re-number
R4-33-401	Amend
R4-33-402	Re-number
R4-33-402	Amend
R4-33-403	Amend

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R4-33-404	Amend
R4-33-405	Renumber
R4-33-405	Amend
R4-33-406	Renumber
R4-33-406	New Section
R4-33-407	Amend
R4-33-408	Repeal
R4-33-408	New Section
R4-33-409	Repeal
R4-33-410	Renumber
R4-33-411	Repeal
R4-33-412	Repeal
Article 5	New Article
R4-33-501	New Section
R4-33-502	New Section
R4-33-503	New Section
R4-33-504	New Section

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

Authorizing statute: A.R.S. § 36-446.03(A)

Implementing statute: A.R.S. §§ 36-446.03(B) and (K), 36-446.04, 36-446.06, 36-446.07, and 36-446.12

3. The effective date for the rules:

December 4, 2006

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 1342, April 21, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 2073, June 16, 2006

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

Name: Allen Imig, Executive Director

Address: NCIA Board
1400 W. Washington, Ste. B-8
Phoenix, AZ 85007

Telephone: (602) 542-8156

Fax: (602) 542-8316

E-mail: allen.imig@nciabd.state.az.us

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

In response to five-year review reports approved by the Council on March 4, 2003, and December 7, 2004, the Board is updating its rules to make them consistent with state and federal law, agency practice, and current rulewriting standards.

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

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:

The following rule changes will have a minimal economic impact on nursing care institution administrators or assisted living facility managers:

- a. Establishing a new fee for renewing an inactive manager certificate;
- b. Establishing a new charge to verify the status of a manager's certificate;
- c. Broadening the fields of study that qualify an individual to become licensed as an administrator;
- d. Allowing six months after passing the required examinations for an applicant to pay to have a license or certificate issued or the application is administratively closed;
- e. Increasing the number of hours of continuing education required to renew a manager certificate;

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- f. Pro-rating the number of hours of continuing education required during the biennial period following initial licensure;
- g. Adding a provision regarding audit of continuing education records; and
- h. Increasing the time for the Board to conduct its administrative completeness review of certain applications.

The following rule changes may cause an applicant for certification as an assisted living facility manager not to be qualified. Although an applicant can take steps to become qualified, these changes may have a significant economic impact on the applicant.

- a. Requiring an applicant for manager certification to have a high school diploma or GED; and
- b. Increasing the passing score that a manager applicant must obtain on the Arizona examination.

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

In addition to minor word choice and formatting changes made between the proposed and final rules, the Board deleted R4-33-204(A)(18) and (A)(19) and R4-33-403(A)(19) and (A)(20) from the rules as proposed. In both Sections, the deleted subsections inquired whether an applicant was ever terminated from employment or resigned to avoid being terminated or disciplined. The Board decided to delete these subsections because there are many reasons that an individual may be terminated from employment that are unrelated to whether the individual is qualified to be licensed and because the information obtained, while potentially relevant to an employer, was never used by the Board to make a licensing decision. The Board decided that if it did not use the information obtained, the requirement that an applicant provide the information was onerous.

Under A.R.S. § 41-1025(B), deleting these subsections is not a substantial change. Individuals affected by the rulemaking, applicants, understood that the rule would affect their interests. The subject matter of the rulemaking, information relevant to whether an applicant is qualified to be licensed, is the same. The effect of the change, removing an onerous requirement, is not substantial. Deleting these subsections does not impair the Board's responsibility to protect the public because the Board, having determined that the information was not relevant to whether an applicant was qualified to be licensed, never used the information to fulfill its responsibility.

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

The Board held an oral proceeding regarding the rules on July 19, 2006. John Linda, representing the Arizona chapter of the American Health Care Association appeared and commented. A written comment was received from Vicki McAllister, who is Executive Director of The Terraces of Phoenix. Their comments and the Board's analysis of and response to the comments follow:

Comment	Board's Analysis	Board's Response
John Linda: R4-33-108 requires a licensee or certificate holder to display the original of the license or certificate. Mr. Linda suggested that the Board allow display of a copy.	The Board's responsibility is to protect the public. Because a copy of a license or certificate can be altered, the only way a member of the public can know that a particular individual is licensed is to see the individual's original license.	No change
Vicki McAllister: R4-33-204(16) through (18) requires an applicant to provide details regarding prior disciplinary action. Ms McAllister said this requirement is not in the current rule and requests that the rule not be changed.	Although the language to which Ms McAllister refers is not in the current rule, the requirement that an applicant provide details regarding prior disciplinary action is in the current application form. The Board is simply making the rule consistent with A.R.S. § 41-1030(B), which specifies that an agency not base a licensing decision on a requirement that is not in statute or rule. Additionally, information about disciplinary action is a public record. Having an applicant provide the information saves the Board time required to obtain the information.	No change

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

None

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

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

ARTICLE 1. GENERAL

Section

- R4-33-101. Definitions
- R4-33-102. Board Officers
- R4-33-103. Time-frames for Licenses, Certifications, and Approvals
- R4-33-104. Fees
- R4-33-105. ~~Reserved~~ Hearing Procedures
- ~~R4-33-209~~ ~~R4-33-106~~. ~~Reserved~~ Rehearing or Review of Decision
- R4-33-107. ~~Reserved~~ Change of Name or Address
- R4-33-108. ~~Reserved~~ Display of License or Certificate
- Table 1. Time-frames (in days)

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

Section

- ~~R4-33-204~~ ~~R4-33-201~~. ~~Qualifications~~ Requirements for Initial License by Examination
- ~~R4-33-203~~ ~~R4-33-202~~. ~~Licensure~~ Requirements for Initial License by Endorsement Reciprocity
- ~~R4-33-212~~ ~~R4-33-203~~. Requirements for Temporary License
- ~~R4-33-201~~ ~~R4-33-204~~. Initial Application
- ~~R4-33-202~~ ~~R4-33-205~~. ~~Licensure by Examination~~ Administration of Examinations; License Issuance
- R4-33-206. Renewal Application
- R4-33-207. Inactive Status
- R4-33-208. Standards of Conduct; Disciplinary Action
- ~~R4-33-209~~. Renumbered
- R4-33-210. Licensure following Revocation
- R4-33-211. Notice of Appointment
- ~~R4-33-212~~. Renumbered
- R4-33-213. ~~Denial of License or Renewal of License~~ Repealed
- R4-33-214. ~~Criteria for Continuing Education~~ Repealed

ARTICLE 4. ASSISTED LIVING FACILITY MANAGER CERTIFICATION

Section

- ~~R4-33-402~~ ~~R4-33-401~~. ~~Eligibility~~ Requirements for Initial Certification by Examination
- ~~R4-33-410~~ ~~R4-33-402~~. Requirements for a Temporary Certificates-Certificate
- R4-33-403. Initial Application
- R4-33-404. Administration of Examination; Certificate Issuance
- ~~R4-33-406~~ ~~R4-33-405~~. Renewal Application
- ~~R4-33-406~~. Inactive Status
- R4-33-407. Standards of Conduct; Suspension or Revocation-Disciplinary Action
- R4-33-408. ~~Criteria for Continuing Education~~ Referral Requirements
- R4-33-409. ~~Display of Certificate~~ Repealed
- ~~R4-33-410~~. Renumbered
- R4-33-411. ~~Denial of Certificate~~ Repealed

R4-33-412. ~~Rehearing or Review of Decision Repealed~~

ARTICLE 5. CONTINUING EDUCATION

Section

R4-33-501. Continuing Education Requirement

R4-33-502. Approval of Continuing Education

R4-33-503. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement

R4-33-504. Extension of Time to Complete the Continuing Education Requirement

ARTICLE 1. GENERAL

R4-33-101. Definitions

The definitions in A.R.S. § 36-446 apply to this Chapter. Additionally, ~~in~~ in this Article Chapter, unless otherwise specified:

1. “Accredited” means ~~authorized~~ approved by the North Central Association of Colleges and Secondary Schools, New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or Western Association of Schools and Colleges.
“ACHCA certified” means written evidence of completing the Professional Certification Program administered by the American College of Health Care Administrators.
“Administrator” has the meaning prescribed at A.R.S. § 36-446 and means an individual licensed under this Chapter.
2. “Administrator in training” or “AIT” means ~~a person~~ an individual who is taking an ~~NAB-approved~~ AIT program of training to be licensed as an administrator for a nursing care institution.
3. “AIT ~~Program~~ program” means an NAB-approved training ~~program~~ lasting not less than 20 weeks nor more than 52 weeks, at 40 hours per week, conducted as an educational experience in a licensed nursing care institution.
4. “ACHCA Certified” means ~~having evidence of completing the Professional Certification Program administered by the American College of Health Care Administrators.~~
“Applicant” means an individual who applies to the Board to be licensed as an administrator of a nursing care institution, to be certified as a manager of an assisted living facility, or for approval of a continuing education.
“Application package” means the forms, documents, and fees that the Board requires an applicant to submit or have submitted on the applicant’s behalf.
“Arizona examination” means a measure of an applicant’s knowledge of Arizona statutes and rules regarding nursing care institution administration or assisted living facility management.
5. “AzACHCA” means ~~the Arizona chapter of the American College of Health Care Administrators.~~
“Biennial period” means July 1 of an even-numbered year through June 30 of the next even-numbered year for an administrator and July 1 of an odd-numbered year through June 30 of the next odd-numbered year for a manager.
6. “Contact hour” means an hour during which an administrator or manager is physically present at ~~an instructional activity that is to be used for either a continuing education credit or a manager is physically present at a required initial training credit required for adult care home managers.~~
“Continuing education” means a planned educational course or program that the Board approves under R4-33-502.
7. “Good standing” means that a nursing care institution administrator is the holder of a current and valid license, not subject to any disciplinary action or consent order, and not currently under investigation for alleged unprofessional conduct.
“Health care institution” means every place, institution, building or agency, whether organized for profit or not, which provides facilities with medical services, nursing services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and includes home health agencies as defined in A.R.S. § 36-151 and hospice services agencies. A.R.S. § 36-401.
“Manager” means an assisted living facility manager, as defined at A.R.S. § 36-446, who is certified under this Chapter.
8. “NAB” means the National Association of Board of Examiners for Nursing Home Administrators.
“Party” has the same meaning as prescribed in A.R.S. § 41-1001.
9. “Preceptor” means a practicing nursing care institution administrator who ~~undertakes the role of teacher through the tutorial process,~~ has taken a board-approved preceptor training course, and helps to develop a new professional in the field of long-term care administration by tutoring the new professional.
10. “Program Advisory Committee” means the group ~~comprised~~ of practicing nursing care administrators that provides oversight to AITs and ensures the application of uniform training standards and guidelines outlined in the ~~NAB-approved~~ AIT Program program.
11. “Qualified instructor” means a person who meets one or more of the following criteria:

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- a- A registered nurse, licensed under A.R.S. Title 32, Chapter 15;
 - b- An instructor employed by an accredited ~~junior~~ college; or university program; or health care institution to teach a health-care related ~~courses~~ course; or
 - e- A person or entity who that possesses a combination of has sufficient education and training equivalent to the qualifications listed above be qualified to teach a health-care related course.
12. ~~“Training program” means an educational syllabus approved by the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers in accordance with the requirements of A.R.S. § 36-446.04(A)(2) and (B)(2).~~
“Work experience in a health-related field” means employment in a health care institution or in the professional fields of medicine, nursing, social work, gerontology, or other closely related field.

R4-33-102. Board Officers

- A. At its first annual meeting, the Board shall elect ~~from among its membership~~ a president; and vice-president; ~~and secretary-treasurer.~~
- B. The functions, duties, and limitations of these officers are as follows:
 - 1. President. The president shall call and preside at all Board meetings. The president shall act as chief officer of the Board, appoint committees, and delegate authority to other members of the Board as needed.
 - 2. Vice-president. The vice-president shall preside at Board meetings in the absence of the president and may exercise all the powers and duties of the president in the absence of the president.
 - 3. ~~Secretary-treasurer. The secretary-treasurer shall prepare and maintain minutes of all meetings, monitor the attendance of members and keep account of all monies that are collected and disbursed by the Board.~~
- C. Board officers ~~shall~~ serve for a ~~term of~~ one year. ~~No A Board officer may shall not~~ serve more than two consecutive ~~terms~~ years.

R4-33-103. Time-frames for Licenses, Certifications, and Approvals

- A. For each type of license, certification, or approval; ~~or renewal of license or certification~~ issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is ~~set forth~~ listed in Table 1.
- B. For each type of license, certification, or approval; ~~or renewal of license or certification~~ issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is ~~set forth~~ listed in Table 1 and begins on the date the Board receives an application ~~and required documents and information package.~~
 - 1. If ~~the an~~ application ~~and documents are~~ package is not administratively complete, the Board shall send a deficiency notice to an the applicant a deficiency notice.
 - a- ~~The deficiency notice shall state that specifies each deficiency and the piece of information or document needed to complete the application and documents package.~~
 - b- Within the time provided in Table 1 for response to ~~the a~~ deficiency notice, beginning on the mailing date of the deficiency notice, the applicant shall submit to the Board the missing information or document specified in the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information or document.
 - 2. If ~~the an~~ application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
 - 3. If ~~the an~~ application ~~and submitted documents are~~ package is not completed within the time provided to respond to the deficiency notice, the Board shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn.
- C. For each type of license, certification, or approval; ~~or renewal of license or certification~~ issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is ~~set forth~~ listed in Table 1 and begins on the date the Board sends written notice of administrative completeness to the applicant.
 - 1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, beginning on the mailing date of the comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The time-frame for the Board to finish the substantive review is suspended from the date the Board mails the comprehensive written request for additional information to the applicant until the Board receives the requested additional information.
 - 2. ~~The Board shall issue a written notice of denial of license or renewal of license if the Board determines that the applicant does not meet all of the substantive criteria required by statute and this Chapter for licensing, certification, approval, or renewal of license or certification.~~
 - 3. The Board shall issue a written notice informing the applicant that the application is deemed withdrawn if the applicant does not submit the requested additional information within the time-frame provided in Table 1.
 - 4. ~~If the applicant meets all of the substantive criteria required by statute and this Chapter for license, certification,~~

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~~approval, or renewal of license or certification, the Board shall issue the license, certification, approval, or renewal of license or certification to the applicant.~~

D. Within the overall time-frame listed in Table 1, the Board shall:

1. ~~Deny a license, certificate, or approval to an applicant if the Board determines that the applicant does not meet all of the substantive criteria required by statute and this Chapter; or~~
2. ~~Grant a license, certificate, or approval to an applicant if the Board determines that the applicant meets all of the substantive criteria required by statute and this Chapter.~~

E. If the Board denies a license, certificate, or approval under subsection (D)(1), the Board shall provide a written notice of denial to the applicant that explains:

1. ~~The reason for the denial, with citations to supporting statutes or rules;~~
2. ~~The applicant's right to seek a fair hearing to challenge the denial; and~~
3. ~~The time for appealing the denial.~~

~~**D.F.** In computing any period of time prescribed in this Section, the day of the act, event or default after which the designated period of time begins to run shall is not be included. The last day of the period shall be is included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not Saturday, Sunday, or a state holiday. The computation shall include includes intermediate Saturdays, Sundays, and state holidays. The time period shall begin begins on the date of personal service, date shown as received on a certified mail receipt, or postmark date.~~

R4-33-104. Fees

A. ~~For Under the authority provided at A.R.S. § 36-446.12(A), the Board establishes and shall collect the following fees related to nursing care institution administrators, the Board shall charge the following fees, which The fees are nonrefundable unless A.R.S. § 41-1077 applies:~~

1. Initial application, \$100
2. ~~Examination~~ Arizona examination, \$500
3. ~~Re-administering state~~ Re-administer Arizona examination, \$150
4. Issuance of a license, \$260 or \$11 for each month remaining in the biennial period
5. Duplicate license, \$50
6. Biennial active license renewal, \$300
7. Biennial inactive license renewal, \$100
8. Late renewal penalty, \$50
9. Temporary license, \$250
10. ~~Certifying~~ Certify licensure status, \$10
11. Review ~~sponsor's sponsorship of a continuing education program~~, \$20.

B. ~~For Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees for assisted living facility managers, the Board shall charge the following fees, which The fees are nonrefundable unless A.R.S. § 41-1077 applies:~~

1. Initial application, \$100
2. ~~Examination~~ Arizona examination, \$100
3. ~~Re-administering state~~ Re-administer Arizona examination, \$100
4. Issuance of a certificate, \$100 or \$4 for each month remaining in the biennial period
5. Duplicate certificate, \$50
6. Biennial active certificate renewal, \$100
7. Biennial inactive certificate renewal, \$75
- 7-8. Late renewal penalty, \$50
- 8-9. Temporary certificate, \$50
10. Verify certificate status, \$10
- 9-11. Review ~~sponsor's sponsorship of a continuing education program~~, \$20.

C. ~~If the Board approves an applicant for a license and issues a license to the applicant for less than the biennial license period, the applicant shall submit to the Board \$11 for each month remaining in the licensure period.~~

D. ~~If the Board approves an applicant for a certificate and issues a certificate for less than the biennial certificate period, the applicant shall submit to the Board \$4 for each month remaining in the certificate period.~~

R4-33-105. Reserved Hearing Procedures

As required under A.R.S. § 36-446.07(J), the Board shall conduct all hearings according to the procedures in A.R.S. Title 41, Chapter 6, Article 10 and rules issued by the Office of Administrative Hearings.

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~~R4-33-209~~ ~~R4-33-106~~ ~~Reserved~~ Rehearing or Review of Decision

- A. Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in the case may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision which specifies the particular grounds on which it is based. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at the party's last known residence or place of business. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- ~~B.C.~~ A party may amend a motion for rehearing under this rule may be amended or review at any time before it is ruled upon by the Board rules on the motion. A response may be filed within 10 days after service of the motion. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- ~~C.D.~~ The Board may grant a rehearing or review of the decision for any of the following causes reasons materially affecting the moving a party's rights:
1. Irregularity in the ~~administrative proceedings of the agency or its hearing officer or the prevailing party~~ Board or any order or abuse of discretion that deprived the moving party of a fair hearing; ;
 2. Misconduct of the Board, its staff, or its hearing officer or the prevailing party an administrative law judge; ;
 3. Accident or surprise that could not have been prevented by ordinary prudence; ;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the ~~original~~ hearing; ;
 5. Excessive or insufficient ~~penalties;~~ penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the ~~administrative hearing or during the progress of the proceedings;~~ ; and
 7. ~~That the~~ The findings of fact or decision is not justified by the evidence or is contrary to law.
- ~~D.E.~~ The Board may affirm or modify ~~the a~~ decision or grant a rehearing or review to all or ~~any~~ some of the parties; on all or ~~part~~ some of the issues; for any of the reasons listed in subsection ~~(C)~~ (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the ~~ground or grounds on which the rehearing is granted, and for the order. If a rehearing or review is granted,~~ the rehearing or review shall cover only the ~~specified matters specified in the order.~~
- ~~E.F.~~ Not later than 30 days after ~~the date of a decision is rendered and after giving the parties notice and an opportunity to be heard,~~ the Board may, on its own initiative, order a rehearing or review of its decision for any reason ~~for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter,~~ The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. In either case the An order granting a rehearing or review shall specify with particularity the grounds on which ~~it~~ the rehearing or review is granted.
- ~~F.G.~~ When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Board for a maximum of 20 days by the Board for good cause shown as described in subsection (H) or by written stipulation of the parties. Reply affidavits may be permitted.
- H. The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and a ruling on the motion will:
1. Further administrative convenience, expedition, or economy; or
 2. Avoid undue prejudice to any party.
- ~~G.~~ Except as provided in subsection (H), a decision shall be final when rendered if further review is unavailable, upon expiration of the time for filing a request for rehearing, or upon denial of a request for rehearing, whichever is later. If a rehearing is granted, the decision shall be stayed until affirmed, amended, or reversed.
- ~~H.I.~~ If, in a particular decision, the Board makes a specific ~~findings~~ finding that the immediate effectiveness of the decision is necessary for the immediate preservation of the public ~~peace, health, or safety, or welfare~~ and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. ~~If a decision is issued as a final decision without an opportunity for rehearing, the decision shall be effective when issued. Any~~ If an application for judicial review of the decision shall be made, within the time limits permitted for applications for judicial review of the Board's final decisions it shall be made under A.R.S. § 12-901 et seq.
- I. For purposes of this Section, the terms "contested case" and "party" have the meanings provided in A.R.S. § 41-1001.

~~R4-33-107~~ ~~Reserved~~ Change of Name or Address

- A. The Board shall communicate with an administrator or manager using the name and address in the Board's records. To ensure timely communication from the Board, an administrator or manager shall inform the Board in writing of any change in name or address.

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B. An administrator or manager shall include in a notice of change in name or address either the new and former name or new and former address.

C. An administrator or manager shall attach to a notice of change in name a copy of the legal document changing the name.

R4-33-108. ~~Reserved~~ Display of License or Certificate

A. An administrator shall display the administrator's original license and current renewal receipt in a conspicuous place in the nursing care institution at which the administrator is appointed.

B. A manager shall display the manager's original certificate and current renewal receipt in a conspicuous place in the assisted care facility at which the manager is employed.

Table 1. Time-frames (in days)

Type of License	Overall Time-Frame	Administrative Review Time-Frame	Time to Respond to Deficiency Notice	Substantive Review Time-Frame	Time to Respond to Request for Additional Information
Initial License R4-33-201 and R4-33-202 A.R.S. §§ 36-446.04(A) and 36-446.05	120 135	15 30	90	105	60
Renewal of License R4-33-206 A.R.S. § 36-446.07(E)	75	30	15	45	15
Temporary License R4-33-212 R4-33-203 A.R.S. § 36-446.06	120 135	15 30	90	105	60
Continuing Education Program Approval R4-33-214 R4-33-502 A.R.S. § 36-446.07(E) and (F)	60	15	30	45	15
Administrator-in-Training Program Approval R4-33-301 A.R.S. § 36-446.04	60	15	30	45	15
Initial Certification R4-33-403 R4-33-401 A.R.S. § 36-446.04(B)	120 135	15 30	90	105	60
Renewal of Certification R4-33-406 R4-33-405 A.R.S. § 36-446.07(F)	75	30	15	45	15
Approval of Continuing Education Program R4-33-408 A.R.S. § 36-446.07(F)	60	15	30	45	15
Temporary Certification R4-33-410 R4-33-402 A.R.S. § 36-446.06	120 135	15 30	90	105	60

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

~~R4-33-204.~~**R4-33-201. Qualifications Requirements for Initial License by Examination**

An applicant for licensing ~~To be eligible to receive an initial license by examination~~ as a nursing care institution administrator, who completes the requirement of R4-33-201 and meets either of the following requirements shall be eligible to take the licensure examination ~~an individual shall:~~

1. Education and training.
 - a. ~~Has successfully completed a Board approved AIT program and holds~~ Hold a minimum of a baccalaureate degree from an accredited college or university ~~and successfully complete an AIT program; or~~
 - 2-b. ~~Holds~~ Hold a minimum of a masters degree in ~~health care administration or long-term care administration a health-related field~~ from an accredited college or university; ~~or~~
 - c. Hold a minimum of an associate of arts degree in nursing from an accredited college or university and:
 - i. Be currently licensed as a registered nurse under A.R.S. § 32-1632.
 - ii. Have worked as a registered nurse for five of the last seven years, and
 - iii. Successfully complete an AIT program.
2. Examination.
 - a. Obtain the scaled passing score on the NAB examination, and
 - b. Obtain a score of at least 80 percent on the Arizona examination; and
3. Application. Submit all applicable information required under R4-33-204.

~~R4-33-203.~~**R4-33-202. Licensure Requirements for Initial License by Endorsement-Reciprocity**

The Board, in its discretion and otherwise subject to the law pertaining to the licensing of nursing care institution administrators, shall issue ~~To be eligible for an initial license by reciprocity as a nursing care institution administrator, license upon application and payment of the prescribed fee and submission of evidence satisfactory to the Board that an applicant~~ an individual shall:

1. ~~Has met the requirements specified in R4-33-201. Instead of meeting the requirements of R4-33-201(F), the applicant may submit evidence of ACHCA certification~~ Substantially equivalent educational requirement.
 - a. Meet the education and training requirement described in R4-33-201(1), or
 - b. Hold ACHCA certification;
2. Substantially equivalent examination requirement.
 - a. ~~Holds~~ Hold a valid and current license as a nursing care institution administrator ~~for issued by a state or territory, which was obtained by passing the NAB examination; and required by R4-33-202(A)(1). If the applicant took the national examination before January 1990, a passing score shall be a raw score of 105 or better. After January 1990, a passing score shall be 70%. The applicant shall arrange to have the licensing agency of the state in which the applicant is licensed complete and directly return to the Board a certification on a form provided by the Board which provides the name of the secretary of the state board providing the certification, the full name of the applicant, the applicant's license number, date of licensing, expiration date of the license, the national examination taken by the applicant and the applicant's score, a statement that the applicant is fit and proper for licensing, the signature of the secretary, and the agency name and address.~~
 - 3-b. ~~Has met or exceeded~~ Obtain a score of at least 80% percent on the written the Arizona examination administered by the Board in accordance with R4-33-202(A)(2); and
3. Application.
 - a. Submit all applicable information required under R4-33-204.
 - b. Have submitted directly to the Board a certified copy of the valid and current license issued by a state or territory; and
 - c. Have submitted directly to the Board the score that the applicant obtained on the NAB examination.

~~R4-33-212.~~**R4-33-203. Requirements for Temporary License**

A. ~~To qualify be eligible for a temporary license to fill~~ as a nursing care institution administrator ~~position, an applicant individual shall submit the application required in R4-33-201 and provide evidence of the following:~~

1. ~~That the applicant meets~~ Meet or exceeds the requirements specified in R4-33-201 and R4-33-203, or R4-33-204. ~~or R4-33-202 except for the requirement at R4-33-201(2) or R4-33-202(2)(b);~~
2. ~~That an administrator's position is available and that the applicant will be engaged in the capacity of administrator if the applicant is successful in obtaining a temporary license~~ Have the owner of an a nursing care institution that intends to employ the applicant as administrator if the applicant is successful in obtaining a temporary license submit to the Board a Letter of Intent to Employ on a form that is available from the Board. The owner of the nursing care institution shall include the following in the Letter of Intent to Employ:
 - a. Name of the owner of the nursing care institution;
 - b. Name and address of the nursing care institution;
 - c. Name of the applicant;
 - d. An affirmation of intent to employ the applicant;
 - e. Reason for requesting a temporary license for the applicant;

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- f. License number of the nursing care institution; and
- g. Notarized signature of the owner of the nursing care institution;
- 3. ~~That the applicant has not~~ Not have held an Arizona temporary license as a nursing care institution administrator within the past three years; and
- 4. ~~That the applicant has not~~ Not have failed a state the Arizona or national NAB examination within one year before applying for a temporary license.
- B. At the Board's request, an applicant for a temporary license shall appear or be available by telephone for an interview with the Board.
- C. A temporary license is valid for 150 days and is not renewable. Before expiration of the temporary license, the temporary licensee shall become licensed under ~~the terms of~~ A.R.S. § 36-446.04 and this Article or discontinue as administrator of the nursing care institution.
- D. If a temporary licensee fails the Arizona or NAB examination during the term of the temporary license, the temporary license is automatically revoked and the former licensee shall discontinue as administrator of the nursing care institution.

~~R4-33-201~~ **R4-33-204. Initial Application**

- A. ~~A person~~ An individual who desires to be licensed as a nursing care institution administrator shall submit the following information to the Board on an application on a form, which is available from provided by the Board which provides the following information:
 - 1. Full name of the applicant;
 - 2. Type of license for which application is being submitted; and
 - 3. Sworn statement that applicant has answered all questions on all forms related to the application truthfully and has authorized educational and other institutions, employers, and governmental agencies to provide to the Board any information requested by the Board.
- B. ~~The applicant shall arrange to have two persons who are unrelated to the applicant and not in the applicant's employment complete "Moral Character Certification" forms and return them directly to the Board. The certification shall contain the applicant's full name; type of examination for which the applicant is applying to sit; a certification that person is personally acquainted with the applicant; the number of years of acquaintance; the belief that the applicant is of appropriate moral character and suitability; and a recommendation of the applicant to the Board.~~
- C. ~~The applicant shall have a licensed physician complete a "Medical Certification" form and return it directly to the Board. The certification shall contain the applicant's full name; type of examination for which the applicant is applying to sit; a certification by the physician that the applicant is in good health, free from contagious diseases, and absent any physical or mental impairments that would interfere with the performance of administrator duties; the number of years the physician has provided care to the applicant; the date the applicant was examined; other remarks; and the signature, full name, address and license number of the physician.~~
- D. ~~An applicant who has been convicted of a felony shall submit, with the application, evidence that the applicant is in compliance with all court imposed requirements. The evidence shall be issued by an appropriate court, Board of Parole, or equivalent agency. The evidence shall provide information on the specific type of felony offense and the related circumstances.~~
- E. ~~The applicant shall complete and submit a sworn, notarized, and completed personal data sheet form prescribed by the Board which provides the following information:~~
 - 1. ~~The name as the applicant wants it to appear on the certificate;~~
 - 2. ~~The full name of the applicant~~ Other names that the applicant has used;
 - 3. ~~The home~~ Mailing address of the applicant;
 - 4. ~~The home~~ Home, work, and mobile telephone ~~number~~ numbers of the applicant;
 - 5. ~~The applicant's~~ Applicant's date and place of birth;
 - 6. ~~The applicant's social security~~ Applicant's Social Security number;
 - 7. ~~The sex of the applicant~~ Whether the applicant is a U.S. citizen and if not, evidence of authorization to work in the United States;
 - 8. ~~The work telephone number of the applicant~~ Address of every residence at which the applicant has lived in the last five years;
 - 9. ~~Whether the applicant is presently serving as an administrator, and if so, the address of the institution~~ Name and address of every accredited college or university attended, dates of attendance, date of graduation, and degree or certificate received;
 - 10. Information regarding professional licenses or certifications currently or previously held by the applicant, including:
 - a. Name of issuing agency;
 - b. License or certificate number;
 - c. Issuing jurisdiction;
 - d. Date on which the license or certificate was first issued;
 - e. Whether the license or certificate is current; and
 - f. Whether the license or certificate is in good standing and if not, an explanation;

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11. Information regarding the applicant's employment record for the last five years, including:
 - a. Name, address, and telephone number of each employer;
 - b. Title of position held by the applicant;
 - c. Name of applicant's supervisor;
 - d. Dates of employment; and
 - e. Reason for employment termination;
12. Whether the applicant was ever denied a professional license or certificate and if so, the kind of license or certificate denied, licensing authority making the denial, and date;
13. Whether the applicant ever voluntarily surrendered a professional license or certificate and if so, the kind of license or certificate surrendered, licensing authority, date, and reason for the surrender;
14. Whether the applicant ever allowed a professional license or certificate to lapse and if so, the kind of license or certificate that lapsed, licensing authority, date, reason for lapse, and whether the license or certificate was reinstated;
15. Whether the applicant ever had a limitation imposed on a professional license or certificate and if so, the kind of license or certificate limited, licensing authority, date, nature of limitation, reason for limitation, and whether the limitation was removed;
- ~~10-16.~~ Whether the applicant has ever had an administrator a professional license or certificate suspended or revoked and if so, the kind of license or certificate suspended or revoked, licensing authority, date, and reason for the suspension or revocation;
17. Whether the applicant ever was subject to disciplinary action with regard to a professional license or certificate and if so, the kind of license or certificate involved, licensing authority, date, and reason for and nature of the disciplinary action;
18. Whether any unresolved complaint against the applicant is pending with a licensing authority, professional association, health care facility, or nursing care institution and if so, the nature of and where the complaint is pending;
19. Whether the applicant ever was charged with or convicted of a felony or a misdemeanor, other than a minor traffic violation, in any court and if so, the nature of the offense, jurisdiction, and date of discharge; and
20. Whether the applicant ever was pardoned from or had expunged the record of a felony conviction and if so, the nature of the offense, jurisdiction, and date of pardon or expunging.
- ~~11.~~ Whether the applicant has ever had a nursing care institution administrator license denied;
- ~~12.~~ Whether the applicant is currently licensed as an administrator in any other state, including name of state, license number, and expiration date;
- ~~13.~~ Whether the applicant's administrator license has ever been suspended or revoked;
- ~~14.~~ The names of the two persons to whom moral character certificates were sent;
- ~~15.~~ The name and address of the physician to whom the medical certificate was sent;
- ~~16.~~ Whether the applicant has been convicted for a violation of any law other than a minor traffic violation, and, if so, the date, place, and nature of the conviction;
- ~~17.~~ The state of current licensure, date license received, and the license number, if the applicant wishes to apply for licensure by reciprocity;
- ~~18.~~ The educational record of the applicant, including:
 - a. Name of the high school attended by applicant, its location, highest grade completed, whether the applicant received a diploma and year, and if not, GED certificate number and date issued and where the GED exam was taken;
 - b. Undergraduate education, including name and location of college or university, course of study, years attended, and degree and date received;
 - c. Post-graduate education, including name and location of college or university, course of study, years attended, and degree and date received;
 - d. Field training or short courses, including name and location of institution or agency, dates attended, course pursued, and date completed;
 - e. Memberships in professional or honorary societies and dates of membership;
 - f. Any special honors received and dates;
 - g. Professional licenses or certificates held, including type, license number, licensing authority, state, and dates;
 - h. Articles or books published, including name of publication, publisher, and copyright year or date of publication;
- ~~19.~~ The applicant's employment record for the last 10 years, including name and address of each employer, position held, immediate supervisor, and description of duties;
- ~~20.~~ A description of applicant's participation in health care institution association offices and activities;
- ~~21.~~ A description of the applicant's involvement in health related community service activities; and,
- ~~22.~~ A finished, unmounted color photograph of the applicant's head and shoulders, not less than 2 1/2 inches nor more than 3 inches square and taken within six months before the date of application.
- ~~F.~~ The applicant shall provide to the Board transcripts, a certificate of AIT program completion, or both, which demonstrate that the requirements of R4-33-204 have been met.
- ~~G.~~ An applicant shall submit the completed application forms and prescribed fees to the Board at least 45 days before the

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~~date of the next regularly scheduled examination.~~

- ~~H.~~ An applicant shall appear before the Board upon its request.
- ~~B.~~ In addition to the application form required under subsection (A), an applicant shall submit or have submitted on the applicant's behalf:
 - ~~1.~~ Official transcript submitted directly to the Board by each accredited college or university attended by the applicant;
 - ~~2.~~ Verification of license that is signed, authenticated by seal or notarization, and submitted directly to the Board by each agency that ever issued a professional license to the applicant;
 - ~~3.~~ "Character Certification" form submitted directly to the Board by two individuals who have known the applicant for at least three years and are not related to, employed by, or employing the applicant;
 - ~~4.~~ If the applicant is certified by ACHCA, verification of certification submitted directly to the Board by ACHCA;
 - ~~5.~~ If the applicant completed an AIT program, a photocopy of the certificate issued upon completion;
 - ~~6.~~ For every felony or misdemeanor charge listed under subsection (A)(19), a copy of documents from the appropriate court showing the disposition of each charge;
 - ~~7.~~ For every felony or misdemeanor conviction listed under subsection (A)(19), a copy of documents from the appropriate court showing whether the applicant met all judicially imposed sentencing terms;
 - ~~8.~~ Passport-size, color, full-face photograph of the applicant taken within the last 180 days and signed on the back by the applicant;
 - ~~9.~~ Signed and notarized affidavit affirming that the information provided in the application is true and complete and authorizing others to release information regarding the applicant to the Board; and
 - ~~10.~~ Fees required under R4-33-104(A)(1) and (A)(2).
- ~~C.~~ If required by the Board under A.R.S. § 36-446.03(D), an applicant shall appear before the Board.
- ~~D.~~ When the information required under subsections (A) and (B) is received and following an appearance before the Board required under subsection (C), the Board shall provide notice regarding whether the applicant may take the licensing examinations required under R4-33-201 or R4-33-202.
- ~~E.~~ Because of the time required for the Board to perform an administrative completeness review under R4-33-103, an applicant shall submit the information required under subsections (A) and (B) at least 30 days before the applicant expects to take the Arizona examination.

~~R4-33-202-R4-33-205. Licensure by Examination Administration of Examinations; License Issuance~~

- ~~A.~~ To be eligible for licensure as a nursing care institution administrator, an applicant shall obtain the following:
 - ~~1.~~ A score of 70% on a written national examination of NAB;
 - ~~2.~~ A score of 80% on a written examination based on Arizona statutes and rules.
- ~~B.~~ An applicant who passes one of the examinations in subsection (A) but fails the other shall be required to retake only the examination failed to be eligible for licensure.
- ~~C.~~ The Board shall administer the Arizona examinations not less than examination at least twice each year at times and places specified by the Board.
- ~~D.~~ An applicant who fails either part of the examination two times shall not be eligible to take another examination for 11 months from the date of the last examination. An applicant who fails the examination three times may not take another examination until the applicant successfully completes an AIT program.
- ~~B.~~ An applicant shall make arrangements directly with NAB to take the NAB examination.
- ~~C.~~ The Board shall provide written notice to an applicant regarding whether the applicant passed a required examination.
- ~~D.~~ An applicant for licensure under R4-33-201 is not required to take or pass both examinations at the same time. An applicant who passes one of the examinations listed in R4-33-201(2) but fails the other is required to retake only the examination failed.
- ~~E.~~ When an applicant passes the examinations required under R4-33-201 or R4-33-202, the Board shall send the applicant a written notice that the Board will issue a license to the applicant when the applicant submits to the Board the fee required under R4-33-104(A)(4). If the applicant fails to submit the fee within six months of the Board's notice, the Board shall administratively close the applicant's file. An individual whose file is administratively closed may receive further consideration only by submitting a new application under R4-33-201 or R4-33-202.

R4-33-206. Renewal Application

- ~~A.~~ A license year begins July 1 and ends June 30. The Board shall provide a licensee with notice of the need for license renewal. Failure to receive notice of the need for license renewal does not excuse a licensee's failure to renew timely.
- ~~B.~~ All licenses, except temporary, expire. An administrator license expires at midnight on June 30 of each even-numbered year. Temporary licenses expire at midnight on the date designated on the license.
- ~~C.~~ A licensee shall submit an application for renewal of license, accompanied by the prescribed fee and evidence of completion of 50 hours of continuing education credit under R4-33-214, not later than June 1. A licensee who received an original license on or after January 1 and before June 30 of the renewal year shall submit evidence of completion of 10 hours of continuing education credit under R4-33-214. To renew an administrator license, the licensee shall submit the following information to the Board, on or before June 30, on a renewal application, which is available from the Board:
 - ~~1.~~ Current address;
 - ~~2.~~ Current home and business telephone numbers;

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3. Whether within the last 24 months the licensee was convicted of or pled guilty or no contest to a criminal offense, other than a minor traffic violation, in any court and if so, attach a copy of the original arrest record and final court judgment;
 4. Whether within the last 24 months the licensee was denied a professional license or had a professional license revoked, suspended, placed on probation, limited, or restricted in any way by a state or federal regulatory authority and if so, the kind of license, license number, issuing authority, nature of the regulatory action, and date;
 5. An affirmation that the number of hours of continuing education required under R4-33-501 has been completed; and
 6. The licensee's dated and notarized signature affirming that the information provided is true and complete.
- D.** In addition to the renewal application required under subsection (C), a licensee shall submit the license renewal fee required under R4-33-104.
- ~~**E.** A person~~ An individual whose license ~~has expired~~ expires because of failure to renew ~~in accordance with subsection (C)~~ timely may apply for renewal by complying with subsections (C) and (D) if:
1. The person's license was not revoked under A.R.S. § 36-446.07;
 2. No more than 30 days have lapsed since expiration of the license The individual complies with subsections (C) and (D) on or before July 31;
 - 3-2. The person individual ~~pays the prescribed fees~~ penalty prescribed under R4-33-104; and
 - 4-3. The person meets the applicable continuing education requirements individual affirms that the individual has not acted as a nursing care institution administrator since the license expired.
- E.** An individual whose license expires because of failure to renew timely and who does not comply with subsection (E) may become licensed as a nursing care institution administrator only by complying with R4-33-201 or R4-33-202.

R4-33-207. Inactive Status

- A.** The Board shall place a person's an administrator's license on inactive status if the licensee administrator:
1. Is currently licensed in good standing in Arizona; ;
 2. Notifies Submits a written request to the Board in writing of the wish to be placed on inactive status; ; and
 3. Meets the Submits evidence that complies with R4-33-501(D) showing that the administrator completed two hours of continuing education requirements for each month in the current biennial period before the request to be placed on inactive status. These continuing education requirements may be prorated, based upon the commencement of the renewal period.
- B.** The Within seven days after receiving a request to be placed on inactive status, the Board shall provide the licensee administrator written confirmation of inactive status.
- C.** An administrator whose license is on inactive status is not required to comply with R4-33-501.
- D.** An inactive license expires under R4-33-206 unless the administrator timely submits a renewal application and the fee required under R4-33-104(A)(7).
- ~~**E.**~~ To resume active licensure status, the licensee an administrator shall:
1. complete the Submit evidence that complies with R4-33-501(D) showing that the administrator completed 25 hours of continuing education credits required in A.R.S. § 36-446.07(H) continuing education within the six months before making written request to the Board for resumption of requesting to resume active licensure status-; and
 2. Submit a written request to the Board to resume active licensure status.
- ~~**F.**~~ The Board shall grant the a request to resume active licensure status if the requirements of subsection (C) (E) are met. The Within seven days after receiving the written request to resume active licensure status, the Board shall send written notice to the licensee administrator granting or denying active status. If denied, the licensee shall have 15 days from the date of receipt of the notice to file a request for hearing with the Board, appealing the denial. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6 and Article 10.

R4-33-208. Standards of Conduct; Disciplinary Action

- A.** The following standards of conduct apply to an An administrator licensed under this Article shall know and comply with all federal and state laws applicable to operation of a nursing care institution.
- B.** An administrator shall not:
1. An administrator shall not engage Engage in unprofessional conduct: as defined at A.R.S. § 36-446;
 2. An administrator:
 - a. Shall be familiar with the federal and state laws and regulations applicable to operation of a nursing care institution.
 - b. Shall not be Be addicted to or dependent upon on the use of narcotics or other drugs, including alcohol, which interferes with the performance of the duties as a nursing care institution administrator. ;
 - e-3. Shall not wilfully Directly or indirectly permit an owner, officer, or employee of a nursing care institution or its owners, officers, or employees to solicit, offer, or receive any premium, rebate, or other valuable consideration in connection with the furnishing of items goods or services to patients of the institution or for referral of patients to another person or place if unless the resulting economic benefit is not directly passed on to the patients- ;
 4. Directly or indirectly permit an owner, officer, or employee of a nursing care institution to solicit, offer, or receive any premium, rebate, or other valuable consideration for referring a patient to another person or place unless the

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resulting economic benefit is directly passed to the patient:

- ~~d-5. Shall not wilfully~~ Willfully permit the unauthorized disclosure of information relating to a patient or a patient's records-;
 - ~~e-6. Shall not discriminate~~ Discriminate against ~~patients~~ a patient or ~~employees~~ employee, on the basis of race, sex, age, religion, disability, or national origin-;
 - ~~f-7. Shall not misrepresent~~ Misrepresent the administrator's qualifications, education, or experience ~~or affiliations~~ -;
 - ~~g-8. Shall not aid~~ Aid or abet ~~anyone in misrepresenting~~ another person to misrepresent that person's qualifications, education, or experience, ~~or affiliations~~ -;
 - ~~h-9. Shall not defend~~ Defend, support, or ignore unethical conduct ~~perpetrated by employees, owners, or peers~~ of an employee, owner, or other administrator;
 - ~~i-10. Shall not engage~~ Engage in any conduct or practice contrary to recognized community standards or ethics of a nursing care institution administrator; ~~or~~
 - 11. Engage in any conduct or practice ~~which does that is~~ or might constitute incompetence, gross negligence, repeated negligence, or negligence that might constitute a danger to the health, welfare, or safety of ~~the~~ a patient or the public-;
 - ~~j-12. Shall not procure~~ Procure or attempt ~~by fraud or misrepresentation~~ to procure by fraud or misrepresentation a license or renewal of a license ~~to practice as a nursing care institution administrator~~ -;
 - ~~k-13. Shall not violate~~ Violate a formal order, condition of probation, or stipulation issued by the Board-;
 - ~~l-14. Shall not commit~~ Commit an act of sexual abuse, misconduct, harassment, or exploitation-; or
 - ~~m-15. Shall not retaliate~~ Retaliate against any person who reports in good faith to the Board alleged incompetence, or illegal; or unethical conduct of any ~~practitioner~~ administrator.
- ~~B-C.~~ The Board shall consider a Final final judgment or conviction for a felony, ~~or any an~~ an offense involving moral turpitude, or direct or indirect elder abuse ~~shall be as~~ as grounds for disciplinary action under A.R.S. § 36-446.07 ~~et seq.~~ or including denial of a license ~~application~~ or license renewal.
- ~~C-D.~~ An administrator who has violated violates any provision of A.R.S. Title 36, Chapter 4, Article 6 or this ~~Article~~ Chapter shall be is subject to discipline ~~in accordance with~~ under A.R.S. § 36-446.07.

R4-33-209. Renumbered

R4-33-210. Restoration of Revoked License Licensure Following Revocation

- ~~A.~~ No earlier than 12 months from the date of revocation, a former licensee may file a request for license restoration. The former licensee shall submit evidence satisfactory to the Board that the basis for revocation has been removed. The former licensee shall meet all of the requirements of R4 33 201, R4 33 202 and R4 33 204. The requirements of R4 33 201(D) shall be applicable to a former licensee who was convicted of a felony.
- ~~B.~~ Following receipt of a request for license restoration, the Board shall require the former licensee to appear before the Board and provide evidence that all the requirements of R4 33 210(A) have been met. If a request for license restoration is denied, the former licensee may request a hearing under A.R.S. § 41-1065.
An individual who wishes to be licensed after the individual's license as a nursing care institution administrator is revoked shall:
 1. Not apply for licensure until at least 12 months have passed since the revocation; and
 2. Apply for licensure under R4-33-201 or R4-33-202.

R4-33-211. Display of License and Board Notification Notice of Appointment

- ~~A.~~ A licensee shall display the licensee's certificate of licensure and current renewal certificate in a conspicuous place in the licensee's office or place of business or employment.
- ~~B.~~ A licensee shall notify the Board, within 30 days, of any change of name or mailing address, providing both former and new name or address.
- ~~C.~~ An administrator shall ~~notify~~ provide written notice to the Board, within 30 days, ~~each time that the licensee is of being appointed administrator of a nursing care institution and each time or terminating an appointment terminates.~~ Each notification shall include the name and address of the facility or facilities involved and the dates of appointment or termination.
- ~~B.~~ An administrator shall include the following, as applicable, in a notice regarding the administrator's appointment:
 1. Administrator's name.
 2. Administrator's license number.
 3. Name and address of the nursing care institution to which the administrator is appointed.
 4. Date of appointment.
 5. Name and address of the nursing care institution at which the administrator's appointment is terminated, and
 6. Date of termination.

R4-33-212. Renumbered

R4-33-213. Denial of License or Renewal of License Repealed

- ~~A.~~ A person who is denied the right to take an examination may file a request for an informal interview before the Board

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within 15 days after receipt of the notice of denial.

- ~~B.~~ A person who is denied a license or renewal of license shall be notified in writing and may file a request for a hearing before the Board under A.R.S. § 41-1092.03.

R4-33-214. Criteria for Continuing Education Repealed

- ~~A.~~ A licensee shall obtain 50 hours of continuing education credit per renewal period for renewal of license except that, if an administrator is initially licensed on or after January 1 and before June 30 of the renewal year, only 10 hours shall be required for that first renewal period.
- ~~B.~~ No later than June 1, a licensee shall submit evidence of attendance at continuing education programs with the application for renewal of license required under R4-33-206. Evidence of attendance includes a certificate, letter of attendance, or grade report from the provider of the continuing education program.
- ~~C.~~ Licensees shall complete continuing education programs between June 1 and May 31, during the renewal period.
- ~~D.~~ To be eligible for credit, a continuing education program shall be approved by the Board and shall be in at least one of the following subject areas:
 - 1. Statutes and regulations on environmental health and safety (OSHA);
 - 2. Principles of management;
 - 3. Psychology and principles of patient care;
 - 4. Personal and social care;
 - 5. Therapeutic and supportive care and services in long term care; and
 - 6. Community health and social resources.
- ~~E.~~ Continuing education credits shall be awarded as follows:
 - 1. Seminars or workshops: one hour of credit for each contact hour.
 - 2. College accredited courses: 15 credit hours for each semester hour.
 - 3. Annual meetings of national health care organizations and annual state association meetings affiliated with national health care organizations: 1/2 hour credit for each business meeting.
 - 4. Two continuing education credits for each month that an AIT preceptor trains an AIT. A preceptor shall receive a maximum of 50% of required continuing education hours during a renewal period from serving as a preceptor.
- ~~F.~~ A licensee who participates as an instructor in an approved continuing education program shall receive the same credit as a student. The licensee may receive continuing education credit for instructing the same approved program only once during a renewal period.
- ~~G.~~ A licensee shall receive credit for no more than 20 hours of required continuing education during a renewal period from correspondence courses.
- ~~H.~~ Requests for approval of a continuing education program shall be submitted by individuals or sponsors in writing and shall contain the following information:
 - 1. Title of program;
 - 2. Sponsor: name, address and contact person;
 - 3. Date, time and place of program;
 - 4. Content and applicability to nursing home administration;
 - 5. Qualification of instructors;
 - 6. Number of contact hours; include a time schedule of events and an agenda with specific times for instruction, breaks and meals; and
 - 7. If an accredited college course, the number of semester credits available.

ARTICLE 4. ADULT CARE HOME ASSISTED LIVING FACILITY MANAGER CERTIFICATION

~~R4-33-402.~~ R4-33-401. Eligibility Requirements for Initial Certification by Examination

- ~~A.~~ A person may apply for To be eligible to receive an initial adult care home manager certificate by examination pursuant to A.R.S. § 36-446.04(B) if one of the following requirements is met as an assisted living facility manager, an individual shall:
 - 1. Education:
 - a. Earn a high school diploma or G.E.D., and
 - ~~1-b.~~ The applicant has successfully completed a Board-approved adult care home manager Complete a Department-approved training program in personal, supervisory, and directed care and management of an assisted living facility; or
 - 2-c. In lieu of a Board-approved training program, the applicant may provide a certified transcript from Complete at least 36 contact hours of instruction at an accredited university or college or provide other evidence of a combination of education and training which verifies a total of at least 34 hours of instruction, including a minimum of the indicated hours in the following areas: resident rights (two hours); hands-on care of elderly, disabled or physically handicapped adults (ten hours); nutrition and food preparation (four hours); caring for confused individuals (four hours); pharmacology of medications commonly prescribed for adults (four hours); care plan development (four hours); environment and fire safety (two hours); business practices and recordkeeping (four

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- ~~hours);~~ the following hours in the following subject areas:
- i. Residents' rights, two contact hours;
 - ii. Care of elderly or disabled adults, 10 contact hours;
 - iii. Nutrition and food preparation, four contact hours;
 - iv. Care of confused individuals, four contact hours;
 - v. Pharmacology of commonly prescribed medications, four contact hours;
 - vi. Care plan development, four contact hours;
 - vii. Environmental and fire safety, four contact hours; and
 - viii. Business practices and recordkeeping, four contact hours;
2. Work experience. Complete at least 2,080 hours of paid work experience in a health-related field within the five years before application;
 3. Examination. Obtain a score of at least 75 percent on the Arizona examination;
 - ~~B.4. Training. Complete~~ The applicant shall also provide evidence of successful completion of an adult cardiopulmonary resuscitation program and a basic first-aid training program; and
 5. Submit all applicable information required under R4-33-403.

~~R4-33-410-R4-33-402.~~ **Requirements for a Temporary Certificate**

- A. ~~To qualify be eligible for a temporary certificate to fill an adult care home as an assisted living facility manager position, the applicant an individual shall have completed one of the following:~~
 1. Meet the requirements under R4-33-401 except for the requirement at R4-33-401(A)(3); 27 hours of instruction in an approved adult care home manager training program; or
 2. Be registered as a Nurse's Aide in Arizona; or
 3. Have current licensure with the State Board of Nursing.
 2. Have the owner of an assisted living facility that intends to employ the applicant as manager if the applicant is successful in obtaining a temporary certificate submit to the Board a Letter of Intent to Employ on a form that is available from the Board. The owner of the assisted living facility shall include the following in the Letter of Intent to Employ:
 - a. Name of the owner of the assisted living facility;
 - b. Name and address of the assisted living facility;
 - c. Name of the applicant;
 - d. An affirmation of intent to employ the applicant;
 - e. Reason for requesting a temporary certificate for the applicant;
 - f. License number of the assisted living facility; and
 - g. Notarized signature of the owner of the assisted living facility;
 3. Not have held an Arizona temporary certificate as an assisted living facility manager within the past three years; and
 4. Not have failed the Arizona examination before applying for the temporary certificate.
- B. ~~The requirements specified in R4-33-303 and R4-33-305 shall also be met~~ At the Board's request, an applicant for a temporary certificate shall appear or be available by telephone for an interview with the Board.
- C. ~~The owner or governing authority of the adult care home shall submit a letter indicating the manager position is available and that the applicant shall be engaged in the capacity of manager if the applicant is successful in obtaining a temporary certificate~~ A temporary certificate is valid for 150 days and is not renewable. Before expiration of the temporary certificate, the temporary certificate holder shall obtain a certificate under A.R.S. § 36-446.04 and this Article or discontinue as manager of the assisted living facility.
- D. ~~Prior to the expiration of the 150-day period, the~~ If a temporary certificate holder shall become certified under the terms of A.R.S. § 36-446.04(B) or fails the Arizona examination during the term of the temporary certificate, the temporary certificate is automatically revoked and the former temporary certificate holder shall discontinue as the manager of the adult care home assisted living facility.

R4-33-403. Initial Application

- A. ~~All applicants for adult care home manager shall submit a sworn, notarized application form supplied by the Board releasing information to the Board and identifying both the type of certificate requested and the statute under which they are applying.~~ An individual who desires to be certified as a manager of an assisted living facility shall submit the following information to the Board on an application form, which is available from the Board:
 1. Full name of the applicant;
 2. Other names that the applicant has used;
 3. Mailing address of the applicant;
 4. Home, work, and mobile telephone numbers of the applicant;
 5. Applicant's date and place of birth;
 6. Applicant's Social Security number;
 7. Whether the applicant is a U.S. citizen and if not, evidence of authorization to work in the United States;

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8. Address of every residence at which the applicant has lived in the last five years;
 9. Education information regarding the applicant, including:
 - a. Name and location of last high school attended;
 - b. Date of high school graduation or date on which a G.E.D. was earned; and
 - c. Name and address of every accredited college or university attended, dates of attendance, date of graduation, and degree or certificate earned;
 10. Information regarding professional licenses or certifications currently or previously held by the applicant, including:
 - a. Name of issuing agency;
 - b. License or certificate number;
 - c. Issuing jurisdiction;
 - d. Date on which the license or certificate was first issued;
 - e. Whether the license or certificate is current; and
 - f. Whether the license or certificate is in good standing and if not, an explanation;
 11. Information regarding the applicant's employment record for the last five years, including:
 - a. Name, address, and telephone number of each employer;
 - b. Title of position held by the applicant;
 - c. Name of applicant's supervisor;
 - d. Dates of employment;
 - e. Number of hours worked each week;
 - f. Whether the employment was full or part time; and
 - g. Reason for termination;
 12. Whether the applicant was ever denied a professional license or certificate and if so, the kind of license or certificate denied; licensing authority making the denial, and date;
 13. Whether the applicant ever voluntarily surrendered a professional license or certificate and if so, the kind of license or certificate surrendered, licensing authority, date, and reason for the surrender;
 14. Whether the applicant ever allowed a professional license or certificate to lapse and if so, the kind of license or certificate that lapsed, licensing authority, date, reason for lapse, and whether the license or certificate was reinstated;
 15. Whether the applicant ever had a limitation imposed on a professional license or certificate and if so, the kind of license or certificate limited, licensing authority, date, nature of limitation, reason for limitation, and whether the limitation was removed;
 16. Whether the applicant ever had a professional license or certificate suspended or revoked and if so, the kind of license or certificate suspended or revoked, licensing authority, date, and reason for suspension or revocation;
 17. Whether the applicant ever was subject to disciplinary action with regard to a professional license or certificate and if so, the kind of license or certificate involved, licensing authority, date, and reason for and nature of the disciplinary action;
 18. Whether any unresolved complaint against the applicant is pending with a licensing authority, professional association, health care facility, or assisted living facility and if so, the nature of and where the complaint is pending;
 19. Whether the applicant ever was charged with or convicted of a felony or a misdemeanor, other than a minor traffic violation, in any court and if so, the nature of the offense, jurisdiction, and date of discharge; and
 20. Whether the applicant ever was pardoned from or had the record expunged of a felony conviction and if so, the nature of the offense, jurisdiction, and date of pardon or expunging.
- B.** The applicant shall submit a "Character Certification" form from at least two persons who are not related to or in the employment of the applicant who attest to the good character of the applicant. In addition to the application form required under subsection (A), an applicant shall submit or have submitted on the applicant's behalf:
1. Education:
 - a. Copy of the applicant's high school diploma or G.E.D., and
 - b. Certificate of completion from the Department-approved training course; or
 - c. Official transcript submitted directly to the Board by each accredited college or university attended by the applicant;
 2. Documentation of 2,080 hours of paid work experience in a health-related field;
 3. Copy of current certification in adult cardiopulmonary resuscitation and first aid;
 4. Verification of license that is signed, authenticated by seal or notarization, and submitted directly to the Board by each agency that ever issued a professional license to the applicant;
 5. "Character Certification" form submitted directly to the Board by two individuals who have known the applicant for at least three years and are not related to, employed by, or employing the applicant;
 6. For every felony or misdemeanor charge listed under subsection (A)(19), a copy of documents from the appropriate court showing the disposition of each charge;
 7. For every felony or misdemeanor conviction listed under subsection (A)(19), a copy of documents from the appropriate court showing whether the applicant met all judicially imposed sentencing terms;

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8. Passport-size, color, full-face photograph of the applicant taken within the last 180 days and signed on the back by the applicant;
 9. Signed and notarized affidavit affirming that the information provided in the application is true and complete and authorizing others to release information regarding the applicant to the Board; and
 10. Fees required under R4-33-104(B)(1) and (B)(2).
- C. An applicant shall submit a "Medical Certification" form completed by a licensed physician attesting to the applicant's physical and mental fitness to perform the duties of manager. If required by the Board under A.R.S. § 36-446.03(D), an applicant shall appear before the Board.
- D. Each applicant shall certify in writing that he or she has not committed any of the acts listed in A.R.S. § 36-446.07(B) or 36-448.02(B). When the information required under subsections (A) and (B) is received and following an appearance before the Board required under subsection (C), the Board shall provide notice regarding whether the applicant may take the Arizona examination required under R4-33-401(3).
- E. An applicant shall complete and submit a properly sworn and notarized personal data sheet form prescribed by the Board which provides general information about the applicant, including name and address, telephone number, social security number (optional), date of birth, sex, history of any conviction of a violation of federal, state or local statutes other than for minor traffic violations, educational background, employment background, and an affidavit that the application is complete and accurate. A color photograph showing head and shoulders of the applicant shall be attached to the personal data sheet. The photograph shall not be less than 2 1/2 inches nor more than 3 inches square and shall have been taken within six months prior to the date of application. Because of the time required for the Board to perform an administrative completeness review under R4-33-103, an applicant shall submit the information required under subsections (A) and (B) at least 30 days before the applicant expects to take the Arizona examination.
- F. An applicant shall submit to the Board the following documents indicating the requirements of R4-33-301(A), as applicable, have been met: certified transcripts; evidence of completion of a training program; or other evidence of education and training.
- G. The completed application forms and the prescribed fees shall be received by the Board at least 45 days before the date of the next regularly scheduled examination.

R4-33-404. Administration of Examination; Certificate Issuance

- A. The adult care home manager's examination shall test the applicant's knowledge of adult care home residents' needs, the laws and rules governing operation of adult care homes, and elements of good health facilities management. The minimum passing score shall be 70%. Board shall administer the Arizona examination at least twice each year at times and places specified by the Board.
- B. Examinations shall be administered not less than twice each year at such times and places in Arizona as may be specified by the Board. The Board shall provide written notice to an applicant regarding whether the applicant passed the Arizona examination.
- C. The score sheets and record of the examination shall be filed and retained by the Board for at least four years. When an applicant passes the Arizona examination, the Board shall send the applicant a written notice that the Board will issue a certificate to the applicant when the applicant submits to the Board the fee required under R4-33-104(B)(4). If the applicant fails to submit the fee within six months of the Board's notice, the Board shall administratively close the applicant's file. An individual whose file is administratively closed may receive further consideration only by submitting a new application under R4-33-401.

~~R4-33-406~~R4-33-405. Renewal Application

- A. All certificates, except temporary certificates, expire at midnight on June 30 of each odd-numbered year. Temporary certificates expire at midnight on the date designated on the certificate. The Board shall provide a certificate holder with notice of the need for certificate renewal. Failure to receive notice of the need for certificate renewal does not excuse a certificate holder's failure to renew timely.
- B. A certified adult care home manager seeking renewal shall submit an application for biennial renewal of certificate, accompanied by the prescribed fee, showing address and current employment, and shall submit evidence of completion of six hours of continuing education credit per year, pursuant to R4-33-308, by not later than June 1 of the renewal year. A certificate holder who received an original certificate on or after January 1 of the same year that renewal is required need only submit evidence of completion of three hours of continuing education credit. A manager certificate expires at midnight on June 30 of each odd-numbered year.
- C. An individual whose Arizona certificate has expired may apply for late renewal provided the following requirements are met:
1. The certificate was not revoked pursuant to A.R.S. § 36-446.07;
 2. No more than 30 days have elapsed since the expiration of the certificate;
 3. The prescribed fees have been paid; and
 4. The applicable continuing education requirements have been met.

To renew a manager certificate, the certificate holder shall submit the following information to the Board, on or before

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June 30, on a renewal application, which is available from the Board:

1. Current address;
 2. Current home and business telephone numbers;
 3. Whether within the last 24 months the certificate holder was convicted of or pled guilty or no contest to a criminal offense, other than a minor traffic violation, in any court and if so, attach a copy of the original arrest record and final court judgment;
 4. Whether within the last 24 months the certificate holder was denied a professional license or had a professional license revoked, suspended, placed on probation, limited, or restricted in any way by a state or federal regulatory authority and if so, the kind of license, license number, issuing authority, nature of the regulatory action, and date;
 5. An affirmation that the number of hours of continuing education required under R4-33-501 has been completed;
 6. An affirmation that the certificate holder complies with the disclosure requirements under R4-33-408; and
 7. The certificate holder's dated and notarized signature affirming that the information provided is true and complete.
- D.** In addition to the renewal application required under subsection (C), a certificate holder shall submit the renewal fee required under R4-33-104.
- E.** An individual whose certificate expires because of failure to renew timely may apply for renewal by complying with subsections (C) and (D) if:
1. The individual complies with subsections (C) and (D) on or before July 31;
 2. The individual pays the penalty prescribed under R4-33-104; and
 3. The individual affirms that the individual has not acted as an assisted living facility manager since the certificate expired.
- F.** An individual whose certificate expires because of failure to renew timely and who does not comply with subsection (E) may obtain a manager certificate only by complying with R4-33-401.

R4-33-406. Inactive Status

- A.** The Board shall place a manager's certificate on inactive status if the manager:
1. Is in good standing in Arizona.
 2. Submits a written request to the Board to be placed on inactive status, and
 3. Submits evidence that complies with R4-33-501(D) showing that the manager completed one hour of continuing education for each month in the current biennial period before the request to be placed on inactive status.
- B.** Within seven days after receiving a request to be placed on inactive status, the Board shall provide the manager written confirmation of inactive status.
- C.** A manager whose certificate is on inactive status is not required to comply with R4-33-501.
- D.** An inactive certificate expires under R4-33-405 unless the manager timely submits a renewal application and the fee required under R4-33-104(B)(7).
- E.** To resume active certificate status, a manager shall:
1. Submit evidence that complies with R4-33-501(D) showing that the manager completed 12 hours of continuing education within the six months before requesting to resume active certificate status.
 2. Submit a written request to the Board to resume active certificate status, and
 3. Submit the fee required under R4-33-104(B)(4).
- F.** The Board shall grant a request to resume active certificate status if the requirements of subsection (E) are met. Within seven days after receiving the written request to resume active certificate status, the Board shall send written notice to the manager granting or denying active status.

R4-33-407. Standards of Conduct; ~~Suspension or Revocation~~ Disciplinary Action

- A.** ~~A certified manager is responsible for the operation of any adult care home which he manages, as well as for his or her own conduct. In addition to the requirements of A.R.S. § 36-446.07(B), a manager shall adhere to the following standards~~ A manager shall know and comply with all federal and state laws applicable to the operation of an assisted living facility.
- B.** A manager shall not:
- ~~1. The certified adult care home manager must be knowledgeable about federal and state laws and rules applicable to the operation of adult care homes. Engage in unprofessional conduct as defined at A.R.S. § 36-446;~~
 - ~~2. The certified adult care home manager is prohibited from working in a home that solicits, offers, or receives any premium, rebate, or other valuable consideration to or from any person or entity, except that the certified adult care home manager may be employed in adult care homes that pay referral fees only when those adult care homes have a contract on file with private referral agencies and keep on file names of residents who were referred by such referral agencies. Be addicted to or dependent on the use of narcotics or other drugs, including alcohol;~~
 3. Directly or indirectly permit an owner, officer, or employee of an assisted living facility to solicit, offer, or receive any premium, rebate, or other valuable consideration in connection with furnishing goods or services to residents unless the resulting economic benefit is directly passed to the residents;
 4. Directly or indirectly permit an owner, officer, or employee of an assisted living facility to solicit, offer, or receive any premium, rebate, or other valuable consideration for referring a resident to another person or place unless the

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resulting economic benefit is directly passed to the resident:

5. Willfully permit the unauthorized disclosure of information relating to a resident or a resident's records;
 6. Discriminate against a resident or employee on the basis of race, sex, age, religion, disability, or national origin;
 7. Misrepresent the manager's qualifications, education, or experience;
 8. Aid or abet another person to misrepresent that person's qualifications, education, or experience;
 9. Defend, support, or ignore unethical conduct of an employee, owner, or other manager;
 10. Engage in any conduct or practice contrary to recognized community standards or ethics of an assisted living facility manager;
 11. Engage in any conduct or practice that is or might constitute incompetence, gross negligence, repeated negligence, or negligence that might constitute a danger to the health, welfare, or safety of a resident or the public;
 12. Procure or attempt to procure by fraud or misrepresentation a certificate or renewal of a certificate as an assisted living facility manager;
 13. Violate a formal order, condition of probation, or stipulation issued by the Board;
 14. Commit an act of sexual abuse, misconduct, harassment, or exploitation; or
 15. Retaliate against any person who reports in good faith to the Board alleged incompetence or illegal or unethical conduct of any manager.
 - a. ~~When a referral fee is paid, the certified adult care manager shall keep on file a disclosure statement signed by the competent resident, resident's representative, or resident's legal guardian upon admission indicating knowledge that the adult care home will pay a fee to the referral agency for the resident's placement into the home, and indicating that the competent resident, resident's representative, or resident's legal guardian was informed of the fee payment prior to or upon admission into the adult care home. If a referral is made to a home that has an ownership interest in the referral agency, or by a referral agency that has an ownership interest in the adult care home, the certified adult care home manager shall keep on file a disclosure statement signed by the competent resident, resident's representative, or resident's legal guardian indicating knowledge of the relationship between the referral agency and the home prior to, or upon admission to the home.~~
 - b. ~~Upon renewal of certification, the certified adult care home manager who is employed by an adult care home that pays referral fees shall provide to the Board an affidavit avowing that the above disclosure requirements have been met.~~
- B.** ~~A manager who has violated the provisions of this Article as an applicant for a certificate, renewal of certificate, or late renewal of certificate or in a capacity as a manager is subject to the provisions of A.R.S. § 36-446.07 relating to suspension, revocation, or denial of a certificate.~~
- C.** ~~The Board shall consider a final judgment or conviction for a felony, an offense involving moral turpitude, or direct or indirect elder abuse as grounds for disciplinary action under A.R.S. § 36-446.07 or denial of a certificate or certificate renewal.~~
- D.** ~~A manager who violates any provision of A.R.S. Title 36, Chapter 4, Article 6 or this Chapter is subject to discipline under A.R.S. § 36-446.07.~~

R4-33-408. Criteria for Continuing Education Referral Requirements

- A.** ~~Evidence of attendance at Board-approved continuing education programs shall be submitted with the application for renewal of certificate. Continuing education credits shall be acquired during the period of the certificate but completed by May 31 prior to the renewal period.~~
- B.** ~~All continuing education programs require Board approval and shall be in at least one of the following subject areas:~~
1. ~~Statutes and rules on environmental health and safety (OSHA);-~~
 2. ~~Principles of management, including human resources, financial accounting, marketing, development;~~
 3. ~~Principles of patient care, patient rights, psychology;-~~
 4. ~~Therapeutic and supportive care services, nutrition, pharmacology, disease process, caring for confused residents;~~
 5. ~~Community health and social resources, case management, ombudsman program;~~
 6. ~~Rules governing adult care homes, Medicare, Arizona Health Care Cost Containment System.~~
- C.** ~~Continuing education credits shall be awarded as follows:-~~
1. ~~Programs of study—shall contain at least 25 contact hours and shall receive 25 credit hours.~~
 2. ~~Seminars or workshops—one hour of credit for each contact hour.~~
 3. ~~College accredited courses—13 credit hours for each semester hour.~~
 4. ~~Annual meeting of national health care organizations—three credit hours for each annual meeting attended up to a maximum of six hours per year.~~
 5. ~~State association meetings affiliated with national health care organizations—one half hour credit for each meeting up to a maximum of three hours per year.~~
- D.** ~~A certificate holder who participates as an instructor in an approved program shall receive the same credit as a student.~~
- E.** ~~The Board may disapprove requests for approval which have not been submitted at least 45 days prior to the commencement of a program.~~
- F.** ~~Requests for approval may be submitted by individuals or sponsors in writing and shall contain at least the following~~

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information:

1. Title of program;
2. Sponsor: name, address and contact person;
3. Date, time and place of program;
4. Content and applicability to adult care home management;
5. Credentials of qualified instructors;
6. Number of contact hours, including a time schedule of events where possible;
7. If an accredited college course, the number of semester hours granted;

~~G.~~ Sponsored educational program requests for approval shall be accompanied by the prescribed fee for Board review.

~~H.~~ Sponsored programs shall be submitted to the Board for reapproval prior to changes in content, instructor or hours.

~~I.~~ Continuing education programs shall be taught by qualified instructors as defined in R4-33-112(B)(9).

A. A manager who is employed by an assisted living facility that pays a fee to an individual or entity for referral of a resident to the assisted living facility shall ensure that the assisted living facility:

1. Has on file a contract with the individual or entity making the referral;
2. Maintains a file of the names of the residents referred by the individual or entity; and
3. Obtains at the time of admission and maintains a statement, signed by the resident or the resident's representative or legal guardian, which discloses that:
 - a. A fee was paid for referring the resident to the assisted living facility;
 - b. The resident or the resident's representative or legal guardian was informed of the fee arrangement; and
 - c. The resident or the resident's representative or legal guardian was informed of any ownership interest between the assisted living facility and the individual or entity making the referral.

B. A manager shall maintain the records required under subsection (A)(1) for five years and shall maintain the records required under subsections (A)(2) and (A)(3) for five years after the resident ceases to reside in the assisted living facility.

C. A manager shall make the records required under this Section available for review upon request by the Board.

R4-33-409. Display of Certificate Repealed

~~Every person certified and employed as an adult care home manager shall display the original certificate and the current renewal certificate in a conspicuous place in the adult care home.~~

R4-33-410. Renumbered

R4-33-411. Denial of Certificate Repealed

~~Any person who has been denied a certificate or denied the right to take an examination shall be notified as provided in A.R.S. § 41-1061.~~

R4-33-412. Rehearing or Review of Decision Repealed

~~**A.** Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than ten days after service of the decision, a written request for rehearing or review of the decision which specifies the particular grounds therefor. For purposes of this rule, a decision shall be deemed to have been served when mailed by certified mail to the party at his last known residence or place of business.~~

~~**B.** A request for rehearing under this rule may be amended at any time before it is ruled upon by the Board. Any party may file a response to the request within ten days after service of the request on that party. The Board may require the filing of written argument upon the issues raised in the request and may provide for oral argument.~~

~~**C.** A rehearing or review of the decision may be granted for any of the following causes materially affecting the requesting party's rights:~~

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

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

~~**E.** Not later than ten days after a decision is rendered, the Board may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing on request of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a request for rehearing for a reason not~~

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stated in the motion. In either case the order granting such a rehearing shall specify the grounds therefor.

- F. When a request for rehearing is based upon affidavits, they shall be served with the request. An opposing party may, within ten days after such service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G. If in a particular decision the Board makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.
- H. For purposes of this rule, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

ARTICLE 5. CONTINUING EDUCATION

R4-33-501. Continuing Education Requirement

- A. Continuing education is a prerequisite of license or certificate renewal.
 - 1. A licensed administrator shall obtain 50 hours of Board-approved continuing education during each biennial period. During the biennial period in which an administrator is initially licensed, the administrator shall obtain two hours of Board-approved continuing education for each month or part of a month remaining in the biennial period.
 - 2. A certified manager shall obtain 24 hours of Board-approved continuing education during each biennial period. During the biennial period in which a manager is initially certified, the manager shall obtain one hour of Board-approved continuing education for each month or part of a month remaining in the biennial period.
- B. The Board shall award hours in an approved continuing education as follows:
 - 1. Seminar or workshop. One hour of continuing education for each contact hour;
 - 2. Course at an accredited educational institution. Fifteen hours of continuing education for each seminar hour;
 - 3. Attendance at a business meeting of a national health care organization or of a state association affiliated with a national health care organization. One-half hour of continuing education for each business meeting attended;
 - 4. Self-study, online, or correspondence course. Approved hours of continuing education requested by the course provider;
 - 5. Serving as a preceptor. Two hours of continuing education for each month that an administrator serves as an AIT preceptor; and
 - 6. Teaching a Board-approved continuing education. One hour of continuing education for each hour taught.
- C. The Board shall limit the number of hours of Board-approved continuing education awarded as follows:
 - 1. No more than 40 percent of the required hours may be obtained using self-study, online, or correspondence courses;
 - 2. No more than 50 percent of the required hours may be obtained from serving as an AIT preceptor;
 - 3. Hours may be obtained for teaching a particular continuing education only once during each biennial period; and
 - 4. Hours that exceed the minimum required for a biennial period may not be carried over to a subsequent biennial period.
- D. An administrator or manager shall obtain a certificate or other evidence of attendance from the provider of each continuing education attended that includes the following:
 - 1. Name of the administrator or manager;
 - 2. License or certificate number of the administrator or manager;
 - 3. Name of the continuing education;
 - 4. Name of the continuing education provider;
 - 5. Date, time, and location of the continuing education; and
 - 6. Number of hours in the continuing education.
- E. An administrator or manager shall maintain the evidence of attendance described in subsection (D) for three years and make the evidence available to the Board under R4-33-503 and as otherwise required under this Chapter.

R4-33-502. Approval of Continuing Education

- A. The Board shall approve any continuing education approved by NAB or the ACHCA.
- B. The Board shall approve a continuing education only if it is taught by a qualified instructor and addresses at least one of the following subject areas:
 - 1. Laws regarding environmental health and safety.
 - 2. Principles of management.
 - 3. Psychology and principles of patient or resident care.
 - 4. Personal and social care.
 - 5. Therapeutic and supportive care and services in long-term or assisted care.
 - 6. Community health and social resources.
 - 7. Quality assurance.

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8. Ethics, and
9. Recordkeeping.
- C. To obtain the Board's approval of a continuing education, an administrator, manager, or continuing education provider shall:
 1. Submit a form, which is available from the Board, containing the following information:
 - a. Title of the continuing education;
 - b. Name and address of the continuing education provider;
 - c. Name, telephone and fax numbers, and e-mail address of a contact person for the continuing education provider;
 - d. Date, time, and place at which the continuing education will be taught;
 - e. Whether the continuing education is intended for administrators or managers;
 - f. Subject matter of the continuing education;
 - g. Teaching methods and learning activities that will be used;
 - h. Learning objectives;
 - i. Description of how learning objectives will be evaluated;
 - j. Whether an examination will be given;
 - k. Number of continuing education hours requested; and
 - l. Signature of the person requesting approval of the continuing education.
 2. Submit the following documents:
 - a. Copy of any examination that will be given to those who attend the continuing education;
 - b. Curriculum vitae of each instructor;
 - c. Agenda of the continuing education showing the hours of instruction;
 - d. Certificate of attendance that meets the requirements in R4-33-501(D);
 - e. Copy of any brochure prepared regarding the continuing education; and
 - f. Fee required under R4-33-104.
- D. The Board's approval of a continuing education is valid for one year unless there is a change in subject matter, instructor, or hours of instruction. At the end of one year or when there is a change in subject matter, instructor, or hours of instruction, the continuing education provider shall apply again for approval.

R4-33-503. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement

When notice of the need to renew a license or certificate is provided, the Board shall also provide notice of an audit of continuing education records to a random sample of administrators or managers. An administrator or manager subject to a continuing education audit shall submit the documentation required under R4-33-501(D) at the same time that the administrator or manager submits the renewal application required under R4-33-206 or R4-33-405. If an administrator or manager fails to submit the required documentation with the renewal application on or before June 30, the license or certificate expires unless the administrator or manager obtains an extension of time in which to complete the continuing education requirement under R4-33-504.

R4-33-504. Extension of Time to Complete the Continuing Education Requirement

- A. To obtain an extension of time under A.R.S. § 36-446.07(G) to complete the continuing education requirement, an administrator or manager shall submit to the Board a written request that includes the following:
 1. Ending date of the requested extension.
 2. Continuing education completed during the current biennial period and the documentation required under R4-33-501(D).
 3. Proof of registration for additional continuing education that is sufficient to enable the administrator or manager to fulfill the continuing education requirement before the end of the requested extension, and
 4. Administrator's or manager's attestation that the continuing education obtained under the extension will be reported only to fulfill the current renewal requirement and will not be reported on a subsequent renewal application.
- B. The Board shall grant an extension of time within seven days after receiving a request for an extension of time if the request:
 1. Specifies an ending date no later than October 31.
 2. Includes the required documentation and attestation.
 3. Is submitted no sooner than April 30, and
 4. Will facilitate the safe and professional regulation of nursing care institutions or assisted living facilities in this state.

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TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

[R06-406]

PREAMBLE

- 1. Section Affected**

R15-5-101	Amend
R15-5-103	Amend
R15-5-104	Amend
R15-5-105	Amend
R15-5-106	Amend
R15-5-110	Amend
R15-5-111	Amend
R15-5-113	Amend
R15-5-2309	Amend
R15-5-2313	Amend
R15-5-2314	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statute the rule is implementing (specific):**

Authorizing statute: A.R.S. § 42-1005
Implementing statute: A.R.S. §§ 42-5061; 42-5151; and 42-5155
- 3. The effective date of the rules:**

December 4, 2006
- 4. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 2044, June 9, 2006
Notice of Proposed Rulemaking: 12 A.A.R. 1906, June 9, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Dan Jensen, Tax Analyst
Address: Tax Policy and Research Division
Arizona Department of Revenue
1600 W. Monroe, Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6377
Fax: (602) 716-7995
E-mail: DJensen@azdor.gov

Please visit the ADOR Web site to track the progress of these rules and other agency rulemaking matters at www.azdor.gov/tra/draftdoc.htm.
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

The following rulemaking is pursuant to changes recommended in the latest 5-year review report of the rules in Chapter 5 of Title 15 applicable to transaction privilege taxes imposed under the retail classification. The Department is amending these rules to conform to current rulewriting standards and to delete unnecessary language. Some of the rules inappropriately use the passive voice, use inaccurate verbiage, or are unclear. Language in these rules is also deleted because it does not clarify the applicable statutes.

Three use tax rules are also amended for the some of the same reasons. These three rules are substantially similar to three of the retail rules contained in this rulemaking.
- 7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the 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:**

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

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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:

There should be little to no economic impact associated with amending these rules. The changes are intended to clarify the rules and make them more readable for taxpayers. The changes eliminate the passive voice, delete unnecessary language, or clarify existing ambiguities. For businesses and individuals subject to either use tax or transaction privilege tax under the retail classification, these changes may increase compliance and reduce error in reporting their tax liability. The increased clarity will also help businesses that provide services understand if and when they may be subject to transaction privilege tax. The Department may see a slight increase or decrease in revenues collected due to the increased clarity of these rules.

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

Only minor technical changes were made to the rules at the request of the Governor's Regulatory Review Council staff.

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

None

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

None

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

None

14. Were these rules previously adopted as an emergency rules?

No

15. The full text of the rules follows:

TITLE 15. REVENUE

**CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION**

ARTICLE 1. RETAIL CLASSIFICATION

Section

- R15-5-101. Sales for Resale or Lease
- R15-5-103. Sale of Business Enterprises
- R15-5-104. Service Businesses
- R15-5-105. Services in Connection with Retail Sales
- R15-5-106. Finance Charges in Connection with Retail Sales
- R15-5-110. Lease-purchase Agreements
- R15-5-111. Consignment Sales
- R15-5-113. Sales by Trustees, Receivers, and Assignees

ARTICLE 23. USE TAX

Section

- R15-5-2309. Exemptions -- Purchases for Resale or Lease
- R15-5-2313. Lease-purchase Agreements
- R15-5-2314. Purchase from Trustees, Receivers, and Assignees

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-101. Sales for Resale or Lease

- A.** Gross receipts from the ~~sales~~ sale of tangible personal property to be resold by the purchaser in the ordinary course of business are not ~~taxable~~ subject to tax under the retail classification.
- B.** Gross receipts from the ~~sales~~ sale of tangible personal property to be leased ~~out~~ by a person in the business of leasing such personal property are not ~~taxable~~ subject to tax under the retail classification.
- C.** Gross receipts from the sale of tangible personal property to a lessor of real property are subject to tax if:
 - 1. ~~Gross receipts from the sale of tangible personal property to a lessor of real property are taxable if the~~ The tangible

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personal property is incorporated into, or leased in conjunction with, the real property, and

2. The rental of the tangible personal property is not separately stated as part of the real property lease transaction.

- ~~C.D.~~ Gross receipts from the sale of repair or replacement parts for tangible personal property ~~which that~~ is to be leased ~~out~~ by a person engaged in the business of leasing such tangible personal property are not ~~taxable~~ subject to tax under the retail classification.
- ~~D.~~ ~~The seller may establish the deduction for a sale for resale or lease by obtaining documentation from the purchaser pursuant to statutory provisions and to R15-5-2214.~~

R15-5-103. Sale of Business Enterprises

Gross receipts from the sale of a business as a going concern ~~shall~~ are not be taxable subject to tax if the sale is for the business as an operating enterprise.

R15-5-104. Service Businesses

- A. Gross receipts from the ~~sales~~ sale of tangible personal property to a person engaged in a professional or personal service occupation or business are ~~taxable~~ subject to tax if the tangible personal property is used or consumed in the performance of the service or is sold only as an inconsequential element of the nontaxable service provided.
- B. Gross receipts from the sale of tangible personal property, by a person engaged in a professional or personal service occupation or business, ~~shall~~ are not be taxable subject to tax if the property is sold only as an inconsequential element of the nontaxable service provided.
- C. Sales of tangible personal property ~~shall be considered~~ are inconsequential elements of the service if:
1. The purchase price of the tangible personal property to the person rendering the services represents less than 15% of the charge, billing, or statement rendered to the purchaser in connection with the transaction;
 2. At the time of the sale, the tangible personal property transferred is not in a form ~~which that~~ is subject to retail sale; and
 3. The charge for the tangible personal property is not separately stated on the invoice.
- D. A person engaged in both a retail business and a service business shall keep records of purchases of tangible personal property sufficient to establish whether the property was resold as a taxable retail sale.

R15-5-105. Services in Connection with Retail Sales

~~A charge in connection with a retail sale is taxable~~ Gross receipts from services rendered in addition to selling tangible personal property at retail are subject to tax unless the charge for service is shown separately on the sales invoice and records.

R15-5-106. Finance Charges in Connection with Retail Sales

Gross receipts from finance, carrying charges, or interest charges incurred in connection with a retail sale of tangible personal property ~~shall~~ are not be taxable subject to tax if:

1. The charges are separately stated as part of the sales transaction; and
2. The charges result from the sale of such property on credit or under an installment contract.

R15-5-110. Lease-purchase Agreements

- A. Gross income derived from the leasing of tangible personal property under a lease-purchase agreement ~~shall be~~ is taxable subject to tax under the personal property rental classification.
- B. Payments received after the conversion from a lease to a purchase are ~~taxable~~ subject to tax under the retail classification.
- C. Gross receipts from the sale of tangible personal property ~~shall~~ include conversion charges paid or incurred at the time the lease is converted to a purchase.

R15-5-111. Consignment Sales

- A. The following definitions apply for purposes of this rule:
1. "Consignee" ~~is~~ means the party ~~which that~~ is in the business of selling tangible personal property belonging to a "consignor."²
 2. "Consignor" ~~is~~ means the party with the legal right to contract the services of the consignee to sell tangible personal property on behalf of the consignor.
- B. Gross receipts from consignment sales are subject to tax under the retail classification.
- C. A consignee shall obtain a transaction privilege tax license ~~prior to engaging in the business of~~ before making consignment sales.

R15-5-113. Sales by Trustees, Receivers, and Assignees

- A. Gross receipts from the sale of tangible personal property by a trustee, receiver, or assignee ~~shall be~~ are taxable subject to tax if the sale of the property in the hands of the owner would ~~have been~~ be taxable subject to tax.
- B. Gross receipts from the sale of tangible personal property by a trustee, receiver, or assignee ~~shall~~ are not be taxable subject to tax if the sale of the property in the ~~hand~~ hands of the owner would ~~have been exempt~~ not be subject to tax.

ARTICLE 23. USE TAX

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R15-5-2309. Exemptions -- Purchases for Resale or Lease

- A. Purchases of tangible personal property from a retailer for resale in the ordinary course of the purchaser's business shall are not be subject to the use tax.
B. Purchases of tangible personal property from a retailer for subsequent leasing or renting in the ordinary course of the purchaser's business shall are not be subject to the use tax.

R15-5-2313. Lease-purchase Agreements

- A. Purchase payments made after conversion from a lease to a purchase of tangible personal property shall be are subject to the use tax unless the lease-purchase transaction is subject to the transaction privilege tax.
B. The purchase price of tangible personal property shall include includes conversion charges paid or incurred at the time the lease is converted to a purchase.

R15-5-2314. Purchases from Trustees, Receivers, and Assignees

- A. Tangible personal property purchased for storage, use, or consumption in Arizona from a trustee, receiver, or assignee shall be is subject to use tax if the purchase of the tangible personal property in the hands of the owner would have been be subject to the use tax.
B. Tangible personal property purchased for storage, use, or consumption in Arizona from a trustee, receiver, or assignee shall is not be subject to the use tax if the purchase of the property from the owner would have been exempt not be subject to use tax.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. THE INDISTRIAL COMMISSION OF ARIZONA

[R06-409]

PREAMBLE

1. Sections Affected

R20-5-601
R20-5-602

Rulemaking Action

Amend
Amend

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

Authorizing statute: A.R.S. § 23-405(4)
Implementing statute: A.R.S. § 23-410

3. The effective date of the rules:

December 4, 2006

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 1346, April 21,2006
Notice of Proposed Rulemaking: 12 A.A.R. 1730, May 26, 2006

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

Name: William M. Wright, Assistant Director
Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington Street, Suite 203
Phoenix, AZ 85007
Telephone: (602) 542-1695
Fax: (602) 542-1614
E-mail: wright.william.m@dol.gov

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

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state-administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor. R20-5-601 is amending the rule to incorporate by reference the deletion of § 1926.754(c)(3), Slip Resistance of Skeletal Structural Steel, and Appendix B to subpart R, Steel Erection, as published in 71 FR 2879- 2885, January 18, 2006. Due to

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unavailable technology, OSHA deleted the referenced provision. The Industrial Commission of Arizona is also amending R20-5-601 and R20-5-602 by adopting Subpart Z, Toxic and Hazardous Substances as published in 71 FR 10099-10385, February 28, 2006. OSHA amended the existing standard, which limits occupational exposure to hexavalent chromium. The permissible exposure limit established by rule reduces the significant risk posed to workers exposure to hexavalent chromium. The rule also contains ancillary provisions for worker protection such as requirements for exposure determination, respiratory protection, protective clothing and equipment, hygiene areas and practices, medical surveillance, recordkeeping, and start-up dates that include four years for the implementation of engineering controls to meet permissible exposure limits.

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

None

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

Not applicable.

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

The Federal Occupational Safety and Health Administration has determined that these amendments may have a moderate to possible substantial impact for the construction and general industry sectors as a whole, but has determined the amendments to be economically feasible for all industries including small business. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 West Washington Street, Phoenix, Arizona 85007.

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

None

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

The Arizona Division of Occupational Safety and Health did not receive any written or oral comments concerning these rules.

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

None

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

29 CFR 1926 Federal Occupational Safety and Health Standards for the Construction Industry, with amendments as of January 18, 2006 and February 28, 2006. This incorporation by reference will appear in R20-5-601.

29 CFR 1910 Federal Occupational Safety and Health Standards for General Industry, with amendments as of February 28, 2006. This incorporation by reference will appear in R20-5-602.

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

No.

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, published in 29 CFR 1926 with amendments as of ~~September 12, 2002~~, February 28, 2006, incorporated by reference ~~and on file with the Office of the Secretary of State~~. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents,

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Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after ~~September 12, 2002~~, February 28, 2006.

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

Each employer shall comply with the standards in Subparts B through Z inclusive of the *Federal Occupational Safety and Health Standards for General Industry*, as published in 29 CFR 1910, with amendments as of ~~February 17, 2004~~, February 28, 2006, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of rule R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~February 17, 2004~~, February 28, 2006.