# 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. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

## NOTICE OF FINAL RULEMAKING

### TITLE 3. AGRICULTURE

### CHAPTER 2. DEPARTMENT OF AGRICULTURE
### ANIMAL SERVICES DIVISION

### PREAMBLE

**1. Sections Affected** **Rulemaking Action**
R3-2-202 Amend

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 3-2046.

Implementing statute: A.R.S. § 3-2046.

**3. The effective date of the rules:**
January 5, 2000

**4. A list of all previous notices appearing in the Register addressing the rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 3090, September 10, 1999.

Notice of Proposed Rulemaking: 5 A.A.R. 3744, October 15, 1999.

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

| | |
|---|---|
| Name: | Shirley Conard, Rules Specialist |
| Address: | Arizona Department of Agriculture<br>1688 West Adams, Room 235<br>Phoenix, Arizona 85007 |
| Telephone Number: | (602) 542-0962 |
| Fax Number: | (602) 542-5420 |
| E-mail: | shirley.conard@agric.state.az.us |

**6. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rulemaking updates the incorporations by reference for meat and poultry inspection and slaughtering procedures.

**7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None.

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

**9. The summary of the economic, small business, and consumer impact:**
The incorporations by reference material has been updated to enable the state to comply with U.S. Department of Agriculture (USDA) agreements and contracts to administer programs that follow minimum federal standards.

A. *The Arizona Department of Agriculture*.

The benefit to the Department by updating R3-2-202 allows the Department to continue administering a meat and poultry inspection program that is equal to that administered by the USDA as required by federal law. If a state

inspection program is deemed not to be administering regulations that are equivalent to the USDA, the state becomes "designated" by the USDA. Designation results in both the loss of federal funding and the takeover of inspection activities by the USDA.

B. *Political Subdivision.*

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

C. *Businesses Directly Affected By the Rulemaking.(Common and private carriers, railroads instate and out-of-state nurseries.)*

Updating the incorporations by reference material in R3-2-202 directly affects state-licensed meat and poultry establishments by maintaining the integrity of the existing inspection and slaughtering program. These businesses will continue to receive inspection service from the Department because of the "equal to" status. If the "equal to" status is removed by the USDA, establishments would be required to obtain inspection services from the USDA. Because many state-licensed establishments are unable to meet all of the physical facility requirements of the USDA, they would be forced to close.

D. *Private and public employment.*

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

E. *Consumers and the Public.*

By updating the incorporations by reference in R3-2-202, consumers of meat and poultry products produced in state establishments will benefit by being assured that these meat and poultry products are, at a minimum, as wholesome as those produced in establishments inspected by the USDA.

F. *State Revenues.*

This rulemaking will have no impact on state revenues.

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

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

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

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:**

R3-2-202(A): 9 CFR Chapter III, Subchapters A and E, revised as of January 1, 1999.

R3-2-202(B): 9 CFR Chapter III, Subchapters C and E, revised as of January 1, 1999.

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

No.

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

## TITLE 3. AGRICULTURE

## CHAPTER 2. DEPARTMENT OF AGRICULTURE
## ANIMAL SERVICES DIVISION

## ARTICLE 2. MEAT AND POULTRY INSPECTION

Section
R3-2-202. Meat and Poultry Inspection and Slaughtering Standards

## ARTICLE 2. MEAT AND POULTRY INSPECTION

**R3-2-202. Meat and Poultry Inspection and Slaughtering Standards**

**A.** All meat inspection and slaughtering procedures shall be conducted as prescribed in 9 CFR Chapter III, Subchapters A and E, ~~as amended July 25, 1996~~ revised as of January 1, 1999. ~~The~~ This material is incorporated by reference, ~~is~~ on file with the Office of the Secretary of State, and does not include any later amendments or editions ~~of the incorporated matter~~. The following parts and sections of 9 CFR, Chapter III, Subchapter A, are excepted from incorporation:

302.2
306.3
307.5
312
321329.9
322331
327335
329.7

**B.** All poultry inspection and slaughtering procedures shall be conducted as prescribed in 9 CFR Chapter III, Subchapters C and E, ~~as amended July 25, 1996~~ revised as of January 1, 1999. ~~The~~ This material is incorporated by reference, ~~is~~ on file with the Office of the Secretary of State, and does not include any later amendments or editions ~~of the incorporated matter~~. The following sections of 9 CFR Chapter III, Subchapter C are excepted from incorporation:
381.38
381.96 through 381.112
381.195 through 381.209
381.185 through 381.186
381.218
381.220 through 381.225
381.230 through 381.236

# NOTICE OF FINAL RULEMAKING

## TITLE 4. PROFESSIONS AND OCCUPATIONS

## CHAPTER 23. BOARD OF PHARMACY

## PREAMBLE

| 1. Sections Affected | Rulemaking Action |
|---|---|
| R4-23-415 | New Section |

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

Authorizing statute: A.R.S. § 32-1904(A)(8).

Implementing statute: A.R.S. § 32-1932.01.

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

January 4, 2000

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 2999, September 3, 1999.

Notice of Proposed Rulemaking: 5 A.A.R. 3273, September 24, 1999.

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

| | |
|---|---|
| Name: | Dean Wright, Compliance Officer |
| Address: | Board of Pharmacy<br>5060 N. 19th Ave., Suite 101<br>Phoenix, AZ 85015 |
| Telephone: | (602) 255-5125, Ext. 131 |
| Fax: | (602) 255-5740 |
| E-mail: | rxcop@uswest.net |

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

During the 5-year rule review in 1997, the Board staff discovered that A.R.S. § 32-1904(A)(8) requires the Board to adopt rules for the rehabilitation of pharmacists and pharmacy interns. The rules mentioned have never been written. This is not to say that a program for rehabilitation does not exist. The Board supports a nationally recognized program called Pharmacists Assisting Pharmacists of Arizona (PAPA). This program was developed based on A.R.S. § 32-1932.01 which gives the Board the authority to establish a treatment and rehabilitation program. Because of the oversight involving the mandate at A.R.S. § 32-1904(A)(8), we began drafting the proposed rule in February 1998.

The rule establishes a new Section, R4-23-415 Impaired Licensees - Treatment and Rehabilitation. The rule establishes the contract guidelines, duties, and responsibilities of the Board, the program and its administrator, and the participants.

The Board believes that making these rules will benefit the public health and safety by establishing clear standards governing treatment and rehabilitation programs for pharmacists and pharmacy interns.

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

Not applicable.

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

Not applicable.

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

The rule will have no economic impact except the cost to the Board of Pharmacy and the Secretary of State for writing and publishing the rule. The treatment and rehabilitation program has been in operation for many years. The rule is necessary to comply with statutory mandate. The rule does not impose any costs on small business or consumers.

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

At the request of G.R.R.C. staff, 6 punctuation and capitalization changes were made.

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

Written Comment 1: Information on program participants available as public information at Board meetings should not be available on the internet, specifically the National Association of Boards of Pharmacy (NABP) website.

Board Response: The Board cannot nor does the Board desire to prevent publication of public information. The Board even publishes disciplinary information on their own website as a means to protect public health and safety.

Written Comment 2: The quarterly reports submitted by the program administrator should not become part of the public record.

Board Response: It is a statutory requirement (A.R.S. § 32-1932.01) for the program to provide quarterly reports to the Board. Yes, these reports become a part of the public record. The public has a right to know when a pharmacist has been disciplined by the Board. The existing program and the rule do that by only naming those "known participants" (ones disciplined by the Board) in the quarterly reports. Even though the reports are public information, the "confidential participant's" identities remain confidential because they are listed only by case number.

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

Not applicable.

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

None.

**14. Was this rule previously approved as an emergency rule?**

No.

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 23. BOARD OF PHARMACY**

**ARTICLE 4. PROFESSIONAL PRACTICES**

Section

R4-23-415. Impaired Licensees - Treatment and Rehabilitation

**ARTICLE 4. PROFESSIONAL PRACTICES**

**R4-23-415. Impaired Licensees - Treatment and Rehabilitation**

**A.** The Board may contract with qualified organizations to operate a program for the treatment and rehabilitation of pharmacists and interns impaired as the result of alcohol or other drug abuse, pursuant to A.R.S. § 32-1932.01.

**B.** Participants in the program are either "confidential" or "known". Confidential participants are self-referred and may remain unidentified to the Board, subject to maintaining compliance with their program contract. Known participants are

under Board order to complete a minimum tenure in the program. After a known participant completes the minimum tenure, the Board may terminate the Board order and reinstate the participant's license to practice pharmacy.

**C.** The program contract with a qualified organization shall include as a minimum the following:
1. Duties and responsibilities of each party.
2. Duration, not to exceed two years, of contract and terms of compensation.
3. Quarterly reports from the program administrator to the Board indicating:
   a. Identity of participants;
      i. By name, if a known participant; or
      ii. By case number, if a confidential participant;
   b. Status of each participant, including;
      i. Clinical findings;
      ii. Diagnosis and treatment recommendations;
      iii. Program activities; and
      iv. General recovery and rehabilitation program information.
4. The program administrator shall report immediately to the Board the name of any impaired pharmacist or pharmacy intern who poses a danger to the public or himself.
5. The program administrator shall report to the Board, as soon as possible, the name of any impaired pharmacist or pharmacy intern:
   a. Who refuses to submit to treatment;
   b. Whose impairment is not substantially alleviated through treatment; or
   c. Who violates the terms of their contract.
6. The program administrator shall periodically provide informational programs to the profession, including approved continuing education programs on the topic of drug and chemical impairment, treatment, and rehabilitation.

**D.** Pursuant to A.R.S. § 32-1903(F), the Board may publish the names of participants under current Board orders.

**E.** A majority of the Board may request the treatment records for any participant. The program administrator shall provide treatment records within 10 working days of receiving a written request from the Board for such records. Upon request of the program administrator or the Board, a program participant shall authorize a drug and alcohol treatment facility or program or a private practitioner or treatment program to release the participant's records to the program administrator or the Board.

**F.** On the recommendation of the program administrator or a Board member and by mutual consent, the program administrator, Board member, Board staff, and program participant may meet informally to discuss program compliance.

# NOTICE OF FINAL RULEMAKING

## TITLE 12. NATURAL RESOURCES

## CHAPTER 15. DEPARTMENT OF WATER RESOURCES

## PREAMBLE

**1. Sections Affected** **Rulemaking Action**

| | |
|---|---|
| R12-15-850 | New Section |
| R12-15-851 | New Section |
| R12-15-852 | New Section |

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

Authorizing Statute: A.R.S. § 45-105(B)(1)

Implementing Statute: A.R.S. § 45-605(A), A.R.S. § 45-605(E)

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

January 3, 2000

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 881, March 26, 1999

Notice of Rulemaking Docket Opening: 5 A.A.R. 1022, April 9, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 2151, July 9, 1999

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

| | |
|---|---|
| Name: | Tim Gibson |
| Address: | Arizona Department of Water Resources<br>500 North Third Street<br>Phoenix, Arizona 85004 |
| Telephone Number: | (602) 417-2400, extension 7261 |
| Facsimile: | (602) 417-2426 |

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

A.R.S. § 45-605(E) requires the adoption of rules for review of notices and applications for new or replacement wells to determine the risk of vertical cross-contamination from groundwater contamination. The rules are designed to enable the Department to properly address well owner notification procedures under the statutory mandate provided in A.R.S. § 45-605(A) for well inspections.

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

Not applicable.

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

Not applicable.

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

The major impact of the well inspection and notification rules for vertical cross-contamination will be on the Department itself. There will be no major changes in the way a notice of intent form or well permit application is processed administratively within the Department. Direct budgetary considerations associated with the adopted rules are not considered substantial due to the overlapping of existing administrative functions pertaining to other types of water quality reviews within the Department. Staff time has already been allocated and funded separately under A.R.S. § 45-618, which includes funding for all well inspection, evaluation, and notification activities performed in response to the A.R.S. § 45-605 mandates. The Department does not expect staff workloads to increase substantially under R12-15-850 and R12-15-851 because a similar review process for evaluation and notification has already been established for other types of groundwater permit applications processed by the Department.

If the Department chooses to conduct well investigations for vertical cross-contamination pursuant to R12-15-852, staff time allocations may increase temporarily to compile lists of potentially impacted well owners within selected areas of investigation. These costs are already budgeted through A.R.S. § 45-618.

Well applicants subject to notification under R12-15-850 will gain improved access to information about risks of vertical cross-contamination. In some cases, a well applicant may be requested to submit a well design diagram so that the Department can accurately determine the potential risk of vertical cross-contamination to a proposed or existing well. Once approval to drill a well has been granted by the Department, greater coordination with contracted well drillers will also be needed to ensure that the Department is properly notified under R12-15-851. In regards to the evaluation of well applications, the Department already has existing rules, R12-15-812 and R12-15-821, which enable it to attach special well construction requirements to an application, in addition to the minimum well construction requirements, in order to avoid vertical cross-contamination. The new rules do not constitute any additional regulatory burden that is placed on well owners or applicants which extend beyond these authorities. Well evaluation and notification procedures established pursuant to the new rules are intended to inform well applicants and existing well owners about potential risks of groundwater contamination and prevent wells from being constructed that could cause a threat to public health. The evaluation process may also provide well owners with some measure of protection against future liability stemming from the prevention of unintended vertical cross-contamination of aquifers.

Well owners who are not identified as responsible parties under A.R.S., Title 49, Chapter 2, Article 5 (Water Quality Assurance Revolving Fund program) who meet the requirements of A.R.S. § 45-605 and A.R.S. § 49-282.04, and who cooperate with the investigation and remedial activities of the Department and the ADEQ in accordance with A.R.S. § 45-605(C) and A.R.S. § 49-282.04(C), are eligible to receive (may request) a covenant not to sue from the Director of the Arizona Department of Environmental Quality pursuant to A.R.S. § 49-282.04(C).

Well inspections will greatly assist well owners in identifying wells which are conduits for vertical cross-contamination and may provide state-funded remedies to correct well deficiencies and protect the public and individual well owner's health by mitigating exposure to contaminated groundwater.

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

Minor grammatical and stylistic changes were made at the request of G.R.R.C. staff. Four substantive changes were made in response to public commentary and suggestions from G.R.R.C. and ADWR staff.

A substantive change was made after consultation with G.R.R.C. staff to amend R12-15-850(B). Language was modified to eliminate Director discretion in establishing requirements for well evaluations that are consistent with R12-

15-811, R12-15-812 and R12-15-821 by making this action mandatory. The rules that are referenced are flexible and do not limit the Department's previous ability to evaluate wells or develop specific requirements to prevent vertical cross-contamination. Furthermore, the minimum well construction requirements listed in R12-15-811 are acceptable in many cases without having to invoke additional measures under R12-15-812 and R12-15-821 to prevent vertical cross-contamination. As a result, the Department has adopted a recommended change in language which states that the Department shall establish site-specific requirements that are consistent with R12-15-812 and R12-15-821 in cases where the requirements of R12-15-811 are deemed insufficient to prevent the risk of vertical cross-contamination.

Another substantive change was made to R12-15-851. Under the original language, the responsibility for notifying the Department, upon receipt of a drilling card and prior to the drilling of a well within a site listed on the registry under A.R.S. § 49-287.01, was shared by both the well owner and authorized well driller. Based on a public comment, this shared obligation, where both parties were obligated to notify the Department, was determined to be unnecessary and duplicative. The Department's response is to keep any obligations contained within R12-15-851 under the jurisdiction of the well applicant who has filed a notice of intent to drill with the Department.

R12-15-851 was also amended to delete the reference to lessees of property on which a well is to be drilled or deepened based on consultation internally and with G.R.R.C. staff. Lessees of property were originally considered in cases where a well owner and property owner are separate parties. Because this rule only applies to the well owner who has received approval to drill a well, the obligation does not apply to the property lessee or owner. The omission of any reference to a lessee of property avoids unintended confusion about who is specifically responsible for requirements under R12-15-851.

The reference to standard forms under R12-15-851 was deleted based on internal commentary. The instrument for informing well owners of the requirements in this section are addressed through the mailing of the notification letter referenced in R12-15-850(A). Where applicable, the letter provided to well owners and authorized well drilling contractors under R12-15-850(A) shall contain a specific reference to the requirements of R12-15-851 in cases where it is applicable. The language in R12-15-851 was modified to reflect this and to avoid any misunderstanding. The change does affect the well owner's responsibility, where applicable, to notify the Department prior to the commencement of drilling.

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

The only public comment received was a letter from the El Paso Natural Gas Company, which suggested that the responsibilities under R12-15-851, to notify the Department prior to the commencement of drilling activity, be placed exclusively on the authorized well drilling contractor. Although the public suggestion was to place the responsibility on the well driller, the directives under A.R.S. § 45-605 and A.R.S. § 45-596, which relate to the processing and review of well applications, pertain to the well owner or applicant, and not to the well driller. The changes made are reflected in the previous question.

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

Not applicable.

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

Not applicable

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

No.

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

## TITLE 12. NATURAL RESOURCES

## CHAPTER 15. DEPARTMENT OF WATER RESOURCES

## ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

Section



## ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

**R12-15-850. Evaluation of Notices of Intention to Drill; Notification of Registered Site Locations; Vertical Cross-Contamination Evaluation**

**A.** The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well

will be drilled within a groundwater basin or subbasin in which there exists a site listed on the registry established under A.R.S. § 49-287.01(D). If the proposed well is situated within such a groundwater basin or subbasin, the Director shall notify the applicant and the authorized well drilling contractor in writing of the existence of the site and shall enclose a map indicating the boundaries of all listed sites within the groundwater basin or subbasin. The notification letter shall include the name, address, and telephone number of a Department contact person, along with a reference to the provision in R12-15-851 that requires the applicant to notify the Department in advance of the date drilling of the well will commence. The Department shall also specify in the notification letter whether the applicant is subject to the requirements of R12-15-851.

**B.** The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well will be drilled within an area where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination, as defined in A.R.S. § 49-281(15). If the Director determines that the proposed well will be drilled in such an area, and if the Director finds that the requirements of R12-15-811 are insufficient to prevent the risk of vertical cross-contamination, the Director shall establish site-specific requirements pursuant to R12-15-812 and R12-15-821.

**R12-15-851. Notification of Well Drilling Commencement**

A well owner who has been issued a drilling card for a notice of intent to drill authorizing the drilling of a well located within a site listed on the registry established under A.R.S. § 49-287.01, shall provide written notice to the Director indicating the date drilling will commence. The well owner shall coordinate with the contracted well driller to ensure that the Department receives proper notification under this Section. This notification shall consist of a letter or facsimile transmission received by the Department at least 2 business days before drilling commences at the well site. The Department shall use notification letters required by R12-15-850(A) to inform well owners whether they are subject to the requirements of this Section.

**R12-15-852. Notice of Well Inspection; Opportunity to Comment**

**A.** At least 30 days before the beginning of a well inspection under A.R.S. § 45-605(A), the Director shall notify in writing all potentially affected well owners of record within a community involvement area established under A.R.S. § 49-289.02 or within other areas that the Director has selected for inspection of wells that may be contributing to vertical cross-contamination. The notices shall include a map of the community involvement area, remedial site, or a subsection of either, that the Department intends to inspect, indicating the location of affected wells of record. The notice shall indicate the approximate date the inspection will start, the approximate duration of the inspection, an access agreement defining what specific activities will occur during a well inspection, and the name, address, and telephone number of a Department contact person.

**B.** Once the Director has given notice of a well inspection under A.R.S. § 45-605(A), potentially affected well owners have 30 days from the date the letter is postmarked to comment on the proposed inspection. The Director, upon receiving a written request, may extend the comment period for a maximum of 30 additional days.

# NOTICE OF FINAL RULEMAKING

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

## CHAPTER 6. INVESTMENT MANAGEMENT

## PREAMBLE

**1. Sections Affected** | **Rulemaking Action**

| | |
|---|---|
| R14-6-204 | Repeal |
| R14-6-204 | New Section |

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

Authorizing statute: A.R.S. § 44-3131

Implementing statute: A.R.S. §§ 44-3153, 44-3156, 44-3201, 44-3241, and 44-3296

Constitutional authority: Arizona Constitution Article XV § 6

**3. The effective dates of the rules (if different from the date the rules are filed with the Office):**

December 30, 1999

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 2446, July 30, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 2913, August 27, 1999

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

| | |
|---|---|
| Name: | Sharleen A. Day, Associate General Counsel |
| Address: | Arizona Corporation Commission, Securities Division<br>1300 W. Washington, Third Floor<br>Phoenix, AZ 85007-2996 |
| Phone: | (602) 542-4242 |
| Fax Number: | (602) 594-7471 |

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

The Arizona Corporation Commission repeals and replaces Section R14-6-204. A.A.C. R14-6-204 (rule 204) specifies the examination requirements for individuals seeking licensure as investment advisers or investment adviser representatives under the Arizona Investment Management Act. The North American Securities Administrator's Association (NASAA) has adopted uniform Series 65 and 66 examinations for investment adviser licensure. These examinations will be implemented December 31, 1999, and will replace those series of examinations referenced in the previous version of rule 204. The amendments to rule 204 were in response to the adoption of the new examinations by the NASAA membership, and were based on a NASAA model rule.

The new NASAA examinations incorporate additional subjects to those contained in the current examinations. Rule 204 requires a different combination of testing requirements to reflect the amended content of the new examinations.

Rule 204 includes a grandfather clause for those individuals that have taken the previous examinations and have met the requirements of the previous rule 204.

Rule 204 requires individuals that have been out of the industry for a period of 2 years to satisfy the testing requirements of the rule.

Individuals that hold and maintain a professional designation from one of several specified professional associations are given a waiver from all examination requirements.

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

Not applicable.

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

Rule 204 promotes a statewide interest by reducing the regulatory burden of meeting an unnecessary examination requirement for certain applicants. Rule 204 provides for a waiver of examination requirements for individuals that possess and maintain a designation from one of several specified professional associations. The examination requirements in rule 204 are designed to establish minimum competency. The designations are obtained through courses of study that are more comprehensive and detailed than the subject matter of the examinations required in rule 204. Individuals possessing one of the specified designations are presumed to have established their competency by completion of the course work.

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

The economic, small business, and consumer impact statement for rule 204 analyzes the costs, savings, and benefits that accrue to the Commission, Secretary of State, registrants, and the public. With the adoption of rule 204, the impact on established Commission procedures, Commission staff time, and other administrative costs is minimal. The estimated additional cost to the Secretary of State's office is minimal. The benefits provided by the proposed rules are non-quantifiable. The rules should benefit the Commission's relations with the regulated public by creating a more uniform and non-duplicative testing standard among the states. The public will benefit from the continuation of minimum competency testing for individuals providing financial services.

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

None.

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

The Commission received three comment letters encouraging the Commission to adopt the North American Securities Administrators (NASAA) examinations Series 65 and 66 in the interest of uniformity, and to adopt the NASAA recommendation for exempting from all examination requirements those individuals holding certain specified professional designations. The Commission did not respond to any of the written comment letters as they were all in support of the rule as proposed by the Commission.

**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. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency rule and the adoption of the final rule.**
Not applicable.

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

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

## CHAPTER 6. INVESTMENT MANAGEMENT

## ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

Section
~~R14-6-204.~~ ~~Written Examinations~~ Repealed
R14-6-204. Required Written Examinations

~~**R14-6-204. Written Examination.**~~

~~**A.** Prior to licensure, except as provided in Subsection (B), each investment adviser who is an individual and each investment adviser representative, each of whom is hereafter referred to as an "applicant," must take and receive a score of at least 70% on:~~
~~1. The NASAA Series 65 Uniform Investment Adviser State Law Examination or Series 66 Combined State Law Examination; and~~
~~2. The NASD Series 7 General Securities Registered Representative Examination or Series 2 General Securities Representative (Non-member) Examination.~~

~~**B.** The examination requirements of Subsection (A)(2) shall not be required of an applicant who has completed and maintains 1 of the following credentials:~~
~~1. Certified Financial Planner (CFP) designation awarded by the Certified Financial Planner Board of Standards, Inc.;~~
~~2. Chartered Financial Analyst (CFA) designation awarded by the Institute of Chartered Financial Analysts;~~
~~3. Chartered Financial Consultant (ChFC) designation awarded by the American College, Bryn Mawr, Pennsylvania;~~
~~4. Chartered Investment Counselor (CIC) designation awarded by the Investment Counsel Association of America, Inc.; or~~
~~5. Personal Financial Specialist (PFS) designation awarded by the American Institute of Certified Public Accountants.~~

~~**C.** In the event that the NASAA or NASD Series examination numbers change, the most current examination series deemed applicable by the Commission to the category of licensure shall apply.~~

~~**D.** In the event that the title changes for any of the credentials designated in Subsection (B), the title deemed applicable by the Commission shall apply.~~

**R14-6-204. Required Written Examination**

**A.** Except as otherwise provided in subsections (B) and (C), all natural persons applying for licensure as an investment adviser or an investment adviser representative under A.R.S. Title 44, Chapter 13, Article 4 shall have taken and passed:
1. The Uniform Investment Adviser Law Examination (Series 65 examination); or
2. The Uniform Combined State Law Examination (Series 66 examination) and either the General Securities Registered Representative Examination (Series 7 examination) or the General Securities Representative (nonmember) Examination (Series 2 examination).

**B.** An applicant who has taken the Uniform Investment Adviser State Law Examination (Series 65 examination) or the Combined State Law Examination (Series 66 examination) prior to December 31, 1999, shall have taken and received a score of at least 70% on:
1. The NASAA Uniform Investment Adviser Law Examination (Series 65 examination) or Combined State Law Examination (Series 66 examination); and
2. The NASD General Securities Registered Representative Examination (Series 7 examination) or the General Securities Representative (nonmember) Examination (Series 2 examination).

**C.** An applicant shall not be required to comply with subsections (A) or (B) if the applicant currently holds any 1 of the following professional designations and is currently in good standing with the associated organization:
1. Certified Financial Planner (CFP) designation awarded by the Certified Financial Planner Board of Standards, Inc.;
2. Chartered Financial Analyst (CFA) designation awarded by the Institute of Chartered Financial Analysts;

3. Chartered Financial Consultant (ChFC) designation awarded by the American College, Bryn Mawr, Pennsylvania;
4. Chartered Investment Counselor (CIC) designation awarded by the Investment Counsel Association of America, Inc.; or
5. Personal Financial Specialist (PFS) designation awarded by the American Institute of Certified Public Accountants.

**D.** An applicant must have satisfied the examination requirements of this Section within 12 months prior to application if the applicant has not been registered or licensed as an investment adviser or investment adviser representative in at least 1 state during the 2-year period preceding application.

# NOTICE OF FINAL RULEMAKING

## TITLE 20. COMMERCE, BANKING, AND INSURANCE

## CHAPTER 6. DEPARTMENT OF INSURANCE

## PREAMBLE

**1. Section Affected** — **Rulemaking Action**
R20-6-204 — Amend

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 20-143 and 20-413

Implementing statute: A.R.S. § 20-413

**3. The effective date of the rules:**
January 5, 2000

**4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2447, July 30, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 2729, August 13, 1999

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

| | |
|---|---|
| Name: | Vista Thompson Brown<br>Executive Assistant for Policy Affairs |
| Address: | Arizona Department of Insurance<br>2910 N. 44th Street, Suite 210<br>Phoenix, Arizona 85018 |
| Telephone Number: | (602) 912-8456 |
| Fax Number: | (602) 912-8452 |

**6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Department has proposed the rule revisions to:

Add definitions of terms used in the rule to improve clarity;

Clarify the filing requirements for surplus lines insurance by specifying who is responsible for filing various documents and specifying what is a "material change" in operations;

Revise the filing requirements to require surplus lines brokers and insurers to certify only the information about which they have personal knowledge to address concerns raised by public comment about excessive filing requirements;

Eliminate duplicative and unnecessary filings; and

Make non-substantive changes to conform to current format and style requirements for rules, such as eliminating the subsections of "purpose" and "authority."

**7. A reference to any study, that the agency relied on in its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**
None.

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

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

Clarification of the process has intangible benefits for both the Department and the regulated community by eliminating confusion about filing requirements. Elimination of unnecessary filing requirements may have small cost savings for surplus lines brokers.

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

In response to a public comment concerning subsection (H) of the rule, the Department changed the time period for a response to a Department request for supplemental information, from 15 days to 30 days. In response to a comment from G.R.R.C. staff, the Department changed the rule to indicate that the 30 day time period runs from the date of the request for information (a date certain) rather than the date the broker receives it.

In subsection (E), the Department added language to clarify that the subsection also applies to Insurance Exchanges. The Department also added a new paragraph 1 to clarify that the surplus lines broker must also submit an original or a certified copy of the insurer's certificate of compliance from the supervisory official of the insurer's state of domicile. The Department currently requires submission of this document at the time of initial listing and thought the rule should properly reflect this requirement.

The Department also made certain grammatical and punctuation changes requested by G.R.R.C. staff.

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

The Department received comment that the proposed changes were very helpful to the surplus lines industry by clarifying filing requirements and reducing administrative burdens. The Department also received a comment that the time period in subsection (H) should be extended because a broker must sometimes request documentation from out-of-state sources, and the process can take longer than 15 days. In response, the Department extended the time period from 15 to 30 days.

**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 rule:**

None.

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

No.

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

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

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**ARTICLE 2. TRANSACTION OF INSURANCE**

Section
R20-6-204. Surplus Lines Brokers' Filing Requirements; List of Unauthorized Insurers

**ARTICLE 2. TRANSACTION OF INSURANCE**

**R20-6-204. Surplus Lines Brokers' Filing Requirements; List of Unauthorized Insurers**

~~**A.** Authority. This rule is promulgated pursuant to A.R.S. § 20-143 and in accordance with A.R.S. § 20-413.~~

~~**B.** Purpose. The purpose of this rule is to set forth filing requirements for surplus lines brokers, create and maintain a list of those foreign and alien unauthorized insurers providing surplus lines coverages in Arizona and require disclosure statements.~~

~~**C.** Scope. This rule applies to all unauthorized insurers writing surplus lines in Arizona and to all surplus lines brokers.~~

**A.** Definitions.

1. "Listed insurer" means an unauthorized insurer who is on the list created by the Director under subsection (C)(1) and A.R.S. § 20-413.
2. "Surplus lines broker" means a person licensed under A.R.S. § 20-411.
3. "Surplus lines insurance" means the type of insurance described in A.R.S. § 20-407.
4. "Unauthorized insurer" means an insurer that does not have a certificate of authority to transact insurance in Arizona.

**B.** Filing requirements. Unauthorized insurers writing surplus lines insurance in Arizona and surplus line brokers shall comply with the filing requirements of this Section.

**C.** ~~**D.**~~ ~~The~~ List ~~list~~ of unauthorized insurers.

1. The Director shall create and maintain a list of unauthorized insurers that may write surplus lines insurance in this state under ~~in accordance with~~ A.R.S. § 20-413. The list shall include the names of unauthorized insurers for which a ~~any~~ surplus lines broker has made the filings required by this Section ~~subsections (D)(2) or (3)~~.

2. A listed insurer shall remain on the list until:
   a. The Director removes the insurer from the list under A.R.S. § 20-413 or subsections (H) or (I) below, or
   b. The insurer requests the Director to remove its name from the list, and the Director consents to the request.

**D.** Placing surplus lines insurance. A ~~licensed~~ surplus lines broker shall restrict all surplus lines business placed by the surplus lines broker to listed insurers. ~~may place insurance with any insurer appearing on the current list. The list is available from the Department of Insurance and a copy may be obtained upon request and payment of the required photocopy charge.~~ An insurer's removal from the list does not affect the validity of any contract existing at the time of removal.

**E.** ~~2.~~ Requirements for Initial Listing of Foreign Unauthorized Insurers and Insurance Exchanges. ~~In the case of foreign unauthorized insurers,~~ A ~~the~~ surplus lines broker shall file ~~with the Director~~ the following documents for a foreign unauthorized insurer ~~on or before June 1 of each year~~:

1. An original or a certified copy of the insurer's certificate of compliance from the supervisory official of the insurer's state of domicile;
2. ~~a.~~ A current Certificate of Deposit, Capital, and Surplus for Foreign Insurers ~~form~~ from the public officials or other persons who have supervision over the insurer in any other state;
3. ~~b.~~ A certification from the surplus lines broker of the insurer's compliance with the financial requirements of A.R.S. § 20-413;
4. ~~c.~~ The insurer's most recent report of financial examination ~~of the insurer~~, certified by the insurance supervisory official of its state of domicile; and
5. ~~d.~~ A certified copy of a full-size National Association of Insurance Commissioners (N.A.I.C.) convention blank annual statement (Form 2) for the insurer as of December 31 of the preceding year.

**F.** ~~3.~~ Requirements for Initial Listing of Alien Unauthorized Insurers. A surplus lines broker shall file a certification of the insurer's compliance with the financial requirements of A.R.S. § 20-413. For all alien insurers other than title insurers, the surplus lines broker may rely on the information contained in the most recent N.A.I.C. Financial Review of Alien Insurers as prima facie evidence of the ~~financial responsibility of an alien insurer and shall submit to the Director a certification from the broker of the~~ insurer's compliance ~~with the financial requirements of A.R.S. § 20-413.~~

**G.** Filing Requirements to Maintain Listing. To ensure that a foreign or alien unauthorized insurer remains on the Director's list, a surplus lines broker shall file, before June 1 of each year:

1. A copy of a full-size National Association of Insurance Commissioners (N.A.I.C.) convention blank annual statement (Form 2) for the insurer, as of December 31 of the preceding year; and
2. An affidavit, on a form approved by the Director, that meets the requirements of this subsection.
   a. The surplus lines broker and a duly authorized officer of the unauthorized insurer shall sign the affidavit.
   b. The insurer's officer shall state whether there have been any changes in the insurer's name, address, state of domicile, statutory agent, and any material changes in its operations since the insurer's initial qualification for listing or the last annual filing under this subsection. If there have been material changes in operations, the officer shall describe the changes. In this subsection, material changes include a change in any 1 or a combination of the following:
      i. A director, officer, or controlling person;
      ii. The insurer's holding company or affiliates;
      iii. The insurer's charter documents, including its articles of incorporation, articles of agreement, or by-laws governing its conduct of business;
      iv. The insurer's marketing or administration plans, operations, or agreements with 3rd parties;
      v. Any other matter material to the insurer meeting its obligations to its policyholders; and
      vi. Any other matter that relates to any of the grounds for removal from the list as prescribed in A.R.S. § 20-413.
   c. The insurer's officer shall state whether the insurer is in good standing in all jurisdictions where it conducts insurance business and whether the insurer has been, since the date of initial listing or the last annual filing under this subsection, or currently is, the subject of any action or order by any regulatory official in any jurisdiction. If the insurer has been or is the subject of a disciplinary action or order, the insurer's officer shall describe the matter in the affidavit and shall attach a copy of any applicable official document. In this subsection, regulatory action or order includes any 1 or a combination of the following:
      i. Denial, suspension, or revocation of a license, permit, or certificate of authority;
      ii. A corrective action or operation plan, consent order, memorandum of understanding, or cease and desist order;
      iii. Action against the insurer's bond or securities held in trust by a regulatory official; and
      iv. Supervision, conservatorship, receivership, or any other form of possession or control by a regulatory official in any jurisdiction.
   d. The insurer's officer shall state whether the report of examination, if any, previously filed with the Director under subsection (E)(3) or with a previous annual filing, remains the most current, filed report. If a more recent report of examination exists, the surplus lines broker shall file a copy of the report with the affidavit.

**H.** Supplemental information; removal. A surplus lines broker and an unauthorized insurer shall provide any additional information the Director requests to determine whether the insurer meets the requirements of A.R.S. § 20-413, or to clarify documents filed under this Section. The Director may remove an insurer from the list if the surplus lines broker or insurer does not submit the requested information within 30 days after the date of a written request for information.

**I.** Removal for failure to make annual filing. The Director shall remove an unauthorized insurer from the list if a surplus lines broker fails to timely file the documents required by subsection (G). The Director shall not restore the insurer to the list until a surplus lines broker files all applicable documents required under subsections (E) and (F) and the insurer requalifies under A.R.S. § 20-413.

~~4. The Department may remove any unauthorized insurer which appears on the list under the authority of A.R.S. § 20-413(H). This paragraph does not affect the validity of any existing contract if an insurer is removed from the list.~~

**J.** **~~E.~~** Organizations of surplus lines brokers; unauthorized insurer.

1. A surplus lines broker may file records or reports that are subject to examination with any voluntary organization of surplus line brokers. The Director may examine the records or reports filed with an organization of surplus lines brokers ~~in order~~ to ascertain compliance with A.R.S. Title 20, Chapter 2, Article 5. An examination performed under ~~pursuant to~~ this authority shall not preclude examination of records of a surplus line broker.
2. Nothing in this rule requires that a surplus lines broker become a member of any surplus line organization ~~in order~~ to file or to preserve or maintain any affidavit or statement.