

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* 1st 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 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY WATER POLLUTION CONTROL

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R18-9-120 Repeal
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. § 49-203(A)(4)
Implementing statute: A.R.S. § 49-242(A)
3. **The effective date of the rules:**
The rule is effective on the date that it is filed with the Office of the Secretary of State pursuant to A.R.S. § 41-1031(A) and § 41-1032. Effective date: July 14, 1998.
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 4 A.A.R. 838, April 3, 1998.
Notice of Proposed Rulemaking: 4 A.A.R. 814, April 3, 1998.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Steven Pawlowski
Address: Arizona Dept. of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012
Telephone: (602) 207-2227
6. **An explanation of the rules, including the agency's reasons for initiating the rules:**
The Director proposes to repeal A.A.C. R18-9-120. The current rule states that the Director of the Arizona Department of Environmental Quality shall not issue an individual Aquifer Protection Permit [APP] unless the permittee certifies that the permittee understands the requirements and conditions of the permit and the penalties for violations of permit conditions, the APP rules, and the statutes that relate to APPs in Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes. The Department's experience in implementing this section has shown that this certification requirement is unnecessary. Also, some permittees have not provided the required certification, thus preventing the timely issuance of individual APPs.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
8. **The summary of the economic, small business, and consumer impact:**
The repeal of the certification requirement in R18-9-120 will have no economic, small business, or consumer impact. No economic impact statement is required for this rulemaking under A.R.S. § 41-1055(D)(3) because the repeal of the certification requirement in R18-9-120 decreases the administrative burden on applicants for individual Aquifer Protection Permits. The repeal of the current rule will not result in increased costs to the Department for implementation or enforcement of the Aquifer Protection Permit rules.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
There were no changes between the proposed rule and the final rule.

Arizona Administrative Register
Notices of Final Rulemaking

10. A summary of the principal comments and the agency response to them:
No comments were received by the agency on the proposed repeal of R18-9-120.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
12. Incorporations by reference and their location in the rules:
None.
13. Was this rule previously adopted in an emergency rule?
No.
14. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL**

ARTICLE 1. AQUIFER PROTECTION PERMITS

Section
R18-9-120. ~~Individual permits: Certification of permittee~~
Repealed

ARTICLE 1. AQUIFER PROTECTION PERMITS

~~R18-9-120. Individual permits: Certification of permittee~~
~~Repealed~~
The Director shall not issue an individual Aquifer Protection Permit unless the permittee certifies that the permittee understands the requirements and conditions of the permit and the penalties for violations of the permit conditions, this Article, and Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

PREAMBLE

1. Sections Affected
R20-6-204
- Rulemaking Action
Amend
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. §§ 20-143 and 20-413
Implementing statute: A.R.S. § 20-413
3. The effective date of the rules:
This rule will become effective when approved by the Governor's Regulatory Review Council and filed with the Secretary of State.
4. A list of previous notices appearing in the Register addressing the final rule:
Notice of Docket Opening: 4 A.A.R. 599, February 27, 1998.
Notice of Proposed Rulemaking: 4 A.A.R. 582, February 27, 1998.
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Gregory Y. Harris
Address: Arizona Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, Arizona 85018
Telephone: (602) 912-8456
Fax: (602) 912-8452
6. An explanation of the rule, including the agency's reasons for initiating the rule:
The rule revisions are necessary to comply with legislative changes to the surplus lines insurance statutes enacted in 1997.

Notices of Final Rulemaking

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
8. The summary of the economic, small business, and consumer impact:
The Arizona Legislature enacted the surplus lines insurance statutes to provide a means to permit consumers to purchase insurance not available from an insurer that holds a certificate of authority issued by the Director of the Arizona Department of Insurance. Recent changes by the Legislature to these statutes have required the Department to amend its surplus lines insurance rule. The Department anticipates that the rule revisions will not result in an economic impact to small businesses and consumers.
9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
The Department did not make any changes from the proposed rules other than technical corrections requested by the Office of the Secretary of State.
10. A summary of the principal comments and agency response to them:
The Department did not receive any comments opposing the revisions to the surplus lines rule. At a public hearing held at the Department on April 30, 1998, several favorable comments were made in support of the changes.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
12. Incorporations by reference and their location in the rules:
Not applicable
13. Was this rule previously adopted as an emergency rule?
No, this rule was not adopted as an emergency rule.
14. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 2. TRANSACTION OF INSURANCE

Section

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

ARTICLE 2. TRANSACTION OF INSURANCE

R20-6-204. Surplus ~~Lines~~ Line 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~~ line brokers, create and maintain a list of those foreign and alien unauthorized insurers providing surplus ~~lines~~ line 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~~ line brokers.
- D. The list of unauthorized insurers
 1. ~~The Director shall create a A list of unauthorized insurers that may write surplus lines insurance in this state shall be created in accordance with A.R.S. § 20-413. The On the list shall include appear the names of unauthorized insurers for which any surplus lines line broker has made the filings required by subsections (D) paragraphs (2) or (3) of this subsection. A licensed surplus lines line broker may place insurance with any insurer appearing on the current list. The list is shall be available from at the Department of Insurance and a copy thereof may be obtained upon request and payment of the required photocopy charge.~~
 2. In the case of foreign unauthorized insurers other than title insurers, the broker shall ascertain the financial condition of the insurer and shall file, or authorize an

~~insurer to file on his behalf, with the Director the following on or before June 1 of each year:~~

- 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 on the appropriate form;~~
- b. A sworn statement that ~~certification from the broker of the insurer's compliance with the financial requirements of A.R.S. § 20-413 he has ascertained the financial condition of the insurer;~~
- c. The most recent report of examination of the insurer, certified by the insurance supervisory official of its state of domicile;
- d. A ~~certified~~ certificated copy of a full size National Association of Insurance Commissioners (N.A.I.C.) convention blank annual statement (Form 2) as of December 31 ~~of the last preceding year.~~
~~The broker may rely on the foregoing information as prima facie evidence on the financial condition of the foreign insurer. The broker, or an insurer on behalf of the broker, shall annually file the insurer's annual statement as of December 31 last preceding on or before June 1 each year.~~
3. For all alien insurers other than title insurers, ~~the Director has determined that the public interest requires a minimum deposit in public depositories or trust institutions within the United States of one million five hundred thousand dollars (\$1,500,000). The 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~~

Arizona Administrative Register
Notices of Final Rulemaking

insurer and shall submit to the Director a sworn statement regarding the information certification from the broker of the insurer's compliance with the financial requirements of A.R.S. § 20-413.

4. The requirements of paragraph (3) for alien insurers shall not apply to Mexican insurers placing vehicle insurance coverages in Mexico through licensed Arizona surplus line brokers.
 5. An unauthorized insurer may be included in the list upon performance by the broker of paragraphs (2) or (3) of this subsection. An insurer which does not appear on the list shall not transact insurance business in the State of Arizona until its name appears on the list.
 6. This rule shall not require the Director to determine the actual financial condition of any unauthorized insurer.
 - 7.4. The Department may remove any Any unauthorized insurer which appears on the list under the authority of A.R.S. § 20-413(H) and which is subsequently declared by the Director to be in an unsound financial condition, improperly managed or unreliable in insurance transactions, or for which a broker has failed to timely file the annual statement, certification of deposit, capital and surplus and affidavit pursuant to (D)(2) of this rule, shall be removed from the list and thereafter no insurance may be placed with that insurer until its name reappears on the list. Surplus line brokers will be notified of such declaration by the Director. This paragraph does shall not affect the validity of any existing contract if in the event an insurer is removed from the list.
- E. Organizations of surplus lines line brokers; unauthorized insurer
1. A broker need not file any type of report on the placement of surplus line insurance where the coverage has been recognized by order of the Director as a recognized surplus line. A broker shall file the report under oath required by A.R.S. § 20-408 regarding the placement of surplus line insurance for coverages not recognized by the Director.
 2. A voluntary domestic organization or organizations of surplus line brokers may file with the Director the affi-

davits, reports, certificates or statements required by this rule or the report under oath required by A.R.S. § 20-408 for those lines which have not been recognized by the Director pursuant to A.R.S. § 20-409. Ultimate responsibility for filings and maintenance of documents shall remain in each surplus line broker.

- 4.1. A surplus lines broker may file records Records or reports that are subject to examination may be filed with any voluntary organization of surplus lines line brokers. The Director may examine the records or reports filed with an organization of surplus lines line brokers in order to ascertain compliance with A.R.S. Title 20, Chapter 2, Article 5, Chapter 2 of Title 20, A.R.S. An Such examination performed pursuant to this authority shall not preclude examination of records of a surplus lines broker brokers.
 - 3.2. Nothing in this rule requires shall be construed to require that a surplus lines line broker become a member of any surplus lines line organization in order to file any affidavit or statement or to preserve or maintain any affidavit or statement the same.
 5. The Director may contract with a voluntary domestic organization of surplus line brokers whereby the affidavits, reports, certificates or statements required by this rule or the report under oath required by A.R.S. § 20-408 may be filed with and maintained by the organization.
- F. Disclosure requirement. There shall be stamped or written conspicuously in boldface type on the first page of the policy of surplus line insurance and the confirmation of insurance, if any, these words:
"This insurance is transacted pursuant to Arizona Revised Statutes, Title 20, Chapter 2, Article 5 and is placed in an insurer or insurers not holding a Certificate of Authority from or regulated by the Arizona Department of Insurance."
- G. Effective date. This rule shall become effective on January 1, 1981. The current list of insurers shall remain in effect until July 1, 1981.