

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R7-1-713 New Section
2. **The specific authority for the rulemaking, including both the authorizing statute and the statutes the rules are implementing:**
Authorizing statute: A.R.S. 15-1424

Implementing statute: A.R.S. 15-1424
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2265, July 16, 1999.
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Thomas J. Saad

Address: State Board of Directors for Community Colleges of Arizona
3225 North Central Ave., Suite 1220
Phoenix, AZ 85012

Telephone: (602) 255-4037
Fax: (602) 279-3464
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
Establishes guidelines for community colleges that offer credit courses in another state or country, including courses delivered by technology at designated receive sites. Requires intergovernmental agreements or contracts, that must be approved by the State Board. State Board must approve tuition and fees; state aid may not be claimed.
6. **A reference to any study that the agency proposes to rely on its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None.
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:**
The new section will not diminish the authority of college districts. They have been operating under similar, but less formal, provisions.

Arizona Administrative Register
Notices of Proposed Rulemaking

8. **The preliminary summary of the economic, small business, and consumer impact:**
The proposed rule will not adversely impact small business or consumers.
9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Thomas J. Saad
Address: State Board of Directors for Community Colleges of Arizona
3225 N. Central Ave., Suite 1220
Phoenix, AZ 85012
Telephone: (602) 255-4037
Fax: (602) 279-3464
10. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:**
Oral Proceedings/public hearing is scheduled as follows:
Date: November 19, 1999
Time: 1 p.m.
Location: Eastern Arizona College, Thatcher, Arizona
11. **Any other matters prescribed by statute that are applicable to the specific agency:**
None
12. **Incorporations by reference and their location in the rules:**
None
13. **Full text of the rules follows:**

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY
COLLEGES OF ARIZONA

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

Section

R7-1-713. Providing Community College Credit Courses in Another State or Country

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

R7-1-713. Providing Community College Credit Courses in Another State or Country

- A.** A community college district (offering district) may offer credit courses in another state or country, including courses and services delivered in whole or in part through educational technology requiring a designated receive site, as follows:
1. written agreement or contract, or where required by an Intergovernmental Agreement statute (A.R.S. § 11-952 through 11-954, Intergovernmental Agreement Provisions), shall be completed between the offering district and any out-of-state public agency and submitted for State Board approval prior to any services being provided.
 2. contract shall be completed between the offering district and any nonpublic/private entity with specific reference to R7-1-506 (Contracting with Private Schools for Educational Services) and A. R. S. § 15-1424.B.4 (General Powers of the State Board) and submitted for State Board approval prior to any services being provided.
- B.** For all services covered by this rule:
1. The State Board shall approve tuition and fees for students enrolled in credit courses.
 2. Credit may be awarded by the district on curriculum approved by the State Board.
 3. State aid may not be claimed.
 4. An annual report for the previous fiscal year shall be submitted to the State Board by September 1 of each year. The annual report shall include for each service: the location, direct operating costs of courses provided, remuneration received, and enrollment.
- C.** The offering district shall inform the State Board of any changes in the scope of services authorized pursuant to this rule. Upon a change in the plan or 5 years from the most recent approval of the plan by the State Board, whichever occurs first, the offering district shall resubmit the plan for State Board review and approval.

- D.** Courses delivered via educational technology methods that do not require a designated receive site are exempt from this rule, but are subject to R7-1-714.

NOTICE OF PROPOSED RULEMAKING

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

CHAPTER 4. CORPORATION COMMISSION SECURITIES

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R14-4-136 | Repeal |
| R14-4-136 | 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. §§ 44-1821 and 44-1845
Implementing statute: A.R.S. §§ 44-1844 and 44-1845
Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13

- 3. A list of all previous notices appearing in the Arizona Administrative Register:**

Notice of Rulemaking Docket Opening: 5 A.A.R. 2180, July 9, 1999.

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

Name: Cheryl T. Farson, General Counsel
Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, AZ 85007-2996
Telephone: (602) 542-4242
Fax: (602) 594-7470

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

The Arizona Corporation Commission (the "Commission") proposes to repeal and replace Section R14-4-136 ("rule 136"). The proposed rule 136 will provide an exemption from registration of securities consistent with federal law.

Rule 136 provides an exemption from registration for offers and sales of securities pursuant to certain compensatory benefit plans and compensation contracts. The exemption covers securities offered or sold under a plan or agreement between a private company and the company's employees, officers, directors, partners, trustees, consultants, and advisors.

The current rule was substantially similar to federal rule 701, promulgated pursuant to the Securities Act of 1933. In Release No. 33-7645, the Securities and Exchange Commission amended federal rule 701 effective April 7, 1999. The proposed revisions to rule 136 are in response to and conform with the changes in federal rule 701.

The primary changes to federal rule 701 to be reflected in rule 136 are:

 1. The \$5 million aggregate offering price ceiling was removed and the maximum amount of securities that may be sold in a 12-month period is a flexible limit related to the size of the issuer.
 2. More specific disclosure is required from issuers that sell more than \$5 million worth of securities in a 12-month period.
 3. The definition of consultant and advisor are revised to harmonize with the definition contained in Form S-8, the federal short-form registration statement for the offer and sale of employee benefit plan securities.

Arizona Administrative Register
Notices of Proposed Rulemaking

6. **Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**
None.
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:**
The proposed rule will not diminish a previous grant of authority of any political subdivision of this state.
8. **The preliminary summary of the economic, small business, and consumer impact:**
Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.
9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Not applicable.
10. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
Date: October 15, 1999
Time: 10 a.m.
Location: Arizona Corporation Commission
1200 West Washington Avenue
Phoenix, Arizona 85007

Nature: Oral proceeding. Subsequent to the oral proceeding, the Arizona Corporation Commission will taken final action at an open meeting with respect to the making of the proposed rule.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None.
12. **Incorporations by reference and their location in the rules:**
17 CFR 230.701 (1999) Subsection (A)
13. **The full text of the rule follows:**

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

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Sections

- ~~R14-4-136. Exempt Transactions—Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation Repealed~~
R14-4-136. Exempt Offerings Pursuant to Compensatory Arrangements

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

~~**R14-4-136. Exempt Transactions—Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation Repealed**~~

- ~~**A.** Exemption. Offers and sales of securities that satisfy the provisions of subsection (B) by an issuer that satisfies the requirements of A.R.S. § 44-1902(B)(4) and (5) shall be added to the class of transactions exempt under the provisions of A.R.S. § 44-1844.~~
- ~~**B.** Conditions to be met.~~
- ~~1. An exemption under this rule applies only to offers and sales of an issuer's securities pursuant to:~~
- ~~a. A written compensatory benefit plan and interests in such plan established by that issuer, its parents, or majority-owned subsidiaries for the participation of their employees, directors, general partners, trustees (where the issuer~~

Arizona Administrative Register
Notices of Proposed Rulemaking

is a business trust), officers, or consultants or advisers provided that bona fide services shall be rendered by consultants or advisers and such services must not in connection with the offer and sale of securities in a capital raising transaction; or

- b. A written contract relating to the compensation of the persons specified in subparagraph (B)(1)(a).
 2. For purposes of this rule, a compensatory benefit plan means any purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension, or similar plan.
 3. The issuer, its parent, or majority-owned subsidiary shall provide each participant in a compensatory benefit plan with a copy of such plan. A copy of a written contract relating to compensation shall be provided to the parties.
 - 4.a. Aggregate offering price means the sum of all cash, property, notes, cancellation of debt, or other consideration to be received by the issuer for the issuance of the securities. Noncash consideration should be valued in reference to bona fide sales of that consideration made within a reasonable time or, in the absence of sales, on the fair value as determined by generally accepted accounting principles.
 - b. No adjustment of the aggregate offering price described in this rule shall be made for other offerings made in reliance upon other rules adopted pursuant to the Arizona Securities Act. The aggregate offering price under other rules adopted pursuant to the Arizona Securities Act shall not be reduced by offerings made under this rule.
 - e. The number of shares permitted to be offered and sold under subparagraph (B)(5)(b) shall not be reduced by the number of shares offered or sold in reliance upon other rules adopted pursuant to the Arizona Securities Act or vice versa.
 5. The amount of securities offered and sold in reliance on this rule shall not exceed the greater of \$500,000 or the amount determined pursuant to subparagraph (B)(5)(a) or (b); provided, however, that the aggregate offering price of securities of the issuer subject to outstanding offers made in reliance on this rule plus securities of the issuer sold in the preceding 12 months in reliance on this rule shall in no event exceed \$5,000,000.
 - a. The aggregate offering price of securities of the issuer subject to outstanding offers in reliance on this rule plus securities of the issuer sold in the preceding 12 months in reliance on this rule shall not exceed 15% of the total assets of the issuer, measured at the end of its last fiscal year; or
 - b. The number of securities of the issuer subject to outstanding offers in reliance on this rule plus securities of the issuer sold in the preceding 12 months in reliance on this rule shall not exceed 15% of the outstanding securities of that class. The outstanding securities of a class shall include securities of that class issuable pursuant to the exercise of outstanding options, warrants, rights, or conversion of convertible securities, unless such options, warrants, rights, or convertible securities were issued under this rule. If the securities offered or sold under this rule are convertible securities, the number of securities subject to outstanding offers and sold under this subsection shall be deemed to be the shares of the securities into which such securities may be converted.
 6. Offers and sales exempt pursuant to this rule are deemed to be a part of a single, discrete offering and are not subject to integration with any other offering or sale whether registered under the Arizona Securities Act or otherwise exempt from the registration requirements of the Arizona Securities Act.
- C.** Except as provided in subsection (D), an exemption pursuant to this rule is not available for the securities of an issuer if the issuer or any of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of ten percent or more of any class of its equity securities:
1. Has been convicted of a felony involving racketeering or a transaction in securities or of which fraud is an essential element or offenses listed in A.R.S. § 13-2301(D)(4).
 2. Has been convicted within the ten years before any issuance of securities under this rule, or at any time thereafter, of a misdemeanor involving racketeering or a transaction in securities or of which fraud or dishonesty is an essential element.
 3. Is subject to an order, judgment, or decree of a court of competent jurisdiction entered within ten years of the date of any issuance of securities under this rule enjoining or restraining him from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities or involving fraud, deceit, racketeering, or consumer protection laws.
 4. Has been subject to any state or federal administrative order or judgment in connection with the purchase or sale of securities entered within five years before any issuance of securities under this rule or at any time thereafter.
 5. Is subject to an order of the Securities and Exchange Commission denying or revoking registration as a broker or dealer in securities under the Securities Exchange Act of 1934, is subject to an order denying or revoking membership in a national securities association registered under the Securities Exchange Act of 1934, or has been suspended for a period exceeding six months or expelled from membership in a national securities exchange registered under the Securities Exchange Act of 1934.
- D.** The Commission may, at its discretion, waive any disqualification caused by subsection (C). A disqualification under subsection (C) ceases to exist if:
1. The basis for the disqualification has been removed by the jurisdiction creating it,
 2. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification, or
 3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.

Arizona Administrative Register
Notices of Proposed Rulemaking

E. ~~In view of the primary purpose of this rule, which is to provide an exemption from the registration requirements of the Arizona Securities Act for securities issued in compensatory circumstances, this rule is not available to any issuer for any transaction which, while in technical compliance with this rule, is part of a plan or scheme to circumvent this purpose, such as to raise capital or to evade the registration provisions of the Arizona Securities Act. In such cases, registration or some other exemption from registration under the Arizona Securities Act is required.~~

R14-4-136. Exempt Offerings Pursuant to Compensatory Arrangements

- A.** Offers and sales of securities that satisfy the requirements and provisions of rule 701 promulgated under the Securities Act of 1933, 17 CFR 230.701 (1999), (“rule 701”) and this Section shall be added to the class of transactions exempt under the provisions of A.R.S. § 44-1844. Rule 701 is incorporated by reference and on file with the office of the secretary of state. The incorporated material contains no later editions or amendments.
- B.** Except as provided in subsection (C), an exemption pursuant to this Section is not available for the securities of an issuer if the issuer or any of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of 10% or more of any class of its equity securities:
1. Has been convicted of offenses listed in A.R.S. § 13-2301(D)(4) or of a felony involving racketeering or a transaction in securities or of which fraud is an essential element.
 2. Has been convicted within the 10 years before any issuance of securities under this Section, or at any time thereafter, of a misdemeanor involving racketeering or a transaction in securities or of which fraud or dishonesty is an essential element.
 3. Is subject to an order, judgment, or decree of a court of competent jurisdiction entered within 10 years of the date of any issuance of securities under this Section enjoining or restraining it from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities or involving fraud, deceit, racketeering, or consumer protection laws.
 4. Has been subject to any state or federal administrative order or judgment in connection with the purchase or sale of securities entered within 5 years before any issuance of securities under this Section or at any time thereafter.
 5. Is subject to an order of an administrative tribunal, self-regulatory organization, or the Securities and Exchange Commission denying, suspending, or revoking membership or registration as a broker or dealer in securities or as an investment adviser or investment adviser representative for a period of 6 months or more.
- C.** The Commission may, at its discretion, waive any disqualification caused by subsection (B). A disqualification under subsection (B) ceases to exist if any one of the following occurs.
1. The basis for the disqualification has been removed by the jurisdiction creating it.
 2. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification.
 3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- D.** This Section provides an exemption from the registration requirements of the Arizona Securities Act for securities issued in compensatory circumstances. The Section is not available to any issuer for any transaction that, while in technical compliance with this Section, is part of a plan or scheme to circumvent this purpose.

NOTICE OF PROPOSED RULEMAKING

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

CHAPTER 6. INVESTMENT MANAGEMENT

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| 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. A list of all previous notices appearing in the Arizona Administrative Register:**
- Notice of Rulemaking Docket Opening: 5 A.A.R. 2446, July 30, 1999.

Arizona Administrative Register
Notices of Proposed Rulemaking

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

Name: Sharleen A. Day, Associate General Counsel
Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, AZ 85007-2996
Telephone: (602) 542-4242
Fax: (602) 594-7470

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

The Arizona Corporation Commission proposes to repeal and replace Section R14-6-204. 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 current version of rule 204. The proposed revisions to rule 204 are in response to the adoption of the new examinations by the NASAA membership, and are based on a NASAA model rule.

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

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

The proposed 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 1 of several specified professional associations are given a waiver from all examination requirements.

6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

None.

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:

Proposed rule 204 promotes a statewide interest by reducing the regulatory burden of meeting an unnecessary examination requirement for certain applicants. Proposed rule 204 provides for a waiver of examination requirements for individuals that possess and maintain a designation from 1 of several specified professional associations. The examination requirements in proposed 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 proposed rule 204. Individuals possessing 1 of the specified designations are presumed to have established their competency by completion of the course work.

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

Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Not applicable.

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: October 4, 1999
Time: 10 a.m.
Location: Arizona Corporation Commission
1200 West Washington Avenue
Phoenix, Arizona 85007

Arizona Administrative Register
Notices of Proposed Rulemaking

Nature: Oral proceeding. Subsequent to the oral proceeding, the Arizona Corporation Commission will taken final action at an open meeting with respect to the making of the proposed rule.

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

None.

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

None.

13. 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

ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

R14-6-204. Written Examination Repealed

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:

Arizona Administrative Register
Notices of Proposed Rulemaking

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.

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL**

PREAMBLE

1. **Sections Affected**

R18-2-101	<u>Rulemaking Action</u>
R18-2-301	Amend
R18-2-304	Amend
R18-2-306	Amend
R18-2-309	Amend
R18-2-320	Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing and implementing statutes: A.R.S. §§ 49-104(A)(11), 49-425, 49-426, and 426.01
3. **List of all previous notices appearing in the register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 4 A.A.R. 958, April 24, 1998.
Notice of Rulemaking Docket Opening: 5 A.A.R. 2881, August 20, 1999.
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Mark Lewandowski or Martha Seaman, Rule Development Section
Address:	Department of Environmental Quality 3033 North Central Avenue Phoenix, Arizona 85012-2809
Telephone:	(602) 207-2230 or (602) 207-2222. If you are outside the (602) area code, dial 1-800 234-5677, and ask for the extension.
Fax:	(602) 207-2251
5. **An explanation of the rule, including the agency's reasons or initiating the rule:**

Summary: ADEQ is proposing a number of changes in its rules that implement the part 70 federal operating permits program. ADEQ is proposing to incorporate 40 CFR 64 (the federal CAM, or compliance assurance monitoring rules) into Arizona air quality rules. In addition, ADEQ is proposing to clarify existing language concerning significant revisions for Class I sources so that CAM will be implemented the same way in Arizona as the rest of the country. ADEQ is also proposing to modify the definition of major source at R18-2-101(61) to ensure continued approvability of Arizona's air permitting rules under Part 70. Finally, ADEQ has proposed minor changes to R18-2-301 and R18-2-304.

CAM (Compliance Assurance Monitoring): On October 22, 1997 (62 FR 54900), EPA promulgated new regulations and revised regulations to implement compliance assurance monitoring (CAM) for major stationary sources of air pollution that are required to obtain operating permits under title V of the Clean Air Act (Act). The regulations implement requirements concerning enhanced monitoring and compliance certification under the Act. Subject to certain exemptions, the new regulations require owners or operators of such sources to conduct monitoring that satisfies particular criteria established in the rule to provide a reasonable assurance of compliance with applicable requirements under the Act. The monitoring is to focus on emissions units that rely on a pollution control device to meet an emission limit. Revisions to the operating permits program regulations in part 70 clarified the relationship between

Arizona Administrative Register
Notices of Proposed Rulemaking

the part 64 requirements and periodic monitoring and compliance certification requirements. ADEQ proposes to implement this federal rule by incorporating 40 CFR 64 by reference, and by amending its own operating permits program regulations at R18-2-306(A)(3), R18-2-309(2), and R18-2-320.

The proposed change to R18-2-320 would help to ensure that CAM would be implemented the same way in Arizona as the rest of the country. As part of the schedule for implementing CAM, 40 CFR 64.5 requires certain sources applying “for a significant permit revision under part 70”, to submit proposed part 64 monitoring to the permitting authority as part of the application. ADEQ’s proposed amendment to R18-2-320 would clarify that 2 Arizona-specific triggers for significant revisions (added by ADEQ to its Class I permit rules, but not significant revisions under the federal part 70) do not trigger the part 64 submittal requirement. With this clarification, changes in fuels not described in the permit, and increases in potential to emit greater than “significant”, would continue to require significant revisions for Class I sources, but could not be construed as a “significant revision under part 70”, triggering the CAM information submittal requirement in 40 CFR 64.5(a)(2). This clarification will prevent Arizona sources from being required to comply with CAM earlier than they would if they were outside Arizona. Arizona part 70 sources making either of these 2 changes would still need a significant revision under Arizona rules, and would still be subject to any other triggered applicable requirement. ADEQ requests comment on the placement of this clarification in R18-2-320(A).

Definition of “Major Source”: ADEQ is proposing to modify the definition of major source in R18-2-101(61) to return it to the way it was originally adopted on November 15, 1993. The proposed change would again require fugitives to be counted for major source determination in all stationary source categories regulated by a standard under section 111 or 112, not just if the standard was promulgated before August 7, 1980. Striking the August 7, 1980, distinction makes the rule consistent with current 40 CFR 70.2.

After submitting R18-2-101(61) to EPA for Title V approval on November 15, 1993, ADEQ changed this definition in June of 1994 by adding the text, “as of August 7, 1980”. This change was undertaken after a March, 1994 EPA memo forecasted that EPA would change its own definition in this way, due to the questionable legal soundness of their existing definition. (Memo from Lydia Wegman, then Deputy Director, OAQPS, March 8, 1994) The memo stated that states need not require fugitives from sources subject to post-1980 standards to be counted in order to obtain interim approval. ADEQ believed that EPA would change its own part 70 rules before Arizona’s rules were considered for full approval, and that by changing its rule ahead of time, it would avoid having to change its rule again later to gain full approval.

Although EPA has proposed several amendments to Part 70 since 1993, it now appears that no federal part 70 rule matching ADEQ’s rule text will be effective by the time the state’s part 70 interim approval expires on June 1, 2000. ADEQ notes that 40 CFR 71.2, which is what the EPA would implement in Arizona in the event the state’s part 70 program was disapproved, is identical to the current Arizona rule, that is, it includes the August 7, 1980 date. In August, 1995 and February, 1998 proposals, EPA was still of the opinion that August 7, 1980, was the cutoff date for counting fugitives, but introduced proposed language that went further, to provide for future EPA determinations: (“Any other stationary source category regulated under section 111 or 112 of the Act and for which the Administrator has made an affirmative determination under section 302(j) of the Act;”). ADEQ has consulted with EPA on the need to change this rule, and is also seeking comments from the public.

An additional minor change is proposed to R18-2-304. The change was requested by EPA in a comment on a proposed rule that ADEQ published in the November 28, 1997, *Register*. In response to that comment, ADEQ amended R18-2-320(D) to provide that when an existing source applied for a significant permit revision to revise its permit from a Class II permit to a Class I permit, the source would be required to submit a Class I permit application in accordance with R18-2-304, and have its entire permit reissued. ADEQ was unable to amend R18-2-304 at that time. The change to R18-2-304 would clarify that the application, to be complete, must cover the entire source, and not just the change that may have caused the source to require a Class I permit.

Finally, it was discovered during a recent rule review that the term “quantification” had been mistakenly replaced with the term “qualification” in R18-2-301(7). The proposed change to R18-2-301 corrects this action by replacing the term “qualification” with “quantification”.

6. 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 the state:

Not applicable.

Arizona Administrative Register
Notices of Proposed Rulemaking

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

Not applicable.

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

A. Identification of Proposed Rulemaking

Title 18, Chapter 2, Articles 1 and 3; sections R18-2-101, R18-2-301, R18-2-304, R18-2-306, R18-2-309 and R18-2-320.

B. General Comments About Compliance Costs

ADEQ has determined that the incorporation by reference of compliance assurance monitoring (CAM) into Arizona rules should have no economic impact on businesses in Arizona. This is because there are no additional costs to the regulated community when a state agency incorporates an already effective federal standard. Compliance costs were triggered by the federal rule, and they were considered when the federal regulation was proposed and adopted (See 62 FR 54938-54940, 10/22/97). These rules impose no additional costs on the regulated community, small businesses, political subdivisions, or members of the public in Arizona.

The additional language relative to CAM in R18-2-320 prevents CAM from being triggered at an Arizona source under circumstances where it would not be triggered nationally. As such, ADEQ expects the revision to R18-2-320 to reduce compliance costs because it decreases monitoring, recordkeeping, or reporting burdens on agencies, political subdivisions, and businesses. Furthermore, the additional language should not increase the cost of implementation or enforcement for ADEQ. As a result, ADEQ has concluded that the revision to R18-2-320 is exempt from the preparation of an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(3), which allows an exemption for rules that decrease monitoring, record keeping, or reporting burdens and that result in costs of implementation or enforcement that are less than the reduction in burdens.

The proposed change to the major source definition would not be implemented under federal implementation, since under part 71, fugitive counting for applicability purposes is required only for sources regulated under section 111 or 112 as of August 7, 1980. An example of sources that may be affected by this Arizona rule change is mines. Mines were 1st regulated by EPA under section 111 in 1984 (49 FR 6464, Standards of Performance for Metallic Mineral Processing Plants) and currently they do not have to count fugitives in determining major source status under either Arizona law or 40 CFR 71. The impact on mines may be substantial, since some of them could be forced to apply for Class I permits. ADEQ has weighed this impact against the possible loss of its authority to implement the Title V operating permits program and has reached the preliminary conclusion that the benefits of this rule outweigh the costs. ADEQ solicits data and comment regarding this conclusion. Additional information will be included in the final EIS.

C. Rule Impact Reduction on Small Businesses

ADEQ is sensitive to the concerns of small businesses and the impact this rulemaking could have upon them. State law requires agencies to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives for the rule making. ADEQ considered each of the methods prescribed in A.R.S. §§ 41-1035 and 41-1055(B)(5)(c) for reducing the impact on small businesses. The methods considered are:

- (1) Establish less stringent compliance or reporting requirements in the rule for small businesses.
- (2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
- (3) Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
- (4) Establish performance standards for small businesses to replace design or operational standards in the rule.
- (5) Exempt small businesses from any or all requirements of the rule.

The general statutory objectives that are the basis of this rulemaking are contained in the statutory authority cited in number 2 of this preamble. The specific objectives are to:

- (1) Implement the compliance assurance monitoring program for Class I sources.
- (2) Assure part 70 approval by modifying the definition of "major source".

The changes proposed in this rule apply only to major sources. ADEQ is not aware of any major source in Arizona that is a small business. Even if there was a small business that was also a major source, ADEQ has evaluated each of the five listed methods and has concluded that none of the methods are legal, since, by federal law, these rule changes must apply to major sources, whether or not the major source is a small business.

Arizona Administrative Register
Notices of Proposed Rulemaking

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: David Lillie, Economist, Rule Development Section
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809
Telephone: (602) 207-4436 (Any extension may be reached in-state by dialing 1-800-234-5677 and asking for that extension.)
Fax: (602) 207-2251

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Date: October 5, 1999
Time: 10 a.m.
Location: Arizona Department of Environmental Quality, Room 1710, 3033 N. Central, Phoenix, AZ (Please call (602) 207-4795 for special accommodations pursuant to the Americans with Disabilities Act.)
Nature: Public hearing on the proposed rules, with opportunity for formal comments on the record
Close of comment: October 8, 1999.

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:

<u>New Incorporations by reference (subparts or larger)</u>	<u>Location</u>
40 CFR 64	R18-2-306(A)(3)

13. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

Sections

R18-2-101. Definitions

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Sections

R18-2-301. Definitions
R18-2-304. Permit Application Processing Procedures
R18-2-306. Permit Contents
R18-2-309. Compliance Plan; Certification
R18-2-320. Significant Permit Revisions

ARTICLE 1. GENERAL

R18-2-101. Definitions

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
6. No change.

Arizona Administrative Register
Notices of Proposed Rulemaking

7. No change.
8. No change.
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58. No change.
59. No change.
60. No change.
61. "Major source" means:
 - a. A major source as defined in R18-2-401.
 - b. A major source under Section 112 of the Act:
 - i. For pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, including fugitive emissions, 10 tons per year (tpy) or more of any hazardous air pollutant which

Arizona Administrative Register
Notices of Proposed Rulemaking

- has been listed pursuant to Section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as described in Article 11 of this Chapter. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
- ii. For radionuclides, “major source” shall have the meaning specified by the Administrator by rule.
 - c. A major stationary source, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to 1 of the following categories of stationary source:
 - i. Coal cleaning plants (with thermal dryers).
 - ii. Kraft pulp mills.
 - iii. Portland cement plants.
 - iv. Primary zinc smelters.
 - v. Iron and steel mills.
 - vi. Primary aluminum ore reduction plants.
 - vii. Primary copper smelters.
 - viii. Municipal incinerators capable of charging more than 50 tons of refuse per day.
 - ix. Hydrofluoric, sulfuric, or nitric acid plants.
 - x. Petroleum refineries
 - xi. Lime plants.
 - xii. Phosphate rock processing plants.
 - xiii. Coke oven batteries.
 - xiv. Sulfur recovery plants.
 - xv. Carbon black plants (furnace process).
 - xvi. Primary lead smelters.
 - xvii. Fuel conversion plants.
 - xviii. Sintering plants.
 - xix. Secondary metal production plants.
 - xx. Chemical process plants.
 - xxi. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.
 - xxii. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
 - xxiii. Taconite ore processing plants.
 - xxiv. Glass fiber processing plants.
 - xxv. Charcoal production plants.
 - xxvi. Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
 - xxvii. All other stationary source categories regulated by a standard promulgated ~~as of August 7, 1980~~, under Section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.
- 62. No change.
 - 63. No change.
 - 64. No change.
 - 65. No change.
 - 66. No change.
 - 67. No change.
 - 68. No change.
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- 111. No change.
- 112. No change.
- 113. No change.
- 114. No change.
- 115. No change.
- 116. No change.
- 117. No change.

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-301. Definitions

- 1. No change.
- 2. No change.
- 3. No change.
- 4. No change.
- 5. No change.
- 6. No change.
- 7. “Quantifiable” means, with respect to emissions, including the emissions involved in equivalent emissions involved in equivalent emission limits and emission trades, capable of being measured or otherwise determined in terms of quantity and assessed in terms of character. ~~Qualification~~ Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, materials used in a process or production, modeling, or other reasonable measurement practices.
- 8. No change.
- 9. No change.
- 10. No change.

R18-2-304. Permit Application Processing Procedures

- A.** No change.

Arizona Administrative Register
Notices of Proposed Rulemaking

- B. No change.
- C. No change.
- D. No change.
- E. A complete application is one that satisfies all of the following:
 - 1. To be complete, an application shall provide all information required pursuant to subsection (B) ~~of this Section~~ (standard application form section), ~~except that applications~~ Applications for permit revision need supply such information only if it is related to the proposed change, unless the source's proposed permit revision will revise its permit from a Class II permit to a Class I permit. A responsible official shall certify the submitted information consistent with subsection (H) ~~of this section~~ (section on certification of truth, accuracy, and completeness).
 - 2. No change.
 - 3. No change.
 - 4. No change.
 - 5. No change.
 - 6. No change.
 - 7. No change.
 - 8. No change.
 - 9. No change.
 - 10. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.

R18-2-306. Permit Contents

- A. Each permit issued by the Director shall include the following elements:
 - 1. No change.
 - 2. No change.
 - 3. No change.
 - a. All ~~emissions~~ monitoring and analysis procedures or test methods required under ~~the applicable~~ monitoring and testing requirements, including 40 CFR 64, any other procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act, and including any monitoring and analysis procedures or test methods required pursuant to R18-2-306.01. Part 64 of 40 CFR as adopted July 1, 1998, is incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. If more than 1 monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;
 - b. No change.
 - c. 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.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.

Arizona Administrative Register
Notices of Proposed Rulemaking

R18-2-309. Compliance Plan; Certification

All permits shall contain the following elements with respect to compliance:

1. The elements required by R18-2-306(A)(3), (4) and (5).
2. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
 - a. The frequency for submissions of compliance certifications, which shall not be less than annually;
 - b. The means to monitor the compliance of the source with its emissions limitations, standards, and work practices;
 - c. A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):
 - i. The identification of each term or condition of the permit that is the basis of the certification;
 - ii. The identification of the method or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and;
 - ~~iii. Whether compliance was whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under R18-2-306(A)(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;~~
 - iii. The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in subsection (ii). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR 64 occurred; and
 - ~~iv. The method(s) used for determining the compliance status of the source, currently and over the reporting period; and~~
 - ~~iv.~~ Other facts as the Director may require to determine the compliance status of the source.
 - d. A requirement that all compliance certifications be submitted to the Director, and for Class I permits, to the Administrator as well.
 - e. Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act or pursuant to R18-2-306.01.
3. No change.
4. No change.
5. No change.
6. No change.

R18-2-320. Significant Permit Revisions

- A. Significant revision procedures shall be used for applications requesting permit revisions that do not qualify as minor revisions or as administrative amendments. A significant revision that is only required because of a change described in R18-2-319(A)(6) or (7) shall not be considered a significant permit revision under part 70 for the purposes of 40 CFR 64.5(a)(2). Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall follow significant revision procedures.
- B. Any modification to a major source of federally listed hazardous air pollutants, and any reconstruction of a source, or a process or production unit, under section 112(g) of the Act and regulations promulgated thereunder, shall follow significant permit revision procedures and any rules adopted pursuant to A.R.S. § 49-426.03.
- C. Significant permit revisions shall meet all requirements of this Article for applications, public participation, review by affected states, and review by the Administrator as they apply to permit issuance and renewal.
- D. When an existing source applies for a significant permit revision to revise its permit ~~from~~ from a Class II permit to a Class I permit, it shall submit a Class I permit application in accordance with R18-2-304. The Director shall issue the entire permit, and not just the portion being revised, in accordance with Class I permit content and issuance requirements, including requirements for public, affected state, and EPA review, contained in R18-2-307 and R18-2-330.
- E. The Director shall process the majority of significant permit revision applications received each calendar year within 9 months of receipt of a complete permit application but in no case longer than 18 months. Applications for which the Director undertakes accelerated processing pursuant to R18-2-326(N) shall not be included for this requirement.