

NOTICES OF RULEMAKING DOCKET OPENING

The Administrative Procedure Act (APA) requires the publication of Notices of Rulemaking Docket Opening when an agency opens a rulemaking docket to consider rulemaking. Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process.

NOTICE OF RULEMAKING DOCKET OPENING

DEPARTMENT OF HEALTH SERVICES FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

- 1. Title and its heading:** 9, Health Services
Chapter and its heading: 8, Department of Health Services
Food, Recreational, and Institutional Sanitation
Article and its heading: 2, Bottled water
Section numbers: R9-8-201 through R9-8-209 (The Department may add, delete, or modify additional Sections as necessary.)

2. The subject matter of the proposed rules:

This rulemaking is authorized under A.R.S. § 36-136(H)(6), which requires the Department to promulgate rules for the inspection and certification of bottled drinking water sources, plants, processes, and transportation. In addition, this rulemaking is authorized under A.R.S. §§ 41-1072 through 41-1079, which requires the Department to establish licensing time-frames for approvals acted upon by the Department. The rules for bottled water are in Title 9, Chapter 8, Article 2. The Department is amending the definitions in R9-8-201 to reflect the changes made to the Article. An amended R9-8-202 contains the general requirements necessary to operate a food establishment that processes and sells bottled water in Arizona. R9-8-203 is amended to include the applications requirements for an approval of a source. R9-8-204 contains the time-frame requirements as authorized under A.R.S. §§ 41-1072 through 41-1079 and R9-8-205 explains the quality control requirements for the processing and sale of bottled water. The Department is repealing R9-8-206 through R9-8-209. The amended rules conform to current statutory authority, rulemaking format and style requirements, industry practice, and departmental policy.

The agency docket number:

RE-012-03

3. A citation to all published notices relating to the proceeding:

Notice of Rulemaking Docket Opening: 8 A.A.R. 2112, May 10, 2002

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

Name: Will Humble, Bureau Chief

Address: Arizona Department of Health Services
Bureau of Epidemiology and Disease Control
150 N. 18th Avenue, Suite 100
Phoenix, AZ 85007

Telephone: (602) 364-3855

Fax: (602) 364-3266

E-mail: whumble@hs.state.az.us

or

Name: Kathleen Phillips, Rules Administrator

Address: Arizona Department of Health Services
1740 W. Adams, Suite 201
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

Notices of Rulemaking Docket Opening

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Department will accept written comments until close of record, which has not yet been determined. The Department has not scheduled any oral proceedings at this time.

6. A timetable for agency decisions or other action on the proceeding, if known:

None

NOTICE OF RULEMAKING DOCKET OPENING

**DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING**

1. Title and its heading:

9, Health Services

Chapter and its heading:

16, Department of Health Services
Occupational Licensing

Article and its heading:

4, Registration of Sanitarians

Section numbers:

R9-16-401 through R9-16-409 (The Department may add, delete, or modify additional Sections as necessary.)

2. The subject matter of the proposed rules:

Arizona Administrative Code, Title 9, Chapter 16 provides requirements and procedures for the registration of sanitarians. Laws 2003, Ch. 21, effective September 18, 2003, amended the statutory authority for registration of sanitarians by adding a continuing education requirement and provisions for allowing the Council to waive the examination requirement for an individual who is registered, certified, or licensed as a sanitarian in another jurisdiction. The Department is amending the rules to be consistent with the statutory authority.

The agency docket number:

RE-019-03

3. A citation to all published notices relating to the proceeding:

None

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

Name: Don Herrington, Acting Office Chief

Address: Office of Environmental Health
Department of Health Services
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Phoenix, AZ 85007

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Name: Kathleen Phillips, Rules Administrator

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1740 W. Adams, Suite 202
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5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

Written comments will be accepted Monday through Friday, 8:00 a.m. to 5:00 p.m., at the addresses listed in item #4 until the close of record, which has not yet been determined. The schedule for public hearings, at which oral comments may be presented, will be included in the Notice of Proposed Rulemaking.

6. A timetable for agency decisions or other action on the proceeding, if known:

The Department plans to submit a Notice of Proposed Rulemaking by November 2003.

NOTICE OF RULEMAKING DOCKET OPENING

DEPARTMENT OF HEALTH SERVICES

ORAL HEALTH

- 1. Title and its heading:** 9, Health Services
Chapter and its heading: 23, Department of Health Services
Oral Health
Articles and their headings: 1, General Provisions
2, Arizona Dental Sealant Program (New)
3, Oral Health Services
4, Arizona Dental Trailer Loan Program (New)
Sections numbers: R9-23-101 through R9-23-404 (The Department may add, delete, or modify additional Sections as necessary).

2. The subject matter of the proposed rules:

The purpose of this rulemaking is to address the issues identified in the five-year review report submitted to the Governor's Regulatory Review Council (G.R.R.C.) in July 2001. The rules for oral health are in Title 9, Chapter 23, Article 1 and Article 3. In the proposed rules the Department is amending Articles 1 and 3 and adding two new Articles to the Chapter.

The Department is amending the definitions in Article 1 to reflect the changes made in the Chapter. The new Article 2 contains the eligibility requirements, the application process, and the application prioritization criteria for the Arizona Dental Sealant Program. The Department is amending Article 3 to include the eligibility requirements, the application process, and the application prioritization criteria for the Arizona Fluoride Mouthrinse Program. The new Article 4 contains the application process and the application prioritization criteria for the Arizona Dental Trailer Loan Program. The proposed rules will conform to current statutory authority, rulemaking format and style requirements, industry practice, and departmental policy.

The agency docket number:

RE-013-03

3. A citation to all published notices relating to this proceeding:

Notice of Rulemaking Docket Opening: 7 A.A.R. 3681, August 24, 2001

Notice of Rulemaking Docket Opening: 8 A.A.R. 2970, July 19, 2002

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

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Chief, Office of Oral Health

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E-mail: kphilli@hs.state.az.us

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Department will accept written comments until close of the record, which has not yet been determined. The Department has not scheduled any oral proceedings at this time.

6. A timetable for agency decisions or other action on the proceeding, if known:

None

NOTICE OF RULEMAKING DOCKET OPENING

BANKING DEPARTMENT

- 1. **Title and its heading:** 20, Commerce, Banking, and Insurance
- Chapter and its heading:** 4, Banking Department
- Articles and their headings:** 1, General
- 2, Bank Organization and Regulation
- 12, Rules of Practice and Procedure before the Superintendent
- Section numbers:** R20-4-102, R20-4-214, and R20-4-1209

2. **The subject matter of the proposed rules:**

The Department is revising the text of R20-4-102 to correct some typographical errors created the last time this Section was revised. The proposed revisions have no effect on the substance of the definitions contained in the Section.

The Department is revising the text of R20-4-214 for two reasons. First, the Department has noted several typographical errors in the official text of this Section. They are discrepancies between the G.R.R.C.-approved text in the Notice of Final Rulemaking and the text actually printed by the Secretary of State in the Supplement to *The Arizona Administrative Code* for the fourth quarter of 2002, and each supplement since that date.

Second, the Department revises this Section to change the language describing Suspicious Activity Reports that must be retained under the Section. Federal law requires banks to create these reports and retain them for five years for any suspicious activity that involves or aggregates at least \$5,000, with no upper limit stated. In contrast, the current language of R20-4-214 requires banks to retain the reports only for suspicious transactions under \$10,000. The Section is being revised to harmonize it with federal law and regulations.

Finally, the Department is revising the text of R20-4-1209. The subject Section concerns the procedure and timing of an answer to a notice of hearing. The regulated community has pointed out that the existing language requires a party to file an answer within 20 days after issuance of a notice of hearing. This creates two problems for users of the rules. A local lawyer suggested to the Department that a change, counting the time from the date of service rather than issuance, solves both problems.

First, since only the Department issues notices of hearing, only the Department knows when the party's time to answer begins to run. A person involved in a proceeding may not even know a hearing is scheduled, but that person's time to answer has already begun to run. This is unfair to all parties, and might be attacked with a due process challenge. Changing the word "issuance" to "service" solves this problem because the party's time to answer then begins to run as soon as it learns it is required to answer.

Second, because the existing Section times events from the date of issuance rather than the date of service, it is unclear whether OAH's rule on dates of filing and service, specifically R2-19-108(F)(2), would apply equally to documents the Department mailed as well as those it personally served. The problem here is the unfairness of the uncertainty, and the unfairness of having two different ways to count time to answer. These problems could be challenged on equal protection grounds. This problem is solved if the Section is amended to change "issuance" to "service" because the change will make service the crucial event, and make it clear that service by mail is effective five days after the date of mailing, exactly as in R2-19-108. After the change, all parties will still have 20 days from service to answer, but the date of service is more certain because of the proposed change.

3. **A citation to all published notices relating to the proceeding:**

There are no previous published notices relating to this proceeding.

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

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5. **The time during which the agency will accept written comments and the time and place where oral comments may be made:**

The Department accepts written comments during business hours at the address stated in item #4 of this Notice. Comments are welcome at any time until the close of the record in this proceeding. The date for closure of the record depends on the publication date of the actual proposed rules, which has not yet occurred. Notice of any opportunity to make public oral comment will be published as required by law.

6. **A timetable for agency decisions or other action on the proceeding, if known:**

No timetable has been projected or established. In March 2004 the Department expects to submit the text of proposed rules for publication.