

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first 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. 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 making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

[R06-46]

PREAMBLE

1. Sections Affected

R4-23-110
R4-23-607
R4-23-621

Rulemaking Action

Amend
Amend
New Section

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

Authorizing statutes: A.R.S. §§ 32-1904(A)(1)

Implementing statutes: A.R.S. §§ 32-1904(B)(3), 32-1929, and 32-1930

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 3127, August 12, 2005

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

Name: Dean Wright, Compliance Officer

Address: Board of Pharmacy
4425 W. Olive Ave., Suite 140
Glendale, AZ 85302

Telephone: (623) 463-2727, ext. 131

Fax: (623) 934-0583

E-mail: rxcop@cox.net

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

The Board has approved at least two pharmacies in Arizona to provide central filling for other pharmacies. There is at least one pharmacy in Arizona that is providing prescription order processing for other pharmacies, and there are other pharmacies from outside Arizona who are providing prescription order processing for Arizona pharmacies. The Board has no rules defining the practice of providing prescription order filling or processing by one pharmacy for another pharmacy. It has been the Board's practice to take each case individually. The Board staff is proposing rules to define the practice of providing prescription order filling and processing by one pharmacy for another pharmacy. The proposed rules will include definitions added to R4-23-110 for: "order," "shared order filling," "shared order processing," and "shared services." The proposed rules will include a new Section R4-23-621 (Shared Services) that details the requirements for participating in shared services (order filling and order processing or both), including notifications to patients, labeling, recordkeeping, confidentiality, and policies and procedures. The Board feels that the public, pharmacists, and pharmacies will benefit from rules that establish the standards for pharmacies that provide or utilize shared services. The rules will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and Governor's Regulatory Review Council.

The Board believes that approval of these rules benefits the public and the pharmacy community by clearly establishing the standards for pharmacies that provide or utilize shared services.

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

None

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

The proposed rules will impact the Board, pharmacies, and the public. The proposed rules' impact on the Board will be the usual rulemaking-related costs which are minimal. The Board estimates the proposed rules will have minimal economic impact on pharmacies. Several pharmacies are already using or providing shared services. The Board's proposed rules will not require a pharmacy to use or provide shared services, but will establish the minimum standards for using or providing shared services. The amended rules have no economic impact on the public.

The public, Board, and pharmacies benefit from rules that are clear, concise, and understandable. The proposed rules benefit the public and the pharmacy community by clearly establishing the standards for pharmacies that provide or utilize shared services.

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: Dean Wright, Compliance Officer

Address: Board of Pharmacy
4425 W. Olive Ave., Suite 140
Glendale, AZ 85302

Telephone: (623) 463-2727, ext. 131

Fax: (623) 934-0583

E-mail: rxcop@cox.net

10. The time, place, and nature of the proceedings for the making, 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:

Comments may be written or presented orally. Written comments must be received by 5 p.m., Monday, April 3, 2006. An oral proceeding is scheduled for:

Date: April 3, 2006

Time: 10:00 a.m.

Location: 4425 W. Olive Ave., Suite 140
Glendale, AZ 85302

A person may request information about the oral proceeding by contacting the person listed in this item.

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. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section
R4-23-110. Definitions

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

R4-23-607. Nonresident Permits

R4-23-621. ~~Reserved~~ Shared Services

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to A.A.C. Title 4 Chapter 23:

- “Active ingredient” No change
- “Alternate physician” No change
- “Approved course in pharmacy law” No change
- “Approved Provider” No change
- “Authentication of product history” No change
- “Batch” No change
- “Beyond-use date” No change
- “Biological safety cabinet” No change
- “Care-giver” No change
- “Class 100 environment” No change
- “Community pharmacy” No change
- “Component” No change
- “Compounding and dispensing counter” No change
- “Computer system” No change
- “Computer system audit” No change
- “Contact hour” No change
- “Container” No change
- “Continuing education” No change
- “Continuing education activity” No change
- “Continuing education unit” or “CEU” No change
- “Correctional facility” No change
- “CRT” No change
- “Current good compounding practices” No change
- “Current good manufacturing practice” No change
- “Cytotoxic” No change
- “Day” No change
- “DEA” No change
- “Dietary supplement” No change
- “Dispensing pharmacist” No change
- “Drug sample” No change
- “Drug therapy management” No change
- “Drug therapy management agreement” No change
- “Eligible patient” No change
- “Extreme emergency” No change
- “FDA” No change
- “Immediate notice” No change
- “Inactive ingredient” No change
- “Internal test assessment” No change

“Limited-service correctional pharmacy” No change
“Limited-service long-term care pharmacy” No change
“Limited-service mail-order pharmacy” No change
“Limited-service nuclear pharmacy” No change
“Limited-service pharmacy permittee” No change
“Limited-service sterile pharmaceutical products pharmacy” No change
“Long-term care consultant pharmacist” No change
“Long-term care facility” or “LTCF” No change
“Lot” No change
“Lot number” or “control number” No change
“Materials approval unit” No change
“Mediated instruction” No change
“MPJE” No change
“NABP” No change
“NABPLEX” No change
“NAPLEX” No change

“Order” means either of the following:

A prescription order as defined in A.R.S. § 32-1901; or

A medication order as defined in R4-23-651.

“Other designated personnel” No change
“Outpatient” No change
“Outpatient setting” No change
“Patient profile” No change
“Pharmaceutical patient care services” No change
“Pharmaceutical product” No change
“Pharmacist-administered immunizations training program” No change
“Pharmacy counter working area” No change
“Pharmacy law continuing education” No change
“Pharmacy permittee” No change
“Prepackaged drug” No change
“Proprietor” No change
“Provider pharmacy” No change
“Radiopharmaceutical” No change
“Radiopharmaceutical quality assurance” No change
“Radiopharmaceutical services” No change
“Red C stamp” No change
“Refill” No change
“Remodel” No change
“Remote drug storage area” No change
“Resident” No change
“Responsible person” No change
“Score transfer” No change

“Shared order filling” means the following:

Preparing, packaging, compounding, or labeling an order, or any combination of these functions, that are performed by:

A person with a current Arizona Board license and located at an Arizona pharmacy on behalf of and at the request of another resident or nonresident pharmacy; or

A person located in a nonresident pharmacy on behalf of and at the request of an Arizona pharmacy; and
Returning the filled order to the requesting pharmacy for delivery to the patient or patient's care-giver or at the
request of the requesting pharmacy, directly delivering the filled order to the patient.

"Shared order processing" means the following:

Interpreting the order, performing order entry verification, drug utilization review, drug compatibility and drug
allergy review, final order verification, and when necessary, therapeutic intervention, or any combination of these
order processing functions, that are performed by:

A pharmacist or intern, under pharmacist supervision, with a current Arizona Board license located at an Arizona
pharmacy on behalf of and at the request of another resident or nonresident pharmacy; or

A pharmacist or intern, under pharmacist supervision, located in a nonresident pharmacy on behalf of and at the
request of an Arizona pharmacy; and

After order processing is completed, returning the processed order to the requesting pharmacy for order filling and
delivery to the patient or patient's care-giver or at the request of the requesting pharmacy, returning the processed
order to another pharmacy for order filling and delivery to the patient or patient's care-giver.

"Shared services" means shared order filling or shared order processing, or both.

"Sight-readable" No change

"Single-drug audit" No change

"Single-drug usage report" No change

"Sterile pharmaceutical product" No change

"Strength" No change

"Supervision" No change

"Supervisory physician" No change

"Supplying" No change

"Support personnel" No change

"Transfill" No change

"Wholesale distribution" No change

"Wholesale distributor" No change

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-607. Nonresident Permits

- A. Permit. A person, who is not a resident of Arizona, shall not sell or distribute any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona without:
1. A Possessing a current Board-issued nonresident pharmacy permit, nonresident manufacturer permit, nonresident full-service or nonprescription drug wholesale permit, or nonresident nonprescription drug permit; and
 2. A Possessing a current equivalent license or permit issued by the licensing authority in the jurisdiction where the person or firm resides; and
 3. For a nonresident pharmacy, employing a pharmacist designated as the pharmacist-in-charge who possesses a current Arizona Board-issued pharmacist license.
- B. No change
- C. In addition to the requirements of subsection (B), the following information is required:
1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. Pharmacist-in-charge's name, current Arizona Board-issued pharmacist license number, and telephone number;
and
 - e. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change

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- 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 4. No change
 - a. No change
 - b. No change
 - c. No change
- D. No change
- E. No change
 - 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - c. No change
 - d. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 3. Nonresident full-service drug wholesaler. A nonresident full-service drug wholesale permittee shall:
 - a. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona, except in the original container packaged and labeled by the manufacturer or repackager;
 - b. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona;
 - ~~a-c.~~ Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, ~~or~~ prescription-only drug or device nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - ~~b-d.~~ No change
 - ~~e-e.~~ No change
 - ~~d-f.~~ No change
 - 4. Nonresident nonprescription drug wholesaler. A nonresident nonprescription drug wholesale permittee shall:
 - a. Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona, except in the original container packaged and labeled by the manufacturer or repackager;
 - b. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical for shipment or delivery to anyone Arizona;
 - ~~a-c.~~ No change
 - ~~b-d.~~ No change
 - ~~e-e.~~ No change
 - 5. Nonresident nonprescription drug retailer. A nonresident nonprescription drug permittee shall not:
 - a. No change
 - b. Package, repackage, label, or relabel any drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona; or
 - c. No change
- F. No change

R4-23-621. Reserved Shared Services

- A. Before participating in shared services, a pharmacy shall have either a current resident or non-resident pharmacy permit**

issued by the Board.

- B.** A pharmacy may provide or utilize shared services functions only if the pharmacies involved:
1. Have the same owner; or
 2. Have a written contract or agreement that outlines the services provided and the shared responsibilities of each party in complying with federal and state pharmacy statutes and rules; and
 3. Share a common electronic file or appropriate technology that allows access to sufficient information necessary or required to perform shared services in conformance with the pharmacy act and the Board's rules.
- C.** Notifications to patients.
1. Before using shared services provided by another pharmacy, a pharmacy permittee shall:
 - a. Notify patients that their prescription order may be processed or filled by another pharmacy; and
 - b. Give the name of that pharmacy or if the pharmacy is part of a network of pharmacies under common ownership and any of the network pharmacies may process or fill the prescription order, the patient shall be notified of this fact. Such notification may be provided through a one-time written notice to the patient or through use of a sign in the pharmacy.
 2. If a prescription order is delivered directly to the patient by a filling pharmacy and not returned to the requesting pharmacy, the filling pharmacy permittee shall ensure that the following is placed on the prescription container or on a separate sheet delivered with the prescription container:
 - a. The local, and if applicable, the toll-free telephone number of the filling pharmacy; and
 - b. A statement that conveys to the patient or patient's care-giver the follow information: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the filling pharmacy's local and toll-free telephone numbers)."
 3. The provisions of this subsection do not apply to prescriptions orders delivered to patients in facilities where a licensed health care professional is responsible for administering the prescription medication to the patient.
- D.** A pharmacy permittee engaged in shared services shall meet the following requirements:
1. Maintain records identifying, individually for each order processed, the name of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, and pharmacy technician trainee who took part in the order interpretation, order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, therapeutic intervention, or refill authorization functions performed at that pharmacy;
 2. Maintain records identifying, individually for each order filled or dispensed, the name of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, and pharmacy technician trainee who took part in the filling, dispensing, and counseling functions performed at that pharmacy;
 3. Report to the Board as soon as practical the results of any disciplinary action taken by another state's pharmacy regulatory agency involving shared services;
 4. Maintain a mechanism for tracking the order during each step of the processing and filling procedures performed at the pharmacy;
 5. Provide for adequate security to protect the confidentiality and integrity of patient information; and
 6. Provide for inspection of any required record or information within 72 hours of any request by the Board or its designee.
- E.** Each pharmacy permittee providing or utilizing shared services shall develop, implement, review, revise, and comply with joint policies and procedures for shared services in the manner described in R4-23-610. Each pharmacy permittee is required to maintain only those portions of the joint policies and procedures that relate to that pharmacy's operations. The policies and procedures shall:
1. Outline the responsibilities of each of the pharmacies;
 2. Include a list of the name, address, telephone numbers, and all license and permit numbers of the pharmacies involved in shared services; and
 3. Include policies and procedures for:
 - a. Notifying patients that their prescription may be outsourced to another pharmacy for shared services and providing the name of that pharmacy;
 - b. Protecting the confidentiality and integrity of patient information;
 - c. Dispensing prescription orders when the filled order is not received or the patient comes in before the order is received;
 - d. Maintaining appropriate records to identify the name, initials, or identification code and specific activity or activities of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee who performed any shared services;
 - e. Complying with federal and state laws; and
 - f. Operating a continuous quality improvement program for shared services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

- E.** Nothing in this Section shall prohibit an individual pharmacist licensed in Arizona who is an employee of or under contract with a pharmacy or an Arizona-licensed graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee working under the supervision of the pharmacist from accessing that pharmacy's electronic database from inside or outside the pharmacy and performing the order processing functions permitted by the pharmacy act, if both of the following conditions are met:
1. The pharmacy establishes controls to protect the privacy and security of confidential records; and
 2. None of the database is duplicated, downloaded, or removed from the pharmacy's electronic database.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

[R06-49]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R4-46-401 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-3605(A)
Implementing statutes: A.R.S. §§ 32-3605(B)(1) and 32-3635(A)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 12 A.A.R. 695, March 3, 2006
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Deborah G. Pearson, Executive Director |
| Address: | 1400 W. Washington, Suite 360
Phoenix, AZ 85007 |
| Telephone: | (602) 542-1539 |
| Fax: | (602) 542-1598 |
| E-mail: | deborah.pearson@appraisal.state.az.us |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The change in this existing rule is to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires state licensing boards to recognize and enforce the *Uniform Standards of Professional Appraisal Practice* (USPAP); and A.R.S. § 32-3605(B)(1), which requires the Board to adopt standards for professional appraisal practice that are at least equal to the USPAP. The amended rule incorporates by reference the 2006 edition of USPAP. The revisions in the 2006 edition of USPAP are the result of two major Appraisal Standards Board (ASB) initiatives: (1) examination of the proper role of the scope of work and departure concepts in the appraisal process; and (2) specific review of Standards 9 and 10. The ASB formally adopted the 2006 USPAP on October 28, 2005, based on testimony presented at public meetings, responses to three Concept Papers, six Exposure Drafts, and extensive deliberation by the ASB over a two-year period. The effective date of the 2006 USPAP is July 1, 2006. The key features of the 2006 edition are:

CONCEPTUAL CHANGE: USPAP now identifies a minimum set of standards that apply in all appraisal, appraisal review and appraisal consulting assignments. While this conceptual shift required significant revisions to USPAP, these revisions did not change the appraiser's obligations in the development process.

The importance of problem identification and the scope of work determination in the appraisal process are emphasized in the new SCOPE OF WORK RULE. The appropriate scope (type and extent of research and analyses) continues to be based on what is required to produce credible assignment results. The scope of work appropriate for a given assignment under the 2005 USPAP continues to be appropriate under the 2006 USPAP. The changes for 2006 do not permit a scope of work that was not appropriate under the 2005 USPAP. The requirement to report the scope of work takes on greater significance because intended users rely on this disclosure to understand the type and extent of research and analyses performed in the assignment, rather than relying on the simple (and potentially misleading) labels, Complete Appraisal and Limited Appraisal.

ITEMS REMOVED: The DEPARTURE RULE and associated defined terms (Complete Appraisal, Limited Appraisal, Binding Requirement, and Specific Requirement) were removed. Statement No. 7, *Permitted Departure from Specific Requirements in Real Property and Personal Property Appraisal Assignments*, and Advisory Opinion 15, *Using the DEPARTURE RULE in Developing a Limited Appraisal* were retired. These actions were taken to resolve misunderstandings related to departure, enhance public trust in appraisal practice, and improve USPAP clarity.

The scope of work decision drives the full range of activities in the development process. In contrast, the DEPARTURE RULE only applied to portions of the development process governed by Specific Requirements. Having two overlapping processes caused confusion. Further, departure addressed only a single dimension of appraisal development (the application of a specific requirement) while scope of work addresses both the application and the extent of development. For example, development of an approach may have been excluded by invoking departure, but the scope of work analysis addresses both the decision to develop an approach and the determination of the appropriate technique and what constitutes appropriate and sufficient data and analyses to support the conclusion.

In communicating assignment results, the emphasis of the DEPARTURE RULE on the use of associated labels (Complete Appraisal and Limited Appraisal) was potentially misleading and may have been insufficient for intended users to make informed decisions.

The DEPARTURE RULE requirement for client agreement “that the performance of a limited appraisal service would be appropriate” has been removed. The SCOPE OF WORK RULE acknowledges that appraisers have broad flexibility and significant responsibility in determining the appropriate scope of work. Further, the Rules states that communication with the client is required to establish most of the information necessary for problem identification. Finally, the requirement to develop credible assignment results in the context of the intended use links the appropriate scope of work to the use or uses of the assignment results as identified by the client. Thus, the role of the client in shaping the full range of the appraiser’s scope of work decision is recognized, but the need for client approval of the narrow band of items addressed by the DEPARTURE RULE has been removed.

Advisory Opinion 8, *Market Value vs. Fair Value in Real Property Appraisals*, was retired. Since this Advisory Opinion was created and revised, the Financial Accounting Standards Board (FASB) has issued additional Statements of Financial Accounting Standards that require use of the “fair value” type of value. Additionally, FASB has proposed clarification of its definition of fair value. For these reasons, the ASB retired AO-8 with the possibility of issuing a revision after FASB finalizes its Statement of Financial Accounting Standards addressing the definition of fair value.

DEFINITIONS: The definitions of Scope of Work and Appraiser’s Peers were edited for clarity. The term Credible was defined because it is a central concept in USPAP.

PREAMBLE & ETHICS RULE: The PREAMBLE and the Recordkeeping section of the ETHICS RULE were edited to reflect the removal of the DEPARTURE RULE and the addition of the SCOPE OF WORK RULE.

SCOPE OF WORK RULE: The SCOPE OF WORK RULE was added to emphasize the requirements for problem identification, determining the appropriate scope of work, and disclosure of the scope of work that was performed in appraisal, appraisal review, and appraisal consulting assignments.

STANDARD 1 & STANDARD 2: References to the DEPARTURE RULE and associated terminology were removed, and the Standards were edited to establish consistency with the new SCOPE OF WORK RULE.

- The obligation to determine the scope of work required in an appraisal assignment was relocated to the end of Standards Rule (SR) 1-2 (resulting in renumbering subsections of SR 1-2). This places the scope of work determination in its proper sequence in the appraisal process.
- The portion of the Comment to SR 1-2(e) addressing assignment conditions that limit research opportunities was moved to the SCOPE OF WORK RULE.
- The language in 2005 USPAP SR 1-2(f) addressing the acceptability of the scope of work was moved to the SCOPE OF WORK RULE.
- SR 1-4(g) was edited to clarify that opinions of value of portions of the overall subject property that are not real property are appraisals and must be performed by appraisers with the appropriate competence.
- The 2005 USPAP SR 1-4(h) was deleted and the requirement for the identification of relevant characteristics in the appraisal of proposed improvements was relocated to SR 1-2(e).
- In the reporting options of STANDARD 2, the requirement to disclose departure were removed, however the requirement to explain the exclusion of the sales comparison approach, cost approach, or income approach was retained in SR 2-2(a)(viii), (b)(viii) and (c)(viii).

STANDARD 3: References to the DEPARTURE RULE and associated terminology were removed, and the Standard was edited to establish consistency with the new SCOPE OF WORK RULE. The Standard was also edited to improve clarity.

STANDARD 4 & STANDARD 5: References to the DEPARTURE RULE and associated terminology were removed, and the Standards were edited to establish consistency with the new SCOPE OF WORK RULE. The Standards were also edited to improve clarity.

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- The obligation to determine the scope of work required in an appraisal consulting assignment was relocated to the end of SR 4-2 (resulting in renumbering subsections of SR 4-2). This places the scope of work determination in its proper sequence in the appraisal process.
- The language in 2005 USPAP SR 4-2(f) addressing the acceptability of the scope of work was moved to the SCOPE OF WORK RULE.
- The requirements in SR 5-2 were reorganized to mirror their order in STANDARD 4.

STANDARD 6: References to the DEPARTURE RULE and associated terminology were removed, and the Standard was edited to establish consistency with the new SCOPE OF WORK RULE. The Standard was also edited to improve clarity and consistency.

- The obligation to determine the scope of work required in a mass appraisal consulting assignment was relocated to the end of SR 6-2 (resulting in renumbering subsections of SR 6-2). This places the scope of work requirement in its proper sequence in the appraisal process.
- Standards Rule 6-3 was created from the portions of SR 6-2 that address highest and best use analysis. This serves to separate the requirements related to problem identification (new SR 6-2) and those related to highest and best use analysis (new SR 6-3). This edit also resulted in the renumbering of subsections of the Standards Rules.
- The 2005 USPAP SR 6-5(e) was deleted and the requirements related to the identification of relevant characteristics for proposed improvements were relocated to SR 6-2(e).
- In the reporting options of SR 6-8, the requirement to disclose any departures was removed, but the requirement to explain the exclusions of the sales comparison approach, cost approach, or income approach was retained in SR 6-8(j).

STANDARD 7 & STANDARD 8: References to the DEPARTURE RULE and associated terminology were removed, and the Standards were edited to establish consistency with the new SCOPE OF WORK RULE.

- The obligation to determine the scope of work required in appraisal assignment was relocated to the end of SR 7-2 (resulting in renumbering subsections of SR 7-2). This places the scope of work requirement in its proper sequence in the appraisal process.
- Those portions of the Comment to SR 7-2(e) addressing assignment conditions that limit research opportunities were moved to the SCOPE OF WORK RULE.
- The language in 2005 USPAP SR 7-2(f) addressing the acceptability of the scope of work was moved to the SCOPE OF WORK RULE.
- SR 7-4(g) was edited to clarify that opinions of value of portions of the overall subject property that are not personal property are appraisals and must be performed by appraisers with the appropriate competence.
- The 2005 USPAP SR 7-4(h) was deleted and the requirements for the identification of relevant characteristics for proposed improvements were relocated to SR 7-2(e).
- In the reporting options of STANDARD 8, the requirement to disclose any departures was removed, however the requirement to explain the exclusion of the sales comparison approach, cost approach, or income approach was retained in SR 8-2(a)(viii), (b)(viii) and (c)(viii).

STANDARD 9 & STANDARD 10: Periodically, the ASB performs a detailed examination of the form and content of a portion of USPAP. The 2006 USPAP reflects the results of such a process for STANDARDS 9 and 10. The extensive modifications are summarized below:

- The Standards were edited to clarify that the subject of an appraisal assignment is the *ownership interest* in a business enterprise and other intangible assets. This change increases clarity about the appraisal process by recognizing that what is being appraised is an interest in the asset, not the asset itself.
- The concept of marketability/liquidity was incorporated.
- Concepts for business valuation and the appraisal of other intangible assets were better distinguished.
- STANDARDS 9 and 10 were edited to incorporate terminology used in this area of practice, where appropriate.
- The Standards were edited to improve clarity and consistency.
- References to the DEPARTURE RULE and associated terminology were removed, and the Standards were edited to establish consistency with the new SCOPE OF WORK RULE.
- The obligation to determine the scope of work required in an appraisal assignment was relocated to the end of SR 9-2. This places the scope of work requirement in its proper sequence in the appraisal process.
- The language in 2005 USPAP SR 9-2 addressing the acceptability of the scope of work was moved to the SCOPE OF WORK RULE.

STATEMENTS ON APPRAISAL STANDARDS and ADVISORY OPINIONS: References to the DEPARTURE RULE and associated terminology were removed, and the Statements and Advisory Opinions were edited to establish consistency with the new SCOPE OF WORK RULE.

STATEMENT 9: SMT-9, *Identification of the Intended Use and Intended User*, was revised because of the importance of both intended use and intended users in determining the appropriate scope of work for an assignment. Refer-

ences to the DEPARTURE RULE and associated terminology were removed, and the Statement was edited to establish consistency with the new SCOPE OF WORK RULE.

STATEMENT 10: SMT-10, *Assignments for Use by a Federally Insured Depository Institution in a Federally Related Transaction*, was edited to remove references to the DEPARTURE RULE and associated terminology, and establish consistency with the new SCOPE OF WORK RULE. The majority of the changes are in Section C (formerly titled "Departure Issues" and now retitled "Scope of Work Issues") and Section E.1. Additionally, in response to comment from the federal financial institutions regulatory agencies (FDIC, FRB, OCC, AND OTS), the reference to residential tract development in Section E. 4 was removed.

ADVISORY OPINION 2: AO-2, *Inspection of Subject Property*, was expanded to apply to both real property and personal property and was revised to improve clarity and better illustrate the guidance.

ADVISORY OPINION 28: AO-28, *Scope of Work Decision, Performance, and Disclosure*, was added to illustrate the requirements of the SCOPE OF WORK RULE related to the problem identification, determination of an appropriate scope of work, and disclosure of the scope of work that was performed. Specific illustrations clarify the application of these procedures.

ADVISORY OPINION 29: AO-29, *An Acceptable Scope of Work*, was added to offer advice regarding the measures of acceptability for scope of work and to illustrate the application of the SCOPE OF WORK RULE in the performance of assignments.

NOTE: USPAP and the Advisory Opinions were edited for conformity with the adopted changes. Administrative edits were also made to improve consistency.

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

None

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

The rule is being changed to adopt the latest standards of practice in the profession, as required by federal and state law. The primary groups that will be affected are the Board, the licensed or certified appraisers, and the public. The Board annually adopts the latest standards for professional appraisal practice and there should be no appreciable changes in the economic impact. The cost for the new edition is \$30. Not all appraisers will find it necessary to own a copy. Some offices share copies. The cost is a deductible business expense.

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: Deborah G. Pearson, Executive Director
Address: 1400 W. Washington, Suite 360
Phoenix, AZ 85007
Telephone: (602) 542-1539
Fax: (602) 542-1598
E-mail: deborah.pearson@appraisal.state.az.us

10. The time, place, and nature of the proceedings for the making, 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: April 12, 2006
Time: 9:00 a.m.
Location: 1400 W. Washington, Suite 360
Phoenix, AZ 85007
Nature: The Board will hold a telephonic open meeting to hear opinions and suggestions, and to adopt, amend, or repeal the rule. The agenda for this Board meeting will be available to the public the day before the meeting. It may be obtained by contacting the Board office at (602) 542-1539. In addition, written comment will be accepted at the Board office, 1400 W. Washington, Suite 360, Phoenix, AZ 85007, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday through April 11, 2006.

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

Notices of Proposed Rulemaking

rules:

Not applicable

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

The *Uniform Standards of Professional Appraisal Practice* (USPAP), 2006 Edition, published by The Appraisal Foundation and effective nationally July 1, 2006. The location in the rules is R4-46-401.

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 4. STANDARDS OF PRACTICE

Section

R4-46-401. Standards of Appraisal Practice

ARTICLE 4. STANDARDS OF PRACTICE

R4-46-401. Standards of Appraisal Practice

Every appraiser, in performing the acts and services of an appraiser, shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP), ~~2005~~ 2006 edition, published by The Appraisal Foundation, which is incorporated by reference and on file with the Board and the Office of the Secretary of State. This incorporation by reference contains no future additions or amendments. A copy of the USPAP ~~2005~~ 2006 edition may be obtained from ~~the~~ The Appraisal Foundation, ~~1029 Vermont Avenue, N.W., Suite 900, 1155 15th Street, NW, Suite 1111,~~ Washington, D.C. 20005; toll free 1-800-805-7857; (202) 347-7722; fax (202) 347-7727; or web site www.appraisalfoundation.org.

NOTICE OF PROPOSED RULEMAKING

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

**CHAPTER 6. CORPORATION COMMISSION
INVESTMENT MANAGEMENT**

[R06-41]

PREAMBLE

1. Sections Affected

R14-6-101

R14-6-206

Rulemaking Action

Amend

Amend

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

Authorizing statute: A.R.S. § 44-3131

Implementing statute: A.R.S. § 44-3241

Constitutional authority: Arizona Constitution, Article XV, § 6

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 5220, December 9, 2005

Notices of Proposed Rulemaking

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

Name: Abby Henig
Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, AZ 85007-2996
Telephone: (602) 542-0187
Fax: (602) 594-7402
E-mail: ahenig@azcc.gov

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

R14-6-206 ("rule 206") regulates the custody of client funds and securities by investment advisers. R14-6-101 ("rule 101") provides definitions for the terms used in the rules promulgated under Arizona's Investment Management Act.

As reflected in SEC Release No. IA-2176, the Securities and Exchange Commission has amended its rule governing custody of client funds and securities by investment advisers, effective November 5, 2003 with a compliance date of April 1, 2004.

The Securities Division has recommended that the Commission amend rule 101 and rule 206 to reflect the changes made by the Securities and Exchange Commission to its federal rule.

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

None

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 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:

The individual named in item #4.

10. The time, place, and nature of the proceedings for the making, 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: April 18, 2006
Time: 10:00 a.m.
Location: Arizona Corporation Commission
1200 W. Washington Ave.
Phoenix, AZ 85007
Nature: Oral proceeding. Subsequent to the oral proceeding, the Arizona Corporation Commission will take 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 rules follows:

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

**CHAPTER 6. CORPORATION COMMISSION
INVESTMENT MANAGEMENT**

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA INVESTMENT MANAGEMENT ACT

Section
R14-6-101. Definitions

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

Section
R14-6-206. Custody of Client Funds or Securities by Investment Advisers

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA INVESTMENT MANAGEMENT ACT

R14-6-101. Definitions

- A.** The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 shall apply to the rules promulgated under A.R.S. Title 44, Chapter 13.
- B.** The following definitions shall apply to all rules promulgated under A.R.S. Title 44, Chapter 13, unless the context otherwise requires:
1. "Advertisement" means, except as set forth in subsections (d) and (e), any notice, circular, letter, or other written, oral, or electronically generated communication addressed to or reasonably designed by the investment adviser or investment adviser representative to be accessed by more than one person, or any notice or other announcement in any publication or by radio or television, that directly or indirectly offers:
 - a. Any analysis, report, or publication that either concerns securities, or is to be used in making any determination as to when to buy or sell any security or which security to buy or sell; or
 - b. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
 - c. Any other investment advisory service with regard to securities;
 - d. A communication over a computer on-line service including but not limited to an electronic bulletin board shall not be deemed to be an advertisement when an investment adviser or an investment adviser representative is either:
 - i. Engaged in a discussion regarding securities and does not receive compensation from any person for the discussion; or
 - ii. Responds to unsolicited inquiries regarding the provision of investment advisory services.
 - e. A communication by one or more investment advisers or investment adviser representatives shall not be deemed to be an advertisement when the communication is addressed solely to or is reasonably designed to be accessed solely by other investment advisers or investment adviser representatives.
 2. "Certified public accountant" or "CPA" means an accountant who has been registered or licensed to practice public accounting and is permitted to use the title "certified public accountant" and to use the initials "CPA" after the accountant's name.
 3. "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. Custody includes:
 - a. Possession of client funds or securities (but not of checks drawn by clients and made payable to third parties), unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;
 - b. Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and
 - c. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the invest-

- ment adviser or the investment adviser representative legal ownership of or access to client funds or securities.
- ~~3-4.~~ “Federal covered adviser” means an investment adviser registered under the Investment Advisers Act of 1940.
- ~~4-5.~~ “Fixed fee basis” means an investment advisory fee that at any given time can be precisely established in a dollar amount without regard to the investment performance or value of an account and that is not based on the purchase or sale of specific securities.
- ~~5-6.~~ “Form ADV” means the Uniform Application for Investment Adviser Registration, 17 CFR 279.1, as required by A.R.S. § 44-3153.
- ~~6-7.~~ “IM Act” means the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.*
- ~~7-8.~~ “Impersonal advisory services” means investment advisory services provided solely:
- By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;
 - Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
 - Any combination of the foregoing services.
- ~~9.~~ “Independent representative” means a person that:
- Acts as agent for a client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership (or members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);
 - Does not control, is not controlled by, and is not under common control with the investment adviser; and
 - Does not have, and has not had within the past two years, a material business relationship with the investment adviser.
- ~~8-10.~~ “Internet” means all proprietary or common carrier electronic systems, or similar media.
- ~~9-11.~~ “Internet communication” means the distribution of information on the Internet.
- ~~10-12.~~ “Investment-related” means pertaining to securities, commodities, banking, insurance, or real estate, including but not limited to acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or a fiduciary.
- ~~11-13.~~ “Involved” means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.
- ~~12-14.~~ “Management person” means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.
- ~~13-15.~~ “NASAA” means the North American Securities Administrators Association, Inc., or any successor organization.
- ~~14-16.~~ “NASD” means the National Association of Securities Dealers, Inc., or any successor or subsidiary organization.
- ~~17.~~ “Qualified custodian” means:
- A bank or a savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;
 - A broker or dealer registered under Section 15(b)(1) of the Securities Exchange Act of 1934, holding the client assets in customer accounts;
 - A futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients’ funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and
 - A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the clients’ assets in customer accounts segregated from its proprietary assets.
- ~~15-18.~~ “Relative” means any relationship by blood, marriage, or adoption, not more remote than 1st cousin.
- ~~16-19.~~ “Rule 204-2” means United States securities and exchange commission rule 204-2, 17 CFR 275.204-2 (1998), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the office of the secretary of state. Copies of Rule 204-2 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
- ~~17-20.~~ “SEC” means United States Securities and Exchange Commission.
- ~~18-21.~~ “Securities Act” means the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*
- ~~19-22.~~ “Self-regulatory organization” or “SRO” means any national securities or commodities exchange, registered association, or registered clearing agency.
- ~~20-23.~~ “Unincorporated organization” includes a limited liability company for purposes of the definition of “person,” as defined in A.R.S. § 44-1801.

~~21-24.~~ “Wrap fee program” means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client’s account for investment advisory services, which may include portfolio management or advice concerning the selection of other investment advisers, and execution of client transactions.

ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

R14-6-206. Custody of Client Funds or Securities by Investment Advisers

- A. Except as otherwise provided in this Section, it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to take or have custody of any securities or funds of any client unless:
1. The investment adviser notifies the Commission in writing that the investment adviser has or may have custody of client funds or securities. Such notification may be given on Form ADV.
 2. ~~The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss. A qualified custodian maintains those funds and securities:~~
 - a. In a separate account for each client under that client’s name; or
 - b. In accounts containing only clients’ funds and securities, maintained in the name of the investment adviser as agent or trustee for such clients.
 3. ~~All client funds are deposited in one or more bank or similar accounts containing only clients’ funds, such accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and the investment adviser maintains a separate record for each such account showing the name and address of the bank or similar institution where the account is maintained, the dates and amounts of deposits into and withdrawals from the account, and the exact amount of each client’s beneficial interest in the account. If opening an account with a qualified custodian, either under the client’s name or under the investment adviser’s name as agent, the investment adviser notifies the client in writing of the qualified custodian’s name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.~~
 4. ~~Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and, subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client within ten business days. Account statements are sent to clients at least quarterly, either:~~
 - a. By a qualified custodian, if the investment adviser has a reasonable basis for believing that the qualified custodian sends the requisite account statement to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or
 - b. By the investment adviser, to each client for whom it has custody of funds or securities, identifying the amount of funds and of each security of which it has custody at the end of the period and setting forth all transactions in the account during that period if:
 - i. An independent certified public accountant verifies all of those client funds and securities by actual examination at least once during each calendar year, at a time chosen by the accountant, without prior notice or announcement to the investment adviser, that is irregular from year to year; and
 - ii. The independent certified public accountant files a copy of the auditor’s report and financial statements with the Commission within 30 calendar days after the completion of the examination, along with a letter stating that it has examined the funds and securities, describing the nature and extent of the examination; and
 - iii. Upon finding any material discrepancies during the course of the examination, the independent certified public accountant notifies the Commission within one business day of the finding, by means of a fax transmission or electronic mail, followed by first-class mail.
 5. ~~At least once every three months, the investment adviser sends each client an itemized statement showing the client’s funds and securities in the investment adviser’s custody at the end of such period and all debits, credits, and transactions in the client’s account during such period.~~
 6. ~~At least once every calendar year, an independent CPA or public accountant verifies all client funds and securities by actual examination at a time chosen by the independent CPA or public accountant without prior notice to the investment adviser. The independent CPA’s or public accountant’s report stating that such CPA or public accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission within 30 calendar days after the examination.~~
- B. If the investment adviser is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under subsection (A)(4) must be sent to each limited partner (or member or other beneficial owner).

- C.** A client may designate an independent representative to receive, on his behalf, notices and account statements as required under subsections (A)(3) and (A)(4).
- D.** With respect to shares of an open-end company, the company's transfer agent may be used in lieu of a qualified custodian for purposes of complying with subsection (A).
- E.** An investment adviser is not required to comply with this Section with respect to certain privately offered securities that are:

 - 1. Acquired from the issuer in a transaction or chain of transactions not involving any public offering; uncertificated, and ownership thereof is recorded only on books of the issuer to its transfer agent in the name of the client; and transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.
 - 2. Notwithstanding subsection (E)(1), the exception provided by subsection (E) is available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in subsection (F).
- F.** The investment adviser is not required to comply with subsections (A)(4) and (B) with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year.
- G.** Compliance with this Section is not required with respect to the account of an investment company registered under the Investment Company Act of 1940.
- B.H.** With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the Investment Advisers Act of 1940.