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BOARD OF ACCOUNTANCY

Title 4, Chapter 1, Board of Accountancy

Amend: R4-1-104, R4-1-117, R4-1-226.01, R4-1-229, R4-1-341, R4-1-346, R4-1-453, R4-1-454,
R4-1-455



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 1, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 13, 2021

SUBJECT: BOARD OF ACCOUNTANCY
Title 4, Chapter 1, Board of Accountancy

Amend: R4-1-104, R4-1-117, R4-1-226.01, R4-1-229, R4-1-341, R4-1-346,
R4-1-453, R4-1-454, R4-1-455

Summary:

This regular rulemaking from the Board of Accountancy (Board) relates to rules in Title 4, Chapter, Articles 1, 2, 4, and 4. In this rulemaking, the Board proposes to amend the rules to streamline processes, remove outdated citations, modify the procedures for the administration of the Uniform CPA Exam, implement Laws 2019, Ch. 55 (Universal Licensing), require registrants to inform the Board of a change in their email address, expand the different types of activities that qualify for CPE (continuing professional education) credit, and update incorporations by reference.

The Board received an exemption from Executive Order 2020-02 to conduct this regular rulemaking on November 2, 2020.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

Yes. The Board cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

No. This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Board states that it did not review or rely on a study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The proposed amendments to the rules support the modernization, conformity and improvement to the regulatory framework relating to certified public accountants (CPA) and their continuing professional education (CPE) requirements. Stakeholders include the Board, registrants, applicants and the public. The amendments are intended to clarify rules, streamline communications, and ensure applicants are treated equitably.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board believes that the amendments are the least costly and least intrusive method to update the rules. The Board indicates that including the requirement that registrants notify the Board of a change in email address may be considered intrusive, but it provides consistency with the Board's legal framework and it is helpful to Board operations and the experience of registrants.

6. **What are the economic impacts on stakeholders?**

This rulemaking will only impact the Board, and the Board will not require a new full time employee to implement and enforce the rulemaking. According to the Board, the changes should not affect political subdivisions. The Board expects the rulemaking will have no impact on private or public employment. CPA firms, persons certified with the Board as a CPA, or who are applying to become a CPA, should benefit from greater clarity in the amended rules.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. The Board did not make any changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

The Board did not receive any comments in conducting this rulemaking.

9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

These rules do not require a permit, license, or agency authorization.

10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

Not applicable. There are no corresponding federal laws that relate to these rules.

11. Conclusion

Council staff finds that this rulemaking would result in rules that are more clear, concise, understandable, and effective. Council staff further notes that if approved, the amended rules would result in a reduced regulatory burden on the Board's regulated population. The Board is requesting the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



ARIZONA STATE BOARD OF ACCOUNTANCY

100 North 15th Avenue, Suite 165
Phoenix, Arizona 85007
Phone (602) 364-0804
Fax (602) 364-0903
www.azaccountancy.gov

March 25, 2021

The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: Request for Approval - Notice of Final Rulemaking

Council Members:

I am pleased to submit the Notice of Final Rulemaking on behalf of the Arizona Board of Accountancy. Pursuant to A.A.C. R1-6-201(A)(1), I have addressed the following:

- a. **The close of record date** – January 11, 2021
- b. **Whether the rulemaking activity relates to a five-year rule review report and, if applicable, the date the report was approved by Council** – This rulemaking does not relate to a five-year rule review report.
- c. **Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee** – The rules do not establish a new fee.
- d. **Whether the rule contains a fee increase** – The rules do not contain a fee increase.
- e. **Whether an immediate effective date is requested under A.R.S. §41-1032** – An immediate effective date is not being requested.
- f. **A certification that the preamble discloses a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation or justification for the rule** – I certify that the Board did not review or rely on any study for this rulemaking.
- g. **If one or more full time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule** – No new FTEs are required to enforce the rules in the Notice of Final Rulemaking.
- h. **A list of all the documents enclosed** – Written requests for exemption from rulemaking moratorium and approvals, Notice of Final Rulemaking (including preamble); text of rules;

economic, small business, and consumer impact statement; material incorporated by reference; and general and specific statutes authorizing the rules.

Thank you for your consideration and approval of the Board's Notice of Final Rulemaking.

Sincerely,

A handwritten signature in blue ink, appearing to read "Monica L. Petersen", with a long horizontal flourish extending to the right.

Monica L. Petersen
Executive Director



ARIZONA STATE BOARD OF ACCOUNTANCY

100 North 15th Avenue, Suite 165
Phoenix, Arizona 85007
Phone (602) 364-0804
Fax (602) 364-0903
www.azaccountancy.gov

September 10, 2020

Trista Guzman Glover
Director, Boards and Commissions
Office of Arizona Governor Doug Ducey
1700 W. Washington, Suite 250
Phoenix, AZ 85007

Dear Trista:

The Arizona State Board of Accountancy (Board) requests it be granted an exemption to Executive Order 2020-02 to implement beneficial changes to its rules. The Board is critical of its regulatory framework and continues to identify opportunities to modernize, clarify, and reduce regulation for stakeholders, while achieving its mission to protect the public from unlawful, incompetent, unqualified or unprofessional certified public accountants (CPAs) through certification, regulation and rehabilitation. The proposed rule changes would accomplish the following:

- Eliminate a rule provision which is antiquated or redundant,
- Modernize communication efforts with the regulated community,
- Conform the notice to schedule (NTS) extension process to accommodate continuous Uniform CPA Exam (Exam) testing,
- Codify the ability of applicants to request 90-day extensions to a conditioned credit,
- Enumerate the materials required for “universal recognition” certification,
- Expand what activities would qualify for continuing professional education (CPE) credit, and
- Update incorporations by reference.

The Board is requesting an exemption to Executive Order 2020-02 for the following reasons:

- To reduce or ameliorate a regulatory burden while achieving the same regulatory objective,
- To comply with a state statutory requirement, and
- To eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.

To reduce or ameliorate a regulatory burden while achieving the same regulatory objective.

Modernize Communication Efforts with the Regulated Community

Email has become an established way to communicate and it is increasingly difficult to participate in modern society without an email address. In recent years, the Board has used email to send the regulated community things like email reminders regarding renewal registrations and pertinent one-time communications such as statutory, regulatory, Executive Order, or other news updates. As of September 9, 2020, the Board has 11,207 CPAs and 1,110 CPA firms and we have an email on file for 99.10%, and

The Americans with Disabilities Act: Persons with disabilities may request reasonable accommodations, such as sign language interpreters. Requests should be made as early as possible to allow time to arrange the accommodation.

This document is available in alternative format upon request.

99.18% respectively, however, these email addresses are not required to be updated. As a result, the Board’s use of email is limited to matters that enhance communications but continues to use regular or certified mail for core business processes because business, mailing, and residential addresses are required to be updated within 30 days. To reduce costs and provide more timely service the Board would like to modify Arizona Administrative Code (A.A.C.) R4-1-117 and R4-1-346.

A.A.C. R4-1-117(E) – Currently subsection E permits the Board to accomplish service of any document either through personal service or United States (U.S.) mail. The Board requests a modification to this subsection to allow service to be accomplished via email as well. This change would allow the Board to streamline some of its processes and in turn help stakeholders conduct business with the Board. For example, if an individual was to apply for certification, but forgot to include a certificate of experience, Board staff could email an incomplete letter detailing what the applicant needs to submit, in lieu of U.S. mail. This would allow the applicant to understand promptly what is needed of them to continue towards certification but also reduce costs by reducing the amount of outgoing mail. While this change would allow the Board to improve some processes, it would not be implemented for all. There are some processes such as issuing a notice of hearing or final decision that would continue to be sent via certified mail as they are required per statute and/or rule. The Board would also continue to send certified mail when it requires a response from a registrant. Despite these exceptions, it is expected that this modification will create efficiencies for both the Board and stakeholders.

A.A.C. R4-1-346 – This rule currently requires that registrants notify the Board of a business, mailing, or residential change of address within 30-days. The amendment would include email addresses into this requirement. As noted earlier, almost all CPAs provide their email to the Board but since there is no requirement for the email to be updated when changed, it is not a reliable way to conduct business. For example, if the Board was to receive a consumer complaint, it is pertinent that the Board has the registrant’s most up-to-date address so the registrant may have an opportunity to respond to the complaint. The use of email to streamline communication timeframes is convenient and cost effective for both the Board and the registrant and can reduce the overall timeframe to complete an investigation. While this rule requires that registrants notify the Board of a change of address, it is important to note that due to the amount of returned mail the Board does not enforce violations of this rule because the effort and cost to do so is not a good use of Board resources.

Conform the NTS Extension Process to Accommodate Continuous Exam Testing

Prior to continuous testing, the computer-based Exam was offered each calendar quarter, with the months of testing known as testing windows. The CPA Exam was not given at the end of each calendar quarter to allow for systems and databank maintenance. A tester could take any or all sections of the CPA Exam during any testing window and in any order. However, they could not take the same section more than once during any one window.



As of July 1, 2020, testing windows will be replaced by continuous testing, allowing candidates to take the Exam year-round, without restriction, other than waiting to receive scores from prior attempts of the

same section.

A.A.C. R4-1-226.01 currently states that upon written request to the Board and showing good cause that prevents an applicant from appearing for the examination, an applicant may be granted by the Board a one-testing window extension to a current NTS. This rulemaking would change the one-testing window extension to a 90-day extension to conform to the continuous testing format.

Codify the Ability of Applicants to Request 90-Day Extensions to a Conditioned Credit

An applicant is allowed to sit for each section of the Exam individually and in any order. An applicant is given conditioned credit for each section of the Exam passed, which is valid for 18-months from the date of examination. If the applicant does not pass all four parts of the exam within 18-months, the exam section(s) that were first conditioned will expire and have to be retaken until all four parts have been passed within an 18-month window. The Board does receive requests from applicants to extend their conditional credit and has a current operational practice of acting on those requests despite the fact that the Board's rules have never clearly articulated the ability to do so. This modification to A.C.C. R4-1-229 provides clarity to applicants of this option, provides support for applicants, reduces barriers to entry to the CPA profession and ensures that the Board's actions are supported.

Expand What Activities Would Qualify for CPE Credit

The Board would also like to modify A.A.C. R4-1-453(A)(5) to expand the different types of activities that qualify for CPE credit. Currently, registrants that write and publish articles or books that contribute to the accounting profession may be counted towards publishing CPE credit. This amendment would also allow credit to be earned for the writing or development of online course curriculum for undergraduate, graduate, or doctoral education that contributes to the accounting profession. This change will provide registrants additional flexibility in how their CPE requirements can be met.

To comply with a state statutory requirement.

Enumerate the Materials Required for "Universal Recognition" Certification

Laws 2019, Ch. 55, (HB 2569) made Arizona the first state in the country to recognize occupational licenses for new residents and created a new route for those individuals to become CPAs. A.A.C. R4-1-341 currently addresses certification routes such as examination, grade transfer, and reciprocity but does not address HB 2569. Amendments to A.A.C. R4-1-341 include the materials that are to be submitted with a certification application, pursuant to A.R.S. § 32-4302. This change will provide applicants clarity in what documentation should be submitted to the Board when applying for this form of certification.

To eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.

Eliminate Rule Provisions Which are Antiquated or Redundant

A.A.C. R4-1-104 addresses Board records, public access, and copying fees. The Board proposes to omit subsection B of the rule for two reasons:

1. A rule cited in the subsection (A.A.C. R4-1-105) expired on December 4, 2019 and therefore is antiquated; and
2. Subsection B is redundant. A.R.S. §§ 32-749(D) and 39-121, *et seq.* already provide that the

records the Board maintains in exercising its statutory duties are public records and are accessible for inspection and copying, barring any confidentiality exceptions. Subsection B adds nothing of value to the Board’s legal framework.

Miscellaneous/Conforming Changes.

Update Incorporations by Reference

The Board seeks to update the incorporations by reference found in A.A.C. R4-1-454 and R4-1-455. A.R.S. §41-1028(B) requires that a reference in rule fully identify an incorporated matter by location, date and state that the rule does not include any later amendments or editions of the incorporated matter.

Paragraph 2 of Executive Order 2020-02.

We provide the following responses to paragraph 2 of Executive Order 2020-02 dependent on the Governor’s Office’s interpretation of this requirement.

If it is the Governor’s Office’s perspective that this requirement is only applicable to those agencies that request a new, *additional* rule, we would contend that this rulemaking exemption request does not seek an additional rule. Accordingly, this requirement would not be applicable to this request.

If it is the Governor’s Office’s perspective that this requirement is applicable to those agencies that seek an amendment to an existing rule, we would provide that we do not have any rules that could be offered for elimination at this time. The reason for this is because the Board has consistently been active in being critical of its own regulatory framework by removing antiquated and unnecessary regulatory requirements. As a result, the Board’s regulatory framework is absent of rules that could be eliminated to satisfy this requirement. In lieu, we provide examples of how the Board has actively sought to reduce regulation:

Examples of Reduced Regulation

Rulemaking	Description
Rulemaking Effective April 5, 2020 ¹	<p>This rulemaking accomplished the following:</p> <ol style="list-style-type: none"> 1. Removed an unnecessary rule (R4-1-228). 2. Allowed for “continuous testing”, which is beneficial and more flexible for applicants (R4-1-229). 3. Permitted letters of recommendations to be signed by non-CPAs who meet certain criteria (R4-1-341). 4. Instituted a temporary registration fee reduction (R4-1-345). 5. Removed an unnecessary regulatory requirement (R4-1-346). 6. Eliminated conflicts between peer review rule and peer review standards and simply peer review compliance (R4-1-454).

¹ A significant amount of amendments from this rulemaking were the result of the Board’s Five-Year Review Report (5YRR), which assisted the Board in identifying rules that were antiquated, unnecessary, or in need of updates. By the time the 5YRR was submitted to the Governor’s Regulatory Review Council, the Board was already proceeding with proposed actions to improve its regulatory framework.

<p>Rulemaking Effective February 4, 2019</p>	<p>This rulemaking accomplished the following in R4-1-453:</p> <ol style="list-style-type: none"> 1. Allowed CPE to be credited in smaller increments (one-fifth vs. one-half hour). 2. Only required 80 hours of CPE to be reported rather than all CPE hours completed during the CPE reporting period. 3. Introduced CPE reciprocity which allowed a registrant who is certified as a CPA in another jurisdiction from having to meet the individual CPE requirements of Arizona, so long as the registrant is a non-resident and complies with the CPE requirements applicable in the state where their principal place of business is located. 4. Permitted a new delivery method of CPE instruction called “nano-learning”.
<p>Rulemaking Effective January 1, 2018</p>	<p>This rulemaking reduced regulatory burden by no longer requiring registrants who are suspended for nonregistration for more than six months to return their actual paper certificates to the Board (R4-1-345).</p>
<p>Rulemaking Effective July 15, 2017</p>	<p>This rulemaking eliminated a rule provision (R4-1-455.03(D)(1)) as it was overbroad and inconsistent with the former A.R.S. § 32-747.01.</p>
<p>Rulemaking Effective February 4, 2014</p>	<p>This rulemaking accomplished the following:</p> <ol style="list-style-type: none"> 1. Repealed an antiquated rule (R4-1-118). 2. Allowed CPE to be credited in smaller increment (one-half vs. one full hour) (R4-1-453).

As evidenced above, the Board is a diligent reviewer of its own rules and has sought to reduce regulations while maintaining its mission to the protect the public. While the Board does not have any rules that could be offered for elimination at this time, it is our hope that the Governor’s Office will recognize the efforts of the Board in supporting the Governor’s agenda, and in turn, support this rulemaking to modernize, conform, and improve its regulatory framework.

Thank you in advance for your timely consideration of this rulemaking. I would be happy to answer any additional questions that you may have to evaluate this request. I can be reached at (602) 364-0870 or mpetersen@azaccountancy.gov.

Sincerely,



Monica L. Petersen
Executive Director

Article 1 – General

R4-1-104. Board Records; Public Access; Copying Fees

- A.** The Board shall maintain all records, subject to A.R.S. Title 39, Chapter 1, reasonably necessary or appropriate to maintain an accurate knowledge of the Board's official activities including, but not limited to:
1. Applications for C.P.A. certificates and supporting documentation and correspondence;
 2. Applications to take the Uniform Certified Public Accountant Examination;
 3. Registration for registrants;
 4. Documents, transcripts, and pleadings relating to disciplinary proceedings and to hearings on the denial of a certificate; and
 5. Investigative reports; staff memoranda; and general correspondence between any person and the Board, members of the Board, or staff members.
- ~~**B.** Except as provided in R4-1-105, all records of the Board are available for public inspection and copying as provided in this Section.~~
- C.B.** Any person desiring to inspect or obtain copies of records of the Board available to the public under this section shall make a request to the Board's Executive Director or the Director's designee. The Executive Director or the director's designee shall, as soon as possible within a reasonable time, advise the person making the request whether the records sought can be made available, or, if the Executive Director or the director's designee is unsure whether a record may be made available for public inspection and copying, the Executive Director or the director's designee shall refer the matter to the Board for final determination.
- D.C.** A person shall not remove original records of the Board from the office of the Board unless the records are in the custody and control of a board member, a member of the Board's committees or staff, or the Board's attorney. The Executive Director or the director's designee may designate a staff member to observe and monitor any examination of Board records.
- E.D.** The Board shall provide copies of all records available for public inspection and copying shall be provided according to the procedures described in A.R.S. Title 39, Chapter 1, Article 2.
- F.E.** Any person aggrieved by a decision of the Executive Director or the director's designee denying access to records of the Board may request a hearing before the Board to review the action of the Executive Director or the director's designee by filing a written request for hearing. Within 60 days of receipt of the request, the Board shall conduct a hearing on the matter. If the person requires immediate access to Board records, the person may request and may be granted an earlier hearing, if the person sets forth sufficient grounds for immediate access.

R4-1-117. Procedure: Witnesses; Service

- A.** Pleadings; depositions; briefs; and related documents. A party shall print or type all pleadings, depositions, briefs, and related documents and use only one side of the paper.
- B.** Witness' depositions. If a party wants to take the oral deposition of a witness residing outside the state, the party shall file with the Board a petition for permission to take the deposition stating the name and address of the witness and describing in detail the nature and substance of the testimony expected to be given by the witness. The petition may be denied if the testimony of the witness is not relevant and material. If the petition is granted, the party may proceed to take the deposition of the witness by complying with the Arizona Rules of Civil Procedure. The party applying to the Board for permission to take a deposition shall bear the expense of the deposition.
- C.** Witness' interrogatories. A party desiring to take the testimony of a witness residing outside the state by means of interrogatories may do so by serving the adverse party as in civil matters and by filing with the Board a copy of the interrogatories and a statement showing the name and address of the witness. The adverse party may file in duplicate cross-interrogatories with a copy of the statement within 10 days following service on the adverse party. A party that objects to the form of an interrogatory or cross-interrogatory may file a statement of the objection with the Board within five days after service of the interrogatories or cross-interrogatories and may suggest to the Board any amendment to an interrogatory or cross-interrogatory. The Board may amend, add, or strike out an interrogatory or cross-interrogatory when the Board determines it is proper to do so.

 - 1. Notwithstanding the fact that a party may petition for permission to take the oral deposition of a witness, the Board may require that the information be provided through written interrogatories and vice versa.
 - 2. A party shall provide a copy of answers to the interrogatories to the Board within 45 days after the interrogatories are answered.
- D.** Subpoenas. The Board officer presiding at a hearing may authorize subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and shall administer oaths. A party desiring the Board to issue a subpoena for the production of evidence, documents or to compel the appearance of a witness at a hearing shall apply for the subpoena in writing stating the substance of the witness's testimony. If the testimony appears to be relevant and material, the Board shall issue the subpoena. Affixing the seal of the Board and the signature of a Board officer is sufficient to show that the subpoena is genuine. The party applying for the subpoena shall bear the expense of service.
- E.** Service.

 - 1. Service of any decision, order, subpoena, notice, or other document may be made personally in the same manner as a summons served in a civil action. If a document is served personally, service is deemed complete at the time of delivery.

2. Except as provided in subsection (E)(~~5~~3), service of any document may also be made by ~~personal service or by enclosing a copy of the document in a sealed envelope and depositing the envelope in the United States mail, with first class postage prepaid, addressed to the party, at the address last provided to the Board.~~
 - a. Personal service.
 - b. By enclosing a copy of the document in a sealed envelope and depositing the envelope in the United States mail, with first-class postage prepaid, addressed to the party, at the address last provided to the Board.
 - i. Service by mail is deemed complete when the document to be served is deposited in the United States mail. If the distance between the place of mailing and the place of address is more than 100 miles, service is deemed complete one day after the deposit of the document for each 100 miles to a maximum of six days after the date of mailing.
 - ii. In computing time, the date of mailing is not counted. All intermediate Sundays and holidays are counted. If the last day falls on a Sunday or holiday, that day is not counted and service is considered completed on the next business day.
 - c. By attaching the document to an email and sending it to the email address last provided to the Board.
- ~~3. Service by mail is deemed complete when the document to be served is deposited in the United States mail. If the distance between the place of mailing and the place of address is more than 100 miles, service is deemed complete one day after the deposit of the document for each 100 miles to a maximum of six days after the date of mailing.~~
- ~~4. In computing time, the date of mailing is not counted. All intermediate Sundays and holidays are counted. If the last day falls on a Sunday or holiday, that day is not counted and service is considered completed on the next business day.~~
- 5~~3~~. The Board shall mail each notice of hearing and final decision by certified mail to the last known address reflected in the records of the Board.
- 6~~4~~. Service on attorney. Service on an attorney who has appeared for a party constitutes service on the party.
- 7~~5~~. Proof of service. A party shall demonstrate proof of service by filing an affidavit, as provided by law, proof of mailing by certified mail, or an affidavit of first-class mailing.

Article 2 – CPA Examination

R4-1-226.01. Applications; Examination - Computer-based

- A.** A person desiring to take the Uniform Certified Public Accountant Examination who is qualified under A.R.S. § 32-723 may apply by submitting an initial application. A person whose initial application has already been approved by the Board to sit for the Uniform CPA Examination may apply by submitting an application for re-examination.
1. The requirements for initial application for examination are:
 - a. A completed application for initial examination,
 - b. A \$100 initial application fee if:
 - i. The applicant has not previously filed an application for initial examination in Arizona, or
 - ii. The Board administratively closed a previously submitted application, or
 - iii. The applicant has been previously denied by the Board.
 - c. University or college transcripts to verify that the applicant meets the educational requirements and if necessary for education taken outside the United States an additional course-by-course evaluation from the National Association of State Boards of Accountancy International Evaluation Services (NIES).
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 2. The requirements for application for re-examination are:
 - a. A completed application for re-examination, and
 - b. A \$50 re-examination application fee.
- B.** Within 30 days of receiving an initial application, the Board shall provide written notice to the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing. The applicant has 30 days from the date of the Board's letter to respond to the Board's request for additional information or the Board or its designee may administratively close the file. An applicant whose file is administratively closed and who later wishes to apply shall reapply under subsection (A)(1).
- C.** The Board's certification advisory committee (CAC) shall evaluate the applicant's file and make a recommendation to the Board to approve or deny the application. The CAC may defer a decision on the applicant's file to a subsequent CAC meeting to provide the applicant opportunity to submit any information requested by written notice by the CAC that the CAC believes is relevant to make a recommendation to the Board. The applicant has 30 days from the date of the Board's letter to respond to the CAC's request for additional information or the Board or its designee may administratively close the file.
- D.** If the Board approves the application, the Board shall notify the applicant in writing and send an authorization to test (ATT) to the National Association of State Boards of Accountancy (NASBA) to permit the applicant to take the specified section or

sections of the examination for which the applicant applied. If the Board denies the application, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a fair hearing to challenge the denial; and
 3. The time periods for appealing the denial.
- E. If the applicant does not timely pay to the NASBA the fees owed for the examination section or sections for which the applicant applied, the ATT expires. An applicant that still wishes to take a section or sections of the Uniform CPA Examination shall submit an application for re-examination under subsection (A)(2).
- F. After an applicant has paid NASBA, NASBA shall issue a notice to schedule (NTS) to the applicant. A NTS enables an applicant to schedule testing at an approved examination center. The NTS is effective on the date of issuance and expires when the applicant sits for all sections listed on the NTS or six months from the date of issuance, whichever occurs first. Upon written request to the Board and showing good cause that prevents the applicant from appearing for the examination, an applicant may be granted by the Board a ~~one-testing-window~~ [90-day](#) extension to a current NTS.
- G. The Board shall send the applicant any written notice required by this section in accordance with R4-1-117(E)(1) or (2).

R4-1-229. Conditioned Credit

- A. An applicant is allowed to sit for each section individually and in any order. An applicant is given conditioned credit for each section of the examination passed. A conditioned credit is valid for 18 months from the date of the examination. [Upon written request to the Board and showing good cause, an applicant may be granted by the Board a 90-day extension to a conditioned credit.](#)
- B. Transfer of conditioned credit. The Board shall give an applicant credit for all sections of an examination passed in another jurisdiction if the credit has been conditioned. If an applicant transfers conditioned credit from another jurisdiction, the applicant shall pass the remaining sections of the examination within the 18-month period from the date that the first section was passed. An applicant who fails to pass all sections of the Uniform CPA Examination within 18 months shall retake previously passed sections of the Uniform CPA Examination to ensure passage of all sections within an 18-month period.

Article 3 – Certification and Registration

R4-1-341. CPA Certificates; Firm Registration; Reinstatement; Reactivation

- A. An applicant may apply for a certificate of certified public accountant or for reinstatement of a certificate by submitting:
1. An application fee of \$100; and
 2. For an applicant applying for certification under A.R.S. § 32-721(A) and (B), a completed application including:
 - a. Verification that the applicant passed the Uniform CPA Examination,
 - b. Verification that the applicant meets the education and experience requirements specified in R4-1-343,
 - c. One signed and dated letter of recommendation by a CPA or an individual who has accounting education and experience similar to that of a CPA,
 - d. Proof of a score of at least 90% on the American Institute of Certified Public Accountants (AICPA) examination in professional ethics taken within the two years immediately before the application is submitted,
 - e. Evidence of lawful presence in the United States, and
 - f. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 3. For an applicant applying for certification under A.R.S. § 32-721(A) and (C), a completed application including:
 - a. Verification that the applicant has passed the International Qualification Examination (IQEX),
 - b. License verification from each jurisdiction in which the applicant has ever been issued a certificate as a certified public accountant of which at least one must be an active certification from a jurisdiction with requirements determined by the Board to be substantially equivalent to the requirements in A.R.S. § 32-721(B) or verification that the applicant meets the education and experience requirements specified in R4-1-343,
 - c. Evidence of lawful presence in the United States, and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 4. For an applicant applying for certification under A.R.S. § 32-721(A) and (D) for mutual recognition agreements adopted by the Board a completed application including:
 - a. Verification that the applicant has passed the International Qualification Examination (IQEX),
 - b. License verification from the applicant's country which has a mutual recognition agreement with the National Association of State Boards of Accountancy that has been adopted by the Board,
 - c. Evidence of lawful presence in the United States, and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.

5. For an applicant applying for certification under A.R.S. § 32-4302, a completed application including:
 - a. License verification from each jurisdiction in which the applicant holds a license
 - b. Evidence of lawful presence in the United States
 - c. Proof of residency
 - d. Disciplinary history, if applicable
 - e. Other information or documents requested by the Board to determine compliance with eligibility requirements.
56. For an applicant applying for reinstatement from cancelled status under A.R.S. § 32-732(B) a completed application including:
 - a. CPE that meets the requirements of R4-1-453(C)(8) and (E), and
 - b. Evidence of lawful presence in the United States.
67. For an applicant applying for reinstatement from expired, relinquished, or revoked status under A.R.S. § 32-732(C), a completed application including:
 - a. CPE that meets the requirements of R4-1-453(C)(8) and (E),
 - b. Evidence of lawful presence in the United States,
 - c. If not waived by the Board as part of a disciplinary order, evidence from an accredited institution or a college or university that maintains standards comparable to those of an accredited institution that the individual has completed at least one hundred fifty semester hours of education as follows:
 - i. At least 36 semester hours are accounting courses of which at least 30 semester hours are upper level courses.
 - ii. At least 30 semester hours are related courses.
 - d. If prescribed by the Board as part of a disciplinary order, evidence that the individual has retaken and passed the Uniform Certified Public Accountant Examination.
- B. An applicant may apply for a certified public accountant firm registration or for reinstatement of a registration by submitting:
 1. For an applicant applying for a new firm under A.R.S. § 32-731, a completed application including:
 - a. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;
 - b. If applicable, peer review results as prescribed by R4-1-454(A); and
 - c. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 2. For an applicant applying for reinstatement from cancelled under A.R.S. § 32-732(E) a completed application including:
 - a. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or

- professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;
- b. If applicable, peer review results as prescribed by R4-1-454(A); and
 - c. Other information or documents requested by the Board to determine compliance with eligibility requirements.
3. For an applicant applying for reinstatement from expired, relinquished, or revoked status under A.R.S. § 32-732(F) a completed application including:
 - a. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;
 - b. If applicable, peer review results as prescribed by R4-1-454(A);
 - c. If applicable, substantial evidence that the applicant has been completely rehabilitated with respect to the conduct that was the basis of the expiration, relinquishment or revocation of the firm's registration; and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
- C. Pursuant to Title 41, Chapter 6, Article 7.1, the Board's licensing time frames are as follows:
1. Certification/Reinstatement/Reactivation
 - a. Administrative Completeness Review Time Frame. The Board shall notify the applicant within 30 days from the receipt of the application that the application is complete.
 - i. If the application is incomplete, an incomplete notice shall specify what information is missing. If the Board issues an incomplete notice, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date the Board receives the missing information from the applicant.
 - ii. The applicant has 30 days from the date of the incomplete notice to respond in writing and provide all the missing information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (A).
 - b. Substantive Review Time Frame. The Board has 60 days to complete its substantive review.
 - i. If the Board finds deficiencies during the substantive review of the application, the Board may issue one comprehensive written request to the applicant for additional information. If the Board issues a comprehensive written request, or a supplemental request by mutual agreement, the substantive review time frame

and the overall time frame are suspended from the date the request is issued until the date the Board receives the additional information from the applicant.

ii. The applicant has 30 days from the date of the written request to respond in writing and provide all the additional information or the Board may administratively close. An applicant whose file is administratively closed shall reapply under subsection (A).

c. Overall Time Frame. The Board has 150 days to issue a written notice to an applicant approving or denying an application.

2. Firm Registration

a. Administrative Completeness Review Time Frame. The Board shall notify the applicant within 10 days from the receipt of the application that the application is complete.

i. If the application is incomplete, an incomplete notice shall specify what information is missing. If the Board issues an incomplete notice, the administrative completeness time frame and the overall time frame are suspended from the date the notice issued until the date the Board receives the missing information from the applicant.

ii. The applicant has 30 days from the date of the incomplete notice to respond in writing and provide all the missing information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (B).

b. Substantive Review Time Frame. The Board has 60 days to complete its substantive review.

i. If the Board finds deficiencies during the substantive review of the application, the Board may issue one comprehensive written request to the applicant for additional information. If the Board issues a comprehensive written request, or a supplemental request by mutual agreement, the substantive time frame and the overall time frame are suspended from the date the request is issued until the date the Board receives the additional information from the applicant.

ii. The applicant has 30 days from the date of the written request to respond in writing and provide all the additional information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (B).

c. Overall Time Frame. The Board has 90 days to issue a written notice to an applicant approving or denying an application.

D. If the Board denies an applicant's request under this section, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial; and
3. The time periods for appealing the denial.

- E. The Board shall send the applicant any written notice required by this section in accordance with R4-1-117(E)(1) or (2).

R4-1-346. Notice of Change of Address

Within 30 days of any [email](#), business, mailing, or residential change of address, a registrant shall notify the Board of the new address by filling out the change of address form prescribed by the Board.

Article 4 – Regulation

R4-1-453. Continuing Professional Education

- A. Measurement Standards. The Board shall use the following standards to measure the hours of credit given for CPE programs completed by an individual registrant.
1. CPE credit shall be given in one-fifth or one-half increments for periods of not less than one class hour except as noted in paragraph 8. The computation of CPE credit shall be measured as follows:
 - a. A class hour shall consist of a minimum of 50 continuous minutes of instruction
 - b. A half-class hour shall consist of a minimum of 25 continuous minutes of instruction
 - c. A one-fifth class hour shall consist of a minimum of 10 continuous minutes of instruction.
 2. Courses taken at colleges and universities apply toward the CPE requirement as follows:
 - a. Each semester - system credit hour is worth 15 CPE credit hours,
 - b. Each quarter - system credit hour is worth 10 CPE credit hours, and
 - c. Each noncredit class hour is worth one CPE credit hour.
 3. Each correspondence program hour is worth one CPE credit hour.
 4. Acting as a lecturer or discussion leader in a CPE program, including college courses, may be counted as CPE credit. The Board shall determine the amount of credit on the basis of actual presentation hours, and shall allow CPE credit for preparation time that is less than or equal to the presentation hours. A registrant may only claim as much preparation time as is actually spent for a presentation. Total credit earned under this subsection for service as a lecturer or discussion leader, including preparation time may not exceed 40 credit hours of the renewal period's requirement. Credit is limited to only one presentation of any seminar or course with no credit for repeat teaching of that course.
 5. ~~Writing and publishing articles or books that contribute to the accounting profession~~ The following may be counted for a maximum of 20 hours of CPE credit during each renewal period.
 - a. Credit may be earned for writing ~~accounting material not used in conjunction with a seminar if the material addresses an audience of certified public accountants, is at least 3,000 words in length,~~ and publishing articles or books that contribute to the accounting profession and is published by a recognized third-party publisher of accounting material or a sponsor as long as it is not used in conjunction with a seminar.
 - b. ~~For each 3,000 words of original material written, the author may earn two credit hours. Multiple authors may share credit for material written.~~ Credit may be earned for the writing or development of online course curriculum for undergraduate, graduate, or doctoral education that contribute to the accounting profession.

- c. Two credit hours will be given for each 3,000 words of original material written or developed into curriculum. Materials must be at least 3,000 words in length. Multiple authors may share credit for material written or developed into curriculum.
6. A registrant may earn a combined maximum of 40 hours of CPE credit under subsections (A)(4) and (5) above during each renewal period.
 7. A registrant may earn a maximum of 20 hours of CPE during each renewal period by completing introductory computer-related courses. Computer-related courses may qualify as consulting services pursuant to subsection (C).
 8. A registrant may earn a maximum of 4 hours of CPE during each renewal period by completing nano-learning courses. A nano-learning program is a tutorial program designed to permit a participant to learn a given subject in a ten-minute time-frame through the use of electronic media and without interaction with a real time instructor.
 9. CPE credit shall be given in one-fifth or one-half hour increments if the CPE is a segment of a continuing series related to a specific subject as long as the segments are connected by an overarching course that is a minimum of one hour and taken within the same CPE reporting period.
 10. Credit shall not be allowed for repeat participation in any seminar or course during the registration period.
- B. Programs that Qualify.** CPE credit may be given for a program that provides a formal course of learning at a professional level and contributes directly to the professional competence of participants.
1. The Board shall accept a CPE course as qualified if it:
 - a. Is developed by persons knowledgeable and experienced in the subject matter,
 - b. Provides written outlines or full text,
 - c. Is administered by an instructor or organization knowledgeable in the program, and
 - d. Uses teaching methods consistent with the study program.
 2. The Board shall accept a correspondence program which includes online or computer based programs if the sponsors maintain written records of each student's participation and records of the program outline for three years following the conclusion of the program.
 3. An ethics program taught or developed by an employer or co-worker of a registrant does not qualify for the ethics requirements of subsection (C)(4).
- C. Hour Requirement.** As a prerequisite to registration pursuant to A.R.S. § 32-730(C) or to reactivate from inactive status pursuant to A.R.S. § 32-732(A), a registrant shall complete the CPE requirements during the two-year period immediately before registration or application respectively as specified under subsections (C)(1) through (C)(5). For registration periods of less than two years CPE may be prorated by quarter, with the exception of ethics.
1. A registrant whose last registration period was for two years shall complete 80 hours of CPE.

2. A registrant shall complete a minimum of 40 hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 16 hours in the subject areas of accounting, auditing, or taxation.
3. A registrant shall complete a minimum of 16 of the required hours:
 - a. In a classroom setting,
 - b. Through an interactive live webinar, or
 - c. By acting as a lecturer or discussion leader in a CPE program, including college courses
4. A registrant shall complete four hours of CPE in the subject area of ethics. The four hours required by this subsection shall include a minimum of one hour of each of the following subjects:
 - a. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants, and
 - b. Board statutes and administrative rules.
5. A registrant shall report, at a minimum, the CPE hours required for the registration period.
6. Hours that exceed the number required for the current registration period may not be carried forward to a subsequent registration period.
7. Any CPE hours completed to vacate a suspension for nonregistration or for noncompliance with CPE requirements may not be used to meet CPE requirements for the registration period.
8. As a prerequisite to reactivate from retired status or reinstate from cancelled, expired, relinquished or revoked status, a registrant or an applicant shall complete up to 160 hours of CPE during the four-year period immediately before application to reactivate or reinstate. For periods of less than four years CPE may be prorated by quarter, with the exception of ethics.
 - a. A registrant or an applicant shall complete a minimum of 80 hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 32 hours in the subject areas of accounting, auditing or taxation.
 - b. A registrant or an applicant shall complete a minimum of 32 hours of the required hours:
 - i. In a classroom setting,
 - ii. Through an interactive live webinar, or
 - iii. By acting as a lecturer or discussion leader in a CPE program, including college courses.
 - c. A registrant or an applicant shall complete CPE in the subject area of ethics. Four hours of ethics CPE shall be required if 1 – 24 months have passed since the last registration due date for which CPE was completed. Eight hours of ethics CPE shall be required if 25 – 48 months have passed since the last registration due date for which CPE was completed. The hours required by this subsection shall include a minimum of one hour of each of the following subjects. The following subjects shall be completed during the two-year period immediately preceding application for reactivation or reinstatement:

- i. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants; and
 - ii. Board statutes and administrative rules.
- D.** Reporting: A registrant or an applicant for reactivation or reinstatement, a registrant who is subject to an audit, or a registrant completing their registration must report the following details about their completed CPE:
 - 1. Sponsoring organization,
 - 2. Number of CPE credit hours,
 - 3. Title of program or description of content,
 - 4. Dates attended,
 - 5. Subject, and
 - 6. Method.
- E.** In addition to the information required under subsection (D), a registrant or an applicant for reactivation or reinstatement from cancelled, expired, relinquished or revoked status, or a registrant subject to a CPE audit pursuant to subsection (G) shall provide the Board the following CPE records at its request: copies of transcripts, course outlines, and certificates of completion that include registrant's name, course provider or sponsor, course title, credit hours, and date of completion.
- F.** CPE Record Retention: A registrant shall maintain CPE records for three years from the date the registration was dated as received by the Board the following documents for all CPE completed for the registration period, even if not reported on the registration: transcripts, course outlines, and certificates of completion that include registrant's name, course provider or sponsor, course title, credit hours, and date of completion.
- G.** CPE audits: The Board, at its discretion, may conduct audits of a registrant's CPE and require that the registrant provide the CPE records that the registrant is required to maintain under subsection (F) to verify compliance with CPE requirements.
- H.** The Board may grant a full or partial exemption from CPE requirements on demonstration of good cause for a disability for only one registration period.
- I.** A non-resident registrant seeking renewal of a certificate in this state shall be determined to have met the CPE requirements of this rule by meeting the CPE requirements for renewal of a certificate in the jurisdiction in which the registrant's principal place of business is located.
 - 1. Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the jurisdiction in which the registrant's principal place of business is located by signing a statement to that effect on the renewal application of this state.
 - 2. If a non-resident registrant's principal place of business jurisdiction has no CPE requirements for renewal of a certificate or license, the non-resident registrant must comply with all CPE requirements for renewal of a certificate in this state.

R4-1-454. Peer Review

- A.** Each firm, review team, and member of a review team shall comply with the Standards for Performing and Reporting on Peer Reviews, issued April 2019 and published ~~June 1, 2019~~ June 1, 2020 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775 (www.aicpa.org), which is incorporated by reference. This incorporation by reference does not include any later amendments or editions. The incorporated material is available for inspection and copying at the Board's office.
- B.** A firm must allow the sponsoring organization to make the following documents accessible to the Board via the FSBA process:
 - a. Peer review report which has been accepted by the sponsoring organization,
 - b. Firm's letter of response accepted by the sponsoring organization, if applicable,
 - c. Completion letter from the sponsoring organization,
 - d. Letter(s) accepting the documents signed by the firm with the understanding that the firm agrees to take any actions required by the sponsoring organization, if applicable, and
 - e. Letter signed by the sponsoring organization notifying the firm that required actions have been appropriately completed, if applicable.
- C.** Information discovered solely as a result of a peer review is not grounds for suspension or revocation of a certificate.
- D.** Firms that reorganize a current firm, rename a firm, or create a new firm, within which at least one of the prior CPA owners remains an owner or employee, shall remain subject to the provisions of this Section. If a firm is merged, combined, dissolved, or separated, the sponsoring organization shall determine which resultant firm shall be considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

R4-1-455. Professional Conduct and Standards

- A.** It is the Board's policy that the rules governing registrants be consistent with the rules governing the accounting profession generally. Except as otherwise set forth in these regulations, registrants shall conform their conduct to the Code of Professional Conduct, published ~~June 1, 2019~~ June 1, 2020 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775 (www.aicpa.org), available from the AICPA.
- B.** The AICPA Code of Professional Conduct, and any interpretations and ethical rulings by the issuing body, shall apply to all registrants, including those who are not members of the AICPA. The version specified above, including any interpretations and ethical rulings in effect shall apply. Any later amendments, additions, interpretations, or ethical rulings shall not apply.



Christopher Rasmussen <crasmussen@azaccountancy.gov>

Rulemaking Exemption

Monica Petersen <mpetersen@azaccountancy.gov>

Mon, Nov 2, 2020 at 1:57 PM

To: Trista Guzman Glover <tguzman@az.gov>

Bcc: crasmussen@azaccountancy.gov

Thank you for the clarification, Trista. We've worked diligently to support the Governor's agenda and appreciate your support.

Monica L. Petersen
Executive Director
Arizona State Board of Accountancy
100 N. 15th Ave., Suite 165
Phoenix, AZ 85007

On Mon, Nov 2, 2020 at 11:37 AM Trista Guzman Glover <tguzman@az.gov> wrote:

You have the green light to move forward. I appreciate the Board continually searching out ways to reduce barriers and rules.

Best,
Trista

Trista Guzman Glover | Office of Arizona Governor Doug Ducey

Director, Boards and Commissions

O. (602) 542-1308

www.azgovernor.gov



On Wed, Oct 28, 2020 at 5:38 PM Monica Petersen <mpetersen@azaccountancy.gov> wrote:

Trista,

I wanted to confirm that it would be okay to pursue our rulemaking despite our inability to identify additional rules for repeal given our active rulemaking efforts in past years which were, in part, documented in our request.

Monica L. Petersen
Executive Director
Arizona State Board of Accountancy
100 N. 15th Ave., Suite 165
Phoenix, AZ 85007

On Thu, Oct 15, 2020 at 10:45 AM Monica Petersen <mpetersen@azaccountancy.gov> wrote:

Trista,

Thank you for your support. As detailed in our request, due to our active rulemaking in the past and our diligence in identifying and eliminating archaic or overly burdensome rules in recent years, we are unable to identify additional rules for repeal.

Monica L. Petersen
Executive Director

Arizona State Board of Accountancy
100 N. 15th Ave., Suite 165
Phoenix, AZ 85007

On Thu, Oct 15, 2020 at 10:39 AM Trista Guzman Glover <tguzman@az.gov> wrote:
Good Morning, Monica -

You read my mind. I've spent the morning reviewing this request. Thank you for submitting this rulemaking proposal related to revising antiquated rules and conforming to statute. This email serves as an approved exemption from the rulemaking moratorium.

As a reminder, in accordance with EO2020-02, for every rule added, three rules must be identified for repeal. Please keep this in mind as you move forward with rulemaking.

Please let me know if I can be of further assistance.

Best,
Trista

Trista Guzman Glover | Office of Arizona Governor Doug Ducey
Director, Boards and Commissions
O. (602) 542-1308
www.azgovernor.gov



On Thu, Oct 15, 2020 at 10:03 AM Monica Petersen <mpetersen@azaccountancy.gov> wrote:
Trista,

Can you please provide an update regarding our rulemaking exemption request which was submitted on September 10?

Monica L. Petersen
Executive Director
Arizona State Board of Accountancy
100 N. 15th Ave., Suite 165
Phoenix, AZ 85007

On Thu, Sep 10, 2020 at 9:23 AM Monica Petersen <mpetersen@azaccountancy.gov> wrote:
Trista,

Please see attached request for an exemption to Executive Order 2020-02 regarding the moratorium on rulemaking. The attached PDF document includes a letter requesting the exemption along with the draft of the proposed rules. If you open the PDF in Adobe and not in your internet browser, you'll find that the PDF has bookmarks to aid in your review.

Monica L. Petersen
Executive Director
Arizona State Board of Accountancy
100 N. 15th Ave., Suite 165
Phoenix, AZ 85007



Christopher Rasmussen <crasmussen@azaccountancy.gov>

Board of Accountancy - Rulemaking Exemption

Trista Guzman Glover <tguzman@az.gov>

Tue, Jan 19, 2021 at 12:42 PM

To: Christopher Rasmussen <crasmussen@azaccountancy.gov>

Cc: Monica Petersen <mpetersen@azaccountancy.gov>, Andrea Byrd <abyrd@azaccountancy.gov>

Great - thanks for that update.

Approved for rulemaking.

Trista

Trista Guzman Glover | Office of Arizona Governor Doug Ducey

Director, Boards and Commissions

O. (602) 542-1308

www.azgovernor.gov

On Tue, Jan 19, 2021 at 12:41 PM Christopher Rasmussen <crasmussen@azaccountancy.gov> wrote:

Trista,

There were no changes since your initial approval.

On Tue, Jan 19, 2021 at 12:31 PM Trista Guzman Glover <tguzman@az.gov> wrote:

Hi, Christopher -

Were there any changes to the language from the initial approval?

Trista

Trista Guzman Glover | Office of Arizona Governor Doug Ducey

Director, Boards and Commissions

O. (602) 542-1308

www.azgovernor.gov

On Tue, Jan 12, 2021 at 11:14 AM Christopher Rasmussen <crasmussen@azaccountancy.gov> wrote:

Good morning Trista,

My name is Chris Rasmussen and I'm with the Arizona State Board of Accountancy. At a recent rule writers' consortium meeting, I learned from Grace Appelbe of the Governor's Office that agencies are now required to submit their proposed rulemaking to their policy advisor for a second approval after the oral proceeding occurs.

You initially approved our rulemaking on 11/2/2020, and on 1/11/2021, the Board held an oral proceeding. Per Ms. Appelbe's advice, we are now seeking your second approval on the rulemaking. Please find attached the Arizona Administrative Register publication for reference. Additionally and for your information, no changes were made as a result of the oral proceeding or since your original approval.

I'd be happy to answer any questions you may have, and thank you for your support.

Sincerely,

--

Christopher Rasmussen

Assistant Director

Regulation and Compliance

Arizona State Board of Accountancy

[100 N 15th Ave, Suite 165](#)

[Phoenix, AZ 85007](#)

Direct: 602-364-0895

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Christopher Rasmussen

Assistant Director

Regulation and Compliance

Arizona State Board of Accountancy

[100 N 15th Ave, Suite 165](#)

[Phoenix, AZ 85007](#)

Direct: 602-364-0895

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 1. BOARD OF ACCOUNTANCY

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R4-1-104	Amend
R4-1-117	Amend
R4-1-226.01	Amend
R4-1-229	Amend
R4-1-341	Amend
R4-1-346	Amend
R4-1-453	Amend
R4-1-454	Amend
R4-1-455	Amend

2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 32-703(B)(7) and (13)

Implementing statute: A.R.S. § 32-703(B)(8)

3. The effective date of the rule:

The agency accepts the standard effective date of 60 days as specified in A.R.S. § 41-1032(A).

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable.

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 26 A.A.R. 3097, December 4, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 3083, December 4, 2020

5. The agency's contact person who can answer questions about the rulemaking:

Name: Monica L. Petersen, Executive Director

Address: Board of Accountancy, 100 N. 15th Ave., Suite 165, Phoenix, AZ 85007

Telephone: (602) 364-0870

Fax: (602) 364-0903

E-mail: mpetersen@azaccountancy.gov

Website: www.azaccountancy.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

R4-1-104. This rule is amended to omit subsection B for two reasons: (1) a rule citation in the subsection (A.A.C. R4-1-105) expired on December 4, 2019 and therefore is antiquated; and (2) subsection B is redundant. A.R.S. §§ 32-749(D) and 39-121, *et seq.* already provide that the records the Board maintains in exercising its statutory duties are public records and are accessible for inspection and copying, barring any confidentiality exceptions.

R4-1-117. Subsection E of this rule permits the Board to accomplish service of any document either through personal service or United States (U.S.) mail. Subsection E is amended to allow service to be accomplished via email as well. This change would allow the Board to streamline some of its processes and in turn help stakeholders conduct business with the Board.

R4-1-226.01. Prior to continuous testing, the computer-based Uniform CPA Exam (Exam) was offered during four testing windows as follows: Quarter 1 (January 1 to March 10), Quarter 2 (April 1 to June 10), Quarter 3 (July 1 – September 10) and Quarter 4 (October 1 to December 10). The CPA Exam was not given at the end of each calendar quarter to allow for systems and databank maintenance. As of July 1, 2020, testing windows have been replaced by continuous testing, allowing candidates to take the Exam year-round, without restriction, other than waiting to receive scores from prior attempts of the same section. This rule is modified so that the Board may grant a notice to schedule (NTS) extension request

for 90-days in contrast to one-testing window. This conforms the NTS extension request process with the continuous testing format and is fairer and more equitable for applicants.

R4-1-229. An applicant is allowed to sit for each section of the Exam individually and in any order. An applicant is given conditioned credit for each section of the Exam passed, which is valid for 18-months from the date of examination. If the applicant does not pass all four parts of the exam within 18-months, the exam section(s) that were first conditioned will expire and have to be retaken until all four parts have been passed within an 18-month window. Historically, the Board has received requests from applicants to extend their conditional credit. This rule is amended to codify the ability of the Board to grant a 90-day extension to a conditioned credit.

R4-1-341. Laws 2019, Ch. 55, (HB 2569) (Universal Licensing) made Arizona the first state in the country to recognize occupational licenses for new residents and created a new route for those individuals to become CPAs. This rule currently addresses certification routes such as examination, grade transfer, and reciprocity but does not address Universal Licensing. Amendments to this rule include materials that are to be submitted with a certification application, pursuant to A.R.S. § 32-4302. This change will provide applicants clarity in what documentation should be submitted to the Board when applying for this form of certification.

R4-1-346. This rule currently requires that registrants notify the Board of a business, mailing, or residential change of address within 30-days. The amendment would include email addresses into this requirement. While almost all CPAs provide their email to the Board, there is no requirement for the email to be updated when changed. As such, the Board cannot rely on email as a reliable way to conduct its business. The use of email to streamline communication timeframes is convenient and cost effective for both the Board and stakeholders, and this amendment will help ensure that the Board maintains a current database of emails.

R4-1-453. This rule is amended to expand the different types of activities that qualify for CPE credit by allowing credit to be earned for the writing or development of online course curriculum for undergraduate, graduate, or doctoral education that contributes to the accounting profession.

R4-1-454 and R4-1-455. These rules are amended to update their respective incorporations by reference.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did 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:

The Board did not review or rely on a study in its evaluation of or justification for a rule in this rulemaking.

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

Not applicable.

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

Amendments to R4-1-104 are expected to produce a clearer and more concise rule, which will benefit the Board, registrants, and the public.

Amendments to R4-1-117 and R4-1-346 are expected to positively affect the Board, registrants, and applicants by streamlining communications, which will allow processes to be completed more efficiently and allow for cost-savings for postage, office supplies, and labor.

Amendments to R4-1-226.01 will ensure that all exam applicants are treated equitably by granting an equal amount of time for the NTS extension. With continuous testing, the concept of testing windows is antiquated. Further, the process of granting extensions by one testing window created inequities because it was based on when an applicant's NTS expired. For example, if an applicant's NTS expired earlier in the testing window they would benefit more than an applicant whose NTS expired later in the testing window.

Amendments to R4-1-229 are expected to positively affect both the Board and applicants. The Board currently provides conditioned credit extensions and will benefit from having its practice clearly codified in rule. Applicants will benefit from having greater clarity regarding their ability to request a conditioned credit extension based on good cause.

Amendments to R4-1-341 are expected to positively affect applicants as it will provide greater clarity on the materials required to apply for Universal Licensing.

Amendments to R4-1-453 are expected to benefit the regulated community as they will have greater flexibility in complying with CPE requirements.

Amendments to R4-1-454 and R4-1-455 are expected to affect the Board, consumers, and the regulated community. The Board will benefit from being able to hold registrants accountable to the most up-to-date versions of the peer review standards and the American Institute of Certified Public Accountants' Code of Professional Conduct, which directly ties to the Board's mission to protect the public. As this update will assist the Board in better fulfilling its mission, the public will also benefit from the more effective protection. Lastly, the regulated community will be affected by being held accountable to the most up-to-date standards.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No changes were made.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were received regarding the Notice of Proposed Rulemaking. No one presented oral or written comments at the oral proceeding held on January 11, 2021. The record closed at 5:00 p.m. on January 11, 2021.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There is no federal law regarding CPAs or any other subjects of the rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

R4-1-454(A) – Standards for Performing and Reporting on Peer Reviews

<https://www.aicpa.org/content/dam/aicpa/research/standards/peerreview/downloadabledocuments/peerreviewstandards.pdf>

R4-1-455(A) – Code of Professional Conduct

<https://pub.aicpa.org/codeofconduct/ethicsresources/et-cod.pdf>

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

No rule in this rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 1. BOARD OF ACCOUNTANCY

ARTICLE 1. GENERAL

- R4-1-104. Board Records; Public Access; Copying Fees
R4-1-117. Procedure: Witnesses; Service

ARTICLE 2. CPA EXAMINATION

- R4-1-226.01. Applications; Examination – Computer-based
R4-1-229. Conditioned Credit

ARTICLE 3. CERTIFICATION AND REGISTRATION

- R4-1-341. CPA Certificates; Firm Registration; Reinstatement; Reactivation
R4-1-346. Notice of Change of Address

ARTICLE 4. REGULATION

- R4-1-453. Continuing Professional Education
R4-1-454. Peer Review
R4-1-455. Professional Conduct and Standards

Article 1 – General

R4-1-104. Board Records; Public Access; Copying Fees

- A.** The Board shall maintain all records, subject to A.R.S. Title 39, Chapter 1, reasonably necessary or appropriate to maintain an accurate knowledge of the Board's official activities including, but not limited to:
1. Applications for C.P.A. certificates and supporting documentation and correspondence;
 2. Applications to take the Uniform Certified Public Accountant Examination;
 3. Registration for registrants;
 4. Documents, transcripts, and pleadings relating to disciplinary proceedings and to hearings on the denial of a certificate; and;
 5. Investigative reports; staff memoranda; and general correspondence between any person and the Board, members of the Board, or staff members.
- ~~**B.** Except as provided in R4-1-105, all records of the Board are available for public inspection and copying as provided in this Section.~~
- C.** Any person desiring to inspect or obtain copies of records of the Board available to the public under this section shall make a request to the Board's Executive Director or the Director's designee. The Executive Director or the director's designee shall, as soon as possible within a reasonable time, advise the person making the request whether the records sought can be made available, or, if the Executive Director or the director's designee is unsure whether a record may be made available for public inspection and copying, the Executive Director or the director's designee shall refer the matter to the Board for final determination.
- D.** A person shall not remove original records of the Board from the office of the Board unless the records are in the custody and control of a board member, a member of the Board's committees or staff, or the Board's attorney. The Executive Director or the director's designee may designate a staff member to observe and monitor any examination of Board records.
- E.** The Board shall provide copies of all records available for public inspection and copying shall be provided according to the procedures described in A.R.S. Title 39, Chapter 1, Article 2.
- F.** Any person aggrieved by a decision of the Executive Director or the director's designee denying access to records of the Board may request a hearing before the Board to review the action of the Executive Director or the director's designee by filing a written request for hearing. Within 60 days of receipt of the request, the Board shall conduct a hearing on the matter. If the person requires immediate access to Board records, the person may request and may be granted an earlier hearing, if the person sets forth sufficient grounds for immediate access.

R4-1-117. Procedure: Witnesses; Service

- A.** Pleadings; depositions; briefs; and related documents. A party shall print or type all pleadings, depositions, briefs, and related documents and use only one side of the paper.
- B.** Witness' depositions. If a party wants to take the oral deposition of a witness residing outside the state, the party shall file with the Board a petition for permission to take the deposition stating the name and address of the witness and describing in detail the nature and substance of the testimony expected to be given by the witness. The petition may be denied if the testimony of the witness is not relevant and material. If the petition is granted, the party may proceed to take the deposition of the witness by complying with the Arizona Rules of Civil Procedure. The party applying to the Board for permission to take a deposition shall bear the expense of the deposition.
- C.** Witness' interrogatories. A party desiring to take the testimony of a witness residing outside the state by means of interrogatories may do so by serving the adverse party as in civil matters and by filing with the Board a copy of the interrogatories and a statement showing the name and address of the witness. The adverse party may file in duplicate cross-interrogatories with a copy of the statement within 10 days following service on the adverse party. A party that objects to the form of an interrogatory or cross-interrogatory may file a statement of the objection with the Board within five days after service of the interrogatories or cross-interrogatories and may suggest to the Board any amendment to an interrogatory or cross-interrogatory. The Board may amend, add, or strike out an interrogatory or cross-interrogatory when the Board determines it is

proper to do so.

1. Notwithstanding the fact that a party may petition for permission to take the oral deposition of a witness, the Board may require that the information be provided through written interrogatories and vice versa.
 2. A party shall provide a copy of answers to the interrogatories to the Board within 45 days after the interrogatories are answered.
- D.** Subpoenas. The Board officer presiding at a hearing may authorize subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and shall administer oaths. A party desiring the Board to issue a subpoena for the production of evidence, documents or to compel the appearance of a witness at a hearing shall apply for the subpoena in writing stating the substance of the witness's testimony. If the testimony appears to be relevant and material, the Board shall issue the subpoena. Affixing the seal of the Board and the signature of a Board officer is sufficient to show that the subpoena is genuine. The party applying for the subpoena shall bear the expense of service.
- E.** Service.
1. Service of any decision, order, subpoena, notice, or other document may be made personally in the same manner as a summons served in a civil action. If a document is served personally, service is deemed complete at the time of delivery.
 2. Except as provided in subsection (E)(~~53~~), service of any document may also be made by ~~personal service or by enclosing a copy of the document in a sealed envelope and depositing the envelope in the United States mail, with first class postage prepaid, addressed to the party, at the address last provided to the Board.~~
 - a. Personal service.
 - b. By enclosing a copy of the document in a sealed envelope and depositing the envelope in the United States mail, with first-class postage prepaid, addressed to the party, at the address last provided to the Board.
 - i. Service by mail is deemed complete when the document to be served is deposited in the United States mail. If the distance between the place of mailing and the place of address is more than 100 miles, service is deemed complete one day after the deposit of the document for each 100 miles to a maximum of six days after the date of mailing.
 - ii. In computing time, the date of mailing is not counted. All intermediate Sundays and holidays are counted. If the last day falls on a Sunday or holiday, that day is not counted and service is considered completed on the next business day.
 - c. By attaching the document to an email and sending it to the email address last provided to the Board.
 3. ~~Service by mail is deemed complete when the document to be served is deposited in the United States mail. If the distance between the place of mailing and the place of address is more than 100 miles, service is deemed complete one day after the deposit of the document for each 100 miles to a maximum of six days after the date of mailing.~~
 4. ~~In computing time, the date of mailing is not counted. All intermediate Sundays and holidays are counted. If the last day falls on a Sunday or holiday, that day is not counted and service is considered completed on the next business day.~~
- ~~53.~~ The Board shall mail each notice of hearing and final decision by certified mail to the last known address reflected in the records of the Board.
- ~~64.~~ Service on attorney. Service on an attorney who has appeared for a party constitutes service on the party.
- ~~75.~~ Proof of service. A party shall demonstrate proof of service by filing an affidavit, as provided by law, proof of mailing by certified mail, or an affidavit of first-class mailing.

Article 2 – CPA Examination

R4-1-226.01. Applications; Examination - Computer-based

- A.** A person desiring to take the Uniform Certified Public Accountant Examination who is qualified under A.R.S. § 32-723 may apply by submitting an initial application. A person whose initial application has already been approved by the Board to sit for the Uniform CPA Examination may apply by submitting an

application for re-examination.

1. The requirements for initial application for examination are:
 - a. A completed application for initial examination,
 - b. A \$100 initial application fee if:
 - i. The applicant has not previously filed an application for initial examination in Arizona, or
 - ii. The Board administratively closed a previously submitted application, or
 - iii. The applicant has been previously denied by the Board.
 - c. University or college transcripts to verify that the applicant meets the educational requirements and if necessary for education taken outside the United States an additional course-by-course evaluation from the National Association of State Boards of Accountancy International Evaluation Services (NIES).
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 2. The requirements for application for re-examination are:
 - a. A completed application for re-examination, and
 - b. A \$50 re-examination application fee.
- B.** Within 30 days of receiving an initial application, the Board shall provide written notice to the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing. The applicant has 30 days from the date of the Board's letter to respond to the Board's request for additional information or the Board or its designee may administratively close the file. An applicant whose file is administratively closed and who later wishes to apply shall reapply under subsection (A)(1).
- C.** The Board's certification advisory committee (CAC) shall evaluate the applicant's file and make a recommendation to the Board to approve or deny the application. The CAC may defer a decision on the applicant's file to a subsequent CAC meeting to provide the applicant opportunity to submit any information requested by written notice by the CAC that the CAC believes is relevant to make a recommendation to the Board. The applicant has 30 days from the date of the Board's letter to respond to the CAC's request for additional information or the Board or its designee may administratively close the file.
- D.** If the Board approves the application, the Board shall notify the applicant in writing and send an authorization to test (ATT) to the National Association of State Boards of Accountancy (NASBA) to permit the applicant to take the specified section or sections of the examination for which the applicant applied. If the Board denies the application, the Board shall send the applicant written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a fair hearing to challenge the denial; and
 3. The time periods for appealing the denial.
- E.** If the applicant does not timely pay to the NASBA the fees owed for the examination section or sections for which the applicant applied, the ATT expires. An applicant that still wishes to take a section or sections of the Uniform CPA Examination shall submit an application for re-examination under subsection (A)(2).
- F.** After an applicant has paid NASBA, NASBA shall issue a notice to schedule (NTS) to the applicant. A NTS enables an applicant to schedule testing at an approved examination center. The NTS is effective on the date of issuance and expires when the applicant sits for all sections listed on the NTS or six months from the date of issuance, whichever occurs first. Upon written request to the Board and showing good cause that prevents the applicant from appearing for the examination, an applicant may be granted by the Board a ~~one testing window~~ 90-day extension to a current NTS.
- G.** The Board shall send the applicant any written notice required by this section in accordance with R4-1-117(E)(1) or (2).

R4-1-229. Conditioned Credit

- A.** An applicant is allowed to sit for each section individually and in any order. An applicant is given conditioned credit for each section of the examination passed. A conditioned credit is valid for 18 months from the date of the examination. Upon written request to the Board and showing good cause, an applicant may be granted by

the Board a 90-day extension to a conditioned credit.

- B.** Transfer of conditioned credit. The Board shall give an applicant credit for all sections of an examination passed in another jurisdiction if the credit has been conditioned. If an applicant transfers conditioned credit from another jurisdiction, the applicant shall pass the remaining sections of the examination within the 18-month period from the date that the first section was passed. An applicant who fails to pass all sections of the Uniform CPA Examination within 18 months shall retake previously passed sections of the Uniform CPA Examination to ensure passage of all sections within an 18-month period.

Article 3 – Certification and Registration

R4-1-341. CPA Certificates; Firm Registration; Reinstatement; Reactivation

- A.** An applicant may apply for a certificate of certified public accountant or for reinstatement of a certificate by submitting:
1. An application fee of \$100; and
 2. For an applicant applying for certification under A.R.S. § 32-721(A) and (B), a completed application including:
 - a. Verification that the applicant passed the Uniform CPA Examination,
 - b. Verification that the applicant meets the education and experience requirements specified in R4-1-343,
 - c. One signed and dated letter of recommendation by a CPA or an individual who has accounting education and experience similar to that of a CPA,
 - d. Proof of a score of at least 90% on the American Institute of Certified Public Accountants (AICPA) examination in professional ethics taken within the two years immediately before the application is submitted,
 - e. Evidence of lawful presence in the United States, and
 - f. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 3. For an applicant applying for certification under A.R.S. § 32-721(A) and (C), a completed application including:
 - a. Verification that the applicant has passed the International Qualification Examination (IQEX),
 - b. License verification from each jurisdiction in which the applicant has ever been issued a certificate as a certified public accountant of which at least one must be an active certification from a jurisdiction with requirements determined by the Board to be substantially equivalent to the requirements in A.R.S. § 32-721(B) or verification that the applicant meets the education and experience requirements specified in R4-1-343,
 - c. Evidence of lawful presence in the United States, and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 4. For an applicant applying for certification under A.R.S. § 32-721(A) and (D) for mutual recognition agreements adopted by the Board a completed application including:
 - a. Verification that the applicant has passed the International Qualification Examination (IQEX),
 - b. License verification from the applicant's country which has a mutual recognition agreement with the National Association of State Boards of Accountancy that has been adopted by the Board,
 - c. Evidence of lawful presence in the United States, and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 5. For an applicant applying for certification under A.R.S. § 32-4302, a completed application including:
 - a. License verification from each jurisdiction in which the applicant holds a license
 - b. Evidence of lawful presence in the United States
 - c. Proof of residency
 - d. Disciplinary history, if applicable

- e. Other information or documents requested by the Board to determine compliance with eligibility requirements.
56. For an applicant applying for reinstatement from cancelled status under A.R.S. § 32-732(B) a completed application including:
- a. CPE that meets the requirements of R4-1-453(C)(8) and (E), and
 - b. Evidence of lawful presence in the United States.
67. For an applicant applying for reinstatement from expired, relinquished, or revoked status under A.R.S. § 32-732(C), a completed application including:
- a. CPE that meets the requirements of R4-1-453(C)(8) and (E),
 - b. Evidence of lawful presence in the United States,
 - c. If not waived by the Board as part of a disciplinary order, evidence from an accredited institution or a college or university that maintains standards comparable to those of an accredited institution that the individual has completed at least one hundred fifty semester hours of education as follows:
 - i. At least 36 semester hours are accounting courses of which at least 30 semester hours are upper level courses.
 - ii. At least 30 semester hours are related courses.
 - d. If prescribed by the Board as part of a disciplinary order, evidence that the individual has retaken and passed the Uniform Certified Public Accountant Examination.
- B.** An applicant may apply for a certified public accountant firm registration or for reinstatement of a registration by submitting:
- 1. For an applicant applying for a new firm under A.R.S. § 32-731, a completed application including:
 - a. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;
 - b. If applicable, peer review results as prescribed by R4-1-454(A); and
 - c. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 - 2. For an applicant applying for reinstatement from cancelled under A.R.S. § 32-732(E) a completed application including:
 - a. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;
 - b. If applicable, peer review results as prescribed by R4-1-454(A); and
 - c. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 - 3. For an applicant applying for reinstatement from expired, relinquished, or revoked status under A.R.S. § 32-732(F) a completed application including:
 - a. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;
 - b. If applicable, peer review results as prescribed by R4-1-454(A);
 - c. If applicable, substantial evidence that the applicant has been completely rehabilitated with respect to the conduct that was the basis of the expiration, relinquishment or revocation of the firm's registration; and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
- C.** Pursuant to Title 41, Chapter 6, Article 7.1, the Board's licensing time frames are as follows:
- 1. Certification/Reinstatement/Reactivation

- a. Administrative Completeness Review Time Frame. The Board shall notify the applicant within 30 days from the receipt of the application that the application is complete.
 - i. If the application is incomplete, an incomplete notice shall specify what information is missing. If the Board issues an incomplete notice, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date the Board receives the missing information from the applicant.
 - ii. The applicant has 30 days from the date of the incomplete notice to respond in writing and provide all the missing information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (A).
- b. Substantive Review Time Frame. The Board has 60 days to complete its substantive review.
 - i. If the Board finds deficiencies during the substantive review of the application, the Board may issue one comprehensive written request to the applicant for additional information. If the Board issues a comprehensive written request, or a supplemental request by mutual agreement, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date the Board receives the additional information from the applicant.
 - ii. The applicant has 30 days from the date of the written request to respond in writing and provide all the additional information or the Board may administratively close. An applicant whose file is administratively closed shall reapply under subsection (A).
- c. Overall Time Frame. The Board has 150 days to issue a written notice to an applicant approving or denying an application.

2. Firm Registration

- a. Administrative Completeness Review Time Frame. The Board shall notify the applicant within 10 days from the receipt of the application that the application is complete.
 - i. If the application is incomplete, an incomplete notice shall specify what information is missing. If the Board issues an incomplete notice, the administrative completeness time frame and the overall time frame are suspended from the date the notice issued until the date the Board receives the missing information from the applicant.
 - ii. The applicant has 30 days from the date of the incomplete notice to respond in writing and provide all the missing information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (B).
- b. Substantive Review Time Frame. The Board has 60 days to complete its substantive review.
 - i. If the Board finds deficiencies during the substantive review of the application, the Board may issue one comprehensive written request to the applicant for additional information. If the Board issues a comprehensive written request, or a supplemental request by mutual agreement, the substantive time frame and the overall time frame are suspended from the date the request is issued until the date the Board receives the additional information from the applicant.
 - ii. The applicant has 30 days from the date of the written request to respond in writing and provide all the additional information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (B).
- c. Overall Time Frame. The Board has 90 days to issue a written notice to an applicant approving or denying an application.

D. If the Board denies an applicant's request under this section, the Board shall send the applicant written notice explaining:

- 1. The reason for denial, with citations to supporting statutes or rules;
- 2. The applicant's right to seek a fair hearing to challenge the denial; and
- 3. The time periods for appealing the denial.

E. The Board shall send the applicant any written notice required by this section in accordance with R4-1-117(E)(1) or (2).

R4-1-346. Notice of Change of Address

Within 30 days of any email, business, mailing, or residential change of address, a registrant shall notify the Board of the new address by filling out the change of address form prescribed by the Board.

Article 4 – Regulation

R4-1-453. Continuing Professional Education

- A. Measurement Standards. The Board shall use the following standards to measure the hours of credit given for CPE programs completed by an individual registrant.
1. CPE credit shall be given in one-fifth or one-half increments for periods of not less than one class hour except as noted in paragraph 8. The computation of CPE credit shall be measured as follows:
 - a. A class hour shall consist of a minimum of 50 continuous minutes of instruction
 - b. A half-class hour shall consist of a minimum of 25 continuous minutes of instruction
 - c. A one-fifth class hour shall consist of a minimum of 10 continuous minutes of instruction.
 2. Courses taken at colleges and universities apply toward the CPE requirement as follows:
 - a. Each semester - system credit hour is worth 15 CPE credit hours,
 - b. Each quarter - system credit hour is worth 10 CPE credit hours, and
 - c. Each noncredit class hour is worth one CPE credit hour.
 3. Each correspondence program hour is worth one CPE credit hour.
 4. Acting as a lecturer or discussion leader in a CPE program, including college courses, may be counted as CPE credit. The Board shall determine the amount of credit on the basis of actual presentation hours, and shall allow CPE credit for preparation time that is less than or equal to the presentation hours. A registrant may only claim as much preparation time as is actually spent for a presentation. Total credit earned under this subsection for service as a lecturer or discussion leader, including preparation time may not exceed 40 credit hours of the renewal period's requirement. Credit is limited to only one presentation of any seminar or course with no credit for repeat teaching of that course.
 5. ~~Writing and publishing articles or books that contribute to the accounting profession~~ The following may be counted for a maximum of 20 hours of CPE credit during each renewal period.
 - a. ~~Credit may be earned for writing accounting material not used in conjunction with a seminar if the material addresses an audience of certified public accountants, is at least 3,000 words in length, and publishing articles or books that contribute to the accounting profession and is published by a recognized third-party publisher of accounting material or a sponsor as long as it is not used in conjunction with a seminar.~~
 - b. ~~For each 3,000 words of original material written, the author may earn two credit hours. Multiple authors may share credit for material written. Credit may be earned for the writing or development of online course curriculum for undergraduate, graduate, or doctoral education that contribute to the accounting profession.~~
 - c. Two credit hours will be given for each 3,000 words of original material written or developed into curriculum. Materials must be at least 3,000 words in length. Multiple authors may share credit for material written or developed into curriculum.
 6. A registrant may earn a combined maximum of 40 hours of CPE credit under subsections (A)(4) and (5) above during each renewal period.
 7. A registrant may earn a maximum of 20 hours of CPE during each renewal period by completing introductory computer-related courses. Computer-related courses may qualify as consulting services pursuant to subsection (C).
 8. A registrant may earn a maximum of 4 hours of CPE during each renewal period by completing nano-learning courses. A nano-learning program is a tutorial program designed to permit a participant to learn a given subject in a ten-minute time-frame through the use of electronic media and without interaction with a real time instructor.
 9. CPE credit shall be given in one-fifth or one-half hour increments if the CPE is a segment of a continuing

series related to a specific subject as long as the segments are connected by an overarching course that is a minimum of one hour and taken within the same CPE reporting period.

10. Credit shall not be allowed for repeat participation in any seminar or course during the registration period.

B. Programs that Qualify. CPE credit may be given for a program that provides a formal course of learning at a professional level and contributes directly to the professional competence of participants.

1. The Board shall accept a CPE course as qualified if it:

- a. Is developed by persons knowledgeable and experienced in the subject matter,
- b. Provides written outlines or full text,
- c. Is administered by an instructor or organization knowledgeable in the program, and
- d. Uses teaching methods consistent with the study program.

2. The Board shall accept a correspondence program which includes online or computer based programs if the sponsors maintain written records of each student's participation and records of the program outline for three years following the conclusion of the program.

3. An ethics program taught or developed by an employer or co-worker of a registrant does not qualify for the ethics requirements of subsection (C)(4).

C. Hour Requirement. As a prerequisite to registration pursuant to A.R.S. § 32-730(C) or to reactivate from inactive status pursuant to A.R.S. § 32-732(A), a registrant shall complete the CPE requirements during the two-year period immediately before registration or application respectively as specified under subsections (C)(1) through (C)(5). For registration periods of less than two years CPE may be prorated by quarter, with the exception of ethics.

1. A registrant whose last registration period was for two years shall complete 80 hours of CPE.

2. A registrant shall complete a minimum of 40 hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 16 hours in the subject areas of accounting, auditing, or taxation.

3. A registrant shall complete a minimum of 16 of the required hours:

- a. In a classroom setting,
- b. Through an interactive live webinar, or
- c. By acting as a lecturer or discussion leader in a CPE program, including college courses

4. A registrant shall complete four hours of CPE in the subject area of ethics. The four hours required by this subsection shall include a minimum of one hour of each of the following subjects:

- a. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants, and
- b. Board statutes and administrative rules.

5. A registrant shall report, at a minimum, the CPE hours required for the registration period.

6. Hours that exceed the number required for the current registration period may not be carried forward to a subsequent registration period.

7. Any CPE hours completed to vacate a suspension for nonregistration or for noncompliance with CPE requirements may not be used to meet CPE requirements for the registration period.

8. As a prerequisite to reactivate from retired status or reinstate from cancelled, expired, relinquished or revoked status, a registrant or an applicant shall complete up to 160 hours of CPE during the four-year period immediately before application to reactivate or reinstate. For periods of less than four years CPE may be prorated by quarter, with the exception of ethics.

a. A registrant or an applicant shall complete a minimum of 80 hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 32 hours in the subject areas of accounting, auditing or taxation.

b. A registrant or an applicant shall complete a minimum of 32 hours of the required hours:

- i. In a classroom setting,
- ii. Through an interactive live webinar, or
- iii. By acting as a lecturer or discussion leader in a CPE program, including college courses.

c. A registrant or an applicant shall complete CPE in the subject area of ethics. Four hours of ethics CPE shall be required if 1 – 24 months have passed since the last registration due date for which CPE was

completed. Eight hours of ethics CPE shall be required if 25 – 48 months have passed since the last registration due date for which CPE was completed. The hours required by this subsection shall include a minimum of one hour of each of the following subjects. The following subjects shall be completed during the two-year period immediately preceding application for reactivation or reinstatement:

- i. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants; and
- ii. Board statutes and administrative rules.

- D. Reporting:** A registrant or an applicant for reactivation or reinstatement, a registrant who is subject to an audit, or a registrant completing their registration must report the following details about their completed CPE:
1. Sponsoring organization,
 2. Number of CPE credit hours,
 3. Title of program or description of content,
 4. Dates attended,
 5. Subject, and
 6. Method.
- E.** In addition to the information required under subsection (D), a registrant or an applicant for reactivation or reinstatement from cancelled, expired, relinquished or revoked status, or a registrant subject to a CPE audit pursuant to subsection (G) shall provide the Board the following CPE records at its request: copies of transcripts, course outlines, and certificates of completion that include registrant’s name, course provider or sponsor, course title, credit hours, and date of completion.
- F. CPE Record Retention:** A registrant shall maintain CPE records for three years from the date the registration was dated as received by the Board the following documents for all CPE completed for the registration period, even if not reported on the registration: transcripts, course outlines, and certificates of completion that include registrant’s name, course provider or sponsor, course title, credit hours, and date of completion.
- G. CPE audits:** The Board, at its discretion, may conduct audits of a registrant’s CPE and require that the registrant provide the CPE records that the registrant is required to maintain under subsection (F) to verify compliance with CPE requirements.
- H.** The Board may grant a full or partial exemption from CPE requirements on demonstration of good cause for a disability for only one registration period.
- I.** A non-resident registrant seeking renewal of a certificate in this state shall be determined to have met the CPE requirements of this rule by meeting the CPE requirements for renewal of a certificate in the jurisdiction in which the registrant’s principal place of business is located.
1. Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the jurisdiction in which the registrant’s principal place of business is located by signing a statement to that effect on the renewal application of this state.
 2. If a non-resident registrant’s principal place of business jurisdiction has no CPE requirements for renewal of a certificate or license, the non-resident registrant must comply with all CPE requirements for renewal of a certificate in this state.

R4-1-454. Peer Review

- A.** Each firm, review team, and member of a review team shall comply with the Standards for Performing and Reporting on Peer Reviews, issued April 2019 and published ~~June 1, 2019~~ June 1, 2020 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, ~~1211 Avenue of the Americas, New York, New York 10036-8775~~ 220 Leigh Farm Road, Durham, North Carolina 27707-8110 (www.aicpa.org), which is incorporated by reference. This incorporation by reference does not include any later amendments or editions. The incorporated material is available for inspection and copying at the Board’s office.
- B.** A firm must allow the sponsoring organization to make the following documents accessible to the Board via the FSBA process:

- a. Peer review report which has been accepted by the sponsoring organization,
 - b. Firm's letter of response accepted by the sponsoring organization, if applicable,
 - c. Completion letter from the sponsoring organization,
 - d. Letter(s) accepting the documents signed by the firm with the understanding that the firm agrees to take any actions required by the sponsoring organization, if applicable, and
 - e. Letter signed by the sponsoring organization notifying the firm that required actions have been appropriately completed, if applicable.
- C. Information discovered solely as a result of a peer review is not grounds for suspension or revocation of a certificate.
- D. Firms that reorganize a current firm, rename a firm, or create a new firm, within which at least one of the prior CPA owners remains an owner or employee, shall remain subject to the provisions of this Section. If a firm is merged, combined, dissolved, or separated, the sponsoring organization shall determine which resultant firm shall be considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

R4-1-455. Professional Conduct and Standards

- A. It is the Board's policy that the rules governing registrants be consistent with the rules governing the accounting profession generally. Except as otherwise set forth in these regulations, registrants shall conform their conduct to the Code of Professional Conduct, published ~~June 1, 2019~~ June 1, 2020 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, ~~1211 Avenue of the Americas, New York, New York 10036-8775~~ 220 Leigh Farm Road, Durham, North Carolina 27707-8110 (www.aicpa.org), available from the AICPA.
- B. The AICPA Code of Professional Conduct, and any interpretations and ethical rulings by the issuing body, shall apply to all registrants, including those who are not members of the AICPA. The version specified above, including any interpretations and ethical rulings in effect shall apply. Any later amendments, additions, interpretations, or ethical rulings shall not apply.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

1. Identification of the rulemaking:

R4-1-104. This rule addresses Arizona State Board of Accountancy (Board) records, public access, and copying fees. It is amended to omit subsection B for two reasons: (1) a rule citation in the subsection (A.A.C. R4-1-105) expired on December 4, 2019 and therefore is antiquated; and (2) subsection B is redundant. A.R.S. §§ 32-749(D) and 39-121, *et seq.* already provide that the records the Board maintains in exercising its statutory duties are public records and are accessible for inspection and copying, barring any confidentiality exceptions.

R4-1-117. This rule addresses procedures, witnesses, and service. Subsection E of the rule permits the Board to accomplish service of any document either through personal service or United States (U.S.) mail. Subsection E is amended to allow service to be accomplished via email as well. This change would allow the Board to streamline communications in some of its processes and in turn help stakeholders conduct business with the Board.

R4-1-226.01. This rule addresses application for the computer-based Uniform CPA Exam (Exam). The only amendment is to subsection F related to notice to schedule (NTS) extension requests. Prior to continuous testing, the Exam was offered during four testing windows as follows: Quarter 1 (January 1 to March 10), Quarter 2 (April 1 to June 10), Quarter 3 (July 1 – September 10) and Quarter 4 (October 1 to December 10). The CPA Exam was not given at the end of each calendar quarter to allow for systems and databank maintenance. As of July 1, 2020, testing windows have been replaced by

continuous testing, allowing candidates to take the Exam year-round, without



restriction, other than waiting to receive scores from prior attempts of the same section. This rule is modified so that the Board may grant an NTS extension request for 90-days in contrast to one-testing window. This conforms the NTS extension request process with the continuous testing format and is fairer and more equitable for applicants.

R4-1-229. An applicant is allowed to sit for each section of the Exam individually and in any order. An applicant is given conditioned credit for each section of the Exam passed, which is valid for 18-months from the date of examination. If the applicant does not pass all four parts of the exam within 18-months, the exam section(s) that were first conditioned will expire and have to be retaken until all four parts have been passed within an 18-month window. Historically, the Board has received requests from applicants to extend their conditional credit, even though the rule does not explicitly speak to extension requests. This rule is amended to codify the ability of the Board to grant a 90-day extension to a conditioned credit.

R4-1-341. Laws 2019, Ch. 55, (HB 2569) (Universal Licensing) made Arizona the first state in the country to recognize occupational licenses for new residents and created a new route for those individuals to become CPAs. This rule currently addresses certification routes such as examination, grade transfer, and reciprocity but does not address Universal Licensing. Amendments to this rule include materials that are to be submitted with a certification application, pursuant to A.R.S. § 32-4302. This change will provide applicants clarity in what documentation should be submitted to the Board when applying for this form of certification.

R4-1-346. This rule currently requires that registrants¹ notify the Board of a business, mailing, or residential change of address within 30-days. The amendment would include email addresses into this requirement. While almost all CPAs provide their email to the Board, there is no requirement

¹ “Registrant” means any certified public accountant or firm that is registered with the Board. (A.R.S. § 32-701(24))

for the email to be updated when changed. As such, the Board cannot rely on email as a reliable way to conduct its business. The use of email to streamline communication timeframes is convenient and cost effective for both the Board and stakeholders, and this amendment will help ensure that the Board maintains a current database of emails.

R4-1-453. This rule outlines continuing professional education (CPE) requirements. It's amended to expand the different types of activities that qualify for CPE credit by allowing credit to be earned for the writing or development of online course curriculum for undergraduate, graduate, or doctoral education that contributes to the accounting profession.

R4-1-454 and R4-1-455. These rules incorporate by reference the peer review standards and the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct. They are amended to update their respective incorporations by reference.

a. The conduct and its frequency of occurrence² that the rule is designed to change:

R4-1-104. Amendments are designed to omit an antiquated and redundant provision from this rule.

R4-1-117 and R4-1-346. Amendments are designed to allow the Board to modernize some of its processes by allowing communications to be sent via email only. Changes to R4-1-346 ensure that the Board can maintain a current database of email addresses.

R4-1-226.01. Amendments are designed to conform the NTS extension request process with the continuous testing format of the Exam, which is fairer and more equitable for applicants.

² A qualitative response is offered in lieu of quantitative data if it is not available or not applicable.

R4-1-229. Amendments are designed to codify the Board's ability to grant a 90-day extension to a conditioned credit.

R4-1-341. Amendments are designed to provide applicants clarity in what documentation should be submitted to the Board when applying for certification via Universal Licensing.

R4-1-453. Amendments are designed to expand the different types of activities that qualify for CPE credit by allowing credit to be earned for the writing or development of online course curriculum for undergraduate, graduate, or doctoral education that contributes to the accounting profession.

R4-1-454 and R4-1-455. Amendments are designed to update incorporations by reference and ensure that registrants are held to up-to-date standards.

- b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

R4-1-104. If the rule is not amended as outlined above, an antiquated provision would remain in this rule, which may cause confusion for the Board, consumers, and registrants.

R4-1-117 and R4-1-346. If the rules are not amended as outlined above, the Board is limited in how it is able to use email to modernize processes and cost-savings related to reduced postage, office supplies, and labor will not be realizable.

R4-1-226.01. If the rule is not amended as outlined above, the Board's NTS extension request process would not provide consistent treatment among exam applicants because the one testing window extension is based on when an applicant's NTS expired.

R4-1-229. If the rule is not amended as outlined above, the Board's ability to grant a 90-day extension to a conditioned credit would not be codified and the Board's current practice to grant extensions for good cause could raise questions under what authority the Board has such authority, and if the Board ceased to grant extensions for good cause then applicants would be harmed.

R4-1-341. If the rule is not amended as outlined above, applicants wishing to apply for certification via Universal Licensing may not be fully aware of materials required, pursuant to A.R.S. § 32-4302.

R4-1-453. If the rule is not amended as outlined above, registrants would be unable to take advantage of an expanded selection of activities that would qualify for CPE credit.

R4-1-454 and R4-1-455. Failure to update the incorporations by reference for the peer review standards and the AICPA's Code of Professional Conduct would create confusion for registrants as they look to the current AICPA publication that is incorporated by reference for the most current standards for guidance. As the CPA profession evolves, standard-setting bodies, through a public comment process, modernize standards to support the ability of regulators to protect the public. Updating the incorporations by reference ensures that registrants are held accountable to the most up-to-date standards and the public is protected.

- c. The estimated change in frequency of the targeted conduct expected from the rule change:

R4-1-104. The removal of this antiquated provision is expected to make this rule more accurate and easier to understand, which benefits the Board and its registrants.

R4-1-117 and R4-1-346. If amended, this change would allow the Board to more easily modernize communications with registrants and applicants in certain processes. This will provide a cost-savings (though difficult to quantify) to the Board and streamline communication timeframes, which benefit both the Board and registrants/applicants.

R4-1-226.01. If amended, this change will conform the NTS extension request process with the continuous testing format of the Exam.

R4-1-229. If amended, this change will codify the Board's ability to grant a 90-day extension to a conditioned credit, which will benefit the Board and applicants.

R4-1-341. If amended, this change will provide applicants clarity on what to submit should they pursue certification via Universal Licensing.

R4-1-453. If amended, registrants would be able to take advantage of an expanded selection of activities that would qualify for CPE credit.

R4-1-454 and R4-1-455. Updating the incorporations by reference for the peer review standards and the AICPA's Code of Professional Conduct will allow the

Board to hold registrants accountable to the most up-to-date standards. This serves as a benefit to the Board and the public it protects.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

Amendments to R4-1-104 are expected to produce a clearer and more concise rule, which will benefit the Board, registrants, and the public.

Amendments to R4-1-117 and R4-1-346 are expected to positively affect the Board, registrants, and applicants by streamlining communications, which will allow processes to be completed more efficiently and allow for cost-savings for postage, office supplies, and labor.

Amendments to R4-1-226.01 will ensure that all exam applicants are treated equitably by granting an equal amount of time for the NTS extension. With continuous testing, the concept of testing windows is antiquated. Further, the process of granting extensions by one testing window created inequities because it was based on when an applicant's NTS expired. For example, if an applicant's NTS expired earlier in the testing window they would benefit more than an applicant whose NTS expired later in the testing window.

Amendments to R4-1-229 are expected to positively affect both the Board and applicants. The Board currently provides conditioned credit extensions and will benefit from having its practice clearly codified in rule. Applicants will benefit from having greater clarity regarding their ability to request a conditioned credit extension based on good cause.

Amendments to R4-1-341 are expected to positively affect applicants as it will provide greater clarity on the materials required to apply for Universal Licensing.

Amendments to R4-1-453 are expected to benefit registrants as they will have greater flexibility in complying with CPE requirements.

Amendments to R4-1-454 and R4-1-455 are expected to affect the Board, consumers, and registrants. The Board will benefit from being able to hold registrants accountable to the most up-to-date versions of the peer review standards and the American Institute of Certified Public Accountants' Code of Professional Conduct, which directly ties to the Board's mission to protect the public. As this update will assist the Board in better fulfilling its mission, the public will also benefit from the more effective protection. Lastly, registrants will be affected by being held accountable to the most up-to-date standards.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Monica L. Petersen, Executive Director
Address: Board of Accountancy, 100 N. 15th Ave., Suite 165, Phoenix, AZ 85007
Telephone: (602) 364-0870
Fax: (602) 364-0903
E-mail: mpetersen@azaccountancy.gov
Website: www.azaccountancy.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

R4-1-104. The Board, registrants, and the public will benefit from a more concise rule that does not contain an antiquated and redundant provision.

R4-1-117 and R4-1-346. The Board, registrants, and applicants would be directly affected by and benefit from the proposed changes. The Board would benefit as it would be able to more

effectively integrate email communications in certain processes, which will streamline communications with and allow Board staff to better assist registrants and applicants. The Board would also benefit from cost-savings for postage, office supplies, and labor.

Registrants and applicants would benefit from streamlined communications with the Board, which will allow for quicker consideration of applications and/or requests. Registrants would be required to notify the Board of a change in email address within 30-days of the change.

R4-1-226.01. Applicants would directly benefit from a NTS extension that treats all applicants the same and that conforms with the continuous testing format of the Exam.

R4-1-229. The proposed amendments would positively affect both the Board and applicants. The Board currently provides conditioned credit extensions and will benefit from having its practice clearly codified in rule. Applicants will benefit from having greater clarity regarding their ability to request a conditioned credit extension based on good cause.

R4-1-341. The proposed changes would positively affect both the Board and applicants. The Board would benefit from its certification rule clearly addressing all roads to certification, including Universal Licensing. Applicants will benefit by having greater clarity on this new path for certification and the materials required to apply via the Universal Licensing pathway.

R4-1-453. Registrants who currently or will in the future participate in the writing or development of online course curriculum for undergraduate, graduate, or doctoral education that contributes to the accounting profession will directly be affected by and benefit from those activities qualifying for CPE credit.

R4-1-454 and R4-1-455. The Board, registrants and the public at large will be directly affected by updating the incorporations by reference for the peer review standards and the AICPA's Code of Professional Conduct. The Board will benefit from being able to hold registrants accountable to up-to-date versions of the peer review standards and the AICPA's Code of Professional Conduct, which directly ties to the Board's mission to protect the public³. As this change will assist the Board in better fulfilling its mission, the public will also benefit from the more effective protection. Registrants will be affected by being held accountable to these up-to-date standards.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only state agency directly affected by this rulemaking. Its effects, including costs and benefits, have been listed in Item 4 above. The Board will not require a new full-time employee to implement and enforce the rulemaking, but there will be some opportunity costs in that human resources will be tasked with the implementation of these rules rather than other Board initiatives.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision is directly affected by this rulemaking.

³ Per A.R.S. § 32-703(A), the primary duty of the Board is to protect the public from unlawful, incompetent, unqualified, or unprofessional CPAs through certification, regulation, and rehabilitation.

c. Costs and benefits to businesses directly affected by the rulemaking:

Businesses that are registered with the Board as CPA firms will be directly affected by the rulemaking. Its effects, including costs and benefits, have been listed in Item 4 above. No other businesses are expected to be affected by this rulemaking.

6. Impact on private and public employment:

The Board expects the rulemaking to have no impact on private or public employment.

7. Impact on small businesses:

a. Identification of the small business subject to the rulemaking:

Similar to Item 5.c, small businesses that are registered with the Board as CPA firms (Small Business CPA Firms) will be directly affected by the rulemaking. Its effects, including costs and benefits, have been listed in Item 4 above.

b. Administrative and other costs required for compliance with the rulemaking:

There are no additional costs required for compliance with the rulemaking.

c. Description of methods that may be used to reduce the impact on small businesses:

None.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

Private persons that are certified with the Board as a CPA or who are applying to become a CPA will be directly affected by the rulemaking. Its effects, including costs and benefits, have been listed in Item 4 above.

The public, which includes consumers, will also be directly affected by the rulemaking. Its effects, including costs and benefits, have been listed in Item 4 above.

9. Probable effects on state revenues:

This rulemaking is not expected to affect state revenues.

10. Less intrusive or less costly alternative methods considered:

The Board believes this is the least costly and least intrusive method for all amendments except for R4-1-346. For R4-1-346, the Board could choose to not include the requirement that registrants notify the Board of a change of email address, while R4-1-117 is amended to allow email to constitute service for some processes. In doing so though, there would be unintended consequences, such as:

1. Efforts to effectively integrate email communications into some processes could be not be reliably implemented.
2. Efforts to make Board processes and procedures more modernized and compatible with telework would be limited.
3. Additionally, the Board's legal framework requires that registrants provide an updated method of communication (e.g. a new address) if said method of communication can be used to provide service. If physical addresses and email addresses can be used to provide service (R4-1-117), but only physical addresses need to be updated (R4-1-346), there would be an inconsistency in the Board's legal framework.

Accordingly, it is felt that though it may not be the least intrusive method, it is helpful to the Board operations and the experience of registrants to make the proposed amendment to R4-1-346.

11. Description of data used:

Not applicable.

MATERIAL INCORPORATED BY REFERENCE

R4-1-454(A) – Standards for Performing and Reporting on Peer Reviews

<https://www.aicpa.org/content/dam/aicpa/research/standards/peerreview/downloadabledocuments/peerreviewstandards.pdf>

R4-1-455(A) – Code of Professional Conduct

<https://pub.aicpa.org/codeofconduct/ethicsresources/et-cod.pdf>

AUTHORIZING AND IMPLEMENTING STATUTES

32-703(B)(7), (8), and (13). Powers and duties; rules; executive director; advisory committees and individuals

B. The board may:

7. Adopt procedures and rules to administer this chapter.
8. Require peer review pursuant to rules adopted by the board on a general and random basis of the professional work of a registrant engaged in the practice of accounting.
13. Adopt and amend rules concerning the definition of terms, the orderly conduct of the board's affairs and the effective administration of this chapter.

Note: This Five Year Review Report was considered at the April 27, 2021 Study Session and May 4, 2021 Council Meeting. At the May 4, 2021 Council Meeting, at the Department's request, the Council voted to table consideration of this report to the May 26, 2021 Study Session and June 1, 2021 Council Meeting.

E-1

DEPARTMENT OF WATER RESOURCES

Title 12, Chapter 15, Department of Water Resources



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 4, 2021 and June 1, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: April 5, 2021

SUBJECT: DEPARTMENT OF WATER RESOURCES (F21-0507)
Title 12, Chapter 15, All Articles, Department of Water Resources

Summary:

This Five Year Review Report (5YRR) from the Department of Water Resources (Department) relates to rules in Title 12, Chapter 15, regarding the Department. The rules address the following:

- Article 1: Fees;
- Article 2: Procedural Rules;
- Article 3: Stockpond and Other Surface Water Rules;
- Article 4: Licensing Time-Frames;
- Article 7: Assured and Adequate Water Supply;
- Article 8: Well Construction and Licensing of Well Drillers;
- Article 9: Water Measurement;
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights;
- Article 11: Inspections and Audits;
- Article 12: Dam Safety Procedures; and
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location.

The Council approved the last 5YRR for these rules in May 2016. In this 5YRR, the Department conducted the analysis required under A.R.S. § 41-1056 separately for each article under review. Therefore, the Department indicates whether it completed the prior course of action proposed for that article in section 10 of each analysis. The following Articles did not have a prior proposed course of action:

- Article 2;
- Article 3;
- Article 9;
- Article 10;
- Article 11; and
- Article 13.

Proposed Action

- Article 1: Fees: **No proposed course of action.**
- Article 2: Procedural Rules: **No proposed course of action.**
- Article 3: Stockpond and Other Surface Water Rules: **No proposed course of action.**
- Article 4: Licensing Time-Frames: **No proposed course of action, however there are incorrect statutory citations in Table A of R12-15-401 as described in the report.**
- Article 7: Assured and Adequate Water Supply: **The Department identifies issues with these rules, but states that as long as the rulemaking moratorium remains in effect, it does not intend to proceed with a rule package unless it receives permission to do so.**
- Article 8: Well Construction and Licensing of Well Drillers: **The Department identifies issues with these rules, but states that as long as the rulemaking moratorium remains in effect, it does not intend to proceed with a rule package unless it receives permission to do so.**
- Article 9: Water Measurement: **No proposed course of action.**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **No proposed course of action.**
- Article 11: Inspections and Audits: **No proposed course of action.**
- Article 12: Dam Safety Procedures: **The Department identifies issues with these rules, but states that as long as the rulemaking moratorium remains in effect, it does not intend to proceed with a rule package unless it receives permission to do so.**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **No proposed course of action.**

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites both general and specific statutory authority for the rules under review.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

After reviewing the economic, small business and consumer impact statements ("EIS") submitted when the rules were adopted, and examining the impact the rules have on the public, the Department states that the actual effect has been approximately the same as predicted in the EIS.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states that the probable benefits of the fee rules outweigh within this state the probable costs of the rules and that the rules impose the least burden and costs on regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

- Article 1: Fees: **No**
- Article 2: Procedural Rules: **No**
- Article 3: Stockpond and Other Surface Water Rules: **No**
- Article 4: Licensing Time-Frames: **No**
- Article 7: Assured and Adequate Water Supply: **No**
- Article 8: Well Construction and Licensing of Well Drillers: **No**
- Article 9: Water Measurement: **No**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **No**
- Article 11: Inspections and Audits: **No**
- Article 12: Dam Safety Procedures: **No**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **No**

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

- Article 1: Fees: **Clear, concise, and understandable**
- Article 2: Procedural Rules: **Clear, concise, and understandable**
- Article 3: Stockpond and Other Surface Water Rules: **Clear, concise, and understandable**
- Article 4: Licensing Time-Frames: **Clear, concise, and understandable**
- Article 7: Assured and Adequate Water Supply: **Clear, concise, and understandable**

- Article 8: Well Construction and Licensing of Well Drillers: **Clear, concise, and understandable, but certain rules require stylistic changes to update language**
- Article 9: Water Measurement: **Clear, concise, and understandable**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **Clear, concise, and understandable**
- Article 11: Inspections and Audits: **Clear, concise, and understandable**
- Article 12: Dam Safety Procedures: **Clear, concise, and understandable**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **Clear, concise, and understandable**

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

- Article 1: Fees: **Consistent with other rules and statutes**
- Article 2: Procedural Rules: **Consistent with other rules and statutes**
- Article 3: Stockpond and Other Surface Water Rules: **Consistent with other rules and statutes**
- Article 4: Licensing Time-Frames: **Consistent with other rules and statutes**
- Article 7: Assured and Adequate Water Supply: **Consistent with other rules and statutes, except for three identified areas as described in the 5YRR**
- Article 8: Well Construction and Licensing of Well Drillers: **Consistent with other rules and statutes**
- Article 9: Water Measurement: **Consistent with other rules and statutes**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **Consistent with other rules and statutes**
- Article 11: Inspections and Audits: **Consistent with other rules and statutes**
- Article 12: Dam Safety Procedures: **Consistent with other rules and statutes**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **Consistent with other rules and statutes**

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

- Article 1: Fees: **Effective in achieving objectives**
- Article 2: Procedural Rules: **Effective in achieving objectives**
- Article 3: Stockpond and Other Surface Water Rules: **Effective in achieving objectives**
- Article 4: Licensing Time-Frames: **Effective in achieving objectives**
- Article 7: Assured and Adequate Water Supply: **Effective in achieving objectives**
- Article 8: Well Construction and Licensing of Well Drillers: **Effective in achieving objectives**
- Article 9: Water Measurement: **Effective in achieving objectives**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **Effective in achieving objectives**

- Article 11: Inspections and Audits: **Effective in achieving objectives**
- Article 12: Dam Safety Procedures: **Effective in achieving objectives**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **Effective in achieving objectives**

8. Has the agency analyzed the current enforcement status of the rules?

- Article 1: Fees: **Enforced without issue**
- Article 2: Procedural Rules: **Enforced without issue**
- Article 3: Stockpond and Other Surface Water Rules: **Enforced without issue**
- Article 4: Licensing Time-Frames: **Enforced without issue**
- Article 7: Assured and Adequate Water Supply: **Enforced without issue**
- Article 8: Well Construction and Licensing of Well Drillers: **Enforced without issue**
- Article 9: Water Measurement: **Enforced without issue**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **Enforced without issue**
- Article 11: Inspections and Audits: **Enforced without issue**
- Article 12: Dam Safety Procedures: **Enforced without issue**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **Enforced without issue**

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

- Article 1: Fees: **No corresponding federal law**
- Article 2: Procedural Rules: **No corresponding federal law**
- Article 3: Stockpond and Other Surface Water Rules: **No corresponding federal law**
- Article 4: Licensing Time-Frames: **No corresponding federal law**
- Article 7: Assured and Adequate Water Supply: **No corresponding federal law**
- Article 8: Well Construction and Licensing of Well Drillers: **No corresponding federal law**
- Article 9: Water Measurement: **No corresponding federal law**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **No corresponding federal law**
- Article 11: Inspections and Audits: **No corresponding federal law**
- Article 12: Dam Safety Procedures: **No corresponding federal law**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **No corresponding federal law**

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

- Article 1: Fees: **Rules do not require a permit or license**
- Article 2: Procedural Rules: **Rules were not adopted or amended after July 29, 2010**
- Article 3: Stockpond and Other Surface Water Rules: **Rule was not adopted or amended after July 29, 2010**
- Article 4: Licensing Time-Frames: **Rule does not require a permit or license**
- Article 7: Assured and Adequate Water Supply: **Rules do not require a permit or license**
- Article 8: Well Construction and Licensing of Well Drillers: **Except for R12-15-806 (amended to conform to fee rules in 2011), the rules were not adopted or amended after July, 29, 2010**
- Article 9: Water Measurement: **Rules were not adopted or amended after July 29, 2010**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **Rules were not adopted or amended after July 29, 2010**
- Article 11: Inspections and Audits: **Rules were not adopted or amended after July 29, 2010**
- Article 12: Dam Safety Procedures: **Rules were not adopted or amended after July 29, 2010, except to conform to fee rules in 2011**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **Rules were not adopted or amended after July 29, 2010**

11. Conclusion

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff notes that while the Department identifies issues with certain rules, it does not propose to take any action in some instances, and in others, does not specify a timeframe. Therefore, while Council staff recommends approval of this report, Council staff recommends that the Council discuss with the Department a specific timeframe within which it can make the changes the Department identifies in the 5YRR.

DOUGLAS A. DUCEY
Governor



THOMAS BUSCHATZKE
Director

ARIZONA DEPARTMENT of WATER RESOURCES

1110 W. Washington, Suite 310
Phoenix, Arizona 85007
602.771.8500
azwater.gov

February 26, 2021

Submitted Electronically to grrc@azdoa.gov

Nicole Sornsins, Chairperson
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 402
Phoenix, AZ 85007

RE: Arizona Department of Water Resources' Five-Year Rule Review Report

Dear Ms. Sornsins:

Submitted with this cover letter is the Department of Water Resources' Five-Year Rule Review Report for its rules in the Arizona Administrative Code, Title 12, Chapter 15, as well as the attachments required by Arizona Administrative Code Rule R1-6-301. The Department reviewed all existing rules and does not intend any rule to expire under A.R.S. § 41-1056(J). Additionally, the Department of Water Resources is in compliance with the substantive policy statement requirements set forth in A.R.S. § 41-1091, as well as additional analysis related to federal law and general permits.

Thank you for your assistance in this matter. If you have any questions, or need additional information, please contact Kelly Brown, ADWR Deputy Counsel, at kbrown@azwater.gov or 602-771-8472.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Buschatzke", is written over a light blue circular background.

Thomas Buschatzke
Director

Encls.: as stated

State of Arizona

DEPARTMENT OF
WATER RESOURCES



Five-Year Rule Review
Report and Appendix
Title 12, Chapter 15
2021

TABLE OF CONTENTS FOR BINDER

	TAB
Five-Year Rule Review Report	A
Department Rules	B
General and Specific Statutes Authorizing the Rule	
Authority for Article 1	C1
Authority for Article 2	C2
Authority for Article 3	C3
Authority for Article 4	C4
Authority for Article 7	C5
Authority for Article 8	C6
Authority for Article 9	C7
Authority for Article 10	C8
Authority for Article 11	C9
Authority for Article 12	C10
Authority for Article 13	C11
Economic, Small Business and Consumer Impact Statements	
EIS for Article 1 – Fee Rule Amendments	D1
EIS for Article 1 – Dam Safety Inspection Fees	D2
EIS for Article 2	D3
EIS for Article 3	D4
EIS for Article 4	D5
EIS for Article 7 – AAWS Amendments	D6
EIS for Article 7 – 2014 Pinal AMA Extinguishment Credits	D7
EIS for Article 7 – 2018 Pinal AMA Extinguishment Credits	D8
EIS for Article 8	D9
EIS for Article 9	D10
EIS for Article 10	D11
EIS for Article 11	D12
EIS for Article 12	D13
EIS for Article 13	D14
EIS for Technical Amendments	D15

TAB A

Five-Year Rule Review Report

TABLE OF CONTENTS FOR 5 YEAR REVIEW REPORT

	Page
Introduction	1
Article 1. Fees R12-15-101 through R12-15-106	1
Article 2. Procedural Rules R12-15-207 and R12-15-224	4
Article 3. Stockpond and Other Surface Water Rules R12-15-303	6
Article 4. Licensing Time-Frames R12-15-401 and Table A	8
Article 5. Reserved	11
Article 6. Reserved	11
Article 7. Assured and Adequate Water Supply R12-15-701 through R12-15-729	11
Article 8. Well Construction and Licensing of Well Drillers R12-15-801 through R12-15-852	17
Article 9. Water Measurement R12-15-901 through R12-15-909	23
Article 10. Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights R12-15-1001 through R12-15-1017	25
Article 11. Inspections and Audits R12-15-1101 through R12-15-1102	28
Article 12. Dam Safety Procedures R12-15-1201 through R12-15-1226	30
Article 13. Well Spacing Requirements; Replacement Wells in Approximately the Same Location R12-15-1301 through R12-15-1308	34

**ARIZONA DEPARTMENT OF
WATER RESOURCES**

5 YEAR REVIEW REPORT

Title 12, Chapter 15

2021

Introduction

In this report, each rule of the Department of Water Resources (“Department”) is examined according to those factors listed in the Governor’s Regulatory Review Council’s (“GRRC”) Rule R1-6-301(A). The rules are grouped by Article so that, in accordance with R1-6-301(B), identical information regarding the rules will only be discussed once.

ARTICLE 1. FEE RULES – R12-15-101 THROUGH R12-15-107

1. Authorization of the rule by existing statutes:

R12-15-101 through R12-15-106 are authorized by A.R.S. § 45-113(A), which broadly allows the director to collect fees “to cover the costs of administrative services and expenses.” A.R.S. § 45-113(B) further authorizes the director to collect fees for “applications, certificates, licenses and permits relating to surface water, groundwater, water exchanges, wells, grandfathered rights, substitution of acres, adequate and assured water supply, groundwater oversupply and lakes and for inspections relating to dam safety.” There is also specific fee authority in the following sections in Title 45, Arizona Revised Statutes:

Authorizing Section	Description
45-133(C)	Application fee for permit for interim water use; bodies of water
45-183(C)	Filing fee for statement of claim
45-273(E)	Fee to file claim of water right in stockpond
45-292(B)	Application fee to transport water out of state
45-467(Q)	Fee for conveyance of flexibility account credit balance
45-476.01(B)	Fee for late applications for certificates of grandfathered rights
45-595(C)	Fee for licenses for well drillers
45-596(L)	Fee for filing of notice of intention to drill
45-599(J)	Fee for application for permit to drill a new well or replacement well in a new location
45-871.01(A)	Permit fees for underground storage facilities, groundwater savings facilities, water storage permits and recovery well permits
45-1041(E)	Fee for water exchange permit
45-1204(B)	Application fee for the construction or enlargement of a dam
45-1603(A)	Weather control and cloud modification license
45-1605(A)	License to sell, lease, offering to sell, licensing, or offering to license equipment and supplies for weather control and cloud modification

Copies of the statutes listed above are located at tab C1 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-101	This rule defines terms that are used in Article 1 to make the rules understandable to the reader, achieve clarity in the rules without needless repetition, and afford consistent interpretation.
R12-15-102	This rule provides that an application filed on or after the effective date of the rule is subject to the applicable fees in R12-15-103 and R12-15-104 and applications pending prior to the effective date of the rule are subject to the fees and costs in effect when the application was filed.
R12-15-103	This rule identifies those types of applications subject to an hourly fee, establishes an initial and maximum fee for applications subject to an hourly fee and establishes billing and payment procedures.
R12-15-104	This rule identifies those types of applications subject to a fixed fee, establishes the fixed fees for those types of applications and requires the applicant to pay any mileage expenses and mailing or publishing costs.
R12-15-105	This rule establishes the fees for dam safety inspections and for the filing of dam safety inspection reports.
R12-15-106	This rule establishes the fee for the capping of an open well by the Department.

3. Are the rules effective in achieving their objectives? Yes X No ___

The Department believes the fee rules are generally effective in achieving the objective of enabling the Department to cover the Department’s expenses in performing the services for which the fees are charged, while allowing individuals, businesses, political subdivisions and other governmental entities to obtain permits, licenses and inspections from the Department at a reasonable cost.

In accordance with Executive Order 2015-01, paragraph 5, the Department evaluated its rules in 2015 to determine whether any of the rules could be amended or repealed to reduce the regulatory burden, administrative delay and legal uncertainty associated with government regulation, while continuing to allow the Department to meet its mission of securing long-term dependable water supplies for Arizona citizens. In the report submitted to the Governor’s Office with the results of the evaluation (2015 Report to the Governor’s Office), the Department recommended the following amendments to its fee rules:

- Lowering the fees charged to the owners of low and very low potential hazard dams for dam safety inspections and for submitting dam safety inspection reports to increase compliance with the dam safety inspection and reporting requirements. It was recommended that the rule establishing those fees, R12-15-105, be amended to lower the fee for a dam safety inspection conducted by the Department from \$1,000.000 to \$250.00 and to lower the fee for submitting a dam safety inspection report from \$750.00 to \$250.00. Rule R12-15-105 was amended to effectuate those fee reductions by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3).
- Repealing R12-15-107, the municipality fee rule, because the statute authorizing the fee, A.R.S. § 45-118, was repealed in 2012. This rule expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3475, effective November 5, 2016 (Supp. 16-4).
- Changing the fees for four applications from an hourly billable rate of \$118 per hour to a fixed fee of \$500. The Department subsequently determined that the fees for those applications should remain an hourly

billable rate of \$118 per hour. For that reason, the Department did not change those fees.

4. **Are the rules consistent with other rules and statutes?** Yes X No

R12-15-101 through R12-15-106 are consistent with statutes or other rules made by the Department and current Department enforcement policy. No comparable federal law applies. As explained in section 3(b) above, R12-15-107 expired in 2016 because the statute authorizing the fee was repealed in 2012.

5. **Are the rules enforced as written?** Yes X No

R12-15-101 through R12-15-106 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes X No

R12-15-101 through R12-15-106 are clear, concise and understandable. The rules provide detailed definitions of terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

The Department has not received written criticisms of R12-15-101 through R12-15-106 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D1 of the Appendix for the economic, small business and consumer impact statements (“EIS”) submitted with R12-15-101 through R12-15-106 in 2011 when the rules were adopted. After reviewing each EIS and examining the impact that R12-15-101 through R12-15-106 actually has had on the public, the Department has concluded that the actual effect has been approximately the same as predicted in the EIS. Please refer to tab D2 of the Appendix for the EIS submitted with the 2017 rule package lowering the fees charged to the owners of low and very low potential hazard dams for dam safety inspections and for submitting dam safety inspection reports. The Department has concluded that the actual effect has been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No X

The Department has not received any analysis from another party that compares the impact of R12-15-101 through R12-15-106 on this state’s business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

In its previous Five-Year Rule Review Report submitted in 2016, the Department described the amendments to its fee rules that it recommended making in its 2015 Report to the Governor’s Office (see section 3 above). The Department stated that it would not make the amendments unless it received permission from the Governor’s Office to do so. The Department received permission from the Governor’s Office to make the rule amendments on February 20, 2017, and the Department then proceeded to make the rule amendments by final rulemaking at 23 A.A.R. 2375,

effective October 10, 2017 (Supp. 17-3). However, the Department did not change the fees for four applications from an hourly billable rate of \$118 per hour to a fixed fee of \$500 as it had recommended in its 2015 Report to the Governor’s Office because the Department subsequently determined that the fees for those applications should remain an hourly billable rate of \$118 per hour.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that the probable benefits of the fee rules outweigh within this state the probable costs of the rules and that the rules impose the least burden and costs on regulated persons, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes No

There is no corresponding federal law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

All of the Department’s fee rules were adopted by final rulemaking after July 29, 2010, and amendments were made in 2017. However, the rules do not require the issuance of a regulatory permit, license or agency authorization. For that reason, none of the rules are subject to A.R.S. § 41-1037.

14. Proposed course of action:

None.

ARTICLE 2. PROCEDURAL RULES

1. Authorization of the rule by existing statutes:

R12-15-207 and R12-15-224 are authorized by A.R.S. § 45-105(B)(1). A copy of this statute is attached at tab C2 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-207	This rule allows the director, upon motion or upon the initiative of the director, to correct clerical mistakes in declarations, orders, rulings, and other parts of the Department’s record, as well as errors in the record resulting from oversight or omission.
R12-15-224	This rule prohibits most <i>ex parte</i> communications between parties and the director, other Department employees or consultants, and authorizes the director to impose sanctions on a party who violates the prohibition.

3. **Are the rules effective in achieving their objectives?** Yes X No

The Department believes that R12-15-207 and R12-15-224 are effective and meet their intended objective of establishing administrative procedures for hearings in two areas not covered by statute or Office of Administrative Hearings (“OAH”) rules.

4. **Are the rules consistent with other rules and statutes?** Yes X No

R12-15-207 and R12-15-224 are consistent with statutes or other rules made by the Department and current Department enforcement policy. No comparable federal law applies. R12-15-207 and R12-15-224 do not conflict with the statutes related to hearings before the OAH or with the rules adopted by OAH because those statutes and rules do not govern corrections of clerical mistakes by the agency, or *ex parte* communications between parties and agency personnel.

Both rules were amended through a rulemaking in 2007 that made technical corrections to a number of the Department’s rules (13 A.A.R. 3022). R12-15-207 and R12-15-224 were amended to remove the references to hearing officers and to make several other non-substantive changes, including updating language, improving grammar and correcting a typographical error. No additional changes have been made to date.

5. **Are the rules enforced as written?** Yes X No

R12-15-207 and R12-15-224 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes X No

R12-15-207 and R12-15-224 are clear, concise and understandable. R12-15-224 provides detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

The Department has not received written criticisms of R12-15-207 and R12-15-224 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D3 of the Appendix for the EIS submitted with R12-15-207 and R12-15-224 and tab D15 of the Appendix for the EIS submitted with the technical amendments in 2007. After reviewing the EIS and examining the impact that R12-15-207 and R12-15-224 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No X

The Department has not received any analysis from another party that compares the impact of R12-15-207 and R12-15-224 on this state's business competitiveness to the competitiveness of businesses in other states.

10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?

The Department’s previous five-year review did not recommend any changes to R12-15-207 and R12-15-224.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that the probable benefits of R12-15-207 and R12-15-224 within the state outweigh the probable costs of the rules and that the rules impose the least burden and costs on regulated persons.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

There is no federal corresponding law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

A.R.S. § 41-1037 does not apply to these rules because the rules were not adopted or amended after July 29, 2010.

14. Proposed course of action:

None.

ARTICLE 3. STOCKPOND AND OTHER SURFACE WATER RULES

1. Authorization of the rule by existing statutes:

R12-15-303 is authorized by A.R.S. § 45-105(B)(1). A copy of this statute is attached at tab C3 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-303	R12-15-303 clarifies the manner in which the Department handles multiple applications filed by the same applicant for water rights to the same water.

3. Are the rules effective in achieving their objectives? Yes X No ___

The Department believes that R12-15-303 is effective and meets its intended objective of avoiding duplicative water rights.

4. Are the rules consistent with other rules and statutes? Yes X No ___

R12-15-303 is consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. Are the rules enforced as written? Yes X No ___

R12-15-303 is being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-303 is clear, concise and understandable. The rule provides detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-303 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D4 of the Appendix for the EIS submitted with R12-15-303. After reviewing the EIS and examining the impact that R12-15-303 has actually had on the public, the Department has concluded that the actual effect has been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-303 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review did not recommend any changes to R12-15-303.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-303 outweigh within this state the probable costs of the rule and that the rule imposes the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to R12-15-303 because the rule was not adopted or amended after July 29, 2010.

14. **Proposed course of action**

None.

ARTICLE 4. LICENSING TIME-FRAMES

1. Authorization of the rule by existing statutes:

R12-15-401, including Table A, are required by A.R.S. § 41-1073. A copy of this statute is attached at tab C4 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-401 and Table A	R12-15-401 establishes timeframes during which the agency will either grant or deny each type of license that it issues. Various types of licenses and their timeframes are listed in an accompanying Table A.

3. Are the rules effective in achieving their objectives? Yes No

The Department believes that R12-15-401 is generally effective in achieving the intended objective of providing the public with a defined time within which the Department will complete licensing tasks.

In its 2015 Report to the Governor’s Office, the Department identified eight LTFs that it believed could be reduced without substantially impacting the mission and goals of the Department’s water resources management. The Department recommended amending Table A of R12-15-401 to reduce those LTFs, to correct citations to the statutory authorities for the permits and licenses described in several LTFs and to remove two LTFs from the table. The Department made those amendments by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3). However, the Department has discovered that a statutory authority cited for the license described in R12-15-401, Table A, No. 5 (Permit to appropriate water for an instream flow) and the statutory authority cited for the license described in Table A, No. 20 (Reversal of substitution of acres irrigated with Central Arizona Project water) remain incorrect. The incorrect statutory citations do not affect the implementation of the LTFs for the two licenses as intended.

Although the Department believes that R12-15-401 is generally effective in achieving its intended objective, as stated in the Department’s previous Five-Year Rules Report submitted in 2016, Table A of R12-15-401 does not include LTFs for several applications and filings for which the Department issues a license. See section 10 below for a list of those applications and filings.

4. Are the rules consistent with other rules and statutes? Yes No

R12-15-401 is consistent with existing statutes or other rules made by the Department and current Department enforcement policy. However, as stated in the Department’s previous Five-Year Rules Report submitted in 2016, Table A of R12-15-401 does not include LTFs for several applications and filings for which the Department issues a license. See section 10 below for a list of those applications and filings.

5. Are the rules enforced as written? Yes No

R12-15-401 is being enforced without issue by the Department.

6. Are the rules clear, concise, and understandable? Yes No

R12-15-401 is clear, concise and understandable. The rule provides a definition of “license,” and explains how the licensing time-frames will be applied.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes _____ No X

The Department has not received written criticisms of R12-15-401 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D5 of the Appendix for the EIS submitted with R12-15-401. No refunds were issued in fiscal years 2016, 2017 and 2018 for non-compliance with licensing timeframes. The Department issued refunds of \$3,000 and \$10,020 in fiscal years 2019 and 2020, respectively. After reviewing the EIS and examining the impact that R12-15-401 has actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes _____ No X

The Department has not received any analysis from another party that compares the impact of R12-15-401 on this state’s business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

In its previous Five-Year Rule Review Report submitted in 2016, the Department stated that it would proceed with making the amendments to Table A of R12-15-401 that it recommended in its 2015 Report to the Governor’s Office (see section 3 above) only if it received permission from the Governor’s Office to do so. The Department received permission from the Governor’s Office to make the rule amendments on February 20, 2017, and the Department then proceeded to make the rule amendments by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3).

In its 2016 Five-Year Rule Review Report, the Department explained that Table A of R12-15-401 does not include LTFs for the following applications and filings for which the Department issues a license, either because the LTFs were inadvertently excluded from the table when R12-15-401 was adopted or because the applications and filings did not exist when the rule was adopted:

- Notice of intent to establish new service area right by a city, town or private water company.
- Final petition to establish new service area right by a city, town or private water company.
- Application for permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547.
- Application for substitution of acres to allow irrigation with Central Arizona Project water in an active management area.
- Application for a physical availability determination.
- Application for assignment of Type A certificate of assured water supply.
- Application for assignment of Type B certificate of assured water supply.
- Application for classification of Type A certificate of assured water supply pursuant to R12-15-707.
- Application for review of revised plat to determine whether changes are material.

- Application for new certificate of assured water supply pursuant to R12-15-704(G).
- Application for letter stating that owner is not required to obtain a certificate of assured water supply pursuant to R12-15-704(M).
- Application for re-issuance of drill card.
- Application for approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right.
- Application for assignment of long-term storage credits.
- Application for extinguishment of grandfathered right for extinguishment credits.
- Application for conveyance of extinguishment credits.
- Application for equipment license for weather control or cloud modification.

The Department stated in its 2016 Five-Year Rule Review Report that because the rulemaking moratorium remained in effect, it did not intend to amend Table A of R12-15-401 to add LTFs for the 17 applications and filings unless it received permission from the Governor's Office to do so. In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including adding LTFs for the 17 applications and filings. The Department received permission to proceed with the rule amendments recommended in the Department's 2015 Report to the Governor's Office, but it did not receive permission to make the other rule amendments recommended in its 2016 Five-Year Rule Review Report. For that reason, the Department did not amend Table A of R12-15-401 to add LTFs for the 17 applications and filings mentioned above.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-401 outweigh within this state the probable costs of the rule, and that the rule imposes the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Although amendments were made to R12-15-401 in 2017, the rules do not require the issuance of a regulatory permit, license or agency authorization. For that reason, A.R.S. § 41-1037 does not apply to R12-15-401.

14. **Proposed course of action:**

As explained in section 10 above, Table A of R12-15-401 does not include LTFs for 17 applications and filings for which the Department issues a license, either because the LTFs were inadvertently excluded from the table when R12-15-401 was adopted or because the applications and filings did not exist when the rule was adopted. In October

2016, the Department met with the Governor’s Office to discuss requesting permission to make the rule amendments recommended by the Department in its 2016 Five-Year Rule Review Report, including adding LTFs for the 17 applications and filings. Although the Department received permission to proceed with the rule amendments that were recommended by the Department in its 2015 Report to the Governor’s Office, it did not receive permission to amend Table A of R12-15-401 to add LTFs for the 17 applications and filings. Because the rulemaking moratorium remains in effect, the Department does not intend to proceed with a rule package to add LTFs for the 17 applications and licenses unless it receives permission from the Governor’s Office to do so.

The Department has discovered that the statutory authorities cited for two licenses in Table A of R12-15-401 are incorrect (see section 3 above). These incorrect statutory citations do not affect the implementation of the LTFs for the two licenses as intended. For that reason, the Department does not intend to correct these statutory citations until it amends Table A of R12-15-401 for other reasons.

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

1. Authorization of the rule by existing statutes:

R12-15-701 through R12-15-729 are authorized by A.R.S. §§ 45-105(B)(1) and 45-576(H). Copies of these statutes are attached at tab C5 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-701	This rule defines terms used in Article 7.
R12-15-702	This rule sets forth the process for filing an application for a physical availability determination with the Department and establishes the criteria under which the director will issue a physical availability determination to an applicant.
R12-15-703	This rule sets forth the requirements needed to apply for and receive an analysis of assured water supply.
R12-15-704	This rule sets forth the requirements for applying and for receiving a certificate of assured water supply (“certificate”). Among these requirements, the rule sets forth the information the applicant must submit to prove ownership of the land. The rule also identifies conditions under which a new owner is not required to obtain a new certificate.
R12-15-705	This rule provides for the assignment of a Type A certificate of assured water supply to a new owner of a subdivision.
R12-15-706	This rule provides for the assignment of a Type B certificate of assured water supply to a new owner of a subdivision. This rule also allows the applicants for an assignment of a Type B certificate to request that the certificate be re-classified as a Type A certificate, provided that the certificate meets the requirements of R12-15-704(H)(1).
R12-15-707	This rule provides a process allowing for the holder of a Type B certificate or a certificate that was issued prior to September 12, 2006, to reclassify that certificate as a Type A certificate of assured water supply.

R12-15-708	This rule provides that if material changes are made to the plat originally submitted with a certificate or water report application, the Department’s determination of an assured or adequate water supply will not apply to the revised plat. The rule establishes criteria for determining whether changes to a plat are material and whether the owner must seek a new determination of assured or adequate water supply.
R12-15-709	This rule establishes the procedure by which the director may revoke a certificate if an assured water supply does not exist.
R12-15-710	This rule sets forth the requirements for applying for and receiving a designation of assured water supply.
R12-15-711	This rule sets forth the annual reporting requirements for providers designated as having an assured water supply; requires the director to review a designation at least every 15 years; allows the director to modify a designation for good cause; and establishes the procedures by which the director may revoke a designation of assured water supply.
R12-15-712	This rule sets forth the requirements for applying for and receiving an analysis of adequate water supply. This rule is substantially similar to R12-15-703, but does not include requirements related to consistency with the management plan and consistency with the management goal, which are specific to AMAs and do not apply to determinations of adequate water supply.
R12-15-713	This rule sets forth the requirements for applying for and receiving a water report.
R12-15-714	This rule sets forth the requirements for applying for and receiving a designation of adequate water supply. This rule is substantially similar to R12-15-710, but does not include requirements related to consistency with the management plan and consistency with the management goal, which are specific to AMAs and do not apply to determinations of adequate water supply.
R12-15-715	This rule sets forth annual reporting requirements for providers designated as having an adequate water supply; requires the director to review a designation every 15 years; allows the director to modify a designation for good cause; and establishes the procedures by which the director may revoke a designation of adequate water supply.
R12-15-716	This rule sets forth the criteria for demonstrating that a water supply is physically available for at least 100 years.
R12-15-717	This rule sets forth the criteria for demonstrating that a water supply is continuously available for at least 100 years.
R12-15-718	This rule sets forth the criteria for demonstrating that a water supply is legally available for at least 100 years.
R12-15-719	This rule sets forth the criteria for demonstrating that the water supply will be of adequate quality.
R12-15-720	This rule sets forth the criteria for demonstrating that the applicant has the financial capability to construct adequate delivery, storage and treatment works.
R12-15-721	This rule sets forth the criteria for demonstrating that groundwater use associated with a certificate or designation of assured water supply is consistent with the management plan of the AMA in which the development or service area is located.
R12-15-722	This rule sets forth the criteria for demonstrating that groundwater use associated with a certificate or designation of assured water supply is consistent with the management goal of the AMA in which the development or service area is located. This rule was amended by a formal rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4) to limit, for certificates, the volume of groundwater use that can be made consistent with the management goal with the use of extinguishment credits created on or after January 1, 2019. This rule was published incorrectly in the Administrative Register after the rule amendment became effective and was subsequently corrected in 13 A.A.R. 1394 (Supp. 19-2).
R12-15-723	This rule sets forth the procedure by which the owner of a grandfathered right may extinguish that right in exchange for extinguishment credits that can be used by an applicant for a certificate or

	designation of assured water supply to make a volume of groundwater pumping consistent with the management goal. The rule also sets forth the procedure by which the credits may be pledged to a certificate or designation of assured water supply or conveyed to another person. In 2011, the rule was amended to add a provision allowing an irrigation grandfathered right (“IGFR”) that was extinguished in 2005, 2006 or 2007 to be restored if certain conditions were met, including that an application to restore the IGFR was filed by December 31, 2015. Because the deadline for filing an application to restore an extinguished IGFR has expired, this provision is no longer being enforced. This rule was amended to allow extinguishment credits to be created in the Pinal AMA in any subsequent year. by a final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).
R12-15-724	This rule sets forth the method for calculating the groundwater allowance for a certificate or designation of assured water supply in the Phoenix AMA and for calculating extinguishment credits in that AMA.
R12-15-725	This rule sets forth the method for calculating the groundwater allowance for a certificate or designation of assured water supply in the Pinal AMA. Prior December 3, 2013, this rule also contained criteria for calculating the amount of extinguishment credits a person would receive for extinguishing a grandfathered right in the Pinal AMA, including a table of annual allocation factors to be used to calculate the amount of the extinguishment credits. Under this rule, the first reduction in the allocation factor was to occur in 2010. Through a rulemaking that became effective on December 3, 2013, the rule was amended to remove the criteria for calculating extinguishment credits and two new rules were adopted containing the criteria – R12-15-725.01, which would be effective until September 15, 2014, and R12-15-725.02, which would be effective beginning September 15, 2014 (19 A.A.R. 4174). Under R12-15-725.01, the first reduction in the allocation factor for calculating extinguishment credits was delayed until 2019, while under R12-15-725.02, the first reduction would occur on September 15, 2014. In a rulemaking that became effective on September 12, 2014, R12-15-725.01 became permanent and R12-15-725.02 was repealed (20 A.A.R. 2673). This rule was amended in 2019 to eliminate the groundwater allowance for certificate applications filed in the Pinal AMA on or after January 1, 2019 and to create a new method for calculating groundwater allowance for designation applications filed on or after January 1, 2019. by a final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4)
R12-15-726	This rule sets forth the method for calculating extinguishment credits and groundwater allowance for a certificate or designation of assured water supply in the Prescott AMA.
R12-15-727	This rule sets forth the method for calculating extinguishment credits and groundwater allowance for a certificate or designation of assured water supply in the Tucson AMA.
R12-15-728	Reserved
R12-15-729	This rule codifies Ariz. Sess. Laws 1997, Ch. 287 § 52, as amended by Laws 1999, Ch. 295, § 50. Specifically, this rule provides that the use of remedial groundwater by a municipal provider in an AMA before January 1, 2025 is consistent with the AMA’s management goal if certain conditions are met.

3. Are the rules effective in achieving their objectives? Yes X No

The Department believes that R12-15-701 through R12-15-729 are generally effective and meet their objectives of establishing the rules by which the Department’s Assured and Adequate Water Supply (“AAWS”) program operates. The objectives of the rules are to provide detailed regulations to implement the assured water supply program established by A.R.S. § 45-576 for active management areas (“AMA”) and the adequate water supply program established by A.R.S. § 45-108 for areas outside of AMAs. A.R.S. § 45-576 is designed to help ensure that new subdivisions in AMAs have a 100-year stable water supply consistent with the AMA’s management plan and management goal. A.R.S. § 45-108 is designed to ensure that in areas outside of AMAs, new subdivisions have a

100-year stable water supply within jurisdictions that have adopted a mandatory water adequacy requirement and that the Department determine and report the adequacy of the water supplies for new subdivisions in all other areas.

Additionally, the rulemaking that became effective on January 1, 2019 modified the method for calculating the extinguishment credits in the Pinal Active Management Area (AMA), limited the amount of groundwater that may be made consistent with the Pinal AMA management goal with the use of extinguishment credits for new certificates of assured water supply in the AMA, and eliminated the groundwater allowance for new certificates of AWS in the AMA.

4. **Are the rules consistent with other rules and statutes?** Yes X No

Significant efforts were made in drafting these rules to ensure that the rules are consistent with rules and policies administered by the Arizona Corporation Commission, the Arizona Department of Environmental Quality, the Arizona Department of Real Estate, the State Land Department, and the various platting entities in the state (*see references in these rules to A.R.S. §§ 9-463.01(C)(8), 11-823(B), 32-2101 and 40-281; Title 48, Chapters 22, 27 and 28; and Title 49, Chapter 2*). The rules are also consistent with federal statutes and rules, to the extent such provisions are applicable (*see reference in these rules to 42 U.S.C. § 9601 et seq.*). In addition, the rules are generally consistent with the state statutes or other rules made by the Department governing the AAWS program and current Department enforcement policy.

The only areas where the Department has not adopted rules contemplated by state statutes are the following:

- The definition of “assured water supply” in A.R.S. § 45-576(J) requires, among other things, that any groundwater use be consistent with the management goal of the AMA. The Santa Cruz AMA was established as an AMA in 1994. The AAWS rules currently do not include criteria for demonstrating that groundwater use in the Santa Cruz AMA is consistent with the AMA’s management goal. Although the Department worked with stakeholders on drafting rules to establish the criteria in 2007, the Department put that rule package on hold to comply with the rulemaking moratorium. The Department does not intend to proceed with this rulemaking package unless it receives permission from the Governor’s Office to do so.
- In 2006, A.R.S. § 45-576(H) was amended to provide that on or before January 1, 2008, the AAWS rules shall provide for a reduction in water demand for an application for a designation of assured water supply or a certificate of assured water supply if a gray water reuse system is to be installed. In 2007, the Department began working on a rule package that included an amendment of the AAWS rules to provide for a reduction in water demand if a gray water system will be used in a subdivision. The Department put that rule package on hold to comply with the rulemaking moratorium. The Department does not intend to proceed with this rulemaking unless it receives permission from the Governor’s Office to do so. However, in practice, the Department does allow any application for a designation or certificate of assured water supply to reduce demand if a gray water system will be used.
- In 2007 the Arizona Legislature enacted SB 1575 (Laws 2007, Ch. 240) in response to recommendations from the Statewide Water Advisory Group (“SWAG”). SB 1575 authorizes cities, towns and counties outside of AMAs to adopt regulations requiring developers of new subdivisions within their jurisdiction to demonstrate a 100-year adequate water supply in order to receive plat approval and a public report. Section 10(B) of SB 1575 provides that the director shall amend the AAWS rules to include criteria for making determinations pursuant to A.R.S. § 45-108.03, which allows the director to grant an exemption from the adequate water supply requirements under certain circumstances, and criteria for demonstrating a physically available 100-

year supply of groundwater in specific aquifer systems and basins outside of AMAs. The Department published a Notice of Proposed Rulemaking for those amendments on December 19, 2008 and held an oral proceeding. However, prior to submitting the rules to GRRC, the Department put the rule package on hold to comply with the rulemaking moratorium. The Department does not intend to proceed with these amendments unless it receives permission from the Governor's Office to do so.

In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including the amendments to its AAWS rules that are contemplated by state statutes as described above. Although the Department received permission to proceed with some of the rule amendments recommended in its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with the amendments to its AAWS rules. If the Department were to receive permission from the Governor's Office to proceed with the rule amendments, and if the rule amendments were made, the AAWS rules would be consistent with state statutes.

5. **Are the rules enforced as written?** Yes No

R12-15-701 through R12-15-729 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-701 through R12-15-729 are among the Department's most technical regulations and are therefore longer and more complex than most of its other rules. The AAWS program requires an applicant to demonstrate the physical, continuous and legal availability of water for 100 years. These requirements involve potentially complex legal elements for each type of water right as well as technical hydrological elements. Furthermore, the assured water supply requirement that groundwater use be consistent with the management goal of the AMA involves separate requirements for each AMA, depending on the management goal and the water resources in each AMA. Thus, the rules for the AAWS programs are inevitably detailed, long and complex. Despite this complexity, the Department believes that the rules are clear, concise, and understandable given their subject matter.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of the rules within the last five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D6 of the Appendix for the EIS submitted in 2006 when the AAWS rules were substantially amended. After reviewing the EIS and examining the impact that R12-15-701 through R12-15-729 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

Also refer to tab D7 of the Appendix for the EIS submitted with the 2014 rulemaking that made R12-15-725.01 permanent and repealed R12-15-725.02. As explained in section 2 above, this rulemaking delayed the first reduction in the allocation factor used to calculate extinguishment credits in the Pinal AMA from 2014 to 2019. The

Department has concluded that the actual effects of this rulemaking have been approximately the same as predicated in the EIS.

Also refer to tab D8 of the Appendix for the EIS submitted with the rulemaking that became effective on January 1, 2019. The Department has concluded that the actual effects of this rulemaking have been approximately the same as predicated in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes _____ No X _____

The Department has not received any analysis from another party that compares the impact of R12-15-701 through R12-15-729 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's 2016 Five-Year Rule Review Report identified the three areas where the Department has not adopted rules contemplated by state statutes. Those three areas are the following: (1) rules establishing criteria for demonstrating that groundwater use by an applicant for an assured water supply determination in the Santa Cruz AMA is consistent with the AMA's management goal; (2) rules providing for a reduction in demand for an application for a certificate or designation of assured water supply if a gray water reuse system will be installed; and (3) rules establishing criteria for determining whether to grant an exemption from the adequate water supply requirements under A.R.S. § 45-108.03 and criteria for demonstrating a physically available supply of groundwater in specific aquifer systems and basins outside of AMAs.

In its 2016 Five-Year Rule Review Report, the Department stated that because of the rulemaking moratorium, it would not proceed with amending its AAWS rules as contemplated by the state statutes unless it received permission from the Governor's Office to do so. In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including the amendments to its AAWS rules that are contemplated by state statutes. Although the Department received permission to proceed with some of the rule amendments recommended in its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with the amendments to its AAWS rules. For that reason, the Department did not proceed with the amendments.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that, with the changes proposed in this report, the probable benefits of R12-15-701 through R12-15-729 outweigh within this state the probable costs of the rules, and that the rules will impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes _____ No X _____

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency**

authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

In 2011 the Department amended R12-15-723 to add a provision allowing certain extinguished irrigation grandfathered rights to be restored. The deadline for applying for the restoration has expired and therefore the provision does not currently require the issuance of a regulatory permit, license, or agency authorization.

Also in 2011, the Department made amendments to conform several of the rules in article 7 to the Department's new fee rules. These amendments do not require the issuance of a regulatory permit, license, or agency authorization.

In 2019, the Department made amendments to R12-15-722, R12-15-723, and R12-15-725. R12-15-722 was amended to limit the volume of groundwater that can be made consistent with the management goal using extinguishment credits created after January 1, 2019 in the Pinal Active Management Area. R12-15-725 was amended to include a new methodology for calculating extinguishment credits in the Pinal Active Management Area. R12-15-723 was amended to make a conforming change to be consistent with the new extinguishment credit calculation contained in R12-15-725. None of these amendments require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action:

As mentioned in section 10 above, the Department has not adopted AAWS rules contemplated by state statutes in the following three areas: (1) rules establishing criteria for demonstrating that groundwater use by an applicant for an assured water supply determination in the Santa Cruz AMA is consistent with the AMA's management goal; (2) rules providing for a reduction in demand for an application for a certificate or designation of assured water supply if a gray water reuse system will be installed; and (3) rules establishing criteria for determining whether to grant an exemption from the adequate water supply requirements under A.R.S. § 45-108.03 and criteria for demonstrating a physically available supply of groundwater in specific aquifer systems and basins outside of AMAs.

In October 2016, the Department met with the Governor's Office to discuss requesting permission to make the rule amendments recommended by the Department in its 2016 Five-Year Rule Review Report, including the amendments to its AAWS rules that are contemplated by state statutes. Although the Department received permission to proceed with some of the rule amendments recommended in its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with the amendments to the AAWS rules. Because the rulemaking moratorium remains in effect, the Department does not intend to proceed with a rule package to amend the AAWS rules unless it receives permission to do so.

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS – R12-15-801 THROUGH R12-15-852

1. Authorization of the rule by existing statutes:

R12-15-801 through R12-15-852 are authorized generally by A.R.S. § 45-105(B)(1), which authorizes the director to adopt rules as necessary to carry out the purposes of title 45, Arizona Revised Statutes. In addition, A.R.S. § 45-594(A) provides the director "shall adopt rules establishing construction standards for new wells and replacement wells, the deepening and abandonment of existing wells and the capping of open wells." A.R.S. § 45-591.01 provides the director may by rule or regulation "exempt exploration wells from any requirement of this article that the director determines is not necessary for the protection of groundwater."

A.R.S § 45-605(E) requires the director to adopt rules requiring review of notices and applications regarding new or replacement wells to identify whether a well will be located where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination by the well. The rules must require that a new or replacement well in such a location be designed and constructed in a manner to prevent vertical cross-contamination within an aquifer.

Finally, A.R.S. § 45-595(C) requires the director to establish by rule qualifications and a reasonable fee of not more than fifty dollars for licenses for well drillers and to establish procedures for the evaluation and licensing of all applicants. Copies of these statutes are attached at tab C6 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-801	This rule defines terms used in Article 8.
R12-15-802	This rule defines the scope of Article 8 by describing the man-made openings in the earth that are subject to this Article.
R12-15-803	This rule requires persons other than single well licensees or well drilling contractor employees to obtain a drilling license from the Department before engaging in well drilling or abandonment and requires that persons comply with the well drilling standards in Article 8 when drilling or abandoning a well.
R12-15-804	This rule prescribes the contents of well drilling license applications and prescribes character, reputation and experience requirements for a license.
R12-15-805	This rule requires the director to offer an examination for a well drilling license at least six times per year to test applicant's general and specific knowledge of well drilling, and sets forth examination standards.
R12-15-806	This rule prescribes the fee for a well driller's license, and the expiration date, renewal conditions, display conditions, and license attributes of a well driller's license.
R12-15-807	This rule sets forth the information to be submitted by a single well license applicant; requires the director to offer an examination for single well licenses at least six times yearly; and sets forth the examination standards and license attributes.
R12-15-808	This rule allows the director to revoke or suspend any well driller's license, or place on probationary status any well drilling or single well drilling license holder, for good cause, including violation of any applicable well construction statute or rule.
R12-15-809	This rule requires that a notice of intention to drill a well be signed by the owner or lessee of the property upon which the well will be drilled.
R12-15-810	This rule requires as a pre-condition of drilling a well that a well drilling contractor or licensee have possession of a drilling card issued by the director or follow the emergency authorization procedures defined in the rule.
R12-15-811	This rule sets forth minimum construction standards for wells, including requirements for installing a well casing, surface seal and access port in most wells. The rule also sets forth requirements for gravel packed wells; requirements for vents; a requirement to protect the aquifer from contamination by drilling materials; requirements for monitor wells; and requirements for wells constructed below the land surface.
R12-15-812	This rule prescribes additional construction standards for artesian wells and wells located in areas with mineralized or polluted water
R12-15-813	This rule requires that wells left unattended during drilling be covered to prevent contamination.
R12-15-814	This rule requires that wells to be used for human consumption or culinary purposes be

	disinfected according to Arizona Department of Health Services standards before the drill rig is removed.
R12-15-815	This rule prohibits removal of a drill rig from the well site unless the well is properly abandoned or constructed in conformance with Article 8 and either sealed with a cap or equipped with a pump.
R12-15-816	This rule requires that the Department receive notice before and after a well is abandoned, prohibits a well drilling contractor or single well license from abandoning a well without an abandonment authorization card from the director, except for the abandonment of a well in the course of drilling the well, and prescribes abandonment construction standards.
R12-15-817	This rule requires notification to the Department prior to exploration well drilling, prescribes construction and abandonment standards for exploration wells, and requires a completion report for exploration wells.
R12-15-818	This rule is designed to prevent contamination of wells by prohibiting the drilling of wells, except monitor wells and piezometer wells, within 100 feet of any septic tank system, sewage disposal area, landfill, hazardous waste facility, hazardous materials storage area or petroleum storage area unless authorized in writing by the director.
R12-15-819	This rule prohibits, except as authorized by the Arizona Department of Environmental Quality, the use of wells for storage or disposal of sewage, toxic industrial waste, or other materials that may pollute groundwater.
R12-15-820	This rule allows the director to grant variances from Article 8 provisions and sets forth the conditions for granting a variance.
R12-15-821	This rule allows the director to set more stringent well construction requirements than those set forth in Article 8 if it is determined that the standards in Article 8 would not adequately protect the aquifer or other water users.
R12-15-822	This rule requires that the owner of an open well either install a cap on the well or abandon the well and prescribes the standards and reporting requirements for well capping.
R12-15-823	Reserved
R12-15-824	Reserved
R12-15-825	Reserved
R12-15-826	Reserved
R12-15-827	Reserved
R12-15-828	Reserved
R12-15-829	Reserved
R12-15-830	Reserved
R12-15-831	Reserved
R12-15-832	Reserved
R12-15-833	Reserved
R12-15-834	Reserved
R12-15-835	Reserved
R12-15-836	Reserved

R12-15-837	Reserved
R12-15-838	Reserved
R12-15-839	Reserved
R12-15-840	Reserved
R12-15-841	Reserved
R12-15-842	Reserved
R12-15-843	Reserved
R12-15-844	Reserved
R12-15-845	Reserved
R12-15-846	Reserved
R12-15-847	Reserved
R12-15-848	Reserved
R12-15-849	Reserved
R12-15-850	This rule: (1) requires the Department to determine whether a proposed well will be located in a groundwater basin or sub-basin in which there is a Water Quality Assurance Revolving Fund (“WQARF”) site, and if so, requires the Department to notify the person proposing to drill the well of the location of the site and of the requirement to notify the Department in advance of the date the well will be drilled; and (2) requires the Department to determine whether a proposed well will be located in an area where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination of groundwater and, if so, authorizes the director to establish site-specific construction requirements.
R12-15-851	This rule requires a well owner to give the Department notice when drilling will commence if the well will be drilled in a groundwater basin or sub-basin in which there is a WQARF site.
R12-15-852	This rule requires the director to give well owners within community involvement areas or other areas selected for inspection at least 30 days’ notice and an opportunity to comment before an inspection for vertical cross-contamination of groundwater.

3. **Are the rules effective in achieving their objectives?** Yes X No

The Department believes that R12-15-801 through R12-15-852 are effective and meet the objectives for which they are designed. The well construction and licensing rules in R12-15-801 through R12-15-822 have allowed the Department to monitor and control the construction, deepening, modification and abandonment of wells so as to preserve more and better-quality groundwater than otherwise might have been preserved. The well capping requirement has protected groundwater from contamination and protected the public from the dangers of open wells. The vertical cross contamination rules, R12-15-850 through R12-15-852, have been effective in the determination of potential vertical cross-contamination of wells, and in the notification of applicants and well owners.

R12-15-801 through R12-15-852 allow the Department to monitor and control the construction and abandonment of wells in Arizona, and to do so in a manner that protects the public’s interests, including health and safety. The rules create standards for the location, construction and abandonment of wells and standards for the licensing of well drillers. These rules require the capping or abandonment of open wells and provide standards for well capping. The

rules also establish a procedure so that the Department can determine whether a proposed well will be drilled within a groundwater basin or sub-basin where a Water Quality Assurance Revolving Fund (“WQARF”) site is located and if so, notify the applicant of that fact.

4. **Are the rules consistent with other rules and statutes?** Yes No

R12-15-801 through R12-15-852 are consistent with existing statutes or other rules made by the Department and the current Department enforcement policy.

5. **Are the rules enforced as written?** Yes No

R12-15-801 through R12-15-852 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-801 through R12-15-852 are generally clear, concise and understandable. The rules provide detailed definitions of technical terms and most citations and cross-references are correct. However, the Department recognizes that these rules are older (originally adopted in 1984), and several rules require stylistic changes to update the rule language. Those changes will be incorporated on a rule by rule basis as substantive changes to each rule are made.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-801 through R12-15-852 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D9 of the Appendix for the EIS submitted with R12-15-801 through R12-15-822 and the EIS for R12-15-850, R12-15-851 and R12-15-852 and tab D15 for the EIS submitted with technical amendments adopted in 2007.

In fiscal year 2016, the Department received 3 applications for well drilling licenses, 195 applications for reissuance or renewal of well drilling licenses and 1 application for single well licenses. In fiscal year 2017, the Department received 4 applications for well drilling licenses, 249 applications for reissuance or renewal of well drilling licenses and 0 applications for single well licenses. In fiscal year 2018, the Department received 2 applications for well drilling licenses, 206 applications for reissuance or renewal of well drilling licenses and 0 applications for single well licenses. In fiscal year 2019, the Department received 3 applications for well drilling licenses, 250 applications for reissuance or renewal of well drilling licenses and 0 applications for single well licenses. After reviewing each EIS and examining the impact that R12-15-801 through R12-15-852 have actually had on the public, the Department has concluded that the actual effect has been approximately the same as predicted in each EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-801 through

R12-15-852 on this state's business competitiveness to the competitiveness of businesses in other states.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

In its 2016 Five-Year Rule Review Report, the Department stated that if it were to receive permission from the Governor's Office to proceed with a rule package of technical rule corrections, it would include in the rule package the following technical corrections to two of the Department's well construction rules: (1) revisions to R12-15-811(A)(3) and (4) to update the references to the American Society for Testing and Materials standard specifications; and (2) revisions to R12-15-814 to update the references to Arizona Department of Health Services engineering bulletins. In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including a rule package of technical rule corrections. Although the Department received permission to proceed with some of the rule amendments recommended its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with a rule package of technical rule corrections. For that reason, the Department did not proceed with the technical corrections to the two well construction rules described above.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that the probable benefits of R12-15-801 through R12-15-852 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. Are the rules more stringent than corresponding federal laws? Yes _____ No X _____

There is no federal corresponding law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Except for amendments in 2011 to conform R12-15-806 to the 2011 Fee Rules, none of the rules were adopted or amended after July 29, 2010. Therefore, A.R.S. § 41-1037 does not apply to these rules.

14. Proposed course of action:

As mentioned in section 10 above, the Department stated in its 2016 Five-Year Rule Review Report that if it received permission from the Governor's Office to proceed with a rule package of technical rule corrections, it would include in the package technical corrections to two of the Department's well construction rules. In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including a rule package of technical rule corrections. Although the Department received permission to proceed with some of the rule amendments recommended its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with a rule package of technical rule corrections. Because the rule moratorium remains in effect, the Department will not proceed with making the technical corrections to the two well construction rules described in section 10 above unless it receives

permission from the Governor’s Office to proceed with a package of technical rule corrections.

ARTICLE 9. WATER MEASUREMENT – R12-15-901 THROUGH R12-15-909

1. Authorization of the rule by existing statutes:

R12-15-901 through R-12-15-909 are authorized by A.R.S. § 45-105(B)(1) and 45-604(E). Copies of these statutes are attached at tab C7 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-901	This rule defines terms used in Article 9.
R12-15-902	This rule requires persons responsible for using water measuring devices to use only those devices that are approved by the director. This rule also sets forth standards for the number of measuring devices that must be used and the locations where the devices must be installed.
R12-15-903	This rule sets forth the standards for an approved measuring device, requires that approved measuring devices be used with measuring methods approved by the director, and lists those measuring methods that are approved.
R12-15-904	This rule requires persons responsible for using water measuring devices to file an annual report with the director and lists information that must be included in that report to allow the Department to verify whether the requirements of Article 9 have been met.
R12-15-905	This rule requires that a measuring device be installed, maintained and used in a manner that: (1) ensures that its measurement error is not greater than 10% of the actual flow rate; and (2) allows the Department to readily check the accuracy of the device.
R12-15-906	This rule requires that a person responsible for using a water measuring device take the following action if the device fails to perform its designated function for more than 72 hours: (1) notify the director within seven days after discovery of the failure; (2) correct the malfunction; and (3) estimate the flow during the period of malfunction.
R12-15-907	This rule requires irrigation grandfathered rightholders to estimate and report to the Department the amount of water used from a common distribution system if water is measured at the point of delivery to the common distribution system, but not at a point of delivery to each rightholder. This rule lists two methods for estimating the amount of water used by each rightholder.
R12-15-908	This rule provides that the person responsible for using a water measuring device is liable for any fines, penalties or other sanctions resulting from the installation, monitoring, use or accuracy of the measuring device, method or recordkeeping even though the installation, monitoring, use or recordkeeping was done by an agent of the person.
R12-15-909	This rule: (1) allows the use of alternative water measuring devices or methods if approved in advance by the director; (2) allows persons to substitute equivalent information for the information required to be included in an annual report if approved in advance by the director; (3) exempts municipal providers from the reporting and notification requirements with respect to metered service connections; and (4) allows municipal providers and irrigation districts to notify the director of measuring device malfunctions at the time of

	filing their annual report if they have a schedule for regularly maintaining measuring devices and obtain approval from the director.
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3. **Are the rules effective in achieving their objectives?** Yes No

The Department believes that R12-15-901 through R12-15-909 are effective and meet their objective of standardizing approved water measuring devices and methods. These rules prescribe the criteria for approved water measuring devices and methods, and outline the reporting requirements for persons using measuring devices.

4. **Are the rules consistent with other rules and statutes?** Yes No

R12-15-901 through R12-15-909 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. **Are the rules enforced as written?** Yes No

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-901 through R12-15-909 are clear, concise and understandable. The rules provide detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-901 through R12-15-909 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D10 of the Appendix for the EIS submitted with R12-15-901 through R12-15-909. After reviewing the EIS and examining the impact that R12-15-901 through R12-15-909 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-901 through R12-15-909 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review did not recommend any changes to R12-15-901 through R12-15-909.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-901 through R12-15-909 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. **Proposed course of action:**

None.

ARTICLE 10. REPORTING REQUIREMENTS FOR ANNUAL REPORTS, ANNUAL ACCOUNTS, OPERATING FLEXIBILITY ACCOUNTS, AND CONVEYANCES OF GROUNDWATER RIGHTS – R12-15-1001 THROUGH R12-15-1017

1. **Authorization of the rule by existing statutes:**

R12-15-1001 through R12-15-1017 are authorized by A.R.S. §§ 45-105(B)(1), 45-467(B), and 45-632(M). Copies of these statutes are attached to this report at tab C8 of the Appendix.

2. **The objective of each rule:**

Rule	Objective
R12-15-1001	This rule defines terms used in Article 10.
R12-15-1002	This rule requires that annual reports and annual accounts be submitted on forms approved by the director and allows annual reports and annual accounts to be filed in the same report.
R12-15-1003	This rule establishes accuracy requirements for annual reports.
R12-15-1004	This rule provides that a person responsible for filing an annual report is liable for any fines, penalties, or other sanctions resulting from the filing or contents of the annual report, even if the report is filed by another person. The rule also creates a rebuttable presumption that a report filed on behalf of a responsible party was filed with the responsible party's knowledge, consent, and authorization if the responsible party did not file an annual report for the year.
R12-15-1005	This rule requires responsible parties to include in their annual reports any monitoring and reporting information required by a management plan.
R12-15-1006	This rule requires a person recovering water pursuant to a recovery well permit to provide additional information with his or her annual report regarding the persons to whom the recovered water was delivered, the quantity of recovered water delivered to each person, the uses to which the recovered water was put, and the quantity of each type of water delivered to each person.

R12-15-1007	This rule requires persons filing annual accounts to report the quantity of water provided to specific classes of users.
R12-15-1008	This rule sets forth the information that must be included in an annual report filed by a person who withdraws, receives or uses groundwater pursuant to an irrigation grandfathered right so that the Department has the information necessary to maintain the person's flexibility account under A.R.S. § 45-467. The rule also sets forth the information that must be included in an annual account filed by a water deliverer.
R12-15-1009	This rule implements A.R.S. § 45-467(D)(2) by establishing a formula for calculating credits to a farm's flexibility account in a manner that will allow the farm to receive a credit only for the amount of water not used which would have been groundwater.
R12-15-1010	This rule encourages the use of tailwater on farms by: (1) excluding from a farm's operating flexibility account calculation the amount of measured and recorded tailwater deliveries to another farm or an irrigation district; and (2) excluding tailwater use from the recipient farm's operating flexibility account calculation to the extent that it would cause a debit to be registered to the account if the tailwater was not measured and recorded by the originating farm pursuant to a plan approved by the director. The rule also provides how tailwater must be accounted for by persons delivering or receiving tailwater.
R12-15-1011	This rule requires the Department to annually provide and amend, if necessary, a statement of the status of an operating flexibility account to the owner or user of the irrigation grandfathered right.
R12-15-1012	This rule notifies the public that the accounting provisions of Article 10 shall not be construed to determine the legality of any water use.
R12-15-1013	This rule requires that the person responsible for filing an annual report or annual account maintain all records necessary to verify those documents for three years.
R12-15-1014	This rule sets forth the dates when the Department shall consider reports filed and fees paid; allows persons filing incomplete annual accounts and annual reports 30 days after receiving notice of the inadequacy to provide the missing information; and provides for extensions of time to file annual reports and pay fees.
R12-15-1015	This rule establishes reporting and accounting requirements for conveyances of grandfathered rights and sets forth information that must be included in a request to convey a groundwater withdrawal permit.
R12-15-1016	This rule requires water providers that deliver spillwater to include in their annual report for the year: (1) the quantity of spillwater delivered for non-irrigation use; (2) the quantity of spillwater delivered for irrigation use; and (3) such other information as the director may reasonably require to determine whether the water qualifies as spillwater.
R12-15-1017	This rule provides that a community water system required to file an annual report under A.R.S. § 45-343 must maintain the report on a calendar year basis and file the report with the Department no later than June 1 of each year for the preceding calendar year.

3. **Are the rules effective in achieving their objectives?** Yes No

The Department believes that R12-15-1001 through R12-15-1017 are effective and meet their objective of allowing the Department to receive an accurate report of water use by persons required to file an annual report or annual account.

These rules implement the statutes in Title 45 of the Arizona Revised Statutes that require certain water users and water providers to submit annual reports of their water use or service. This information is critical to manage the State's water supplies. The rules inform water users and water providers of the information to be recorded and reported; specify who is liable for any fines and penalties resulting from the filing of an annual report when the report

is filed on behalf of the responsible party by another person; set forth criteria for registering credits to a farm's flexibility account; specify the length of time that records for an annual account or annual report must be retained; and provide requirements for filing annual reports and accounts and community water system reports.

4. **Are the rules consistent with other rules and statutes?** Yes No

R12-15-1001 through R12-15-1017 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy. In addition to the authorizing statutes, the rules are consistent with A.R.S. §§ 45-467, 45-468, 45-482, 45-614 and 45-632.

5. **Are the rules enforced as written?** Yes No

R12-15-1001 through R12-15-1017 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-1001 through R12-15-1017 are clear, concise and understandable. The rules provided detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-1001 through R12-15-1017 within the past five years.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D11 of the Appendix for the EIS submitted with R12-15-1001 through R12-15-1017. In fiscal year 2015-2016, the Department anticipates receiving 6,030 annual reports from groundwater users in the five AMAs, including water providers, type 1 non-irrigation right-holders, type 2 non-irrigation right-holders, irrigation grandfathered right-holders, and persons holding groundwater withdrawal permits, recharge permits and assured and adequate water supply designations as well as from groundwater users in the three Irrigation Non-Expansion Areas and community water systems. After reviewing the EIS and examining the impact that R12-15-1001 through R12-15-1017 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-1001 through R12-15-1017 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review did not recommend any changes to R12-15-1001 through R12-15-1017.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-1001 through R12-15-1017 outweigh within

this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. **Proposed course of action:**

None.

ARTICLE 11. INSPECTIONS AND AUDITS – R12-15-1101 AND R12-15-1102

1. **Authorization of the rule by existing statutes:**

Authority for R12-15-1101 and R12-15-1102 is located in A.R.S. §§ 45-105(B)(1), 45-135(B), 45-633(B), 45-880.01(B) and 45-1061(B). Copies of these statutes are attached to this report at tab C9 of the Appendix.

2. **The objective of each rule:**

Rule	Objective
R12-15-1101	This rule: (1) sets forth procedures that must be followed by the Department in conducting authorized inspections on private or public property to ensure that adequate notice is given prior to the inspection, except in cases where notice would frustrate the enforcement of Title 45 or when entry is sought solely for the purpose of inspecting a water measuring device; and (2) requires the Department to provide a post-inspection report to a person whose records or property are inspected.
R12-15-1102	This rule sets forth procedures that the Department must follow in conducting authorized audits of records and other information to ensure that adequate notice of an audit is given to the person subject to the audit. This rule also requires the Department to provide a post-audit report to the person subject to the audit.

3. **Are the rules effective in achieving their objectives?** Yes X No ___

These rules set forth the procedures for conducting inspections and audits authorized or required by Title 45. The Department believes that R12-15-1101 and R12-15-1102 are effective and meet their intended objective of establishing the procedures necessary for inspections and audits.

4. **Are the rules consistent with other rules and statutes?** Yes X No ___

R12-15-1101 and R12-15-1102 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. **Are the rules enforced as written?** Yes X No ___

R12-15-1101 and R12-15-1102 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-1101 and R12-15-1102 are clear, concise and understandable. The rules provide detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received any criticisms of R12-15-1101 and R12-15-1102 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D12 of the Appendix for the EIS submitted with R12-15-1101 and R12-15-1102. After reviewing the EIS and examining the impact that R12-15-1101 and R12-15-1102 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-1101 and R12-15-1102 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review report did not recommend any changes to R12-15-1101 and R12-15-1102.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the benefits of R12-15-1101 and R12-15-1102 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. Proposed course of action

None.

ARTICLE 12. DAM SAFETY PROCEDURES – R12-15-1201 THROUGH R12-15-1226

1. Authorization of the rule by existing statutes:

R12-15-1201 through R12-15-1226 are authorized by A.R.S. §§ 45-105(B)(1) and 45-1202(C). Copies of these statutes are attached to this report as tab C10 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-1201	This rule sets forth the scope of Article 12.
R12-15-1202	This rule defines terms used in Article 12.
R12-15-1203	This rule exempts certain structures based on size and storage capacity; exempts dams owned or operated by agencies or instrumentalities of the federal government regardless of size if covered by a dam safety program at least as stringent as the program described in Article 12; and exempts other structures not typically considered to be dams.
R12-15-1204	This rule requires dam owners to obtain, in advance, the director’s approval of dam design criteria; recommends that dam owners and engineers consult design guidelines published by federal agencies for the design of certain types of dams; and provides that the director may require that other criteria be used or revise any of the specific criteria for the purpose of dam safety.
R12-15-1205	This rule provides that a dam owner is responsible for the safe design, operation, maintenance, and inspection of the dam; requires dam owners to develop and maintain emergency action plans for dams; requires dam owners to operate, maintain, repair, inspect and monitor their dams; and requires notification to the Department if ownership of a dam changes.
R12-15-1206	This rule establishes size and hazard potential classifications of dams; requires applicants to demonstrate the hazard potential of a dam before filing an application to construct; and authorizes the Department to revise the hazard potential classification of a dam in accordance with current conditions.
R12-15-1207	This rule requires prior written approval from the director to construct, reconstruct, repair, enlarge, remove, alter or breach a dam; provides that such approval is valid for one year unless extended by the director; waives application requirements in emergency situations for routine maintenance or ordinary repairs and for breach, removal, or reduction of very low hazard dams; authorizes the director to relieve a dam owner from a requirement in Article 12 if the requirement is unduly burdensome or expensive and is not necessary to protect human life or property; requires pre-application meetings with the Department; and defines Department application review procedures.
R12-15-1208	This rule sets forth application requirements for an application to construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam.
R12-15-1209	This rule sets further application requirements for an application to breach or remove a high or significant hazard potential dam; prescribes the procedures that must be followed in breaching a high or significant hazard potential dam; and allows the director to approve by letter the reduction of a high or significant downstream hazard potential dam to non-

	jurisdictional size under certain circumstances.
R12-15-1210	This rule sets forth application requirements for an application to construct, reconstruct, repair, enlarge, alter, breach or remove a low hazard potential dam; requires written notice to the director prior to reducing a low hazard potential dam to non-jurisdictional size; establishes the time in which the Department must take action on an application for construction, reconstruction, repair, enlargement, alteration, breach or removal of a dam; requires post-construction information to be submitted to the Department; and requires the owner of a low hazard potential dam to immediately commence any repairs necessary to safeguard human life and property and prevent failure and improper operation of the dam.
R12-15-1211	This rule sets forth application requirements for an application to construct, reconstruct, repair, enlarge, or alter a very low hazard potential dam; establishes the time in which the Department must take action on such an application; requires written notice to the director prior to breaching, removing or reducing to non-jurisdictional size a very low hazard potential dam; requires post construction information to be submitted to the Department; allows inspections by the Department after construction; and requires the owner of a very low hazard potential dam to immediately commence repairs necessary to safeguard human life and property and prevent failure and improper operation of the dam.
R12-15-1212	This rule prescribes procedures for the construction of a high, significant or low hazard potential dam, including a pre-construction conference and periodic inspections and supervision by an engineer; requires approval of any construction changes; and requires post-inspection by the Department.
R12-15-1213	This rule requires the owner of a significant or high hazard potential dam to file completion documents after construction or removal of the dam, including construction drawings and records and, if applicable, a schedule for filling the reservoir and an operating manual for the dam.
R12-15-1214	This rule prohibits the owner of a significant or high hazard dam from using the dam or reservoir until the director issues a license for the dam, requires the director to issue a license for the dam if the dam is safe and was completed in accordance with approved plans and specifications, and lists circumstances requiring the issuance of a new license.
R12-15-1215	This rule imposes upon the owner and engineer of a dam the responsibility for completion and adequate design of a dam, including providing in the application all aspects of the design relating to the safety of the dam. The rule also sets forth the requirements for construction drawings, construction specifications and engineering design reports for high, significant and low hazard potential dams.
R12-15-1216	This rule sets forth general design requirements for high, significant and low hazard dams, including emergency spillway requirements, inflow design flood requirements, outlet works requirements, dam site and reservoir area requirements, geotechnical requirements, seismic requirements and embankment dam requirements. This rule also sets forth miscellaneous design requirements.
R12-15-1217	This rule requires dam owners to perform general maintenance and ordinary repairs that do not impair the safety of the dam; requires prior approval of the director before performing repairs or maintenance that may impair or adversely affect safety or before taking emergency actions impairing the safety of the dam; requires notice to the director of any emergency situation; and requires emergency actions during emergency situations.
R12-15-1218	This rule allows the director to determine the safe storage level of the reservoir created by a dam and prohibits the dam owner from storing water in excess of that level.
R12-15-1219	This rule establishes safety inspection schedules, requirements and procedures; provides a

	process for the Department to follow when it receives a complaint that a dam is endangering people or property; and authorizes the director to enter private or public property to inspect dams and determine compliance with dam safety statutes and rules.
R12-15-1220	This rule requires owners of existing dams to comply with the requirements of Article 12, except that: (1) a dam owner is not required to comply with the design requirements in R12-15-1216 if the director has determined that the dam is in a safe condition, unless the director determines that it is cost effective to upgrade the dam to comply with the requirements at the time a major alteration or major repair of the dam is planned; and (2) a dam owner is not required to comply with a requirement if the director finds that the requirement is unduly burdensome or expensive and is not necessary to protect human life or property.
R12-15-1221	This rule requires the owner of a high or significant hazard potential dam to prepare, maintain, review, update and exercise a written emergency action plan.
R12-15-1222	This rule makes the director's decisions under Article 12 appealable agency actions pursuant to the Administrative Procedure Act, except for emergency measures and actions exempted from review by law. The rule also allows an applicant or owner to seek review of an engineering decision by a board of review.
R12-15-1223	This rule allows the Department to exercise discretion in taking actions necessary to prevent danger to human life or property and sets forth enforcement procedures the Department may take when the director has cause to believe that a dam is unsafe or a person is in violation or has violated a provision of Article 12 or a statute governing dam safety.
R12-15-1224	This rule requires a dam owner to notify the Department, emergency authorities and downstream communities of conditions that may threaten the safety of the dam; requires an owner in these situations to take listed emergency actions to protect human life and property; and requires the director to issue an emergency approval for repairs, alterations and removal of an existing dam to alleviate an immediate threat to human life or property.
R12-15-1225	This rule allows the director to use dam repair funds to employ remedial measures necessary to protect human life and property when the dam owner is unable or unwilling to take action and there is not sufficient time to issue and enforce an order. The rule also provides that the director shall hold a lien against all property of the owner for money expended under this rule, as provided in A.R.S. § 45-1212.
R12-15-1226	This rule authorizes the director to use the dam repair fund to defray the costs of repairs for a dam that represents a threat to human life or property, but is not in an emergency condition; authorizes the director to grant or loan monies in the dam repair fund only to dams classified as unsafe by the director; and establishes the procedures for granting and loaning dam repair funds.

3. **Are the rules effective in achieving their objectives?** Yes X No

The Department believes that R12-15-1201 through R12-15-1226 are effective and meet the objectives for which they are designed. The dam safety procedure rules effectively outline the duties of both the Department and dam owners to improve dam safety.

These rules enable the Department to monitor jurisdictional dams and require improvements consistent with accepted engineering practices to ensure the safety of life and property.

4. **Are the rules consistent with other rules and statutes?** Yes X No

R12-15-1201 through R12-15-1226 are consistent with existing statutes or other rules made by the Department and

current Department enforcement policy.

5. **Are the rules enforced as written?** Yes No

R12-15-1201 through R12-15-1226 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-1201 through R12-15-1226 are clear, concise and understandable. The rules provide detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-1201 through R12-15-1226 within the past five years, including written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D13 of the Appendix for the EIS submitted with R12-15-1201 through R12-15-1226 and tab D13 of the Appendix for the EIS submitted with a 2007 technical amendments rule package that made technical amendments to R12-15-1210.

In fiscal year 2016, the Department performed 88 dam safety inspections for all hazard potential dams. In fiscal year 2017, the Department performed 127 dam safety inspections for all hazard potential dams. In fiscal year 2018, the Department performed 136 safety inspections for all hazard potential dams. Lastly, in fiscal year 2019, the Department performed 134 dam safety inspections for all hazard potential dams. After reviewing the EIS and examining the impact that R12-15-1201 through R12-15-1226 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-1201 through R12-15-1226 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

In its 2016 Five-Year Rule Review Report, the Department stated that if it were to receive permission from the Governor's Office to proceed with a rule package of technical rule corrections, it would include in the rule package an amendment to R12-15-1224(A)(2) to remove specific references to the Arizona Department of Public Safety's emergency phone numbers. In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including a rule package of technical rule corrections. Although the Department received permission to proceed with some of the rule amendments recommended its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with a rule package of technical rule corrections. For that reason, the Department did not proceed with the amendment to R12-15-1225(A)(2) described above.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork**

and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that the probable benefits of R12-15-1201 through R12-15-1226 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Except for amendments in 2011 to conform several of the rules in Article 12 to amendments made to the Department’s fee rules in 2011, these rules were not adopted or amended after July 29, 2010. Therefore, A.R.S. § 41-1037 does not apply to these rules.

14. **Proposed course of action:**

As mentioned in section 10 above, the Department stated in its 2016 Five-Year Rule Review Report that if it received permission from the Governor’s Office to proceed with a rule package of technical rule corrections, it would include in the package an amendment to R12-15-1224(A)(2) to remove specific references to the Arizona Department of Public Safety’s emergency phone numbers. In October 2016, the Department met with the Governor’s office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including a rule package of technical rule corrections. Although the Department received permission to proceed with some of the rule amendments recommended its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with a rule package of technical rule corrections. Because the rule moratorium remains in effect, the Department will not proceed with amending R12-15-1224(A)(2) to remove specific references to the Arizona Department of Public Safety’s emergency phone numbers unless it receives permission from the Governor’s Office to proceed with a package of technical rule corrections.

ARTICLE 13. WELL SPACING REQUIREMENTS; REPLACEMENT WELLS IN APPROXIMATELY THE SAME LOCATION – R12-15-1301 THROUGH R12-15-1308

1. **Authorization of the rule by existing statutes:**

R12-15-1301 through R12-15-1307 are authorized by A.R.S. §§ 45-105(B)(1), 45-598(A) and 45-834.01(B)(1).

R12-15-1308 is authorized by A.R.S. §§ 45-105(B)(1) and 45-597(A).

Copies of these statutes are attached to this report as tab C11 of the Appendix.

2. **The objective of each rule:**

Rule	Objective
R12-15-1301	This rule defines terms used in Article 13.
R12-15-1302	This rule contains well spacing criteria for applications for well permits when construction

	of a new well or a replacement well in a new location will occur within an AMA pursuant to a grandfathered groundwater right, a service area right or a general industrial use permit. The rule prescribes that the director shall deny an application for a well permit if the director determines that the proposed well will cause unreasonably increasing damage to surrounding land and other water users due to one of the following factors: (1) ten feet of additional drawdown of water levels at a well of record after the first five years of operation of the proposed well; (2) additional regional land subsidence; or (3) the migration of contaminated groundwater to a well of record. The director may not consider the impacts on a well of record if the owner of the well of record consents to the impact.
R12-15-1303	This rule contains well spacing criteria for applications for recovery well permits throughout the state. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302 with certain exceptions, including: (1) R12-15-1303(B)(1) requires that an applicant for a recovery well permit must submit a hydrological study delineating those areas surrounding the proposed well in which the projected impacts on water levels from recovery of the stored water will exceed 10 feet of additional drawdown after the first five years; and (2) R12-15-1303(C)(2) provides that if the proposed recovery well will be located within the area of impact of an underground storage facility and the applicant will account for all of the water recovered from the well as water stored at the facility, the director shall take into account the effects of water storage at the facility on the proposed recovery of stored water from the recovery well if the applicant submits a hydrologic study demonstrating those effects to the satisfaction of the director.
R12-15-1304	This rule contains well spacing criteria for wells drilled in the Little Colorado River plateau groundwater basin after January 1, 1991 for the purpose of withdrawing groundwater for transportation out of the basin. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302. Note that this rule does not apply to a replacement well in approximately the same location or a well drilled after January 1, 1991 if a notice of intent to drill had been filed on or before that date.
R12-15-1305	This rule contains well spacing criteria for applications to use a well-constructed after September 21, 1991 for the withdrawal of groundwater for transportation to an AMA. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302.
R12-15-1306	This rule contains well spacing criteria for applications for water exchange permits if there will be any new or increased pumping in an AMA by the applicant. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302. Note that this rule does not apply if the applicant for the water exchange permit is a city, town, private water company or irrigation district.
R12-15-1307	This rule contains well spacing criteria for notices of water exchange if there will be new or increased pumping in the AMA by a participant to the water exchange. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302.
R12-15-1308	This rule sets forth the criteria that a proposed well must meet in order to qualify as a replacement well in approximately the same location. These criteria fall into three basic categories: (1) the maximum distance the proposed replacement well may be from the original well; (2) the maximum annual volume of water the proposed replacement well may withdraw; and (3) the date by which a notice of intent to drill the replacement well must be filed if the well to be replaced has been abandoned.

3. **Are the rules effective in achieving their objectives?** Yes No

The Department believes that R12-15-1301 through R12-15-1308 are effective and meet their objective of preventing unreasonably increasing damage from new wells and replacement wells in new locations in certain areas of the state.

4. **Are the rules consistent with other rules and statutes?** Yes No

R12-15-1301 through R12-15-1308 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. **Are the rules enforced as written?** Yes No

R12-15-1301 through R12-15-1308 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-1301 through R12-15-1308 are clear, concise and understandable. The rules provide detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-1301 through R12-15-1308 within the past five years, including written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D14 of the Appendix for the EIS submitted with R12-15-1301 through R12-15-1308. After reviewing the EIS and examining the impact that R12-15-1301 through R12-15-1308 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-1301 through R12-15-1308 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review did not recommend any changes to R12-15-1301 through R12-15-1308.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-1301 through R12-15-1308 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. Proposed course of action:

None.

TAB B
Department Rules

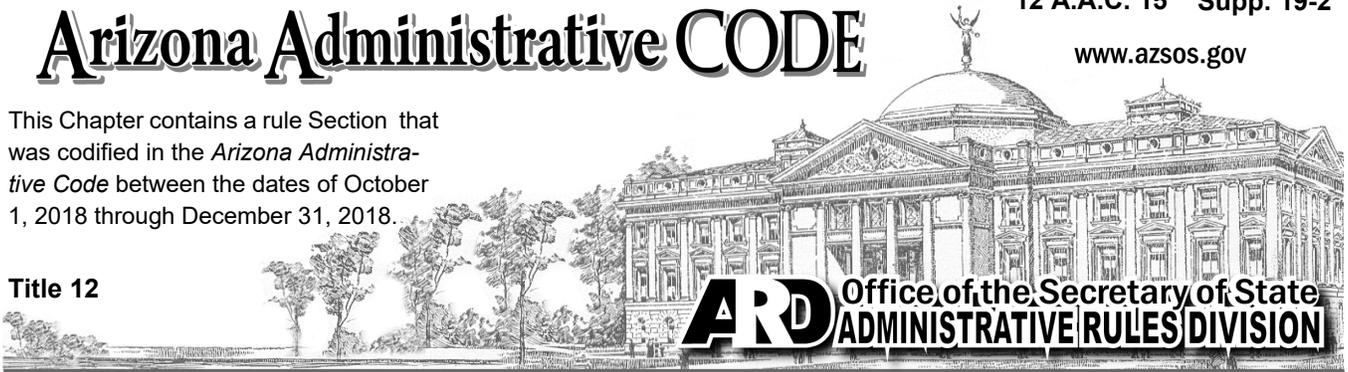
Arizona Administrative CODE

12 A.A.C. 15 Supp. 19-2

www.azsos.gov

This Chapter contains a rule Section that was codified in the *Arizona Administrative Code* between the dates of October 1, 2018 through December 31, 2018.

Title 12



TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Editor's Note: At the request of the Department R12-15-722(A)(2) through (5) were removed since they were not part of the amendments made to this Section in Supp. 18-4. Subsections R12-15-722(A)(2) through (3) as amended at 13 A.A.R. 1394 have been restored (Supp. 19-2).

[R12-15-722.](#) [Consistency with Management Goal 33](#)

Questions about these rules? Contact:

Name: Jeff Tannler
Statewide Active Management Area Director

Address: Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

Telephone: (602) 771-8424
Fax: (602) 771-8686
[E-mail: jmtannler@azwater.gov](mailto:jmtannler@azwater.gov)

or

Name: Ayesha Vohra
Deputy Counsel

Address: Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

Telephone: (602) 771-8472
Fax: (602) 771-8686
[E-mail: avohra@azwater.gov](mailto:avohra@azwater.gov)

The release of this Chapter in Supp. 19-2 replaces Supp. 18-4, 1-83 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

(Authority: A.R.S. § 45-101 et seq.)

ARTICLE 1. FEES

Section
R12-15-101. Definitions 4
R12-15-102. Fees for Applications and Filings 4
R12-15-103. Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee 4
R12-15-104. Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices 6
R12-15-105. Fee for Dam Safety Inspection; Fee for Review of Dam Safety Inspection Report 7
R12-15-106. Fee for Well Capping 8
R12-15-107. Expired 8
R12-15-108. Reserved 8
R12-15-150. Reserved 8
R12-15-151. Repealed 8
R12-15-152. Expired 8

R12-15-304. Reserved10
R12-15-305. Reserved10
R12-15-306. Reserved10
R12-15-307. Reserved10
R12-15-308. Reserved10
R12-15-309. Reserved10
R12-15-310. Renumbered10

ARTICLE 4. LICENSING TIME-FRAMES

Article 4, consisting of Sections R12-15-401 and Table A, adopted effective December 31, 1998; filed in the Office of the Secretary of State July 28, 1998 (Supp. 98-3).

Section
R12-15-401. Licensing Time-frames10
Table A. Licensing Time-frames11

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Article 7, consisting of Sections R12-15-701 through R12-15-725, adopted effective February 7, 1995.

ARTICLE 2. PROCEDURAL RULES

Article 2, consisting of Sections R12-15-201 through R12-15-224, adopted effective June 13, 1984.

Section
R12-15-201. Expired 8
R12-15-202. Expired 8
R12-15-203. Expired 8
R12-15-204. Expired 8
R12-15-205. Expired 9
R12-15-206. Expired 9
R12-15-207. Correction of Clerical Mistakes 9
R12-15-208. Expired 9
R12-15-209. Expired 9
R12-15-210. Expired 9
R12-15-211. Expired 9
R12-15-212. Expired 9
R12-15-213. Expired 9
R12-15-214. Expired 9
R12-15-215. Expired 9
R12-15-216. Expired 9
R12-15-217. Expired 9
R12-15-218. Expired 9
R12-15-219. Expired 9
R12-15-220. Expired 9
R12-15-221. Expired 9
R12-15-222. Expired 9
R12-15-223. Expired 9
R12-15-224. Ex Parte Communications 9

Section
R12-15-701. Definitions - Assured and Adequate Water Supply Programs15
R12-15-702. Physical Availability Determination18
R12-15-703. Analysis of Assured Water Supply18
R12-15-703.01. Repealed19
R12-15-704. Certificate of Assured Water Supply19
R12-15-705. Assignment of Type A Certificate of Assured Water Supply21
R12-15-706. Assignment of Type B Certificate of Assured Water Supply21
R12-15-707. Application for Classification of a Type A Certificate22
R12-15-708. Material Plat Change; Application for Review ..23
R12-15-709. Certificate of Assured Water Supply; Revocation23
R12-15-710. Designation of Assured Water Supply24
R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation24
R12-15-712. Analysis of Adequate Water Supply25
R12-15-713. Water Report26
R12-15-714. Designation of Adequate Water Supply26
R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation27
R12-15-716. Physical Availability27
R12-15-717. Continuous Availability30
R12-15-718. Legal Availability30
R12-15-719. Water Quality32
R12-15-720. Financial Capability32
R12-15-721. Consistency with Management Plan33
R12-15-722. Consistency with Management Goal33

ARTICLE 3. STOCKPOND AND OTHER SURFACE WATER RULES

Section
R12-15-301. Expired 10
R12-15-302. Expired 10
R12-15-303. Multiple Applications for Water Rights 10

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

R12-15-723. Extinguishment Credits 34

R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits 36

R12-15-725. Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits 37

R12-15-725.01. Repealed 38

R12-15-725.02. Repealed 38

R12-15-726. Prescott AMA Calculation of Groundwater Allowance and Extinguishment Credits 38

R12-15-727. Tucson AMA Calculation of Groundwater Allowance and Extinguishment Credits 39

R12-15-728. Reserved 40

R12-15-729. Remedial Groundwater; Consistency with Management Goal 40

R12-15-730. Repealed 42

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

Article 8, consisting of Sections R12-15-801 through R12-15-821, adopted effective March 5, 1984.

Section

R12-15-801. Definitions 42

R12-15-802. Scope of Article 43

R12-15-803. Well Drilling and Abandonment Requirements; Licensing and Supervision Requirements 43

R12-15-804. Application for well drilling license 44

R12-15-805. Examination for Well Drilling License 44

R12-15-806. License Fee; Issuance and Term of Licenses; Renewal; Display of License 44

R12-15-807. Single Well License 45

R12-15-808. Revocation of License 45

R12-15-809. Notice of Intention to Drill 45

R12-15-810. Authorization to Drill 45

R12-15-811. Minimum Well Construction Requirements 45

R12-15-812. Special Aquifer Conditions 47

R12-15-813. Unattended Wells 47

R12-15-814. Disinfection of Wells 47

R12-15-815. Removal of Drill Rig from Well Site 47

R12-15-816. Abandonment 47

R12-15-817. Exploration Wells 48

R12-15-818. Well Location 48

R12-15-819. Use of Well as Disposal Site 48

R12-15-820. Request for Variance 48

R12-15-821. Special Requirements 48

R12-15-822. Capping of Open Wells 48

R12-15-823. Reserved 49

R12-15-849. Reserved 49

R12-15-850. Evaluation of Notices of Intention to Drill; Notification of Registered Site Locations; Vertical Cross-Contamination Evaluation 49

R12-15-851. Notification of Well Drilling Commencement .. 49

R12-15-852. Notice of Well Inspection; Opportunity to Comment 49

ARTICLE 9. WATER MEASUREMENT

Article 9, consisting of Sections R12-15-901 through R12-15-905, adopted effective December 27, 1982.

Section

R12-15-901. Definitions 49

R12-15-902. Installation of Approved Measuring Devices 50

R12-15-903. Approved Water Measuring Devices and Methods 50

R12-15-904. Water Measuring Method Reporting Requirements 50

R12-15-905. Accuracy of Approved Measuring Devices51

R12-15-906. Repair and Replacement of Approved Measuring Devices52

R12-15-907. Calculation of Irrigation Water Deliveries52

R12-15-908. Measurement of Water by One Person on Behalf of Another52

R12-15-909. Alternative Water Measuring Devices, Methods, and Reporting52

ARTICLE 10. REPORTING REQUIREMENTS FOR ANNUAL REPORTS, ANNUAL ACCOUNTS, OPERATING FLEXIBILITY ACCOUNTS, AND CONVEYANCES OF GROUNDWATER RIGHTS

Section

R12-15-1001. Definitions52

R12-15-1002. Form of Annual Account or Annual Report53

R12-15-1003. Accuracy of Annual Reports53

R12-15-1004. Annual Reports Filed on Behalf of a Responsible Party53

R12-15-1005. Management Plan Monitoring and Reporting Requirements53

R12-15-1006. Reporting Requirements for Holders of Recovery Well Permits53

R12-15-1007. Reporting Requirements for Annual Account54

R12-15-1008. Information Required to Maintain an Operating Flexibility Account54

R12-15-1009. Credits to Operating Flexibility Account54

R12-15-1010. Operating Flexibility Account; Tailwater54

R12-15-1011. Statement of Operating Flexibility Account55

R12-15-1012. Rule of Construction55

R12-15-1013. Retention of Records for Annual Accounts and Annual Reports55

R12-15-1014. Late Filing or Payment of Fees; Extension Penalties55

R12-15-1015. Reporting Requirements for Conveyances of Grandfathered Rights and Groundwater Withdrawal Permits56

R12-15-1016. Spillwater Reporting by Water Deliverers56

R12-15-1017. Maintenance and Filing of Annual Reports Required by A.R.S. § 45-34356

ARTICLE 11. INSPECTIONS AND AUDITS

Article 11, consisting of Sections R12-15-1101 and R12-15-1102, adopted effective August 31, 1992 (Supp. 92-3).

Section

R12-15-1101. Inspections56

R12-15-1102. Audits57

ARTICLE 12. DAM SAFETY PROCEDURES

Article 12, consisting of Sections R12-15-1201 through R12-15-1206, repealed; new Article 12, consisting of Sections R12-15-1201 through R12-15-1226 et seq., adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

Section

R12-15-1201. Applicability57

R12-15-1202. Definitions57

R12-15-1203. Exempt Structures59

Table 1. Exempt Structures60

R12-15-1204. Provision for Guidelines60

R12-15-1205. General Responsibilities60

R12-15-1206. Classification of Dams60

Exhibit A. Repealed61

Table 2. Size Classification61

Table 3. Downstream Hazard Potential Classification61

R12-15-1207. Application Process62

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

R12-15-1208. Application to Construct, Reconstruct, Repair, Enlarge, or Alter a High or Significant Hazard Potential Dam 63

R12-15-1209. Application to Breach or Remove a High or Significant Hazard Potential Dam 63

R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam 64

R12-15-1211. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Very Low Hazard Potential Dam 65

R12-15-1212. Construction of a High, Significant, or Low Hazard Potential Dam 66

R12-15-1213. Completion Documents for a Significant or High Hazard Potential Dam 66

R12-15-1214. Licensing 67

R12-15-1215. Construction Drawings, Construction Specifications, and Engineering Design Report for a High, Significant, or Low Hazard Potential Dam 67

R12-15-1216. Design of a High, Significant, or Low Hazard Potential Dam 69

 Table 4. Inflow Design Flood 71

 Table 5. Minimum Factors of Safety for Stability¹ 71

R12-15-1217. Maintenance and Repair; Emergency Actions .. 71

R12-15-1218. Safe Storage Level 72

R12-15-1219. Safety Inspections; Fees 72

R12-15-1220. Existing Dams 73

R12-15-1221. Emergency Action Plans 73

R12-15-1222. Right of Review 73

R12-15-1223. Enforcement Authority 74

R12-15-1224. Emergency Procedures 74

R12-15-1225. Emergency Repairs 75

R12-15-1226. Non-Emergency Repairs; Loans and Grants75

ARTICLE 13. WELL SPACING REQUIREMENTS; REPLACEMENT WELLS IN APPROXIMATELY THE SAME LOCATION

Article 13, consisting of Sections R12-15-1301 through R12-15-1308, made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

Section

R12-15-1301. Definitions75

R12-15-1302. Well Spacing Requirements - Applications to Construct New Wells or Replacement Wells in New Locations Under A.R.S. § 45-59976

R12-15-1303. Well Spacing Requirements - Applications for Recovery Well Permits Under A.R.S. § 45-834.0177

R12-15-1304. Well Spacing Requirements - Wells Withdrawing Groundwater From the Little Colorado River Plateau Groundwater Basin for Transportation to Another Groundwater Basin Under A.R.S. § 45-544(B)(1)79

R12-15-1305. Well Spacing Requirements - Applications to Use a Well to Withdraw Groundwater for Transportation to an Active Management Area Under A.R.S. § 45-55980

R12-15-1306. Well Spacing Requirements - Applications for Water Exchange Permits Under A.R.S. § 45-104181

R12-15-1307. Well Spacing Requirements - Notices of Water Exchange Under A.R.S. § 45-105182

R12-15-1308. Replacement Wells in Approximately the Same Location83

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 1. FEES

R12-15-101. Definitions

In addition to the definitions in A.R.S. §§ 45-101, 45-271, 45-402, 45-511, 45-561, 45-802.01, 45-1001, 45-1201 and R12-15-701, the following definitions apply to this Article:

1. "Application" means a written request submitted by an applicant to the Department for the purpose of obtaining a permit, license or other legal authorization issued by the Department.
2. "Fiscal year" means the year beginning July 1 and ending June 30.
3. "Mileage expenses" means the Department's mileage expenses for travelling to and from a site inspection calculated at the rate set by the Arizona Department of Administration for state travel by motor vehicle.
4. "Municipality" means an incorporated city or town.
5. "Pre-decision administrative hearing" means an administrative hearing held on an application before the Department makes any decision on the application.
6. "Population" means the population according to the most recent United States decennial census.
7. "Review hours" means the hours or portions of hours spent by Department employees in reviewing an application and making a decision thereon, including pre-application consultation time in excess of 60 minutes and site inspection time. Only time spent by the program staff members and technical review team members responsible for processing the application shall be included as review hours. Review hours do not include the first 60 minutes of pre-application consultation time, the time spent traveling to and from a site inspection, any time spent on a pre-decision administrative hearing and any time spent on the application after a party appeals the Director's decision on the application pursuant to A.R.S. § 41-1092.03(B).
8. "Site inspection" means an inspection conducted by the Department before issuing a decision on an application or before issuing a decision on whether water may be stored at an underground storage facility.
9. "Site inspection time" means time spent on a site inspection. Site inspection time includes the time spent conducting the inspection and the time spent preparing an inspection report following the inspection, but does not include the time spent traveling to and from the inspection.
10. "Water resources fund" means the water resources fund established by A.R.S. § 45-117.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 203, effective July 1, 2012 (Supp. 12-1).

R12-15-102. Fees for Applications and Filings

A. A person submitting an application or filing to the Department on or after the effective date of this Section shall pay an hourly application fee as provided in R12-15-103 or a fixed application or filing fee as provided in R12-15-104, whichever applies. Fees for applications and filings shall be paid in U.S. dollars by cash, check, cashier's check, money order, or any other method acceptable to the Department.

B. A person with an application or filing pending before the Department prior to the effective date of this Section shall pay the application or filing fees and costs in effect when the application or filing was submitted to the Department.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-103. Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee

- A. The Department shall calculate the fee for an application listed in subsection (B) of this Section by multiplying the number of review hours for the application by an hourly rate of \$118.00, plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application.
- B. A person submitting an application listed below shall pay an hourly fee for the application, not to exceed the maximum fee shown for the application:
 1. Wells:

Type of Application	Maximum Fee
Variance from well construction requirements that has not been pre-approved by the Department	\$10,000.00

2. Groundwater:

Type of Application	Maximum Fee
a.Issuance, renewal or modification of groundwater withdrawal permit	\$10,000.00
b.Issuance of notice of authority to irrigate in an irrigation non-expansion area	\$10,000.00
c.Approval of contract by a city, town or private water company to supply groundwater to another city, town or private water company pursuant to A.R.S. § 45-492(C)	\$10,000.00
d.Notice of intent to establish new service area right by a city, town or private water company	\$10,000.00
e.Final petition to establish new service area right by a city, town or private water company	\$10,000.00
f.Extension of the service area of a city, town or private water company to furnish disproportionately large amounts of water to an industrial or other large water user pursuant to A.R.S. § 45-493(A)(2)	\$10,000.00
g.Addition and exclusion of area by an irrigation district pursuant to A.R.S. § 45-494.01	\$10,000.00
h.Delivery of groundwater by an irrigation district to an industrial user with a general industrial use permit pursuant to A.R.S. § 45-497(B)	\$10,000.00

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

i.Determination of historically irrigated acres or annual transportation allotment for lands in McMullen valley groundwater basin pursuant to A.R.S. § 45-552	\$10,000.00
j.Determination of volume of groundwater that can be transported from lands in Harquahala irrigation non-expansion area to an initial active management area pursuant to A.R.S. § 45-554	\$10,000.00
k.Determination of historically irrigated acres or annual transportation allotment for lands in the Big Chino sub-basin of the Verde River groundwater basin pursuant to A.R.S. § 45-555	\$10,000.00
l.Permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547	\$10,000.00
m.Drought emergency groundwater transfer away from a groundwater basin outside of an active management area	\$10,000.00

3. Grandfathered Rights:

Type of Application	Maximum Fee
a.Type 1 non-irrigation grandfathered right for land retired from irrigation after date of designation of active management area pursuant to A.R.S. § 45-469 or 45-472	\$10,000.00
b.Restoration of retired irrigation grandfathered right pursuant to A.R.S. § 45-469(O)	\$10,000.00

4. Substitution of Acres:

Type of Application	Maximum Fee
a.Substitution of flood damaged acres in an active management area or an irrigation non-expansion area	\$10,000.00
b.Substitution of acres to eliminate limiting condition impeding efficient irrigation in an active management area or an irrigation non-expansion area	\$10,000.00
c.Substitution of acres to allow irrigation with Central Arizona Project water in an active management area	\$10,000.00

5. Lakes:

Type of Application	Maximum Fee
a.Permit to fill body of water with poor quality water pursuant to A.R.S. § 45-132(C)	\$10,000.00
b.Permit for interim water use in a body of water	\$10,000.00
c.Temporary emergency permit for use of surface water or groundwater in a body of water	\$10,000.00

6. Water Exchange:

Type of Application	Maximum Fee

a. Issuance, renewal or modification of water exchange permit	\$10,000.00
b. Notice of water exchange for which approval is required pursuant to A.R.S. § 45-1052(6)(b)	\$10,000.00

7. Water Exportation:

Type of Application	Maximum Fee
Permit to transport water from this state	\$25,000.00

8. Underground Water Storage, Savings and Replenishment:

Type of Application	Maximum Fee
a.Issuance, renewal or modification of an underground storage facility permit	\$25,000.00
b.Issuance, renewal or modification of a groundwater savings facility permit	\$10,000.00
c.Issuance, renewal or modification of a water storage permit	\$10,000.00
d.Recovery well permit, including an emergency temporary recovery well permit	\$10,000.00

9. Assured and Adequate Water Supply:

Type of Application	Maximum Fee
a.Physical availability determination	\$10,000.00
b.Analysis of assured or adequate water supply	\$10,000.00
c.Renewal of analysis of assured or adequate water supply	\$10,000.00
d.Certificate of assured water supply	\$10,000.00
e.Issuance or modification of designation of assured water supply	\$35,000.00
f.Issuance or modification of designation of adequate water supply	\$25,000.00
g.Water report (outside an AMA)	\$10,000.00
h.Assignment of Type A certificate of assured water supply	\$5,000.00
i.Assignment of Type B certificate of assured water supply	\$5,000.00
j.Classification of Type A certificate of assured water supply pursuant to R12-15-707	\$10,000.00
k.Review of revised plat to determine whether changes are material	\$10,000.00
l.New certificate of assured water supply pursuant to R12-15-704(G)	\$10,000.00
m.Letter stating that owner is not required to obtain a certificate of assured water supply pursuant to R12-15-704(M)	\$10,000.00

10. Surface Water:

Type of Application	Maximum Fee
a.Permit to appropriate public water	\$10,000.00
b.Certificate of water right	\$10,000.00

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

c.Primary reservoir permit or secondary reservoir permit	\$10,000.00
d.Change in use of water	\$10,000.00
e.Severance and transfer of water right to land that is not within the same parcel or farm unit as the current use, or that includes a change in water source, use or ownership	\$25,000.00
f.Severance and transfer of water right to land that is within the same parcel or farm unit as the current use and that does not include a change in water source, use or ownership	\$2,500.00
g.Request for extension of time to complete construction	\$10,000.00

- C. A person filing an application that is subject to an hourly fee shall submit an initial fee at the time the application is submitted to the Department. The initial fee for applications described in subsections (B)(7), (B)(8)(a), (B)(9)(e), (f) and (B)(10)(e) of this Section shall be \$2,000.00. The initial fee for all other applications shall be \$1,000.00. If requested by the applicant, the Department may set a lower initial fee if the Department estimates that the total application fee will be less than the initial fee specified in this subsection. The Department shall not accept an application for which an initial fee is required under this subsection unless the initial fee is included with the application.
- D. The Department shall bill the applicant for processing the application no more than monthly, but at least quarterly. Each bill shall contain the following information for the billing period:
 1. The number of review hours accrued by activity and sub-activity code during the billing period, the date of each activity, a description of each activity and the effective hourly rate for all activities;
 2. A description and amount of any mileage expenses charged for the application;
 3. A description and amount of the cost of mailing or publishing any legal notice of the application or notice of a pre-decision administrative hearing on the application; and
 4. The total fees paid to date, the total fees due for the billing period, the date when the fees are payable, which shall be at least 60 days after the date of the bill, and the maximum fee for the application.
- E. A bill for hourly fees becomes past due if the applicant does not pay the bill in full by the due date specified in the bill, unless the applicant submits a timely request for reconsideration of the bill pursuant to subsection (G) of this Section. If the applicant submits a timely request for reconsideration of the bill, the bill becomes past due if the applicant does not pay the amount due under the Director's decision on the request by the date specified in the decision. If a bill for hourly fees becomes past due, the following shall apply:
 1. The applicable review time-frame shall be suspended from the date the bill became past due until the applicant pays the bill in full or the application is denied under subsection (E)(2) of this Section, whichever applies.
 2. The Department shall suspend its review of the application and send a written notice to the applicant that the bill is past due. If the applicant does not pay the outstanding bill by the date specified in the notice, which shall be at least 35 days from the date of the notice, the application shall be denied.

- F. After the Department makes a determination whether to grant or deny the application, or when an applicant withdraws the application, the Department shall prepare and send to the applicant a final itemized billing statement for the application fee.
 1. If the total fee exceeds the amount of the initial fee paid plus all other payments made to date, the applicant shall pay the balance, up to the maximum fee for the application, plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application or notice of a pre-decision administrative hearing on the application, by the date specified in the statement, unless the applicant submits a timely request for reconsideration of the bill pursuant to subsection (G) of this Section. The statement shall specify a date, at least 60 days from the date of the statement, by which the applicant must pay the bill. If the applicant submits a timely request for reconsideration of the bill, the applicant shall pay the amount due under the Director's decision on the request by the date specified in the decision. The Department shall not release the final permit or approval until the final bill is paid in full.
 2. If the total fee is less than the initial fee plus all other payments made to date, the Department shall refund the difference to the applicant within 35 days of the date of the statement.
- G. An applicant may seek reconsideration of a bill for hourly fees by filing a written request for reconsideration with the Director. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 business days after the date the Director receives the written request. The decision shall specify a date, at least 35 days from the date of the decision, by which the applicant must pay the bill. The Director may reduce the amount of any fees billed under this Section if the Director determines that the number of review hours or mileage expenses billed to the applicant was incorrect or that time spent by the Department to review the application and make a decision thereon was not necessary or advisable.
- H. If a person receives a bill under this Section and the bill becomes past due under subsection (E) or (F) of this Section, the Department shall not accept for filing any other application by that person until the person pays the past due amount in full.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-104. Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices

- A. The Department shall not accept or take action on the following applications and filings unless the fee shown for the application or filing is paid at the time the application or filing is submitted:
 1. Wells:

Type of Application or Filing	Fee
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CHAPTER 15. DEPARTMENT OF WATER RESOURCES

a.Late registration of well	\$60.00
b.Well driller’s license	\$50.00
c.Re-issuance, renewal, or amendment of well driller’s license	\$50.00
d.Re-activation of expired well driller’s license	\$50.00
e.Well assignment	\$30.00 per well
f.Notice of intention to abandon a well	\$150.00
g.Notice of intention to drill a well other than a well described in subsection (A)(1)(h) of this Section	\$150.00
h.Notice of intention to drill a well that will not be located in an active management area or irrigation non-expansion area, that will be used solely for domestic purposes and that will have a pump with a maximum capacity of not more than 35 gallons per minute	\$100.00
i.Re-issuance of drill card	\$120.00
j.Permit to drill non-exempt well in an active management area	\$150.00 application fee plus \$30.00 permit fee

2. Groundwater:

Type of Application or Filing	Fee
a.Conveyance of farm’s flexibility account balance	\$250.00
b.Conveyance of notice of authority to irrigate in an irrigation non-expansion area	\$500.00
c.Conveyance of groundwater withdrawal permit	\$500.00

3. Grandfathered rights:

Type of Application	Fee
a.Late application for certificate of grandfathered right	\$100.00
b.Conveyance of certificate of grandfathered right	\$500.00
c.Issuance of revised certificate of grandfathered right following partial extinguishment of grandfathered right for assured water supply extinguishment credits	\$120.00
d.Revised certificate of Type 2 non-irrigation grandfathered right to reflect new or additional points of withdrawal or the deletion of a point of withdrawal	\$250.00
e.Approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right	\$500.00
f.Re-issuance of certificate of grandfathered right to reflect a change in family circumstances or a transfer of the right from the rightholder to a trust in which the rightholder is a beneficiary or from a trust to a beneficiary of the trust	\$120.00

4. Underground water storage, savings and replenishment:

Type of Application or Filing	Fee
a.Conveyance of storage facility permit	\$500.00
b.Conveyance of water storage permit	\$500.00
c.Assignment of long-term storage credits	\$250.00

5. Assured water supply:

Type of Application or Filing	Fee
a.Extinguishment of grandfathered right for extinguishment credits	\$250.00
b.Conveyance of extinguishment credits	\$250.00

6. Surface water:

Type of Application or Filing	Fee
a.Re-issuance of a surface water permit or certificate (not associated with an assignment of the permit or certificate)	\$120.00
b.Claim of water right for a stockpond pursuant to A.R.S. § 45-273	\$10.00
c.Statement of claim for a water right pursuant to A.R.S. § 45-183	\$5.00
d.Assignment of application, permit, certificate or statement of claim	\$75.00
e.Certification of water right for a stockpond pursuant to A.R.S. § 45-275	\$120.00

7. Dams:

Type of Application	Fee
Approval of plans for construction, enlargement, repair, alteration or removal of dam	2 percent of the total project cost

8. Water Exchange:

Type of Filing	Fee
Notice of water exchange that does not require approval pursuant to A.R.S. § 45-1052(6)(b)	\$500.00

9. Weather modification:

Type of Application	Fee
a.License for weather control or cloud modification	\$100.00
b.Equipment license for weather control or cloud modification	\$10.00

B. In addition to the application or filing fee listed in subsection (A) of this Section, an applicant shall pay any mileage expenses and the actual cost of mailing or publishing any legal notice of the application.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-105. Fee for Dam Safety Inspection; Fee for Review of Dam Safety Inspection Report

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- A. The owner of a high or significant hazard potential dam shall pay a fee for the Department’s dam safety inspection pursuant to R12-15-1219(A). The fee shall be based on the total crest length of the dam plus appurtenant embankments and saddle dikes, as follows:

Length (feet)	Fee
0 up to and including 500	\$2,000.00
More than 500 up to and including 1,000	\$2,200.00
More than 1,000 up to and including 2,000	\$2,400.00
More than 2,000 up to and including 4,000	\$2,600.00
More than 4,000 up to and including 8,000	\$3,000.00
More than 8,000 up to and including 16,000	\$3,400.00
More than 16,000 up to and including 32,000	\$3,800.00
More than 32,000	\$4,200.00

- B. The owner of a low or very low hazard potential dam shall pay a fee for the Department’s dam safety inspection pursuant to R12-15-1219(A). The fee shall be \$250.00.
- C. After conducting a dam safety inspection pursuant to R12-15-1219(A), the Director shall send to the dam owner a bill for the fee required by subsection (A) or (B) of this Section. The dam owner shall pay the fee by the date specified in the bill, which shall be at least 35 days from the date of the bill. Failure by a dam owner to pay a fee required by subsection (A) or (B) of this Section shall be considered a violation of R12-15-1219.
- D. The owner of a dam who submits a dam safety inspection report pursuant to R12-15-1219(E) shall pay a fee of \$750.00 if the dam is a high or significant hazard potential dam or a fee of \$250 if the dam is a low or very low hazard potential dam. The Department shall not accept a dam safety inspection report unless the fee is submitted with the report.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Section amended by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3).

R12-15-106. Fee for Well Capping

The owner of a well that is capped by the Department pursuant to A.R.S. § 45-594(C) shall pay to the Department a fee of \$300.00, plus actual expenses over \$300.00. After capping an open well, the Department shall send the owner of the well a bill for the fee under this Section. The owner of the well shall pay the fee by the date specified in the bill, which shall be at least 35 days after the date of the bill.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-107. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011 (Supp. 11-2). New Section made by exempt rulemaking at 17 A.A.R. 1769, effective August 10, 2011 with an automatic repeal date effective July 1, 2012 (Supp. 11-3). New Section made by final rulemaking at 18 A.A.R. 203, effective July 1, 2012 (Supp. 12-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3475, effective November 5, 2016 (Supp. 16-4).

R12-15-108. Reserved

through

R12-15-150. Reserved

R12-15-151. Repealed

Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective June 29, 1994 (Supp. 94-2). Amended effective March 3, 1995 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3). Section repealed by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). New Section made by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Section repealed by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-152. Expired

Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1647, effective May 31, 2006 (Supp. 07-2).

ARTICLE 2. PROCEDURAL RULES

R12-15-201. Expired

Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). The reference to R12-14-223 in subsection (C) corrected to read R12-15-223 (Supp. 93-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-202. Expired

Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-203. Expired

Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-204. Expired

Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159,

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

effective February 28, 2001 (Supp. 01-2).

R12-15-205. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-206. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-207. Correction of Clerical Mistakes

Upon a motion or on the initiative of the Director, the Director may correct clerical mistakes in decisions, orders, rulings, any process issued by the Department, or other parts of the record, and errors in the record arising from oversight or omission. The Director shall give all parties and the Chief Counsel notice of any corrections made pursuant to this Section.

Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

R12-15-208. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-209. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-210. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-211. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-212. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-213. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-214. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section

expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-215. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section number corrected (Supp. 93-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-216. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-217. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-218. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-219. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-220. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-221. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-222. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-223. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-224. Ex Parte Communications

A. During the course of a contested case or appealable agency action, a party shall not make an ex parte communication or knowingly cause an ex parte communication to be made to the Director or other Department employee or consultant who is or may reasonably be expected to be involved in the decision-making process of the contested case or appealable agency action.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- B.** During the course of a contested case or appealable agency action, the Department personnel listed in subsection (A) shall not make an ex parte communication or knowingly cause an ex parte communication to be made to a party or a person who will be materially and directly affected by the outcome of the contested case or appealable agency action.
- C.** Any of the Department personnel listed in subsection (A) of this Section who receives a written communication prohibited by this Section shall file a copy of the communication in the public docket and serve a copy on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action. Any of the Department personnel listed in subsection (A) of this Section who receives an oral communication prohibited by this Section shall file a summary, stating the substance of the communication, in the public docket and serve a copy on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action.
- D.** Upon receipt of an ex parte communication or a copy or summary of an ex parte communication made or knowingly caused to be made by a party in violation of this Section, the Director, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why the party's claim or interest in the contested case or appealable agency action should not be dismissed, denied or disregarded because of the violation.
- E.** For purposes of this Section, "ex parte communication" means any written or oral communication relating to the merits of a contested case or appealable agency action, except:
1. Communications made in the course of official proceedings in the contested case or appealable agency action;
 2. Communications made in writing, if a copy of the communication is promptly served on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action;
 3. Oral communications made after adequate notice, stating the substance of each communication, to all parties and the Chief Counsel;
 4. Communications relating solely to procedural matters; and
 5. As otherwise authorized by law.

Historical Note

Adopted effective June, 1984 (Supp. 84-3). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

ARTICLE 3. STOCKPOND AND OTHER SURFACE WATER RULES**R12-15-301. Expired****Historical Note**

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective April 3, 1987 (Supp. 87-2). Amended effective May 7, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2012, effective February 28, 2001 (Supp. 01-2).

R12-15-302. Expired**Historical Note**

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective May 7, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2012, effective February 28, 2001 (Supp. 01-2).

R12-15-303. Multiple Applications for Water Rights

- A.** If two or more applications are filed with the Director pursuant to A.R.S. §§ 45-152 or 45-273 or both by or for the same applicant and for a right to use the same water, the Director

shall consolidate the applications. If the applicant is otherwise entitled to both a permit to appropriate and a certificate of stockpond water right, the Director shall issue to the applicant either the permit to appropriate or the certificate of stockpond water right, whichever would give the applicant the higher priority.

- B.** If one or more applications are filed with the Director pursuant to A.R.S. §§ 45-152 or 45-273 or both by or for the same applicant and for a right to use the same water for which the applicant holds a permit to appropriate, a certificate of water right or a certificate of stockpond water right, the Director shall deny the application or applications unless the applicant relinquishes every permit to appropriate, certificate of water right and certificate of stockpond water right which the applicant holds for that same water. The applicant may relinquish every permit to appropriate, certificate of water right and certificate of stockpond water right on the condition that the Director issues a permit to appropriate or certificate of stockpond water right to the applicant for the same water. In that case, the relinquishment shall be effective when the Director issues the permit to appropriate or certificate of stockpond water right.
- C.** For purposes of this rule, "same water" means the same quantity of water from the same source for use at the same place for the same purpose. Water for which a right is applied or held pursuant to an application or permit to appropriate, certificate of water right or certificate of stockpond water right may be the same water in whole or in part as water for which a right is applied or held pursuant to a separate application or permit to appropriate, certificate of water right or certificate of stockpond water right.

Historical Note

Adopted effective April 3, 1987 (Supp. 87-2). Section R12-15-310 renumbered to R12-15-303 and amended effective May 7, 1990 (Supp. 90-2).

R12-15-304. Reserved**R12-15-305. Reserved****R12-15-306. Reserved****R12-15-307. Reserved****R12-15-308. Reserved****R12-15-309. Reserved****R12-15-310. Renumbered****Historical Note**

Adopted effective April 3, 1987 (Supp. 87-2). Section R12-15-310 renumbered to R12-15-303 effective May 7, 1990 (Supp. 90-2)

ARTICLE 4. LICENSING TIME-FRAMES**R12-15-401. Licensing Time-frames**

The following time-frames apply to licenses issued by the Department. In this Article, "license" has the meaning prescribed in A.R.S. § 41-1001. The licensing time-frames consist of an administrative completeness review time-frame, a substantive review time-frame, and an overall time-frame.

1. Within the administrative completeness review time-frames set forth in subsection (7), the Department shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the notice shall specify what information or component is required to make the application complete.
2. An applicant with an incomplete application shall supply the missing information within 60 days from the date of

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

the notice, or within such further time as the Director may specify, unless another time limit is specified by statute or applicable rule. If the applicant fails to complete the application within the specified time period, the Director may deny the application. Denial of an application under this provision does not preclude the applicant from filing a new application.

3. Within the overall time-frames set forth in subsection (7), unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or the applicant's right to appeal.
4. In computing any period of time prescribed by this rule, the day of the filing, notice or event from which the designated period of time begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When

the prescribed administrative completeness review time-frame or substantive review time-frame is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation. The overall time-frame is the sum of the administrative completeness review time-frame and the substantive review time-frame calculated as prescribed by this Section.

5. Except as otherwise noted, the licensing time-frames do not include time for hearings. Time-frames in cases where a hearing is held are increased by 120 days.
6. The licensing time-frame rules are effective after December 31, 1998, as prescribed by A.R.S. § 41-1073(A), and apply to all applications filed after that date.
7. The licensing time-frames are set forth in Table A.

Historical Note

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

Table A. Licensing Time-frames

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
1	Filling a body of water with poor quality water	A.R.S. § 45-132(C)	30	60	90
2	Interim water use in body of water	A.R.S. § 45-133	30	60	90
3	Temporary emergency permit for use of surface water or groundwater in body of water	A.R.S. § 45-134	10	20	30
4	Permit to appropriate water (non-instream flow)	A.R.S. §§ 45-151, 45-152 and 45-153	30	420	450
5	Permit to appropriate water (instream flow)	A.R.S. §§ 45-151, 45-151.01 and 45-153	50	530	580
6	Change in use of water	A.R.S. § 45-156(B)	30	375	405
7	Exception to limitation on time of completion of construction	A.R.S. § 45-160	5	15	20
8	Primary reservoir permit	A.R.S. § 45-161	30	420	450
9	Secondary reservoir permit	A.R.S. § 45-161	30	420	450
10	Certificate of water right (non-instream flow)	A.R.S. § 45-162	20	100	120
11	Certificate of water right (instream flow)	A.R.S. § 45-162	20	190	210
12	Reissuance of permit or certificate held by the United States or State of Arizona	A.R.S. § 45-164(C)	10	80	90
13	Severance and transfer	A.R.S. § 45-172 (excluding § 172(A)(6))	30	390	420
14	Stockpond certificate	A.R.S. § 45-273	30	190	220

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
15	Transporting water from this state **	A.R.S. § 45-292	120	300	420
16	Waiver of water conserving plumbing fixture requirement	A.R.S. § 45-315	10	3	13
17	Irrigated acreage in an irrigation non-expansion area	A.R.S. § 45-437	30	90	120
18	Substitution of acres in an irrigation non-expansion area/ flood damage	A.R.S. § 45-437.02	30	90	120
19	Substitution of acres in an irrigation non-expansion area/ impediments to efficient irrigation	A.R.S. § 45-437.03	30	90	120
20	Reversal of substitution of acres irrigated with Central Arizona Project water	A.R.S. § 45-452(G) and (F)	30	90	120
21	Type 1 non-irrigation grandfathered right associated with irrigation land retired 1965-1980	A.R.S. §§ 45-463, 45-476.01, and 45- 476	30	60	90
22	Type 2 non-irrigation grandfathered right	A.R.S. §§ 45-464, 45-476.01, and 45- 476	30	60	90
23	Irrigation grandfathered right	A.R.S. §§ 45-465, 45-476.01, and 45- 476	30	60	90
24	Substitution of acres in an active management area/flood damaged acres	A.R.S. § 45-465.01	30	90	120
25	Substitution of acres in an active management area/ impediments to efficient irrigation	A.R.S. § 45-465.02	30	90	120
26	Type 1 non-irrigation right retired after 6/12/80	A.R.S. § 45-469	30	90	120
27	Restoration of retired irrigation grandfathered right	A.R.S. § 45-469(O)	30	90	120
28	Revised certificate for new or additional points of withdrawal for a Type 2 right	A.R.S. § 45-471(C)	45	45	90
29	Conveyance of irrigation grandfathered right for electrical energy generation	A.R.S. § 45-472(B)(2)	30	90	120
30	Conveyance of irrigation grandfathered right for non-irrigation use within service area	A.R.S. § 45-472(C)	30	90	120
31	Contract to supply groundwater	A.R.S. § 45-492(C)	15	90	105

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
32	Extension of service area to provide disproportionately large amount of water to large user	A.R.S. § 45-493(A)(2)	15	90	105
33	Addition/exclusion of acres by irrigation district	A.R.S. § 45-494.01(A)	30	90	120
34	Delivery of groundwater from an irrigation district to a general industrial use permit holder	A.R.S. § 45-497(B)	15	60	75
35	Issuance/renewal/modification of dewatering permit	A.R.S. §§ 45-513 and 45-527	30	70	100
36	Issuance/renewal/modification of mineral extraction and metallurgical processing permit	A.R.S. §§ 45-514 and 45-527	30	70	100
37	Issuance/renewal/modification of general industrial use permit	A.R.S. §§ 45-515, 45-521, 45-522, 45-523, 45-524, and 45-527	30	70	100
38	Issuance/renewal/modification of poor quality groundwater withdrawal permit	A.R.S. §§ 45-516 and 45-527	30	70	100
39	Issuance/renewal/modification of temporary permit for electrical energy generation	A.R.S. §§ 45-517 and 45-527	30	70	100
40	Issuance/extension/ modification of temporary dewatering permit	A.R.S. §§ 45-518 and 45-527	30	70	100
41	Emergency temporary dewatering permit	A.R.S. § 45-518(D)	3	7	10
42	Issuance/renewal/modification of drainage water withdrawal permit	A.R.S. §§ 45-519 and 45-527	30	70	100
43	Issuance/renewal/modification of hydrologic testing permit	A.R.S. §§ 45-519.01, 45-521, 45-522, 45-524, and 45-527	30	15	45
44	Change of location of use	A.R.S. §§ 45-520(A), 45-521, and 45-527	30	30	60
45	Conveyance of a groundwater withdrawal permit	A.R.S. § 45-520(B)	30	30	60
46	Transportation of groundwater withdrawn in McMullen Valley Basin to an active management area	A.R.S. § 45-552(B)	45	105	150
47	Transportation of groundwater withdrawn in Harquahala irrigation non-expansion area to an initial active management area	A.R.S. § 45-554(B)	45	105	150

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
48	Transportation of groundwater withdrawn in Big Chino subbasin to an initial active management area	A.R.S. § 45-555(B)	45	105	150
49	Well spacing requirements for withdrawing groundwater for transportation to an active management area	A.R.S. § 45-559	45	105	150
50	Groundwater replenishment district's preliminary or long-term replenishment plan **	A.R.S. § 45-576.03	As prescribed by A.R.S. § 45-576.03(A)	As prescribed by A.R.S. § 45-576.03 (B), (C), (D), and (E)	As prescribed by A.R.S. § 45-576.03
51	Conservation district or water district long-term replenishment plan **	A.R.S. §§ 45-576.03, 45-576.02(C), and 45-576.02(E)	As prescribed by A.R.S. § 45-576.03(I)	As prescribed by A.R.S. § 45-576.03(J), (K), (L), and (M)	As prescribed by A.R.S. § 45-576.03
52	Notice of intent to abandon a well	A.R.S. § 45-594 and A.A.C. R12-15-816	15	15	30
53	Well construction request for variance	A.R.S. §§ 45-594, 45-596(D), and A.A.C. R12-15-820	15	30	45
54	Well driller license	A.R.S. § 45-595(C)	25	65	90
55	Single well license	A.R.S. § 45-595(D)	25	65	90
56	Renewal or reactivation of well drilling license	A.R.S. § 45-595(C) A.A.C. R12-15-806	25	15	40
57	Notice of intent to drill	A.R.S. § 45-596, and A.A.C. R12-15-810	15	0	15
58	Well construction permit	A.R.S. § 45-599	30	60	90
59	Alternative water measuring devices	A.R.S. § 45-604 and A.A.C. R12-15-909	15	60	75
60	Underground storage facility permit	A.R.S. §§ 45-811.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
61	Groundwater savings facility permit	A.R.S. §§ 45-812.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
62	Storage facility permit renewal/conveyance/ modification	A.R.S. §§ 45-814.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
63	Water storage permit modification/conveyance	A.R.S. §§ 45-831.01 and 45-871.01	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(B) and (E)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(D), (E), (G), and (H)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01
64	Recovery well permit	A.R.S. §§ 45-834.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(F), (G), and (H)	As prescribed by A.R.S. § 45-871.01
65	Emergency temporary recovery well permit	A.R.S. § 45-834.01(D)	5	10	15

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
66	Issuance/renewal/modification of water exchange permit	A.R.S. §§ 45-1041, 45-1042, and 45- 1045	As prescribed by A.R.S. § 45-1042(A)	As prescribed by A.R.S. § 45-1042(B), (C), and (D)	As prescribed by A.R.S. § 45-1042
67	Modification of previously enrolled or permitted water exchange/non-Colorado River	A.R.S. § 45-1041(B)	60	90	150
68	Construction, enlargement, repair, alteration, or removal of a dam	A.R.S. §§ 45-1203, 45-1206, and 45- 1207	120	60	180
69	Weather modification license	A.R.S. § 45-1601	15	60	75
70	Certificate of Assured Water Supply (CAWS)	A.A.C. R12-15-704, A.R.S. §§ 45-576 and 45-578	150	60	210
71	Designation or Modification of Designation of Assured Water Supply (DAWS)	A.A.C. R12-15-710 and R12-15-714; A.R.S. § 45-576	150	60	210
72	Analysis of Assured Water Supply	A.A.C. R12-15-703, A.R.S. § 45-576(H)	150	30	180
73	Water Report	A.A.C. R12-15-713, A.R.S. § 45-108	60	60	120
74	Designation or Modification of Designation of Adequate Water Supply	A.A.C. R12-15-714, A.A.C. R12-15-715 A.R.S. § 45-108	150	60	210
75	Analysis of Adequate Water Supply	A.R.S. § 45-108 A.A.C. R12-15-712	60	60	120

* The computation of days is prescribed by subsection (4).

** Hearing is required.

Historical Note

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3). Table A amended by final rulemaking at 23 A.A.R. 2375, effective October 10, 2107 (Supp. 17-3).

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

R12-15-701. Definitions - Assured and Adequate Water Supply Programs

In addition to any other definitions in A.R.S. Title 45 and the management plans in effect at the time of application, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned plat" means a plat for which a certificate or water report has been issued and that will not be developed because of one of the following:
 - a. The land has been developed for another use; or
 - b. Legal restrictions will preclude approval of the plat.
2. "ADEQ" means the Arizona Department of Environmental Quality.
3. "Adequate delivery, storage, and treatment works" means:

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- a. A water delivery system with sufficient capacity to deliver enough water to meet the needs of the proposed use;
 - b. Any necessary storage facilities with sufficient capacity to store enough water to meet the needs of the proposed use; and
 - c. Any necessary treatment facilities with sufficient capacity to treat enough water to meet the needs of the proposed use.
4. "Adequate storage facilities" means facilities that can store enough water to meet the needs of the proposed use.
 5. "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.
 6. "AMA" means an active management area as defined in A.R.S. § 45-402.
 7. "Analysis" means an analysis of assured water supply or an analysis of adequate water supply.
 8. "Analysis holder" means a person to whom an analysis of assured water supply or an analysis of adequate water supply is issued and any current owner of land included in the analysis.
 9. "Analysis of adequate water supply" means a determination issued by the Director stating that one or more criteria required for a water report pursuant to R12-15-713 have been demonstrated for a development.
 10. "Analysis of assured water supply" means a determination issued by the Director stating that one or more criteria required for a certificate of assured water supply pursuant to R12-15-704 have been demonstrated for a development.
 11. "Annual authorized volume" means, for an approved remedial action project, the annual authorized volume specified in a consent decree or other document approved by ADEQ or the EPA, except that:
 - a. If no annual authorized amount is specified in a consent decree or other document approved by ADEQ or the EPA, the annual authorized volume is the largest volume of groundwater withdrawn pursuant to the approved remedial action project in any year prior to January 1, 1999.
 - b. If the Director increases the annual authorized volume pursuant to R12-15-729(C), the annual authorized volume is the amount approved by the Director.
 12. "Annual estimated water demand" means the estimated water demand divided by 100.
 13. "Approved remedial action project" means a remedial action project approved by ADEQ under A.R.S. Title 49, or by the EPA under CERCLA.
 14. "Authorized remedial groundwater use" means, for any year, the amount of remedial groundwater withdrawn pursuant to an approved remedial action project and used by a municipal provider during the year, not to exceed the annual authorized volume of the project.
 15. "Build-out" means a condition in which all water delivery mains are in place and active water service connections exist for all lots.
 16. "CAP water" means:
 - a. All water from the Colorado River or from the Central Arizona Project works authorized in P.L. 90-537, excluding enlarged Roosevelt reservoir, which is made available pursuant to a subcontract with a multi-county water conservation district.
 - b. Any additional water not included in subsection 16(a) of this Section that is delivered by the United States Secretary of the Interior pursuant to an Indian water rights settlement through the Central Arizona Project.
 17. "Central Arizona Groundwater Replenishment District" or "CAGR" means a multi-county water conservation district acting in its capacity as the entity established pursuant to A.R.S. § 48-3771, et seq., and responsible for replenishing excess groundwater.
 18. "Central distribution system" means a water system that qualifies as a public water system pursuant to A.R.S. § 49-352.
 19. "CERCLA" or "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" has the same meaning as prescribed in A.R.S. § 49-201.
 20. "Certificate" means a certificate of assured water supply issued by the Director for a subdivision pursuant to A.R.S. § 45-576 et seq. and this Article.
 21. "Certificate holder" means any person included on a certificate, except the following:
 - a. Any person who no longer owns any portion of the property included in the certificate, and
 - b. Any potential purchaser for whom the purchase contract has been terminated or has expired.
 22. "Certificate of convenience and necessity" means a certificate required by the Arizona Corporation Commission, pursuant to A.R.S. § 40-281, which allows a private water company to serve water to customers within its certificated area.
 23. "Colorado River water" means water from the main stream of the Colorado River. For purposes of this Article, Colorado River water does not include CAP water.
 24. "Committed demand" means the 100-year water demand at build-out of all recorded lots that are not yet served water within the service area of a designation applicant or a designated provider.
 25. "County water augmentation authority" means an authority formed pursuant to A.R.S. Title 45, Chapter 11.
 26. "Current demand" means the 100-year water demand for existing uses within the service area of a designation applicant or designated provider, based on the annual report for the previous calendar year.
 27. "Depth-to-static water level" means the level at which water stands in a well when no water is withdrawn by pumping or by free flow.
 28. "Designated provider" means:
 - a. A municipal provider that has obtained a designation of assured or adequate water supply; or
 - b. A city or town that has obtained a designation of adequate water supply pursuant to A.R.S. § 45-108(D).
 29. "Designation" means a decision and order issued by the director designating a municipal provider as having an assured water supply or an adequate water supply.
 30. "Determination of adequate water supply" means a water report, a designation of adequate water supply, or an analysis of adequate water supply.
 31. "Determination of assured water supply" means a certificate, a designation of assured water supply, or an analysis of assured water supply.
 32. "Development" means either a subdivision or an unplatted development plan.
 33. "Diversion works" means a structure or well that allows or enhances diversion of surface water from its natural course for other uses.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

34. "Drought response plan" means a plan describing a variety of conservation and augmentation measures, especially the use of backup water supplies, that a municipal provider will utilize in operating its water supply system in times of a water supply shortage. The plan may include the following:
- An identification of priority water uses consistent with applicable public policies.
 - A description of sources of emergency water supplies.
 - An analysis of the potential use of water pressure reduction.
 - Plans for public education and voluntary water use reduction.
 - Plans for water use bans, restrictions, and rationing.
 - Plans for water pricing and penalties for excess water use.
 - Plans for coordination with other cities, towns, and private water companies.
35. "Drought volume" means 80% of the volume of a surface water supply, determined by the director under R12-15-716 to be physically available on an annual basis to a certificate holder or a designated provider.
36. "Dry lot development" means a development or subdivision without a central water distribution system.
37. "EPA" means the United States Environmental Protection Agency.
38. "Estimated water demand" means:
- For a certificate or water report, the Director's determination of the 100-year water demand for all uses included in the subdivision;
 - For a designation, the sum of the following:
 - The Director's determination of the current demand;
 - The Director's determination of the committed demand; and
 - The Director's determination of the projected demand during the term of the designation; or
 - For an analysis, the Director's determination of the water demand for all uses included in the development.
39. "Existing municipal provider" means a municipal provider that was in operation and serving water for non-irrigation use on or before January 1, 1990.
40. "Extinguish" means to cause a grandfathered right to cease to exist through a process established by the director pursuant to R12-15-723.
41. "Extinguishment credit" means a credit that is issued by the Director in exchange for the extinguishment of a grandfathered right and that may be used to make groundwater use consistent with the management goal of an AMA.
42. "Firm yield" means the minimum annual diversion for the period of record which may include runoff releases from storage reservoirs, and surface water withdrawn from a well.
43. "Management plan" means a water management plan adopted by the director pursuant to A.R.S. § 45-561 et seq.
44. "Master-planned community" has the same meaning as provided in A.R.S. § 32-2101.
45. "Median flow" means the flow which is represented by the middle value of a set of flow data that are ranked in order of magnitude.
46. "Member land" has the same meaning as provided in A.R.S. § 48-3701.
47. "Member service area" has the same meaning as provided in A.R.S. § 48-3701.
48. "Multi-county water conservation district" means a district established pursuant to A.R.S. Title 48, Chapter 22.
49. "Municipal provider" has the same meaning as provided in A.R.S. § 45-561.
50. "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.
51. "Owner" means:
- For an analysis, certificate, or water report applicant, a person who holds fee title to the land described in the application; or
 - For a designation applicant, the person who will be providing water service pursuant to the designation.
52. "Perennial" means a stream that flows continuously.
53. "Persons per household" means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.
54. "Physical availability determination" means a letter issued by the Director stating that an applicant has demonstrated all of the criteria in R12-15-702(C).
55. "Plat" means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.
56. "Potential purchaser" means a person who has entered into a purchase agreement for land that is the subject of an application for a certificate or an assignment of a certificate.
57. "Projected demand" means the 100-year water demand at build-out, not including committed or current demand, of customers reasonably projected to be added and plats reasonably projected to be approved within the designated provider's service area and reasonably anticipated expansions of the designated provider's service area.
58. "Proposed municipal provider" means a municipal provider that has agreed to serve a proposed subdivision.
59. "Purchase agreement" means a contract to purchase or acquire an interest in real property, such as a contract for purchase and sale, an option agreement, a deed of trust, or a subdivision trust agreement.
60. "Remedial groundwater" means groundwater withdrawn pursuant to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply pursuant to A.R.S. § 49-282.03.
61. "Service area" means:
- For an application for an analysis of adequate water supply, a water report, or a designation of adequate water supply, the area of land actually being served water for a non-irrigation use by the municipal provider and additions to the area that contain the municipal provider's operating distribution system for the delivery of water for a non-irrigation use;
 - For an application for a designation of adequate water supply pursuant to A.R.S. § 45-108(D), the area of land actually being served water for a non-irrigation use by each municipal provider that serves water within the city or town, and additions to the area that contain each municipal provider's operating distribution system for the delivery of water for a non-irrigation use; or
 - For an application for a certificate or designation of assured water supply, "service area" has the same meaning as prescribed in A.R.S. § 45-402.
62. "Subdivision" has the same meaning as prescribed in A.R.S. § 32-2101.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

63. "Superfund site" means the site of a remedial action undertaken pursuant to CERCLA.
64. "Surface water" means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.
65. "Water Quality Assurance Revolving Fund site" or "WQARF site" means a site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5.
66. "Water report" means a letter issued to the Arizona Department of Real Estate by the Director for a subdivision stating whether an adequate water supply exists pursuant to A.R.S. § 45-108 and this Article.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1).
Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired.
Amended by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-702. Physical Availability Determination

- A. A person may apply for a physical availability determination by submitting an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and providing the following information with the application:
 1. The proposed source of water for which the applicant is seeking a determination of physical availability,
 2. Evidence that the applicant has complied with subsection (C) of this Section, and
 3. Any other information that the Director reasonably deems necessary to determine whether water is physically available in the area that is the subject of the application.
- B. Each applicant shall sign an application for a physical availability determination. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the determination, the authorized representative may sign the application on the applicant's behalf.
- C. An applicant for a physical availability determination shall demonstrate the following:
 1. The volume of water that is physically available for 100 years in the area that is the subject of the application, according to the criteria in R12-15-716.
 2. That the proposed sources of water will be of adequate quality, according to the criteria in R12-15-719.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine whether the applicant has demonstrated all of the criteria in subsection (C) of this Section. If the Director determines that the applicant has demonstrated all of the criteria in subsection (C) of this Section, the Director shall issue a physical availability determination.
- E. Any person applying for a determination of assured water supply or a determination of adequate water supply may use an existing physical availability determination for purposes of R12-15-716. The Director shall consider any changes in hydrologic conditions for purposes of R12-15-716.
- F. The issuance of a physical availability determination does not reserve any water for purposes of this Article.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).
Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-703. Analysis of Assured Water Supply

- A. A person proposing to develop land that will not be served by a designated provider may apply for an analysis of assured water supply before applying for a certificate. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona or may consent to the inclusion of such land in an application.
- B. An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach the following:
 1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted, demonstrating the ownership of the land that is the subject of the application;
 2. A description of the development, including:
 - a. A map of the land uses included in the development,
 - b. A list of water supplies proposed to be used by the development,
 - c. A summary of land use types included in the development, and
 - d. An estimate of the water demand for the land uses included in the development; and
 3. Evidence that the applicant has complied with subsection (E) of this Section.
- C. An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the analysis, the authorized representative may sign the application on the applicant's behalf.
- D. After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E. The Director shall issue an analysis if an applicant demonstrates one or more of the following:
 1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716.
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717.
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718.
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
 5. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

6. Any proposed groundwater use is consistent with the management goal, according to the criteria in R12-15-722.
- F.** For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:
1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1) of this Section, the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
 2. If an analysis holder applies for a certificate for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the certificate, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the certificate that will be met with groundwater.
- G.** The Director shall reduce the amount of groundwater considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the name of the person's designee for purposes of this subsection.
- H.** The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:
1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
 2. The analysis holder has made material progress in developing the land included in the analysis.
 3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.
- I.** After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.
- J.** The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.
- gency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired. Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-703.01. Repealed**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 3038, effective June 18, 2001 (Supp. 01-2). Section repealed by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-704. Certificate of Assured Water Supply

- A.** An application for a certificate shall be filed by the current owner of the land that is the subject of the application. Potential purchasers and affiliates may also be included as applicants.
- B.** An applicant for a certificate shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
1. One of the following forms of proof of ownership for each applicant to be listed on the certificate:
 - a. For an applicant that is the current owner, one of the following:
 - i. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed, demonstrating that the applicant is the owner of the land that is the subject of the application; or
 - ii. Evidence that the CAGR has reviewed and approved evidence that the applicant is the owner of the land that is the subject of the application;
 - b. For an applicant that is a potential purchaser, evidence of a purchase agreement; or
 - c. For an applicant that is an affiliate of another applicant, a certification by the other applicant of the affiliate status;
 2. A plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision;
 4. A list of all proposed sources of water that will be used by the subdivision;
 5. Evidence that the criteria in subsections (F) or (G) of this Section are met; and
 6. Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.
- C.** Each applicant shall sign the application for a certificate. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.
- D.** The Director shall give public notice of an application for a certificate as provided in A.R.S. § 45-578.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1).
Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emer-

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- E. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The estimated water demand of the subdivision;
 2. The amount of the groundwater allowance for the subdivision, as provided in R12-15-724 through R12-15-727; and
 3. Whether the applicant has demonstrated all of the requirements in subsection (F) or subsection (G) of this Section.
- F. Except as provided in subsection (G) of this Section, the Director shall issue a certificate if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
 4. The sources of water are of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision, according to the criteria in R12-15-720;
 6. The proposed use of groundwater withdrawn within an AMA is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
 7. The proposed use of groundwater withdrawn within an AMA is consistent with the achievement of the management goal, according to the criteria in R12-15-722.
- G. If the Director previously issued a certificate for the subdivision, the Director shall issue a new certificate to the applicant if the applicant demonstrates that all of the requirements in subsection (F) are met or that all of the following apply:
1. Any changes to the plat for which the previous certificate was issued are not material, according to the criteria in R12-15-708;
 2. If groundwater is a proposed source of supply for the subdivision, the proposed groundwater withdrawals satisfied the physical availability requirements in effect at the time the complete and correct application for the previous certificate was submitted;
 3. Any proposed sources of water, other than groundwater, are physically available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-716;
 4. Any proposed sources of water other than groundwater are continuously available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-717;
 5. The proposed uses of groundwater withdrawn within an AMA were consistent with the achievement of the management goal according to the criteria in effect at the time the complete and correct application for the previous certificate was submitted; and
 6. The applicant demonstrates that the requirements in subsections (F)(3) through (6) of this Section are met.
- H. Before issuing a certificate, the Director shall classify the certificate for the purposes of R12-15-705 and R12-15-706 as follows:
1. **Type A certificate.** The Director shall classify the certificate as a Type A certificate if the applicant meets the criteria in R12-15-720(A)(1) and all of the subdivision's estimated water demand will be met with one or more of the following:
 - a. Groundwater served by a proposed municipal provider pursuant to an existing service area right;
 - b. Groundwater served by a proposed municipal provider pursuant to a pending service area right, if the proposed municipal provider currently holds or will hold the well permit;
 - c. CAP water served by a municipal provider pursuant to the proposed municipal provider's non-declining, long-term municipal and industrial subcontract;
 - d. Surface water served by a proposed municipal provider pursuant to the proposed municipal provider's surface water right or claim;
 - e. Effluent owned and served by a proposed municipal provider; or
 - f. A Type 1 grandfathered right appurtenant to the land on which the groundwater will be used and held by a proposed municipal provider.
 2. **Type B certificate.** The Director shall classify all certificates that do not meet the requirements of subsection (H)(1) of this Section as Type B certificates.
- I.** The Director shall review an application for a certificate pursuant to the licensing time-frame provisions in R12-15-401.
- J.** An owner of six or more lots is not required to obtain a certificate if all of the following apply:
1. The lots comprise a subset of a subdivision for which:
 - a. A plat was recorded before 1980; or
 - b. A certificate was issued before February 7, 1995;
 2. No changes were made to the plat since February 7, 1995; and
 3. Water service is currently available to each lot.
- K.** A new owner of all or a portion of a subdivision for which a plat has been recorded is not required to obtain a certificate if all of the following apply:
1. The Director previously issued a Type A certificate for the subdivision pursuant to subsection (H)(1) of this Section or R12-15-707;
 2. Water service is currently available to each lot; and
 3. There are no material changes to the plat for which the certificate was issued, according to the criteria in R12-15-708.
- L.** An owner of six or more lots in the Pinal AMA is not required to obtain a certificate if all of the following apply:
1. A plat for the subdivision was recorded before October 1, 2007;
 2. There have been no material changes to the plat according to the criteria in R12-15-708, since October 1, 2007;
 3. The proposed municipal provider was designated as having an assured water supply when the plat was recorded, but is no longer designated as having an assured water supply; and
 4. Water service is currently available to each lot.
- M.** A person may request a letter stating that the owner is not required to obtain a certificate pursuant to subsection (J), (K), or (L) of this Section by submitting an application on a form prescribed by the Director and attaching evidence that the criteria of subsection (J), (K), or (L) are met. Upon receiving an application pursuant to this subsection, the Director shall:
1. Review the application pursuant to the licensing time-frame provisions in R12-15-401.
 2. Determine whether the criteria of subsection (J), (K), or (L) of this Section are met.
 3. If the Director determines that the criteria of subsection (J) of this Section are met, issue a letter to the applicant

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

and the Arizona Department of Real Estate stating that the current owner is not required to obtain a certificate.

4. If the Director determines that the criteria of subsection (K) or (L) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner and any future owners are not required to obtain a certificate.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-705. Assignment of Type A Certificate of Assured Water Supply

- A. The certificate holder of a Type A certificate and the assignee may apply for approval of an assignment of the Type A certificate within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:
 1. One of the following forms of proof of ownership for each assignee:
 - a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner of the land that is the subject of the proposed assignment; or
 - b. If the assignee is a potential purchaser, evidence of a purchase agreement;
 2. A current plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
 4. Certification by each applicant that:
 - a. The proposed municipal provider has not changed and has agreed to continue to serve the subdivision after the assignment; and
 - b. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment.
- B. Each applicant shall sign the application for an assignment of a Type A certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land included in the certificate, the authorized representative may sign the application on behalf of the applicant.
- C. Upon receiving an application for an assignment of a Type A certificate, the Director shall post the notice required by A.R.S. § 45-579(E).
- D. If the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type A certificate to each applicant. A Type A certificate issued under

this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (E) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:

1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
 2. The assignee is the owner or a potential purchaser of the portion of the subdivision that is the subject of the assignment;
 3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
 4. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
 5. The applicant makes the certifications required in subsection (A)(4) of this Section.
- E. In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type A certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type A certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate being assigned.
 - F. The Director shall review an application for an assignment of a Type A certificate of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 4390, effective November 22, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-706. Assignment of Type B Certificate of Assured Water Supply

- A. The certificate holder of a Type B certificate or a certificate issued before the effective date of this Section that has not been classified pursuant to R12-15-707 and the assignee may apply for approval of an assignment of the certificate to another person within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:
 1. One of the following forms of proof of ownership for each assignee:
 - a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- of the land that is the subject of the proposed assignment; or
- b. If the assignee is a potential purchaser, evidence of a purchase agreement;
 2. A current plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
 4. Evidence that all necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
 5. Evidence that the assignee has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
 6. Evidence that all water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
 7. Evidence that the proposed municipal provider has not changed and has agreed to serve the subdivision after the assignment;
 8. If the applicant requests that the Director classify the certificate pursuant to subsection (E) of this Section, evidence that the requirements of R12-15-704(H)(1) are satisfied;
 9. Any other information that the Director reasonably deems necessary to determine whether the application meets the criteria of A.R.S. § 45-579.
- B.** Each applicant shall sign the application for an assignment of a certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.
- C.** Upon receiving an application for an assignment, the Director shall post the notice required by A.R.S. § 45-579(E).
- D.** Except as provided in subsection (E) of this Section, if the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type B certificate to each applicant. A Type B certificate issued under this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (F) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:
1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
 2. The assignee is the owner or potential purchaser of the portion of the subdivision that is the subject of the assignment;
 3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
 4. The applicant demonstrates the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
 5. All necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
 6. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
 7. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
 8. The proposed municipal provider has agreed to serve the subdivision after the assignment.
- E.** The applicant may include in the application a request to classify the certificate as a Type A certificate. If the Director determines that the request meets the requirements of R12-15-704(H)(1), the Director shall classify the certificate as a Type A certificate.
- F.** In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type B certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type B certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate that is being assigned.
- G.** The Director shall review an application for an assignment of a Type B certificate pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-707. Application for Classification of a Type A Certificate

- A.** A holder of a Type B certificate or a certificate issued before the effective date of this Section may apply to the Director to classify the certificate as a Type A certificate by submitting an application on a form prescribed by the Director with the initial fee prescribed in R12-15-103(C), and attaching evidence that the certificate meets the requirements of R12-15-704(H)(1).
- B.** At least one certificate holder shall sign the application for classification of a certificate as a Type A certificate. If the applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on behalf of the applicant.
- C.** If the applicant demonstrates that the requirements of R12-15-704(H)(1) are met, the Director shall classify the certificate as

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

a Type A certificate and issue a Type A certificate to each certificate holder.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-708. Material Plat Change; Application for Review

- A. A certificate or a water report is applicable to the original plat for which the certificate or water report was issued and to a revised plat, unless the plat changes are material according to subsections (C) and (D) of this Section.
- B. If a plat is revised after the Director issues a certificate or a water report and the changes to the plat are material according to subsection (C) or (D) of this Section, the holder may:
 1. Apply for a new certificate or water report for the revised plat,
 2. Use the original plat for which the certificate or water report was issued, or
 3. Revise the plat so that any changes are not material according to subsections (C) and (D) of this Section.
- C. Changes to the plat for which a certificate or a water report has been issued are material if any of the following apply:
 1. The number of lots on the plat has increased by more than:
 - a. For subdivisions of six to 10 lots: one lot;
 - b. For subdivisions of 11 to 499 lots: 10%, rounding up to the nearest whole number; or
 - c. For subdivisions of 500 lots or more: 50 lots.
 2. The 100-year water demand for the revised plat exceeds the estimated water demand for the certificate, unless all of the following apply:
 - a. The 100-year water demand for the revised plat does not exceed the estimated water demand for the certificate by more than 10%, rounding to the nearest whole acre-foot, or by more than 25 acre-feet per year, whichever is less;
 - b. The 100-year water demand is not greater than the supply demonstrated to be physically, continuously, and legally available at the time of issuance of the certificate or water report, and that water supply remains physically, continuously, and legally available; and
 - c. For a certificate, one of the following applies:
 - i. The subdivision is enrolled as a member land in the CAGRDR;
 - ii. Groundwater is not included as a source of supply; or
 - iii. The subdivision is located in the Pinal AMA and the 100-year water demand for the revised plat will not exceed the sum of the amount of the groundwater allowance and the amount of any extinguishment credits pledged to the certificate, including extinguishment credits pledged after the certificate was issued.
 3. For a certificate, additional land is included in the plat, unless all of the following apply:
 - a. The land included in the original plat for which the certificate was issued is located in a master-planned community;

- b. The outer boundaries of the master-planned community have not expanded;
- c. If the land included in the original plat for which the certificate was issued is enrolled as a member land in the CAGRDR, the additional land has also been enrolled in the CAGRDR; and
- d. A certificate has been issued for the additional land.

- D. Changes to a portion of a plat are not material if one of the following applies:
 1. The changes to the portion of the plat being reviewed are not material according to subsection (C) of this Section when compared to the equivalent portion of the plat for which the certificate was issued;
 2. The changes to the entire revised plat are not material according to subsection (C) of this Section when compared to the entire plat for which the certificate was issued; or
 3. For a partial assignment pursuant to R12-15-705 or R12-15-706, the plat for the portion of the subdivision retained by the certificate holder could be configured so that changes to the total number of lots and the estimated water demand for the entire subdivision, including the portion under consideration, are not material according to subsection (C) of this Section. For purposes of this subsection, the Director may require the applicant to submit evidence demonstrating whether changes to the plat are material. However, the Director shall not require the applicant to submit a plat for the retained portion of a subdivision, unless the materiality of changes to the plat cannot be determined with any other evidence.
- E. A person may apply for a review of a revised plat to determine whether any changes to the plat are material as follows:
 1. The applicant shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and shall attach the revised plat.
 2. The Director shall review the revised plat and the plat for which the certificate or water report was originally issued to determine whether any changes are material according to the criteria in subsections (C) and (D) of this Section.
 3. The Director shall issue a letter to the applicant stating whether any changes to the plat are material and identifying which changes, if any, are material. If the Director determines that the changes to the plat are not material, the Director's letter shall state that the certificate or water report is applicable to the revised plat.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-709. Certificate of Assured Water Supply; Revocation

- A. The Director may revoke a certificate if an assured water supply does not exist.
- B. The Director shall not revoke a certificate if any of the residential lots within the plat have been sold.
- C. If the Director determines that a certificate should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10. To determine whether a certificate should be revoked, the Director shall use the standards in place at the time the original application was submitted for the certificate.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-710. Designation of Assured Water Supply

- A.** A municipal provider applying for a designation of assured water supply shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
1. The applicant's current demand;
 2. The applicant's committed demand;
 3. The applicant's projected demand for the proposed term of the designation;
 4. The proposed term of the designation, which shall not be less than two years;
 5. Evidence that the criteria in subsection (E) of this Section are met; and
 6. Any other information that the Director determines is necessary to decide whether an assured water supply exists for the municipal provider.
- B.** An application for a designation shall be signed by:
1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
 2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
- C.** The Director shall give public notice of an application for designation in the same manner as provided for certificates in A.R.S. § 45-578.
- D.** After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The annual volume of water physically, continuously, and legally available for at least 100 years;
 2. The term of the designation, which shall not be less than two years;
 3. The applicant's estimated water demand;
 4. The applicant's groundwater allowance; and
 5. Whether the applicant has demonstrated compliance with all requirements in subsection (E) of this Section.
- E.** The Director shall designate the applicant as having an assured water supply if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720;
 6. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
 7. Any proposed use of groundwater withdrawn within an AMA is consistent with the management goal, according to the criteria in R12-15-722.

- F.** The Director shall review an application for a designation of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation

- A.** A designated provider shall include in the annual report required by A.R.S. § 45-632 the following information for the preceding calendar year:
1. The designated provider's committed demand;
 2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
 3. A report regarding the designated provider's compliance with water quality requirements;
 4. The depth-to-static water level of all wells from which the designated provider withdrew water; and
 5. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of assured water supply.
- B.** If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C.** The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked. To determine whether the designation should be modified or revoked, the Director shall use the standards in place at the time of review.
- D.** The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider.
- E.** A designated provider may request a modification of the designation at any time pursuant to R12-15-710.
- F.** The Director may revoke a designation if:
1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-710(E), than the amount required for a 100-year supply for the provider's:
 - a. Current demand,
 - b. Committed demand, and
 - c. Projected demand during the next two calendar years;
 2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner;
 3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
 4. The designated provider has violated its management plan requirements for two or more consecutive calendar years, and one of the following applies:
 - a. The provider fails to amend its water use plan in a manner that the Director determines will achieve compliance, or

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- b. The provider fails to sign a stipulated agreement to remedy the violation.
- G.** If the Director determines that a designation of assured water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- H.** If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- I.** Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.
- Historical Note**
- Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).
- R12-15-712. Analysis of Adequate Water Supply**
- A.** A person proposing to develop land outside an AMA that will not be served by a designated provider may apply for an analysis of adequate water supply before applying for a water report. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona outside an AMA or may consent to the inclusion of such land in an application.
- B.** An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach the following:
1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director, demonstrating the ownership of the land that is the subject of the application;
 2. A description of the development, including:
 - a. A map of the land uses included in the development,
 - b. A list of water supplies proposed to be used by the development,
 - c. A summary of land use types included in the development, and
 - d. An estimate of the water demand for the land uses included in the development; and
 3. Evidence that the applicant has complied with subsection (E) of this Section.
- C.** An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land that is the subject of the water report, the authorized representative may sign the application on the applicant's behalf.
- D.** After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E.** The Director shall issue an analysis if an applicant demonstrates one or more of the following:
1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
- F.** For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:
1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1), the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
 2. If an analysis holder applies for a water report for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the water report, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the water report that will be met with groundwater.
- G.** The Director shall reduce the amount of water considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the person's designee for purposes of this subsection.
- H.** The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:
1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
 2. The analysis holder has made material progress in developing the land included in the analysis.
 3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.
- I.** After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.
- J.** The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-713. Water Report

- A. An application for a water report shall be filed by the current owner of the land that is the subject of the application.
- B. An applicant for a water report shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
 1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed and demonstrating that the applicant is the owner of the land that is the subject of the application;
 2. A plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision;
 4. A list of all proposed sources of water that will be used by the subdivision;
 5. If the applicant is seeking a finding that the subdivision has an adequate water supply, evidence that the criteria in subsection (E) of this Section are met; and
 6. Any other information that the Director reasonably determines is necessary to decide whether an adequate water supply exists for the subdivision.
- C. Each applicant shall sign the application for a water report. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the water report, the authorized representative may sign the application on the applicant's behalf.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
 1. The estimated water demand of the subdivision,
 2. Whether the applicant has demonstrated all of the requirements in subsection (E) of this Section.
- E. The Director shall determine that the subdivision has an adequate water supply if the applicant demonstrates all of the following:
 1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
 4. The proposed sources of water will be of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720.
- F. The Director shall issue a water report to the applicant that states whether the applicant has complied with the requirements in subsection (E) of this Section.

- G. The Director shall review an application for a water report pursuant to the licensing time-frame provisions in R12-15-401.
- H. The Director may review or modify a water report if the Director receives new evidence regarding the criteria in subsection (E) of this Section. The Director shall not modify a water report pursuant to this subsection if any of the residential lots included in the plat have been sold. To determine whether a water report should be modified pursuant to this subsection, the Director shall use the standards in place at the time the original application was submitted for the water report. If the Director modifies a water report, the Director shall:
 1. Provide for an administrative hearing pursuant to A.R.S. Title 41, Chapter 6, Article 10; and
 2. Notify the Arizona Department of Real Estate.
- I. An owner of land that is the subject of a water report may request a modification of the water report at any time by submitting an application in accordance with subsection (B) of this Section. To determine whether a water report should be modified pursuant to this Section, the Director shall use the standards in place at the time of review.
- J. A water report is subject to the provisions of R12-15-708.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-714. Designation of Adequate Water Supply

- A. A municipal provider applying for a designation of adequate water supply shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the following:
 1. The applicant's current demand;
 2. The applicant's committed demand;
 3. The applicant's projected demand for the proposed term of the designation;
 4. The proposed term of the designation, which shall not be less than two years;
 5. Evidence that the criteria in subsection (E) of this Section are met; and
 6. Any other information that the Director determines is necessary to decide whether an adequate water supply exists for the municipal provider.
- B. A city or town, other than a municipal provider, that is applying for a designation shall submit an application on a form prescribed by the Director with the initial fee required in R12-15-103(C), and provide the following:
 1. The current demand of the applicant's service area;
 2. The committed demand of the applicant's service area;
 3. The projected demand of the applicant's service area for the proposed term of the designation;
 4. The proposed term of the designation, which shall not be less than two years; and
 5. Evidence that the requirements in A.R.S. § 45-108(D) are met.
- C. An application for a designation shall be signed by:
 1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
 1. The annual volume of water that is physically, continuously, and legally available for at least 100 years;
 2. The term of the designation, which shall not be less than two years;
 3. The estimated water demand for the applicant's service area for 100 years; and
 4. Whether the applicant has demonstrated compliance with all requirements in subsection (E) or (F) of this Section.
- E. The Director shall designate the applicant as having an adequate water supply pursuant to subsection (A) of this Section if the applicant demonstrates all of the following:
 1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719; and
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720.
- F. The Director shall issue a designation pursuant to subsection (B) of this Section if the applicant demonstrates that the requirements of A.R.S. § 45-108(D) are met.
- G. The Director shall review an application for a designation of adequate water supply pursuant to the licensing time-frame provisions in R12-15-401.
- B. If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C. The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked.
- D. The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider. A designated provider may request a modification of the designation at any time pursuant to R12-15-714. To determine whether the designation should be modified, the Director shall use the standards in place at the time of review.
- E. The Director may revoke a designation if:
 1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-714(E), than the amount required for a 100-year supply for the provider's:
 - a. Current demand,
 - b. Committed demand, and
 - c. Projected demand for the next two calendar years;
 2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner; or
 3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance.
- F. To determine whether the designation should be revoked, the Director shall use the standards in place at the time of review. If the Director determines that a designation of adequate water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- G. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- H. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation

- A. By March 31 of each calendar year, a designated provider shall submit the following information for the preceding calendar year on a form provided by the Director:
 1. The designated provider's committed demand;
 2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
 3. A report regarding the designated provider's compliance with water quality requirements;
 4. The depth-to static water level of all wells from which the designated provider withdrew water;
 5. A report regarding volume of water withdrawn, diverted, or received from each source for delivery to customers;
 6. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of adequate water supply.

Historical Head

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-716. Physical Availability

- A. The volume of a proposed source of water that is physically available to an applicant for a determination of assured water supply or a determination of adequate water supply is the amount determined by the Director to be physically available pursuant to subsections (B) through (L) of this Section.
- B. If the proposed source is groundwater, the applicant shall submit a hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area. Except as provided in subsection (D) of this Section, the Director shall determine that the proposed volume of groundwater will be physically available for the proposed use if both of the following apply:
 1. The groundwater will be withdrawn as follows:
 - a. Except as provided in subsection (B)(1)(b) of this Section, from wells owned by the applicant or the proposed municipal provider that are located within

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed municipal provider.

- b. If the application is for a dry lot development, from wells that the Director determines are likely to be constructed on individual lots.
- 2. Except as provided in subsection (C) of this Section, the groundwater will be withdrawn from depths that do not exceed the applicable maximum 100-year depth-to-static water level according to the following:

Type and location of development	Maximum 100-year depth-to-static water level
a. Developments in Phoenix, Tucson, or Prescott AMAs, except dry lot developments	1000 feet below land surface
b. Developments in Pinal AMA, except dry lot developments	1100 feet below land surface
c. Developments outside AMAs, except dry lot developments	1200 feet below land surface
d. Dry lot developments	400 feet below land surface

- 3. The Director shall calculate the projected 100-year depth-to-static water level by adding the following for the area where groundwater withdrawals are proposed to occur:
 - a. The depth-to-static water level on the date of application.
 - b. The projected declines caused by existing uses, using the projected decline in the 100-year depth-to-static water level during the 100-year period after the date of application, calculated using records of declines for the maximum period of time for which records are available up to 25 calendar years before the date of application. If evidence is provided to the Director of likely changes in pumpage patterns and aquifer conditions, as opposed to those patterns and conditions occurring historically, the Director may determine projected declines using a model rather than evidence of past declines.
 - c. The projected decline in the depth-to-static water level during the 100-year period after the date of application, calculated by adding the projected decline from each of the following that are not accounted for in subsection (B)(3)(b) of this Section:
 - i. The estimated water demand of issued certificates and water reports that will be met with groundwater or stored water recovered outside the area of impact of the stored water, not including the demand of subdivided lots included in abandoned plats;
 - ii. The estimated water demand of designations that will be met with groundwater or stored water recovered outside the area of impact of the stored water; and
 - iii. The groundwater reserved for developments for which the Director has issued an analysis pursuant to R12-15-703 or R12-15-712.
 - d. The projected decline in depth-to-static water level that the Director projects will result from the applicant's proposed use over a 100-year period.

- C. The Director shall lower the maximum 100-year depth-to-static water level requirement specified in subsection (B)(2) of this Section for an applicant seeking a determination of adequate water supply if the applicant demonstrates both of the following:
 - 1. Groundwater is available at the lower depth; and
 - 2. The applicant has the financial capability to obtain the groundwater at the lower depth, according to the criteria in R12-15-720.
- D. If the proposed source is groundwater that will be withdrawn from a groundwater basin outside an AMA and transported into an AMA, the Director shall determine that the proposed volume of groundwater will be physically available if both of the following apply:
 - 1. The groundwater will be withdrawn from wells owned by the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for the future uses of the applicant or the proposed municipal provider.
 - 2. Withdrawal of the groundwater will comply with any depth-to-static water level criteria, decline rate criteria, and volume limitation criteria prescribed by statute. If there are no applicable depth-to-static water level criteria prescribed by statute, withdrawal of the groundwater shall comply with the depth-to-static water level criteria in subsection (B)(2) of this Section.
- E. Subject to subsection (L) of this Section, if the proposed source of water is surface water, other than CAP water, or Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use, taking into consideration the priority date of the right or claim, by calculating 120% of the firm yield of the proposed source at the point of diversion as limited by the capacity of the diversion works; except that if the applicant demonstrates that an alternative source of water will be physically available during times of shortage in the proposed surface water supply, the Director shall determine the annual volume of water available by calculating 100% of the median flow of the proposed source at the point of diversion as limited by the capacity of the diversion works. The Director shall determine the firm yield or median flow as follows:
 - 1. By calculating the firm yield or median flow at the point of diversion based on at least 20 calendar years of flow records from the point of diversion, unless 20 calendar years of records are unavailable and the Director determines that a shorter period of record provides information necessary to determine the firm yield or median flow; or
 - 2. By calculating the firm yield or median flow at the point of diversion using a hydrologic model that projects the firm yield or median flow, taking into account at least 20 calendar years of historic river flows, changes in reservoir storage facilities, and projected changes in water demand. The yield available to any applicant may be composed of rights to stored water, direct diversion, or normal flow rights. If the permit for the water right was issued less than five years before the date of application, the Director shall require the applicant to submit evidence, as applicable, in accordance with this subsection.
- F. Subject to subsection (L) of this Section, if the proposed source of water is CAP water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:
 - 1. If the applicant or the proposed municipal provider has a non-declining, long-term municipal and industrial subcontract for CAP water, calculate 100% of the annual amount of water established in the subcontract.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

2. If the applicant has a lease for Indian priority CAP water, calculate 100% of the annual amount of water established in the lease.
 3. If the applicant has a subcontract for CAP water other than a non-declining, long-term municipal and industrial subcontract or a lease for Indian priority CAP water:
 - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water established in the subcontract. The applicant may establish backup water supplies by one or more of the following:
 - i. A drought response plan;
 - ii. Long-term storage credits;
 - iii. A contract for water with a multi-county water conservation district; or
 - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
 - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (F)(3)(a) of this Section, calculate the percentage of the annual amount of water established in the subcontract that reasonably reflects the reliability of the applicant's CAP water supply.
- G.** Subject to subsection (L) of this Section, if the proposed source of water is Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:
1. If the priority of the contract for Colorado River water provides reliability equal to or better than CAP municipal and industrial water, calculate 100% of the annual amount of water established in the contract.
 2. If the contract for Colorado River water provides reliability that is less than CAP municipal and industrial water:
 - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water in the contract. The applicant may establish backup water supplies by one or more of the following:
 - i. A drought response plan;
 - ii. Long-term storage credits;
 - iii. A contract for water with a multi-county water conservation district; or
 - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
 - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (G)(2)(a) of this Section, calculate the percentage of the annual amount of water established in the contract that reasonably reflects the reliability of the applicant's Colorado River water supply.
- H.** Subject to subsection (I) of this Section, if the proposed source of water is effluent, the Director shall determine the annual volume of water that will be physically available by evaluating the current, metered production or the projected production of effluent. The volume of effluent that is physically available shall not include the following:
1. If the effluent will be delivered directly from a wastewater treatment plant, the volume of effluent that exceeds the applicant's estimated water demand that will be met with effluent; and
 2. The volume of effluent that does not comply with any applicable water quality requirements for the proposed use of the effluent.
- I.** If the proposed source of water is stored water to be recovered from recovery wells, the Director shall determine the volume of water that is physically available for the proposed use as follows:
1. If the stored water is represented by long-term storage credits in existence on the date of application, the amount that is physically available is the amount that may be recovered pursuant to the credits in a manner consistent with A.R.S. Title 45, Chapter 3.1, subject to subsection (I)(3) of this Section.
 2. If the applicant proposes to use long-term storage credits that do not exist on the date of application or recover stored water on an annual basis pursuant to A.R.S. § 45-851.01, the Director shall evaluate the following in determining whether to include the proposed credits or the water proposed to be stored and recovered annually in the amount of water that is physically available for the applicant's proposed use:
 - a. The terms of a contract to obtain water to store in a storage facility;
 - b. The physical, continuous, and legal availability of the water proposed to be stored;
 - c. The presence of an existing storage facility that will be available for use for the proposed storage;
 - d. The existence of all required permits of an adequate duration; and
 - e. Whether recovery of the stored water will comply with subsection (I)(3) of this Section.
 3. If the applicant proposes to recover the stored water from recovery wells located outside the area of impact of storage, the stored water will be considered physically available only if sufficient water exists for the withdrawals consistent with both of the following:
 - a. The maximum 100-year depth-to-static water level requirements established in subsection (B)(2) of this Section; and
 - b. Any criteria for the withdrawals prescribed in the management plan in effect at the time of the application.
- J.** If the applicant will obtain the source of water through a water exchange agreement, the Director shall determine that the water is physically available for the proposed use if the applicant submits evidence that the source of water the applicant or the applicant's customers will use will be physically available in accordance with the terms of this Section.
- K.** In the case of two or more pending, conflicting, complete and correct applications for determinations of assured water supply or determinations of adequate water supply, the Director shall give priority to the application with the earliest priority date. The priority date of an application for a determination of assured water supply or determination of adequate water supply shall be the date that a complete and correct application is filed with the Director. The Director shall consider an application complete and correct if it contains all the information required and the Director verifies that the information is accurate.
- L.** For a certificate applicant that proposes to use surface water, the Director shall determine that the proposed source is physically available only if the applicant demonstrates one of the following:
1. The land that is the subject of the application is a member land of the CAGRD.
 2. The applicant has independently obtained the surface water supply.
 3. The proposed municipal provider would satisfy the criteria in R12-15-722 if the municipal provider were subject to those requirements.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-717. Continuous Availability

- A.** The Director shall determine that an applicant will have sufficient supplies of water that will be continuously available for 100 years if the applicant submits sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely manner to make the water available to the applicant or the applicant's customers for 100 years and the applicant meets any applicable requirements in subsections (B) through (G) of this Section.
- B.** If the proposed source of water is groundwater, the applicant shall demonstrate that wells of a sufficient capacity will be constructed in a timely manner to serve the proposed uses on a continuous basis for 100 years.
- C.** If the proposed source of water is surface water other than CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply will exist because of one or more of the following:
1. The projected volume to be diverted from the source is perennial at the point of diversion;
 2. Adequate storage facilities will be available to the applicant in a timely manner to store water for use when a volume of surface water is not available at the point of diversion to satisfy the applicant's water demands;
 3. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to supplement the applicant's proposed surface water supplies;
 4. The applicant or the proposed municipal provider will withdraw surface water from wells of sufficient capacity to meet the applicant's estimated water demand on a continuous basis for 100 years; or
 5. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume of water that is subject to drought.
- D.** If the proposed source of water is CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply is available because of one or more of the following:
1. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of CAP water or Colorado River water is not available to meet the applicant's water demands;
 2. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed CAP water or Colorado River water supplies; or
 3. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume subject to drought.
- E.** If the proposed source of water is effluent, the applicant shall demonstrate that the capability to use the effluent to meet the demands of the proposed use will not be affected by any fluctuations in the supply of the effluent.
- F.** If the proposed source of water is stored water to be recovered from recovery wells, the applicant shall demonstrate that recovery wells of a sufficient capacity will be constructed in a timely manner to serve the proposed use on a continuous basis for 100 years.
- G.** If an applicant will obtain the source of water through a water exchange agreement, the applicant shall demonstrate that the source of water the applicant or the applicant's customers will

use will be continuously available in accordance with the terms of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired. Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-718. Legal Availability

- A.** The Director shall determine that an applicant will have sufficient supplies of water that will be legally available for at least 100 years if the applicant submits all of the applicable information required by this Section.
- B.** If the applicant is an applicant for a certificate or a water report, the applicant shall submit the following, as applicable:
1. A Notice of Intent to Serve agreement between the owner of the land to be included in the subdivision and the proposed municipal provider, stating the proposed municipal provider's intent to serve the subdivision;
 2. If the proposed municipal provider is a city or town, evidence indicating that the proposed subdivision is located within the incorporated limits of the city or town or evidence of the legal right of the city or town to serve water to the subdivision outside the city or town's incorporated limits; or
 3. If the proposed municipal provider is a private water company, one of the following:
 - a. Evidence that the proposed municipal provider has a certificate of convenience and necessity approved by the Arizona Corporation Commission and the subdivision is located within the geographic area described in the certificate of convenience and necessity or any other area in which the Arizona Corporation Commission authorizes the private water company to serve water;
 - b. Evidence that the proposed municipal provider has an order preliminary issued by the Arizona Corporation Commission authorizing the municipal provider to provide water service and the proposed subdivision is located within the area described in the order preliminary; or
 - c. Evidence that the proposed municipal provider is not a public service corporation regulated by the Arizona Corporation Commission.
- C.** If the applicant is a private water company applying for a designation, the applicant shall submit evidence that the applicant has a certificate of convenience and necessity approved by the Arizona Corporation Commission, or has been issued an order preliminary by the Arizona Corporation Commission for a certificate of convenience and necessity, authorizing the applicant to serve the proposed use.
- D.** If a proposed source of water is groundwater to be withdrawn within an AMA, the applicant shall submit evidence that the applicant or the proposed municipal provider has one or more of the following:
1. A service area right;
 2. An applicable non-irrigation grandfathered right to withdraw groundwater, in an amount sufficient to serve the proposed use; or
 3. A pending notice of intent to establish a new service area and all of the following apply:

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- a. The notice of intent to establish a new service area identifies the proposed subdivision,
 - b. The applicant or the proposed municipal provider has obtained a permit for any wells used to establish the service area right,
 - c. The proposed municipal provider has obtained a water right or recovery well permit to establish the service area right, and
 - d. The water right is of sufficient volume and duration to meet the estimated water demand of the proposed subdivision until the anticipated date of issuance of a service area right.
- E.** If a proposed source of water is surface water other than CAP water or Colorado River water:
1. The applicant shall submit evidence that the applicant or the proposed municipal provider has a certificated surface water right, decreed water right, or a pre-1919 claim for the proposed source. If the applicant or the proposed municipal provider does not hold a surface water right or claim, but will receive water pursuant to a water right or claim that is appurtenant to the land that is the subject of the application, the applicant shall submit evidence of the water right or claim and evidence that the water right or claim may neither be legally withheld nor severed and transferred by the right holder or claimant.
 2. If the certificated surface water right or decreed water right pre-dates the date of application by at least five years, or the applicant submits a pre-1919 claim, the applicant shall submit one of the following:
 - a. Evidence that the surface water supply has been used pursuant to the applicable water right or claim within the five years before the date of application;
 - b. Evidence that a court has determined that the right has not been abandoned; or
 - c. Evidence that the non-use would not have resulted in an abandonment of the right pursuant to A.R.S. § 45-189.
 3. The Director shall determine that the volume of water that is legally available pursuant to a certificated surface water right, a decreed water right, or a pre-1919 claim is equal to the face value of the right or claim. If the right or claim is subsequently adjudicated, the Director shall determine the volume of water that is legally available based on the adjudicated amount of water.
- F.** Subject to subsections (M) and (N) of this Section, if a proposed source of water is CAP water, the applicant shall submit evidence that the applicant or the proposed municipal provider has entered into a subcontract with a multi-county water conservation district for the proposed volume of CAP water. The Director shall presume that a 50-year long-term, non-declining municipal and industrial subcontract is sufficient evidence of the legal availability of the volume of CAP water specified in the subcontract for 100 calendar years.
- G.** Subject to subsections (M) and (N) of this Section, if a proposed source of water is Colorado River water, the applicant shall submit evidence of one of the following:
1. The applicant or the proposed municipal provider has a contract with the United States Secretary of the Interior for the proposed supply; or
 2. The applicant has obtained an allocation of Colorado River water from an entity to which all of the following apply:
 - a. The entity holds a contract for Colorado River water with the United States Secretary of the Interior;
 - b. The entity provides Colorado River water to the proposed municipal provider;
 - c. The entity has allocated a sufficient volume of the Colorado River water to the subdivision; and
 - d. The area that the entity may serve, described in the contract with the United States Secretary of the Interior, includes the subdivision.
- H.** If a proposed source of water is effluent, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the effluent.
- I.** If the applicant will obtain a proposed source of water through a written contract other than a water exchange agreement, a contract between a certificate applicant and the municipal provider proposed to serve the applicant, a contract with the United States Secretary of the Interior for Colorado River water, or a subcontract with a multi-county water conservation district, the applicant shall submit evidence that the person providing the water under the contract has a legal right to the water in accordance with the terms of this Section and that the terms of the contract will ensure that the proposed source of water will be delivered to the applicant or to the proposed subdivision. The Director shall determine the term of years for which the proposed source of water is legally available based on the term of years remaining in the contract. The Director shall determine the quantity of water legally available based on the volume established in the contract.
- J.** If the applicant will obtain a proposed source of water through a water exchange agreement, the applicant shall submit evidence that the water exchange agreement satisfies the requirements of A.R.S. Title 45, Chapter 4.
- K.** If the Director can determine the proposed source of water to be physically and continuously available only because of the use of storage facilities by the applicant or by the proposed municipal provider, the applicant shall submit evidence of the applicant's or the proposed municipal provider's legal right to store water in the storage facilities.
- L.** If the applicant proposes to use long-term storage credits, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the credits under A.R.S. Title 45, Chapter 3.1.
- M.** If a proposed supply of water is Colorado River water or CAP water leased from an Indian community, the applicant shall submit evidence that the water leased has a priority equal to or higher than CAP municipal and industrial water, evidence that the Indian community is expressly authorized by an Act of Congress to lease the water for use off Indian community lands, evidence of the lease, and evidence of one of the following:
1. The proposed water supply is available under the lease for at least 100 years from any time during the year in which the applicant submits the application.
 2. The term of the lease has less than 100 years remaining in the year in which the applicant submits the application and a supplemental water supply, together with the leased water, provides a 100-year water supply. The applicant shall demonstrate that the supplemental water supply is physically, continuously, and legally available and, if such supplemental supply is groundwater, that use of the groundwater is consistent with the management goal of the AMA. If the supplemental supply is water recovered through the use of long-term storage credits, the applicant shall also submit the following, as applicable:
 - a. If the applicant is to use the long-term storage credits before the beginning of the lease term, evidence that the applicant or the proposed municipal provider has obtained a recovery well permit that allows the applicant or the proposed municipal provider to

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

recover water pursuant to the long-term storage credits; or

- b. If the long-term storage credits will be accrued in the future, evidence that the applicant or the proposed municipal provider will accrue the long-term storage credits within 20 years after the effective date of the designation, certificate, or water report by storing the water under an issued water storage permit at a permitted storage facility and that no more than 20 years of the applicant's supplemental water supply will be provided by the long-term storage credits.
- N. If the Director previously determined that Colorado River water or CAP water leased from an Indian community was legally available to a designated provider for 100 years, the Director shall determine that the designated provider continues to have a legally available supply of water for 100 years for the annual amount of water available under the lease if:
1. The lease has at least 50 years remaining in its term or the lease has at least 40 years remaining in its term and the designated provider submits evidence to the Director of active and ongoing negotiations with the Indian community to renew or re-negotiate the lease; and
 2. One of the following applies:
 - a. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
 - b. Groundwater will be physically, continuously, and legally available to the designated provider at the end of the lease term to substitute for the leased water for the remainder of the 100-year period, and the projected use of groundwater is consistent with the management goal of the AMA. For purposes of this subsection, the designated provider may demonstrate that the proposed use is consistent with the management goal by entering into a written agreement with the Director under which the designated provider agrees to replace through replenishment or underground storage any groundwater used at the end of the lease term if groundwater use is not consistent with the management goal. The written agreement shall provide that specific performance is the only remedy in the event of default;
 - c. A non-groundwater source of water will be physically, continuously, and legally available at the end of the lease term to substitute for the leased water for the remainder of the 100-year period; or
 - d. The designated provider's governing board or council submits a resolution requesting that the designated provider be allowed to increase its projected use of Indian lease water from 15%, as allowed by subsection (N)(2)(a) of this Section, to 20%, and the Director finds that all of the following apply:
 - i. No more than 20% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
 - ii. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through any single lease with an Indian community; and

- iii. The designated provider does not meet the requirements of subsections (N)(2)(a), (b), or (c) of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-719. Water Quality

- A. Except as provided in subsection (B) of this Section, when reviewing an application for a determination of assured water supply or a determination of adequate water supply, the Director shall determine that the water supply is of adequate quality if one of the following applies:

1. The applicant certifies on the application that the applicant or the proposed municipal provider will be regulated by ADEQ, or another governmental entity with equivalent jurisdiction, as a public water system pursuant to A.R.S. § 49-351, et seq., unless ADEQ, or another governmental entity with equivalent jurisdiction, has determined, after notice and an opportunity for a hearing, that the public water system is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
 2. The applicant has submitted results of a lab analysis demonstrating that the water meets water quality requirements in accordance with A.A.C. Title 18, Chapter 4, or that the water will meet these requirements after treatment that is required by law. The lab analysis shall be based on water withdrawn from a well representative of the well or wells from which water will be withdrawn for the proposed use, conducted in compliance with sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, and completed within 60 days of the date the application is submitted to the Director. If ADEQ waives any of the water quality or sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, the Director shall not require the applicant to meet the waived requirements.
- B. If a well or a proposed well from which water will be withdrawn for the proposed use is located within one mile of a WQARF site or Superfund site, the Director shall determine that the water supply is of adequate quality only if the applicant submits a contaminant migration and mitigation analysis, demonstrating that the water supply will continue to meet the requirements in A.A.C. Title 18, Chapter 4 for 100 years. The contaminant migration and mitigation analysis may include the impact of any mitigation or treatment, including mitigation or treatment required pursuant to a consent decree.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-720. Financial Capability

- A. The Director shall determine that an applicant for a certificate or a water report has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following:
1. The applicant will submit its final plat to a qualified platting authority;
 2. The applicant has constructed adequate delivery, storage, and treatment works, and water service is available to each lot; or

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- 3. The applicant has posted a performance bond with the platting authority for the entire cost of adequate delivery, storage, and treatment works.
- B. Upon receiving evidence that a platting authority has established standards for proof of financial capability to construct adequate delivery, storage, and treatment works, pursuant to A.R.S. § 9-463.01(C)(8) or A.R.S. § 11-806.01(G), the Director shall classify the platting authority as a qualified platting authority. The Director shall maintain a list of qualified platting authorities.
- C. The Director shall determine that an applicant for a designation has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following for each of those facilities:
 - 1. The applicant has constructed adequate delivery, storage, and treatment works;
 - 2. The applicant has entered into written agreements requiring a potential developer to construct adequate delivery, storage, and treatment works;
 - 3. If the applicant is a city or town, the applicant has:
 - a. Adopted a five year capital improvement plan that provides for the construction, or the commencement of construction, of adequate delivery, storage, and treatment works in a timely manner, and has submitted a certification by the applicant’s chief financial officer that finances are available to implement that portion of the five-year plan; or
 - b. Submitted evidence demonstrating that financing mechanisms are in place to construct adequate delivery, storage, and treatment works in a timely manner; or
 - 4. If the applicant is a private water company, the applicant has received approval from the Arizona Corporation Commission for financing the construction of adequate delivery, storage, and treatment works.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-721. Consistency with Management Plan

- A. The Director shall determine whether a designation applicant’s projected use of groundwater withdrawn within an active management area is consistent with the management plan as follows:
 - 1. If the applicant is providing water to customers as of the date of application, the applicant’s projected water use is consistent with the management plan if either of the following apply:
 - a. The applicant is in compliance with its applicable management plan requirements in the most recent calendar year for which data is available before the date of application; or
 - b. The applicant has signed a stipulation and consent order that is in effect on the date of the application, or that becomes effective during the time of review of the application, to remedy non-compliance with the management plan requirements and the applicant is in compliance with the terms of the stipulation and consent order.
 - 2. If the applicant has not commenced serving water to customers as of the date of application, the applicant shall submit a water use plan that demonstrates to the Director that compliance with management plan requirements will be achieved through the use of conservation or augmentation measures.

- 3. If the applicant has a pending request for an administrative review or variance from its management plan requirements, the Director shall not make a finding regarding compliance with this Section until the Director has issued a final decision and order on the request or the request has been withdrawn.
- B. The Director shall determine that a certificate applicant’s projected use of groundwater withdrawn within an AMA is consistent with the management plan if the applicant submits a water use plan for the subdivision that includes both of the following:
 - 1. Information demonstrating that compliance with management plan requirements will be achieved through conservation or augmentation measures; and
 - 2. All information required to calculate the water requirements for each proposed water use.
- C. A certificate applicant for a subdivision of 50 or fewer lots is exempt from the requirements of this rule.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-722. Consistency with Management Goal

- A. For the Phoenix, Prescott, or Tucson AMAs, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA in which the proposed use is located for at least 100 years by adding the following:
 - 1. The amount of the groundwater allowance, according to R12-15-724(A), R12-15-726(A), or R12-15-727(A).
 - 2. The amount of any extinguishment credits pledged to the certificate or designation, according to R12-15-724(B), R12-15-726(B), or R12-15-727(B).
 - 3. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- B. The Director shall determine that a proposed groundwater use in the Phoenix, Prescott, or Tucson AMA is consistent with the management goal of the AMA if the volume calculated in subsection (A) is equal to or greater than the portion of the applicant’s estimated water demand to be met with groundwater.
- C. For a certificate in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA for at least 100 years by adding the following:
 - 1. The amount of the groundwater allowance, according to R12-15-725(A)(1).
 - 2. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after January 1, 2019, according to R12-15-725(B), except that annual reported use of such extinguishment credits to make groundwater use consistent with the management goal is limited to the following percentages of groundwater use from the sixth year after certificate issuance:

Years After Certificate Issuance	Percentage of Total Groundwater Use that May Be Made Consistent with the Pinal AMA Management Goal with Extinguishment Credits Pledged to Certificate
Years Six through Ten	75%
Years Eleven through Fifteen	50%
Years Sixteen through Twenty	25%

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Years Twenty-one and After	0%
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- 3. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019.
- 4. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished before October 1, 2007. The Director shall calculate the amount of the extinguishment credits by multiplying the annual amount of the credits by 100.
- 5. Any groundwater that is consistent with achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- D.** For a certificate in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the AMA if the volume calculated in subsection (C) is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.
- E.** For a designation in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the Pinal AMA on an annual basis for at least 100 years by adding the following for each year during the 100-year period:
 - 1. The amount of the groundwater allowance, according to R12-15-725(A)(2). If any of the groundwater allowance is not used during a year, the unused groundwater allowance shall not be added to the volume calculated under this subsection for the following year.
 - 2. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after January 1, 2019, divided by the number of years remaining in which the credits may be used pursuant to R12-15-725(B). These credits shall be included in the calculation only for those years in which the credits may be used. If any of the extinguishment credits were originally pledged to a certificate and are being used to support the municipal provider's designation pursuant to R12-15-723(G)(2), the extinguishment credits shall not be limited by the percentages in subsection (C)(2) of this section.
 - 3. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019, divided by 100. Extinguishment credits for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019 may be used in any year.
 - 4. The annual amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished before October 1, 2007. The following shall apply if any of the extinguishment credits are not used during a calendar year:
 - a. If the extinguishment credits were pledged to the designation before October 1, 2007, any extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.
 - b. If the extinguishment credits are pledged to the designation on or after October 1, 2007, any of the extinguishment credits not used during a calendar year shall not be added to the volume calculated under this subsection for the following calendar year, except that if the extinguishment credits were originally pledged to a certificate before October 1, 2007 and are used to support the municipal provider's designation pursuant to R12-15-723(G)(2), any of the extinguishment credits not used during a

calendar year shall be added to the volume calculated under this subsection for the following calendar year.

- 5. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- F.** For a designation in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the Pinal AMA if the volume calculated in subsection (E) for each year during the 100-year period is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater.
- G.** Upon application, the following volumes of groundwater used by an applicant are considered consistent with the management goal:
 - 1. If the Director determines that a surface water supply is physically available under R12-15-716 and the volume of the supply actually available during a calendar year is equal to or less than the drought volume for the supply, the volume of groundwater, other than the groundwater that is accounted for under subsection (A), (C), or (E), withdrawn within the AMA that, when combined with the available surface water supply, is equal to or less than the drought volume.
 - 2. Any volume of groundwater withdrawn within a portion of an AMA that is exempt from conservation requirements under A.R.S. Title 45 due to waterlogging. The Director shall review the application of this exclusion on a periodic basis, not to exceed 15 years.
 - 3. Remedial groundwater that is consistent with the management goal according to the requirements of R12-15-729.
- H.** An applicant for a certificate of assured water supply for a dry lot subdivision of 20 lots or fewer is exempt from the requirements of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4). At the request of the Department R12-15-722(A)(2) through (5) have been removed since they were not part of the amendments made to this Section in Supp. 18-4; subsections R12-15-722(A)(2) through (3) as amended at 13 A.A.R. 1394 have been restored (Supp. 19-2).

R12-15-723. Extinguishment Credits

- A.** Except as provided in subsection (D), the owner of a grandfathered right may extinguish the right in exchange for extinguishment credits by submitting the following:
 - 1. A notarized statement of extinguishment of a grandfathered right on a form provided by the Director;
 - 2. The grandfathered right number;
 - 3. If the right being extinguished is a Type 1 non-irrigation grandfathered right or an irrigation grandfathered right, evidence of ownership of the land to which the grandfathered right is appurtenant;
 - 4. If the grandfathered right is located in the Prescott AMA, evidence that all of the following conditions are met:
 - a. The land to which the right is appurtenant has not been and will not be subdivided pursuant to a preliminary plat or a final plat that was approved by a city, town, or county before August 21, 1998; and

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- b. The land to which the right is appurtenant is not and will not be the location of a subdivision for which a complete and correct application for a certificate of assured water supply was submitted to the Director before August 21, 1998;
5. If the right being extinguished is an irrigation grandfathered right, evidence that the development of the land to which the right is appurtenant is not completed; and
6. Any additional information the Director may reasonably require to process the extinguishment.
- B.** The Director shall calculate the amount of extinguishment credits pursuant to R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B). The Director shall notify the owner of the amount of extinguishment credits in writing. If the owner is extinguishing only a portion of the right, the Director shall issue a new certificate of grandfathered right for the remainder of the right.
- C.** A Type 1 non-irrigation grandfathered right or an irrigation grandfathered right may be extinguished in whole or in part. A Type 2 non-irrigation grandfathered right may be extinguished only in whole.
- D.** The following rights may not be extinguished in exchange for extinguishment credits:
1. An irrigation grandfathered right that is appurtenant to land that has been physically developed for a non-irrigation use. The Director shall not consider the land to be physically developed until the development is completed.
 2. A Type 1 non-irrigation grandfathered right, if the Director determines that the holder is likely to continue to receive groundwater from an undesignated municipal provider for the same use pursuant to the provider's service area right or pursuant to a groundwater withdrawal permit.
 3. A Type 2 non-irrigation grandfathered right that was issued based on the withdrawal of groundwater for mineral extraction or processing or for the generation of electrical energy.
 4. On or after January 1, 2025, any grandfathered right that is in the Phoenix, Prescott, or Tucson AMAs.
 5. A Type 1 non-irrigation grandfathered right that was requested to be included by a city or town in the Tucson AMA in the determination made under A.R.S. § 45-463(F).
- E.** The owner of extinguishment credits may pledge the credits to a certificate or to a designation before the certificate or designation is issued by submitting with the application for the certificate or designation a notice of intent to pledge extinguishment credits on a form provided by the Director. The extinguishment credits shall be pledged to the certificate or designation upon issuance of the certificate or designation.
- F.** The owner of extinguishment credits may pledge the credits to a certificate or to a designation after the certificate or designation is issued by submitting a notice of intent to pledge extinguishment credits on a form provided by the Director. The Director shall notify the owner of the extinguishment credits and the certificate holder or designated provider that the credits have been pledged to the certificate or designation.
- G.** Extinguishment credits that have not been pledged to a certificate or designation may be conveyed within the same AMA. Extinguishment credits pledged to a certificate or designation shall not be conveyed to another person, except that:
1. If extinguishment credits are pledged to a certificate that is later assigned or reissued, any unused credits are transferred, by operation of this subsection, to the assigned or reissued certificate. If the certificate is partially assigned or reissued, a pro rata share of the unused extinguishment credits is transferred to each assigned or reissued certificate according to the estimated water demand.
 2. If extinguishment credits are pledged to a certificate for a subdivision that is later served by a designated provider or a municipal provider that is applying for a designation, any unused extinguishment credits may be used to support the municipal provider's designation as long as the municipal provider serves the subdivision and remains designated. If the municipal provider is no longer serving the subdivision or if the municipal provider loses its designated status, any unused extinguishment credits shall revert, by operation of this subsection, to the certificate to which they were originally pledged.
- H.** The Director shall review a statement of extinguishment of a grandfathered right and a notice of intent to pledge extinguishment credits pursuant to the licensing time-frame provisions in R12-15-401.
- I.** A person may apply to the Director on or before December 31, 2015 for the restoration of all or a portion of an irrigation grandfathered right extinguished under this Section during calendar year 2005, 2006 or 2007 if all of the following conditions are met:
1. The person owns the land to which the right or portion of the right was appurtenant;
 2. The land to which the right or portion of the right was appurtenant is physically capable of being irrigated and the infrastructure for delivering water to the land for irrigation purposes remains intact and is operable;
 3. The person holds extinguishment credits that were issued for the extinguishment of a grandfathered right in the AMA in which the land is located and that have not been pledged to a certificate or designation under subsection (E) or (F) in the following amount, as applicable:
 - a. If the person seeks to restore the entire irrigation grandfathered right, an amount of extinguishment credits equal to the amount of extinguishment credits issued by the Director in exchange for extinguishment of the irrigation grandfathered right; or
 - b. If the person seeks to restore a portion of the irrigation grandfathered right, an amount of extinguishment credits equal to the result obtained by multiplying the percentage of the right sought to be restored by the amount of extinguishment credits issued by the Director in exchange for the extinguishment of the right.
- J.** An application to restore all or a portion of an irrigation grandfathered right under subsection (I) shall be on a form provided by the Director and include all of the following:
1. A fee of \$250.00;
 2. The irrigation grandfathered right number of the right sought to be restored;
 3. If a certificate of extinguishment credits was issued by the Director for the extinguishment credits described in subsection (I)(3), the original certificate or an affidavit stating that the certificate is lost;
 4. A copy of a deed showing that the applicant owns the land to which the right or portion of the right sought to be restored was appurtenant and, if the application seeks to restore only a portion of the right, the legal description of the land to which that portion of the right was appurtenant;
 5. A certification by the applicant that the conditions described in subsection (I) are met; and
 6. An agreement in writing that if the right or portion of the right is restored, the flexibility account for the land to which the right or portion of the right is appurtenant shall

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and that any credits registered to the flexibility account after the right is restored may not be conveyed or sold to any person, including the applicant.

- K. The Director shall approve an application to restore all or a portion of an irrigation grandfathered right submitted under subsection (I) if the application includes the fee and the information required under subsection (J) and the Director determines that the information is correct. If the Director approves an application to restore all or a portion of an irrigation grandfathered right, all of the following apply:
 1. The irrigation water duty for the land to which the right or portion of the right is restored shall be the same as it was when the right was extinguished, unless the irrigation water duty is changed in a management plan adopted after the right was extinguished or is modified pursuant to A.R.S. § 45-575;
 2. The flexibility account for the land to which the right or portion of the right is appurtenant shall have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and any credits registered to the flexibility account after the right is restored may not be conveyed or sold to any person, including the applicant.
 3. The applicant shall forfeit the extinguishment credits described in subsection (I)(3); and
 4. The restored irrigation grandfathered right may be extinguished in exchange for extinguishment credits under this Section. For purposes of calculating the amount of extinguishment credits under R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B), the calendar year of extinguishment is the calendar year in which the restored irrigation grandfathered right is extinguished.
- L. The Director shall review an application to restore an irrigation grandfathered right under subsection (I) pursuant to the licensing time-frame provisions in R12-15-401. The application shall have an administrative completeness review time-frame of 30 days, a substantive review time-frame of 90 days, and an overall time-frame of 120 days.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 17 A.A.R. 1989, effective September 13, 2011 (Supp. 11-3). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A. The Director shall calculate the groundwater allowance for a certificate or designation in the Phoenix AMA as follows:
 1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD	ALLOCATION FACTOR
Third	4
Fourth	2
Fifth	1
After Fifth	0

2. If the application is for a designation and the applicant provided water to its customers prior to February 7, 1995, multiply 7.5 by the total volume of water provided by the applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Phoenix AMA.
3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.
4. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Phoenix AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.

- B. The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Phoenix AMA as follows:
 1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
 2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-725. Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A. The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

1. If the application is for a certificate:
 - a. If the certificate application is filed before January 1, 2019, multiply the annual estimated water demand for the proposed subdivision by 10.
 - b. If the certificate application is filed on or after January 1, 2019, the groundwater allowance shall be zero.
2. If the application is for a designation:
 - a. If the applicant was designated as having an assured water supply as of October 1, 2007:
 - i. Multiply the applicant’s service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology set forth in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
 - ii. Convert the number of gallons determined in subsection (A)(2)(a)(i) into acre-feet by dividing the number by 325,851 gallons.
 - iii. Determine the number of residential lots within plats that were recorded as of October 1, 2007 but not served water as of that date, and to which the applicant commenced water service by January 1, 2010.
 - iv. Multiply the number of lots determined in subsection (A)(2)(a)(iii) by 0.35 acre-foot per lot.
 - v. Add the volume from subsection (A)(2)(a)(ii) and the volume from subsection (A)(2)(a)(iv) of this Section.
 - b. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation was filed before January 1, 2012, multiply the applicant’s service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
 - c. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation was filed on or after January 1, 2012, the applicant’s groundwater allowance is zero acre-feet.
 - d. If the applicant commenced providing water to its customers on or after October 1, 2007, the applicant’s groundwater allowance is zero acre-feet.
3. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Pinal AMA and add that volume to the designated provider’s groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider’s total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor by submitting a hydrologic study demonstrating, to the satisfaction of the Director, that the ratio of the average annual amount of incidental recharge expected to be attributable to the designated provider during the management period to the average annual amount of water expected to be withdrawn, diverted or received for delivery by the designated pro-

vider for use within its service area during the management period is different than 4%. The hydrologic study shall include the amount of water withdrawn, diverted or received for delivery by the designated provider for use within its service area during each of the preceding five years and the amount of incidental recharge that was attributable to the designated provider during each of those years. The Director may establish a different incidental recharge factor for the designated provider upon such demonstration.

- B. The Director shall calculate the extinguishment credits for extinguishing a grandfathered right in the Pinal AMA as follows:
 1. The Director shall calculate the initial volume of extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:
 - a. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate of grandfathered right by 100.
 - b. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by 100, except that:
 - i. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, only those acres associated with the portion of the right that is extinguished shall be included in the calculation; and
 - ii. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the amount of the debit shall be subtracted from the amount of the extinguishment credits.
 2. For grandfathered rights extinguished in the Pinal active management area on or after January 1, 2019, if the amount of the extinguishment credits remaining unused in the fifth, tenth, fifteenth, and twentieth year after the year of extinguishment is greater than an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage shown in the table below, the amount of unused credits shall be reduced to an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage:

Year After Extinguishment	Percentage
Fifth	75%
Tenth	50%
Fifteenth	25%
Twentieth	0%

3. For purposes of subsection (B)(2), the amount of extinguishment credits remaining unused shall be the initial volume of extinguishment credits issued for the extinguishment of the right, less:
 - a. The amount of any of the extinguishment credits previously pledged to a certificate of assured water supply or designation of assured water supply pursuant to R12-15-723, subsections (E) or (F) and reported to the department as having been used; and

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- b. The amount of any previous reductions made to the extinguishment credits pursuant to subsection (B)(2).

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 1979, effective January 2, 2010 (Supp. 09-4). Amended by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013 (Supp. 13-4). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

R12-15-725.01. Repealed**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013; with automatic repeal date of September 15, 2014 (Supp. 13-4). Section amended with automatic repeal, removed by final rulemaking at 20 A.A.R. 2673; effective September 12, 2014 (Supp. 14-3). Repealed by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

R12-15-725.02. Repealed**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 4174, effective September 15, 2014 (Supp. 13-4). Repealed by final rulemaking at 20 A.A.R. 2673, effective September 12, 2014 (Supp. 14-3).

R12-15-726. Prescott AMA Calculation of Groundwater Allowance and Extinguishment Credits

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Prescott AMA as follows:

1. If the application is for a certificate of assured water supply, the Director shall:
 - a. Subtract the year of application from 2025,
 - b. Multiply the number determined in subsection (A)(1)(a) by the applicant's annual estimated water demand, and
 - c. Divide that product by two. The minimum volume that may be calculated in this subsection is zero acre-feet.
2. If the application is for a designation of assured water supply:
 - a. Except as provided in subsections (A)(3) and (A)(5), if the applicant was in existence as of January 12, 1999, and the application is filed before calendar year 2026, the Director shall:
 - i. Multiply by 100 the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott AMA for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;
 - ii. Determine the volume of the applicant's total water demand, from any source, for 1999, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;

- iii. Determine the volume of the applicant's total water demand, from any source, for 2014, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;
 - iv. Subtract the volume calculated in subsection (A)(2)(a)(ii) from the volume calculated in subsection (A)(2)(a)(iii) and then multiply the difference by 26;
 - v. Divide the product obtained in subsection (A)(2)(a)(iv) by two;
 - vi. If any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, multiply one-half acre-foot of groundwater by the number of housing units receiving the service and then multiply that product by 100;
 - vii. Determine the volume of groundwater withdrawn by the applicant from within the Prescott active management area during the period beginning January 1, 1999, and ending December 31 of the calendar year before the date of the application;
 - viii. Multiply the volume of groundwater withdrawn by the applicant from within the Prescott active management area in 1999 by the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application;
 - ix. Subtract from the volume calculated in subsection (A)(2)(a)(vii) the volume calculated in subsection (A)(2)(a)(viii). The volume calculated in this subsection shall not be less than zero; and
 - x. Add the volumes calculated in subsections (A)(2)(a)(i), (A)(2)(a)(v), and (A)(2)(a)(vi), and then subtract from the sum the volume calculated in subsection (A)(2)(a)(ix).
- b. If the applicant did not exist as of January 12, 1999, or the date of application occurs after calendar year 2025, the groundwater allowance is zero acre-feet, except that if any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, the groundwater allowance is a volume of groundwater computed by multiplying one-half acre-foot of groundwater by the number of housing units receiving the service and multiplying that product by 100.
3. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), at the request of the applicant, the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(ii) through (v) with the amount of groundwater necessary for the applicant to serve the residential lots described in subsection (A)(4):
 - a. To compute this amount of groundwater, the Director shall:
 - i. Determine the average dwelling occupancy within the applicant's service area and multiply that average occupancy by an amount of

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Tucson AMA.

3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.
 4. For each calendar year of the designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Tucson AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.
- B.** The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Tucson AMA as follows:
1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
 2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.
- Historical Note**
- New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).
- R12-15-728. Reserved**
- R12-15-729. Remedial Groundwater; Consistency with Management Goal**
- A.** Use of remedial groundwater by a municipal provider before January 1, 2025, is deemed consistent with the management goal of the AMA in which the remedial groundwater is withdrawn and is excluded when determining compliance with management goal requirements in this Article if all of the following apply:
1. The Director determines that the remedial groundwater use is consistent with the management goal under subsection (F) or (H) of this Section or the remedial groundwater use is consistent with the management goal under subsection (J) of this Section; and
 2. The municipal provider complies with the metering and reporting requirements in subsection (K) of this Section.
- B.** A municipal provider that is using remedial groundwater or that has agreed in a consent decree or other document approved by ADEQ or the EPA to use remedial groundwater may apply to the Director for a determination that the municipal provider's use of the remedial groundwater is consistent with the management goal of the active management area by submitting an application on a form provided by the Director with the information required in subsection (D) of this Section before January 1, 2010.
- C.** A municipal provider filing an application under subsection (B) of this Section for remedial groundwater use associated with a treatment plant in operation before June 15, 1999, may request an increase in the project's annual authorized volume at the time the application is filed. The Director shall grant the request and increase the annual authorized volume up to the maximum treatment capacity of the treatment plant if the municipal provider submits evidence that an increase in the annual authorized volume is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the remedial action project.
- D.** An applicant shall provide the following with an application submitted under subsection (B) of this Section:
1. A document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
 2. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
 3. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
 4. A reference to the annual authorized volume provided in the document submitted pursuant to subsection (D)(1) of this Section or, if the document submitted pursuant to subsection (D)(1) does not specify the annual authorized volume for the project, the annual authorized volume claimed by the municipal provider and a written justification for that volume;
 5. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
 6. The designated provider or certificate to which the remedial groundwater will be pledged;
 7. If the municipal provider is requesting an increase in the annual authorized volume of the project pursuant to subsection (C) of this Section, evidence that the increase is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the project;
 8. The name and telephone number of a person the Department may contact regarding the application; and

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

9. Any other information reasonably required to assist the Director in making the determination under subsection (F) of this Section.
- E.** After receiving an application under subsection (B) of this Section, the Director shall determine that the application is complete and correct if it contains all the information required in subsection (D) of this Section and the Director verifies that the information is accurate. If the Director determines that the application is complete and correct, the Director shall assign a priority date to the application according to the following:
1. If the Director determines that the application was complete and correct when filed, the priority date of the application is the date the application was filed.
 2. If the Director determines that the application was not complete or correct when filed because of minor deficiencies, the Director shall notify the applicant of the deficiencies in writing and give the applicant 30 days to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within 30 days after the date of the notice, the priority date of the application is the date the application was filed.
 3. If the Director determines that the application was not complete or correct when filed and that the deficiencies are not minor, the Director shall notify the applicant of the deficiencies and give the applicant at least 60 days to submit the necessary information to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within the time allowed by the Director, the priority date of the application is the date the applicant submits the necessary information to correct the deficiencies.
- F.** The Director shall approve a complete and correct application filed under subsection (B) of this Section if the Director determines that the applicant will use remedial groundwater before January 1, 2025. If the Director approves a municipal provider's application, the Director shall calculate the annual amount of remedial groundwater use that is deemed consistent with the management goal of the AMA as follows:
1. The Director shall determine the total annual amount of remedial groundwater use in all AMAs that is deemed to be consistent with the management goal under this subsection and subsections (H) and (I) of this Section for applications with a priority date earlier than the priority date of the municipal provider's application.
 2. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is equal to or greater than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed to be consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year.
 3. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is less than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year up to the difference between the amount determined in subsection (F)(1) and 65,000 acre-feet, plus a percentage of the municipal provider's authorized remedial groundwater use during the year that exceeds the difference. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
4. If the amount determined in subsection (F)(1) of this Section is equal to or greater than 65,000 acre-feet, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is a percentage of the municipal provider's authorized remedial groundwater use during the year. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
- G.** If the Director determines that remedial groundwater use by a municipal provider is consistent with the management goal of the active management area under subsection (F) of this Section, the determination shall apply to remedial groundwater used by the municipal provider between the priority date of the application and January 1, 2025.
- H.** If, before the effective date of this Section, a municipal provider filed an application with the Director requesting that the Director determine that the provider's use of remedial groundwater pursuant to an approved remedial action project is consistent with the management goal of the active management area under Laws 1997, Ch. 287, § 52, as amended by Laws 1999, Ch. 295, § 50, the following shall apply:
1. If the Director approved the application before the effective date of this Section and determined the annual amount of remedial groundwater use by the applicant that will be considered consistent with the management goal, the Director's determination shall apply after the effective date of this Section and the Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
 2. If the Director did not approve the application before the effective date of this Section, the Director shall process the application under subsections (E) and (F) of this Section. If the Director approves the application, the Director's determination shall apply to remedial groundwater withdrawn and used by the municipal provider pursuant to the approved remedial action project from the priority date of the application until January 1, 2025.
- I.** A municipal provider that is using remedial groundwater that has been determined by the Director to be consistent with the management goal under subsection (F) or (H) of this Section may apply to the Director for an increase in the annual authorized volume of the approved remedial action project as follows:
1. The applicant shall submit an application on a form provided by the Director.
 2. The Director shall determine that the application is complete and correct if it contains all of the required information and the Director verifies that the information is accurate.
 3. If the Director determines that an application filed under this subsection is complete and correct, the Director shall assign a priority date to the application using the criteria in subsection (E) of this Section.
 4. The Director shall approve the application if the municipal provider submits information that demonstrates one of the following:
 - a. The annual authorized volume of the approved remedial action project has been increased in a con-

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

sent decree or other document approved by ADEQ or the EPA; or

- b. An increase is necessary to further the purpose of the approved remedial action project, and the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the project.
5. If the Director approves the application, the Director shall determine the additional annual amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal of the active management area, using the criteria in subsections (F) and (G) of this Section. The Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal under this subsection in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
- J. Until January 1, 2025, use of remedial groundwater by a municipal provider during a year is deemed consistent with the management goal of the AMA in which the remedial groundwater was withdrawn without approval of the Director under subsection (F) or (H) of this Section if:
1. The total annual amount of remedial groundwater withdrawn from all wells pursuant to the approved remedial action project does not exceed 250 acre-feet; and
 2. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced before June 15, 1999, the municipal provider notified the Director in writing of the volume and duration of the anticipated withdrawals on or before August 15, 1999. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced on or after June 15, 1999, the municipal provider gave written notice of the volume and duration of the anticipated withdrawals on or before August 15, 1999, or before the date the withdrawals commenced, whichever is later. If the municipal provider gives notice after the effective date of this Section, the municipal provider shall include or attach all of the following:
 - a. A copy of a document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
 - b. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
 - c. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
 - d. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
 - e. The designated provider or certificate of assured water supply to which the remedial groundwater will be pledged; and
 - f. The name and telephone number of a person the Department may contact regarding the exemption.
- K. A municipal provider withdrawing remedial groundwater that has been determined to be consistent with the management goal under subsection (F) or (H) of this Section or that is consistent with the management goal under subsection (J) of this Section shall meter the remedial groundwater withdrawals separately from groundwater withdrawn pursuant to another groundwater withdrawal authority. The municipal provider

shall include in its annual reports, filed under A.R.S. § 45-632, the amount of remedial groundwater withdrawn during the reporting year that is consistent with the management goal under this Section and the purposes for which the remedial groundwater was used.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-730. Repealed**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). New Section made by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Section repealed by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS**R12-15-801. Definitions**

In addition to the definitions set forth in A.R.S. §§ 45-101, 45-402, and 45-591 and in R12-15-202, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Annular space" means the space between the outer well casing and the borehole wall. An annular space also means the space between an inner well casing and outer well casing.
2. "Aquifer" means an underground formation capable of yielding or transmitting usable quantities of water.
3. "Artesian aquifer" means an aquifer which is overlain by a confining formation and which contains groundwater under sufficient pressure for the water to rise above the top of the aquifer.
4. "Artesian well" means a well that penetrates an artesian aquifer.
5. "Bentonite" means a colloidal clay composed mainly of sodium montmorillonite, a hydrated aluminum silicate.
6. "Cap" means a tamper-resistant, watertight steel plate of at least one-quarter inch thickness on the top of all inside and outside casings of a well.
7. "Casing" means the tubing or pipe installed in the borehole during or after drilling to support the sides of the well and prevent caving.
8. "Confining formation" means the relatively impermeable geologic unit immediately overlying an artesian aquifer.
9. "Consolidated formation" means a naturally occurring geologic unit through or into which a well is drilled, having a composition, density, and thickness which will provide a natural hydrologic barrier.
10. "Department" means the Arizona Department of Water Resources.
11. "Director" means the Director of the Arizona Department of Water Resources.
12. "Drilling card" means a card which is issued by the Director to the well drilling contractor or single well licensee designated in the notice of intent or permit, authorizing the well drilling contractor or licensee to drill the specific well or wells in the specific location as noticed or permitted.
13. "Exploration well" means a well drilled in search of geophysical, mineralogical or geotechnical data.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

14. "Flowing artesian well" means an artesian well in which the pressure is sufficient to cause the water to rise above the land surface.
15. "Grout" or "cement grout" means cement mixed with no more than 50% sand by volume, and containing no more than six gallons of water per 94 pound sack of cement.
16. "Mineralized water" means any groundwater containing over 3000 milligrams per liter (mg/l) of total dissolved solids or containing any of the following chemical constituents above the indicated concentrations:
- | Constituent | Concentration (mg/l) |
|------------------|----------------------|
| Arsenic | 0.05 |
| Barium | 1.0 |
| Cadmium | 0.01 |
| Chromium (total) | 0.05 |
| Fluoride | 4.0 |
| Lead | 0.05 |
| Mercury | 0.002 |
| Nitrate (as N) | 10.0 |
| Selenium | 0.01 |
| Silver | 0.05 |
17. "Monitor well" means a well designed and drilled for the purpose of monitoring water quality within a specific depth interval.
18. "Open well" means a well which is not equipped with either a cap or a pump.
19. "Perforations" means a series of openings in a casing, made either before or after installation of the casing, to permit the entrance of water into the well.
20. "Piezometer well" means a well that is designed and drilled for the purpose of monitoring water levels within a specific depth interval.
21. "Pitless adaptor" means a commercially manufactured watertight unit or device designed for attachment to a steel well casing which permits discharge from the well below the land surface and allows access into the well casing while preventing contaminants from entering the well.
22. "Polluted water" means water whose chemical, physical, biological, or radiological integrity has been degraded through the artificial or natural infusion of chemicals, radionuclides, heat, biological organisms, or mineralogical or other extraneous matter.
23. "Pressure grouting" means a process by which a grout is confined within the borehole or casing of a well by the use of retaining plugs, packers, or a displacing fluid by which sufficient pressure is applied to drive the grout into and within the annular space or interval to be grouted.
24. "Qualifying party" means a partner, officer, or employee of a well drilling contractor, who has significant supervisory responsibilities and who has been designated to take the licensing examination for that well drilling contractor.
25. "Single well license" means a license issued to a person which allows the drilling or modification of a single exempt well on land owned by that person.
26. "Vadose zone well" means a well constructed in the interval between the land surface and the top of the static water level.
27. "Vault" means a tamper-resistant watertight structure used to complete a well below the land surface.
28. "Well abandonment" means the modification of the structure of a well by filling or sealing the borehole so that water may not be withdrawn or obtained from the well.
29. "Well drilling" means the construction or repair of a well, or the modification, except for abandonment, of a well, regardless of whether compensation is involved, includ-

ing any deepening or additional perforating, any addition of casing or change to existing casing construction, and any other change in well construction not normally associated with well maintenance, pump replacement, or pump repair.

30. "Well drilling contractor" means an individual, public or private corporation, partnership, firm, association, or any other public or private organization or enterprise that holds a well driller's license pursuant to A.R.S. § 45-595(B).

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-802. Scope of Article

This Article shall apply to man-made openings in the earth through which water may be withdrawn or obtained from beneath the surface of the earth, including all water wells, monitor wells and piezometer wells. It shall also apply to geothermal wells to the extent provided by A.R.S. § 45-591.01, and all exploration wells and grounding or cathodic protection holes greater than 100 feet in depth. However, this Article shall not apply to the following:

1. Man-made openings in the earth not commonly considered to be wells, such as construction and mining blast holes, underground mines and mine shafts, open pit mines, tunnels, septic tank systems, caissons, basements, and natural gas storage cavities.
2. Injection wells and vadose zone wells which are subject to regulation by the Arizona Department of Environmental Quality.
3. Oil, gas, and helium wells drilled pursuant to the provisions of A.R.S. Title 27.
4. Drilled boreholes in the earth less than 100 feet in depth which are made for purposes other than withdrawing or encountering groundwater, such as exploration wells and grounding or cathodic protection holes; except that in the event that groundwater is encountered in the drilling of a borehole, this Article shall apply.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-803. Well Drilling and Abandonment Requirements; Licensing and Supervision Requirements

- A. A person shall not drill or abandon a well, or cause a well to be drilled or abandoned, in a manner which is not in compliance with A.R.S. Title 45, Chapter 2, Article 10, and the rules adopted thereunder.
- B. A person, other than a single well licensee or a bona fide employee of a well drilling contractor, shall not engage in well drilling or abandonment without first securing a well drilling license in accordance with R12-15-804, R12-15-805 and R12-15-806.
- C. A qualifying party of a well drilling contractor shall provide direct and personal supervision of the contractor's employees to ensure that all wells are constructed and abandoned in accordance with this Article.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section 12-15-803 amended and the text of former Section R12-15-804 renumbered to subsections (B) and (C) and amended effective June 18, 1990 (Supp. 90-2).

R12-15-804. Application for well drilling license

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- A. An applicant for a well drilling license shall submit a verified application of a form prescribed and furnished by the Director which contains the following information:
1. A designation of the classification of license sought by the applicant.
 2. If the applicant is an individual, the individual's name, address and telephone number.
 3. If the applicant is a partnership, the names, addresses, and telephone numbers of all partners, with a designation of any limited partners.
 4. If the applicant is a corporation, association or other organization, the names, addresses and telephone numbers of the directors and of the president, vice president, secretary and treasurer, or the names, addresses and telephone numbers of the functional equivalent of such officers.
 5. The address or location of the applicant's place of business, the mailing address if it is different from the applicant's place of business, and if applicant is a corporation, the state in which it is incorporated.
 6. The name, address and telephone number of each qualifying party, the qualifying party's relationship to the applicant, and a detailed history of each qualifying party's supervisory responsibilities and well drilling experience, including previous employers, job descriptions, duties and types of equipment utilized.
 7. The names, addresses and telephone numbers of three persons not members of each qualifying party's immediate family, who can attest to each qualifying party's good character and reputation, experience in well drilling, and qualifications for licensing.
 8. Such additional information relevant to the applicant's or qualifying party's experience and qualifications in well drilling as the Director may require.
- B. An applicant shall notify the Director in writing of any change in the information contained in the application within 30 days after such change.
- C. The Director shall not issue a license under this Article if the applicant or a qualifying party lacks good character and reputation.
- D. Prior to the issuance of a license, a qualifying party shall demonstrate three years of experience, dealing specifically with the type of drilling for which the applicant is applying for a license. This experience requirement may be reduced if the Director finds that the qualifying party has clearly and convincingly demonstrated a high degree of understanding and knowledge of well drilling techniques for the type of drilling for which the applicant is applying for a license. In no case, however, shall the practical experience requirement be less than two years.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Former Section R12-15-804 renumbered to R12-15-803(B) and (C), new Section R12-15-804 adopted effective June 18, 1990 (Supp. 90-2).

R12-15-805. Examination for Well Drilling License

- A. The Director shall offer an examination for a well drilling license no less than six times yearly. The examination shall be administered to those eligible applicants whose applications were submitted at least 20 days prior to the date of the examination. The examination shall consist of a section on legal requirements, a section on general knowledge and one or more of six specialized sections. The section on legal requirements shall test the qualifying party's knowledge of A.R.S. Title 45, Chapter 2, Article 10, and the rules adopted thereunder. The section on general knowledge shall test the qualifying party's knowledge of general hydrologic concepts, principles, and practices in the well construction industry, and shall test knowledge of groundwater protection, pollution, water quality and public health effects. The specialized sections shall test the qualifying party's knowledge in the following classifications:
1. Cable tool drilling in rock and unconsolidated material.
 2. Air rotary drilling in rock and unconsolidated material.
 3. Mud rotary drilling in rock and unconsolidated material.
 4. Reverse rotary drilling in rock and unconsolidated material.
 5. Jetting and driving wells in unconsolidated material.
 6. Boring and augering in unconsolidated material.
- B. Only the qualifying party, department personnel, and persons having the express permission of the Director shall be permitted in the examination room while the examination is in progress. The qualifying party shall not bring books or notes into the examination room, or communicate by any means whatsoever while the examination is in progress without the express permission of the presiding examiner. The qualifying party shall not leave the examination room while the examination is in progress without first obtaining the permission of the presiding examiner. The Director may disqualify an applicant for violation of this subsection.
- C. To obtain a well drilling license, a qualifying party of the applicant shall pass the section on legal requirements, the section on general knowledge, and one or more specialized sections. Each section of the examination shall be graded separately. The passing grade on each section shall be 70 percent.
- D. No person may take the examination more than twice during any 12 months.
- E. The Director may exempt a qualifying party from taking the section on general knowledge, and one or more of the specialized sections, if the qualifying party provides proof of passing an equivalent examination given by the National Ground Water Association.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section repealed, new Section adopted effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

R12-15-806. License Fee; Issuance and Term of Licenses; Renewal; Display of License

- A. The fee for a well driller's license shall be \$50.00.
- B. Upon submittal of the license fee and satisfactory completion of an examination, the Director shall issue the applicant a well drilling license. The license shall be numbered and shall state the specialized classifications of drilling activities for which the applicant is qualified and licensed. The applicant shall be licensed in only those classifications for which the qualifying party has passed the specialized sections of the examination. If the qualifying party subsequently passes other specialized sections, the applicant's license shall be amended. The applicant shall pay a fee of \$50.00 for the amendment of a well driller's license.
- C. A well drilling contractor shall notify the Director in writing within 30 days of the date on which the well drilling contractor no longer has a qualifying party for one or more of its specialized drilling classifications. Upon such notification, the Director may revoke or suspend part or all of the well drilling license of the well drilling contractor and require a new qualifying party to take and pass the examination.
- D. A well drilling license shall expire each year on June 30th, unless renewed pursuant to subsection (E).

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- E. A person may renew a well drilling license by submitting an application for renewal on forms prescribed and furnished by the Director and a fee of \$50.00. If the application and renewal fee are postmarked on or before June 30, the well drilling contractor may operate as a licensee until actual issuance of the renewal license. A license which has expired may be reactivated and renewed within one year of its expiration by filing the required application and a reactivation fee of \$50.00. If a license has been expired for one or more years for failure to renew, the well drilling contractor shall apply for a new license and repeat the examination.
- F. A well drilling contractor shall prominently display the well drilling license number on all well drilling rigs owned or operated by the contractor in this state. Good quality paint or commercial decal numbers shall be used in placing each identification number on the drilling rig. The license number shall not be inscribed in crayon, chalk, pencil, or other temporary markings.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-807. Single Well License

- A. An applicant for a single well license pursuant to A.R.S. § 45-595(D) shall submit a verified application on forms prescribed and furnished by the Director, which shall include:
1. The name and address of the applicant.
 2. The location of the well and whether the applicant owns the land.
 3. The type of drill rig to be used and the owner of the rig.
 4. The proposed design of the well or method of abandonment.
 5. The names of any people who will be assisting the applicant in the drilling or abandonment of the well, and whether the applicant will compensate them for their efforts.
 6. The applicant's experience, if any, in well drilling or abandonment.
 7. Such other information as the Director may require relevant to the applicant's experience and qualifications in well drilling or abandonment.
- B. The Director shall offer the single well examination no less than six times yearly and shall administer the examination to those eligible applicants whose applications were submitted at least 20 days prior to the date of the examination.
- C. The single well examination shall be of a form prescribed and furnished by the Director and shall test the applicant's knowledge of abandonment techniques, or those minimum well construction requirements and drilling techniques applicable to the proposed design of the well. The passing grade on the sections of the examination dealing with construction requirements and drilling techniques, respectively, shall be 70 percent.
- D. Rule R12-15-805 relating to testing procedures shall be fully applicable.
- E. Applicants who twice fail the examination shall wait a minimum of 90 days before re-testing.
- F. Upon passing the examination, the applicant shall be issued a single well license, authorizing the applicant to drill or abandon one exempt well at the location specified in the applica-

tion. The license shall be valid for a period of one year from issuance.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-808. Revocation of License

The Director may revoke, suspend, or place on probationary status a well drilling license issued pursuant to R12-15-806, or a single well license, for good cause, including:

1. Intentionally making a misstatement of fact on any filing with the Department.
2. Violating any provision of A.R.S. Title 45, Chapter 2, Article 10, and the rules promulgated thereunder, or aiding and abetting in such a violation.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Section number corrected (Supp. 93-1).

R12-15-809. Notice of Intention to Drill

A notice of intention to drill required to be filed pursuant to A.R.S. § 45-596 shall be signed by the owner or lessee of the property upon which the well is to be drilled.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2).

R12-15-810. Authorization to Drill

- A. A well drilling contractor or single well licensee may commence drilling a well only if the well drilling contractor or licensee has possession of a drilling card at the well site issued by the Director in the name of the well drilling contractor or licensee, authorizing the drilling of the specific well in the specific location.
- B. In extraordinary situations not requiring a permit but only a notice of intention to drill, the Director may grant a request by telephone for emergency authorization of commencement of drilling prior to the actual receipt by the well driller of the drilling card. Within seventy-two hours after such a request is granted, the well driller shall file a written statement indicating the nature and reasons for the request, and the date, time and Department employee granting the request, and the well owner shall file a notice of intent to drill if such a notice has not previously been filed.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

R12-15-811. Minimum Well Construction Requirements

- A. Well casing
1. Casing shall be of a sufficient strength and wall thickness to hold the borehole open and survive any necessary grouting. A person shall use only steel or thermoplastic casing in the construction of a well, unless the person has received a variance from the Director pursuant to R12-15-820. The well casing or an extension of the casing shall extend a minimum of one foot above ground level. When installing a pitless adaptor, the casing may be terminated below ground level for aesthetic reasons or freeze protection purposes. Casing made of, or which has been exposed to, hazardous or potentially harmful materials, such as asbestos, shall not be used.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

2. All well casing joints or overlaps shall be made watertight to prevent the degradation of the water supply by the migration of inferior quality water. Except as provided in subsection (H) of this rule, any openings in the casing that will be above the water level in the well, such as bar holes, cracks or perforations, shall be completely plugged or sealed.
 3. Thermoplastic casing shall be installed only in an over sized drillhole without driving. Thermoplastic casing shall conform with American Society for Testing and Materials Standard Specification F480-89 (1989), which is incorporated herein by reference and is on file with the Office of the Secretary of State. Rivets or screws used in the casing joints shall not penetrate the inside of the casing.
 4. Steel casing shall be new or in like-new condition, free from pits or breaks, and shall conform with American Society for Testing and Materials Standard Specification A53-89a (1989), A139-89b (1989) or A312/A312M-89a (1989), whichever is applicable, all of which are incorporated herein by reference and are on file with the Office of the Secretary of State.
 5. Copies of The American Society for Testing and Materials standard specifications referred to in subsections (3) and (4) above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007; from the Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012; and from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. This rule does not include any later amendments or editions of those standard specifications.
- B. Surface seal**
1. Except as provided in subsections (2) and (4) of this subsection, and R12-15-817(B)(1), all wells shall be constructed with a surface seal as herein provided. The seal shall consist of steel casing, one foot of which shall extend above ground level, and cement grout placed in one continuous application from the bottom of the zone to be grouted to the land surface. If a pitless adaptor is utilized, the cement grout may terminate at the bottom of the pitless adaptor. The minimum length of the steel casing shall be 20 feet. The minimum annular space between the casing and the borehole for placement of grout shall be one and one-half inches. Curing additives, such as calcium chloride, shall not exceed ten percent of the total volume of grout. Bentonite as an additive shall not exceed five percent of the total volume. The minimum length of the surface seal shall be 20 feet. Any annular space between the outer casing and an inner casing shall be completely sealed to prevent contamination of the well.
 2. All hand-dug wells shall be constructed with a watertight curbing extending, at a minimum, from one foot above the natural ground level to the static water level, or into the confining formation if the aquifer is artesian. The curbing shall consist of poured cement grout or casing surrounded by cement grout. Concrete block with cement grout and rock with cement grout may also be used. The poured cement grout shall not be less than six inches thick. If casing is to be used, the minimum annular space between the casing and the borehole shall be three inches. Hand-dug wells shall be sealed at the surface with a watertight, tamper-resistant cover to prevent contaminants from entering the well.
 3. All wells constructed by jetting or driving shall have cement grout placed in the annular space to a minimum depth of six feet. The minimum annular space between the casing and the borehole for placement of the grout shall be one and one-half inches.
 4. All horizontal wells, to prevent leakage, shall be constructed with a surface seal consisting of steel casing and cement grout extending a minimum of ten feet into the land surface.
- C. Access port.** Every well with casing four inches in diameter or larger shall be equipped with a functional watertight access port with a minimum diameter of one-half inch so that the water level or pressure head in the well can be monitored at all times.
- D. Gravel packed wells**
1. If a gravel pack has been installed, the annular space between the outer casing and the inner casing shall be sealed, either by welding a cap at the top or by filling with cement grout from the bottom of the outer casing to the surface.
 2. If a gravel tube is installed, it shall be sealed with a cap.
- E. Vents.** All vents installed in the well casing shall open downward and be screened to prevent the entrance of foreign material.
- F. Removal of drilling materials**
1. In constructing a water well, the well driller shall take all reasonable precautions to protect the producing aquifer from contamination by drilling materials. Upon completion of the well, the well driller shall remove all foreign substances and materials introduced into the aquifer or aquifers during well construction. For purposes of this subsection, "substances and materials" means all drilling fluids, filter cake, lost circulation materials, and any other organic or inorganic substances.
 2. Materials known to present a health hazard, such as chrome-based mud thinners, asbestos products, and petroleum-based fluids, shall not be used as construction, seal or fill materials or drilling fluids.
 3. Drilling fluids and cuttings shall be contained in a manner which prevents discharge into any surface water.
- G. Repair of existing wells**
1. If, in the repair of a well, the old casing is withdrawn, the well shall be recased in conformance with these rules.
 2. If an inner casing is installed to prevent leakage of undesirable water into a well, the annular space between the casings shall be completely sealed by packers, casing swedging, pressure grouting or other methods which will prevent the movement of water between the casings.
- H. Monitor wells**
1. A monitor well may be screened up to ten feet above the highest seasonal static water level of record for the purpose of monitoring contaminants.
 2. A monitor well shall be identified as such on the vault cover or at the top of the steel casing. Identification information shall include the well registration number.
- I. Completion at the surface.** In areas of traffic or public rights-of-way, wells may be constructed below the land surface in a vault. All other requirements in this Article shall apply.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). The reference to R12-14-817(B)(1) in subsection (B)(1) corrected to read R12-15-817(B)(1) (Supp. 93-1). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

(Supp. 05-4).

R12-15-812. Special Aquifer Conditions**A. Artesian wells**

1. The well casing shall extend into the confining formation immediately overlying the artesian aquifer and shall be grouted from a minimum of ten feet into the confining formation to the land surface to prevent surface leakage into and subsurface leakage from the artesian aquifer.
2. If leaks occur adjacent to the well or around the well casing, within 30 days the well shall be completed with the seals, packers, or casing and grouting necessary to eliminate such leakage or the well shall be abandoned according to R12-15-816.
3. If the well flows at land surface, the well shall be equipped with a control valve, or suitable alternative means of completely controlling the flow, which must be available for inspection at the well site at all times.

- B. Mineralized or polluted water.** In all water-bearing geologic units containing mineralized or polluted water as indicated by available data, the borehole shall be cased and grouted so that contamination of the overlying or underlying groundwater zones will not occur.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-813. Unattended Wells

All wells, when unattended during well drilling, shall be securely covered for safety purposes and to prevent the introduction of foreign substances into the well.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section number corrected (Supp. 93-1).

R12-15-814. Disinfection of Wells

A well drilling contractor shall disinfect any well from which the water to be withdrawn is intended to be utilized for human consumption or culinary purposes without prior treatment before removing the drill rig from the well site in accordance with the requirements contained in Engineering Bulletin No. 8, "Disinfection of Water Systems", issued by the Arizona Department of Health Services in August 1978, and Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems", issued by the Arizona Department of Health Services in May 1978, both of which are incorporated by reference and are on file with the Office of the Secretary of State. Copies of the Engineering Bulletins referred to above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007, and from the Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012. This rule does not include any later amendments or editions of those Bulletins.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-815. Removal of Drill Rig from Well Site

The drilling rig shall not be removed from the well site unless the well is in one of the following conditions:

1. Constructed in full conformance with R12-15-811 and R12-15-812 and either sealed with a cap or equipped with a pump.
2. Abandoned in accordance with R12-15-816.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-816. Abandonment

- A.** Well abandonment shall be performed only by a licensed well drilling contractor or single well licensee.
- B.** Except as provided in subsection (F) of this Section, the owner of a well shall file a notice of intent to abandon the well prior to abandonment, on a form prescribed and furnished by the Director, which shall include:
1. The name and mailing address of the person filing the notice.
 2. The legal description of the land upon which the well proposed to be abandoned is located and the name and mailing address of the owner of the land.
 3. The legal description of the location of the well on the land.
 4. The depth, diameter and type of casing of the well.
 5. The well registration number.
 6. The materials and methods to be used to abandon the well.
 7. When abandonment is to begin.
 8. The name and well drilling license number of the well drilling contractor or single well licensee who is to abandon the well.
 9. The reason for the abandonment.
 10. Such other information as the Director may require.
- C.** The Director shall, upon receipt of a proper notice of intent to abandon, mail a well abandonment authorization card to the designated well drilling contractor or single well licensee.
- D.** Except as described in subsection (F) of this Section, a well drilling contractor or single well licensee may commence abandoning a well only if the driller has possession of an abandonment card at the well site, issued by the Director in the name of the driller, authorizing the abandonment of that specific well or wells in that specific location.
- E.** Within 30 days after a well is abandoned pursuant to this Section, the well drilling contractor or single well licensee shall file with the Director a Well Abandonment Completion Report on a form prescribed and furnished by the Director which shall include the date the abandonment of the well was completed and such other information as the Director may require.
- F.** In the course of drilling a new well, the well may be abandoned without first filing a notice of intent to abandon and without an abandonment card. If the well is abandoned pursuant to this subsection without first filing a notice of intent to abandon and without an abandonment card, the well drilling contractor or single well licensee shall provide the following information in the Well Abandonment Completion Report:
1. The legal description of the land upon which the well was abandoned and the name and mailing address of the owner of the land.
 2. The legal description of the location of the well on the land.
 3. The depth, diameter and type of casing of the well prior to abandonment.
 4. The well registration number.
 5. The materials and methods used to abandon the well.
 6. The name and well drilling license number of the well drilling contractor or single well licensee who abandoned the well.
 7. The date of completion of the abandonment of the well.
 8. The reason for the abandonment.
 9. Such other information as the Director may require.
- G.** The abandonment of a well shall be accomplished through filling or sealing the well so as to prevent the well, including the

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

annular space outside the casing, from being a channel allowing the vertical movement of water.

- H.** A well drilling contractor or single well licensee shall construct a surface seal for a well that does not penetrate an aquifer, as follows:
1. If the casing is removed from the top 20 feet of the well, a cement grout plug shall be set extending from two feet below the land surface to a minimum of 20 feet below the land surface, and the well shall be backfilled above the top of the cement grout plug to the original land surface.
 2. If the casing is not removed from the top 20 feet of the well, a cement grout plug shall be set extending from the top of the casing to a minimum of 20 feet below the land surface and the annular space outside the casing shall be filled with cement from the land surface to a minimum of 20 feet below the land surface.
- I.** In addition to the surface seal required in subsection (H):
1. A well penetrating a single aquifer system with no vertical flow components shall be filled with cement grout, concrete, bentonite drilling muds, clean sand with bentonite, or cuttings from the well.
 2. A well penetrating a single or multiple aquifer system with vertical flow components shall be sealed with cement grout or a column of bentonite drilling mud of sufficient volume, density, and viscosity to prevent fluid communication between aquifers.
- J.** Materials containing organic or toxic matter shall not be used in the abandonment of a well.
- K.** The owner or operator of the well shall notify the Director in writing no later than 30 days after abandonment has been completed. The notification shall include the well owner's name, the location of the well, and the method of abandonment.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

R12-15-817. Exploration Wells

- A.** Notification. Prior to drilling one or more exploration wells, the well owner, lessee, or exploration firm shall file a notice of intention to drill on forms provided by the Director. If the notice of intention to drill is filed for the project as a whole, the drilling card shall be issued for the project as a whole.
- B.** Construction and abandonment.
1. If an exploration well which is to be left open for re-entry at a later date encounters groundwater, it shall be cased and capped in accordance with R12-15-811, R12-15-812, and R12-15-822. The minimal length of surface seal shall be either 20 feet, or five feet into the first encountered consolidated formation, whichever is less. If no groundwater is encountered, the well shall be cased, grouted and capped in such a manner so as to prevent contamination of the well bore from the surface.
 2. Exploration wells not left open for re-entry shall be abandoned in accordance with R12-15-816.
- C.** Completion report. Within 30 days of project completion, the well owner, lessee, or exploration firm shall submit a project completion report on forms provided by the Director. The report shall include:
1. The exact number of wells drilled.
 2. The depth to water encountered or detected, with reference to specific wells.
 3. The abandonment method utilized, or construction details if completed for re-entry.
 4. Any other information which the Director may require.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-818. Well Location

Except for monitor wells and piezometer wells, no well shall be drilled within 100 feet of any septic tank system, sewage disposal area, landfill, hazardous waste facility, storage area of hazardous materials or petroleum storage areas and tanks, unless authorized in writing by the Director.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-819. Use of Well as Disposal Site

No well may be used as a storage or disposal site for sewage, toxic industrial waste, or other materials that may pollute the groundwater, except as authorized by the Arizona Department of Environmental Quality.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-820. Request for Variance

- A.** If extraordinary or unusual conditions exist, a well drilling contractor or owner may request a variance from the provisions of this Article.
- B.** The request for variance shall be in writing and shall set forth the location of the well site, the reasons for the request, and the recommended requirements to be applied. The Director may approve the request only if the well drilling contractor or owner has clearly demonstrated that the variance will not adversely affect other water users or the local aquifers.
- C.** A variance shall not be effective until the well drilling contractor or owner receives from the Director a written approval of the variance and a new drilling card stamped "variance issued."

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-821. Special Requirements

If the Director determines that the literal application of the minimum well construction requirements contained in this Article would not adequately protect the aquifer or other water users, the Director may require that further additional measures be taken, such as increasing the length of the surface seal or increasing the well's minimum distance from a potential source of contamination.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-822. Capping of Open Wells

- A.** The owner of an open well shall either install a cap on the well or abandon the well in accordance with R12-15-816. Within five days after capping the well, the owner of the well shall file with the Department a notice of well capping on a form approved by the Director which shall include the following information:
1. The name and address of the well owner.
 2. The name and address of the person installing the cap.
 3. The well registration number.
 4. The legal description of the location of the well.
 5. The date the well was capped.
 6. The method of capping.
 7. The type and diameter of casing.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- B. If no casing exists in an open well, or if the integrity of the existing casing is insufficient to allow installation of a cap, the well owner shall install a surface seal in accordance with R12-15-811(B) prior to capping.
- C. The owner of a well on which a cap is installed shall make the cap tamper resistant by welding the cap to the top of the casing by the electric arc method of welding, except that the owner of a well may make the cap tamper resistant by securing the cap to the top of the casing with a lock during temporary periods of well maintenance, modification or repair, not to exceed 30 days, or at any time if the well is a monitor well or piezometer well.

Historical Note

Adopted as an emergency effective March 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective June 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective September 5, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency expired. Readopted without change as an emergency effective December 1, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Readopted without change as an emergency effective March 23, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Permanent rule adopted with changes effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

R12-15-823. Reserved

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R12-15-849. Reserved**R12-15-850. Evaluation of Notices of Intention to Drill; Notification of Registered Site Locations; Vertical Cross-Contamination Evaluation**

- A. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well will be drilled within a groundwater basin or subbasin in which there exists a site listed on the registry established under A.R.S. § 49-287.01(D). If the proposed well is situated within such a groundwater basin or subbasin, the Director shall notify the applicant and the authorized well drilling contractor in writing of the existence of the site and shall enclose a map indicating the boundaries of all listed sites within the groundwater basin or subbasin. The notification letter shall include the name, address, and telephone number of a Department contact person, along with a reference to the provision in R12-15-851 that requires the applicant to notify the Department in advance of the date drilling of the well will commence. The Department shall also specify in the notification letter whether the applicant is subject to the requirements of R12-15-851.
- B. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well will be drilled within an area where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination, as defined in A.R.S. § 49-281(15). If the Director determines that the proposed well will be drilled in such an area, and if the Director finds that the

requirements of R12-15-811 are insufficient to prevent the risk of vertical cross-contamination, the Director shall establish site-specific requirements pursuant to R12-15-812 and R12-15-821.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

R12-15-851. Notification of Well Drilling Commencement

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

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

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

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

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

ARTICLE 9. WATER MEASUREMENT**R12-15-901. Definitions**

In addition to the definitions set forth in A.R.S. §§ 45-101 and 45-402, the following words and phrases shall have the following meanings, unless the context otherwise requires:

1. "Approved measuring device" means an instrument, approved by the Director pursuant to R12-15-903 or R12-15-909(A) which measures the volume or flow rate of water withdrawn, delivered, received, transported, recharged, stored, recovered, or used, and which measurements, when used with an approved measuring method, allow for accurate computation of a volume of water.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

2. "Approved measuring method" means a procedure, approved by the Director in R12-15-903 or R12-15-909(A), which, when used with an approved measuring device, will accurately calculate a volume of water.
 3. "Flow rate" or "discharge" means the volume of water, including any sediment or other solids that may be dissolved or mixed with it, which passes through a particular reference section in a unit of time.
 4. "Measured system" means a system through which water passes for the purpose of withdrawal, delivery, receipt, transportation, recharge, storage, replenishment, recovery or use.
 5. "Responsible party" means an irrigation district or a person required by A.R.S. Title 45 or by a permit, rule, or order issued pursuant to A.R.S. Title 45, to use a measuring device or method approved by the Director.
1. Totalizing measuring method: This method requires an approved measuring device which continuously records the volume of water passing through the measured system;
 2. Electrical consumption measuring method: This method requires measurements of either pipeflow rates or open-channel flow rates used in combination with electrical energy records;
 3. Natural gas consumption measuring method: This method requires measurements of either pipe flow rates or open channel flow rates used in combination with natural gas energy records;
 4. Hour meter measuring method: This method requires measurements of either pipe flow rates or open-channel flow rates used in combination with hour meter readings;
 5. Elapsed time of flow method: This method requires measurements of flow rates used in combination with elapsed time of the flow. This method may be used only by a responsible party who receives water from an open channel or by a person or entity who delivers water in an open channel to one or more grandfathered rightholders or permit holders, if it is not possible to use the electrical or gas consumption measurement methods or hour meter measuring method.

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).
Amended effective June 15, 1995 (Supp. 95-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2).

R12-15-902. Installation of Approved Measuring Devices

- A. A responsible party shall install an approved measuring device to monitor the volume of water withdrawn, delivered, transported, recharged, stored, replenished, recovered, and used.
- B. A responsible party shall install and use a sufficient number of approved measuring devices to allow for the separate monitoring and reporting of the volume of water passing through the measured system pursuant to the following categories of rights:
 1. Irrigation grandfathered rights,
 2. Non-irrigation grandfathered rights,
 3. Service area rights,
 4. Groundwater withdrawal permits, and
 5. Recovery well permits or water storage permits.

This subsection does not require separate measuring devices for rights within each category unless otherwise required by A.R.S. Title 45, a permit, rule, or order pursuant to that Title.

- C. An approved measuring device which measures groundwater withdrawals shall be installed as close to the wellhead as is practical, consistent with the manufacturer's instructions. An approved measuring device which measures another point in the measured system shall be installed as close as is practical to the point of delivery, receipt, transportation, recharge, storage, replenishment, recovery, or use which the device is intended to measure, consistent with the manufacturer's instructions.

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).
Amended effective June 15, 1995 (Supp. 95-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2).

R12-15-903. Approved Water Measuring Devices and Methods

- A. Any measuring device is approved by the Director if it is installed, maintained, and used in accordance with the manufacturer's recommendations, and if it meets the accuracy requirements set forth in R12-15-905(A).
- B. An approved measuring device shall be used with an approved measuring method set forth in R12-15-903(C) or an alternative measuring method approved by the Director as provided in R12-15-909(A).
- C. The following water measuring methods are approved by the Director:

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).
Amended effective June 15, 1995 (Supp. 95-2).

R12-15-904. Water Measuring Method Reporting Requirements

- A. A responsible party using one of the water measuring methods described in R12-15-903 shall file, with the annual report required by A.R.S. Title 45 and on a form prescribed by the Director, the following information, unless that information has not changed from that submitted in the annual report filed in the previous calendar year.
 1. The approved measuring method used;
 2. The type of approved measuring device used;
 3. The make, model, and size of the approved measuring device used.
- B. Except as provided in R12-15-904(B)(5) and R12-15-909(B) and (D), a responsible party shall file with the annual report the information required in subsection (A) of this Section and the following information on a form prescribed by the Director:
 1. Totalizing measuring method:
 - a. The initial totalizing meter reading for the reporting year taken prior to the first use of the measured system during the reporting year;
 - b. The end totalizing meter reading for the year taken subsequently to the last use of the measured system during the reporting year;
 - c. The units in which the water is measured;
 - d. Whether the power meter serves uses other than the pump motor or engine;
 - e. An estimate of the amount of any water passing through the measured system during measuring device malfunctions;
 - f. If the well is in operation for more than a 30-day period, the results of a minimum of two flow-rate measurements per reporting year taken under normal system operating conditions. The responsible party shall not submit the results of the flow-rate measurements with the annual report unless a meter malfunction continues longer than 72 hours during the reporting year;

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- g. The installation or overhaul date of the totalizing meter; and
 - h. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
2. Electrical consumption measuring method:
- a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
 - b. The dates of the measurements;
 - c. The discharges in gallons per minute;
 - d. The time, in seconds, of ten cycles of the electric meter disk, power indicator pulse, or an alternative measurement, provided that the alternative means of measurement is approved in advance by the Director;
 - e. The inside diameter of the discharge pipe;
 - f. The multiplier (K_r) and disk constant (K_d) of the electric meter; and
 - g. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
3. Natural gas consumption measuring method:
- a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
 - b. The dates of the measurements;
 - c. The discharges in gallons per minute;
 - d. The amounts of gas per second in cubic feet indicated by the gas meter;
 - e. The billing factors (F);
 - f. The inside diameter of the discharge pipe; and
 - g. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
4. Hour meter measuring method:
- a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
 - b. The dates of the measurements;
 - c. The discharges in gallons per minute;
 - d. The initial hour meter reading for the reporting year taken prior to the first use of the measured system during the reporting year;
 - e. The end hour meter reading taken subsequently to the last use of the measured system during the reporting year;
 - f. Whether the energy meter serves uses other than the pump motor or engine;
 - g. The installation or overhaul date of the hour meter; and
 - h. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
5. Elapsed time of flow measuring method: A responsible party using this measuring method shall not be required to submit the following information with the annual report but instead shall record and retain it for three years after the reporting year.
- a. The responsible party or agent shall measure and record an initial flow rate taken at the start of flow for each delivery of water;
 - b. If the flow rate continues for more than eight hours, a subsequent measured flow-rate measurement shall be taken. If any subsequently measured flow-rate differs by more than 10% from the initial flow rate, and the delivery is not adjusted to conform with the initial flow rate, the responsible party or agent shall record the subsequent flow rate;
 - c. The time the flow begins and the time the flow ends for each delivery of water; and
 - d. The dates of the measurements.
- C. A responsible party or person or entity who uses an approved measuring method or an approved alternative water measurement method shall save the records required by subsections (A) and (B) of this Section for three years after the reporting year.

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6). Former Section R12-15-904 renumbered to R12-15-905, new Section adopted effective June 15, 1995 (Supp. 95-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-905. Accuracy of Approved Measuring Devices

- A. A responsible party shall install, maintain, and use an approved measuring device and method in a manner which will ensure that its measurement error does not exceed 10% of the actual flow rate.
- B. All measured systems shall be installed or constructed and thereafter maintained so as to allow the Director, using another measuring device, to check readily the accuracy of the measuring device utilized by the responsible party.

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6). Former Section R12-15-905 renumbered to R15-15-906, new Section R12-15-905 renumbered from R12-15-904 and amended effective June 15, 1995 (Supp. 95-2).

R12-15-906. Repair and Replacement of Approved Measuring Devices

If an approved measuring device fails to perform its designated function for more than 72 hours, the responsible party shall notify the Director of the failure, in writing, within seven calendar days after the discovery of the failure of the device. The reason for such failure shall be stated, as well as the estimated date of return to service of the device. If the malfunction is discovered by the Director and the malfunction does not appear to be the result of an attempt to

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

render the device inaccurate, the Director shall notify the responsible party of the malfunction. The responsible party shall return the measuring device to full service within 30 days of either original notice by the responsible party to the Director or by the Director to the responsible party, unless repair or replacement service or parts are not available. In such case, the responsible party shall notify the Director of the delay within seven days and the reasons for it. The responsible party shall take corrective action in such cases as soon as practical. In all cases, the responsible party shall notify the Director within seven days when the measuring device is returned to full service and shall submit on a form prescribed by the Director estimates of the volume of water, if any, passing through the measured system during the period the measuring device was out of service and a description of the method used to calculate the estimates.

Historical Note

Section R12-15-906 renumbered from R12-15-905 and amended effective June 15, 1995 (Supp. 95-2).

R12-15-907. Calculation of Irrigation Water Deliveries

If one or more irrigation grandfathered rights receive water by a common distribution system where water is measured with an approved device or method at the point of delivery to the common distribution system, but not at a point of delivery to each irrigation grandfathered right, each irrigation grandfathered rightholder or agent shall report the water used by either of the following methods:

1. Estimate the amount of water used based on a pro rata share of the acres irrigated, or
2. Estimate the amount of water used based on a combination of the pro rata share of the acres irrigated and the consumptive use of each crop grown.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R12-15-908. Measurement of Water by One Person on Behalf of Another

A responsible party shall be liable for any fines, penalties, or other sanctions resulting from the installation, monitoring, use, or accuracy of any measuring device, method, or recordkeeping, notwithstanding that the installation, monitoring, use, or recordkeeping may have been done by an agent of the responsible party.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R12-15-909. Alternative Water Measuring Devices, Methods, and Reporting

- A. A responsible party may use an alternative water measuring device or method that differs from those described in R12-15-903 provided the device or method is approved in advance by the Director. The Director shall approve an alternative water measuring device or method if the device meets the requirements of R12-15-905. The Director may require from the responsible party such information as may be necessary to demonstrate that the alternative device or method meets the requirements of R12-15-905.
- B. Responsible parties may substitute equivalent information for the information required on the annual report form or use reporting formats that differ from that required in R12-15-904, provided the substituted information or format is approved in advance by the Director.
- C. Responsible parties may use estimation methods that differ from those described in R12-15-907 provided they are approved in advance by the Director.
- D. A municipal provider is exempted from the reporting requirements under R12-15-904 and the provisions under R12-15-906 pertaining to notification to the Director of measuring device

malfunctions regarding metered service connections, unless required to report by A.R.S. Title 45 or by a permit, rule, or order issued pursuant to A.R.S. Title 45.

- E. Municipal providers and irrigation districts may notify the Director of measuring device malfunctions at the time of filing the annual report and in a manner that differs from the requirements of R12-15-906, provided the municipal provider or irrigation district implements a schedule of regular maintenance of measuring devices, repairs or replaces malfunctioning measuring devices within seven days of discovery of the malfunction, and the alternative notification is approved in advance by the Director.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

ARTICLE 10. REPORTING REQUIREMENTS FOR ANNUAL REPORTS, ANNUAL ACCOUNTS, OPERATING FLEXIBILITY ACCOUNTS, AND CONVEYANCES OF GROUNDWATER RIGHTS**R12-15-1001. Definitions**

In addition to the definitions in A.R.S. §§ 45-101 and 45-402, the following words and phrases in this Article have the following meanings, unless the context otherwise requires:

1. "Annual account" means an accounting of water required to be filed pursuant to A.R.S. § 45-468.
2. "Annual report" means an annual report of water withdrawn, delivered, received, transported, recharged, stored, recovered, replenished or used as required by A.R.S. §§ 45-437, 45-467, 45-632, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004.
3. "Central Arizona project water" means Colorado River water delivered through the facilities of the central Arizona project, and surface water from any other source conserved and developed by dams and reservoirs in the central Arizona project and lawfully delivered by the United States or a multi-county conservation district.
4. "Decreed or appropriative surface water" means surface water which is delivered or used pursuant to a decreed or appropriative water right, except any such water which is included in central Arizona project water.
5. "Farm" means an area of irrigated land under the same ownership as defined in A.R.S. § 45-402, including the area of land described in a certificate of irrigation grandfathered right, as well as contiguous land that the owner is legally entitled to irrigate only with decreed or appropriative surface water.
6. "Maximum annual groundwater allotment" means the quantity of water in acre-feet obtained by multiplying the number of water duty acres for a farm by the current irrigation water duty for the farm unit.
7. "Normal flow" means water delivered or used pursuant to a right to appropriate an unstored, natural flow of surface water.
8. "Operating flexibility account" means an accounting of water use pursuant to an irrigation grandfathered right as provided in A.R.S. § 45-467.
9. "Responsible party" means a person required by law to file an annual account or annual report.
10. "Spillwater" means surface water, other than Colorado River water, released for beneficial use from storage, diversion, or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity and to which one of the following applies:

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- a. The water is released from the facility under written criteria for releasing water to avoid spilling that have been approved in writing by the Director.
 - b. The water is released from the facility because an unreasonable risk exists that the storage capacity of the facility will be exceeded within the next 30 days because the facility is near capacity and either the inflow to the facility or the forecast runoff into the facility is equal to or greater than the quantity of water ordered from the facility.
 - c. The water is released from the facility because an unreasonable risk exists that the storage capacity of the facility will be exceeded more than 30 days in the future because the forecast runoff into the facility exceeds current unused storage capacity and projected water demand during the forecast period, provided that the Director has made a written finding before the release that the forecast is reasonable.
11. "Surface water right acre" means land to which the owner is legally entitled to apply decreed or appropriative surface water.
 12. "Tailwater" means water which, after having been applied to a farm for irrigation purposes,
 - a. Is subsequently used for the irrigation of a different farm, without having entered the distribution system of a city, town, private water company or irrigation district, or
 - b. Is delivered to an irrigation district in accordance with R12-15-1010. Such water, once having entered the distribution system of the irrigation district, loses its characterization as tailwater.
 13. "Water deliverer" means a city, town, private water company or irrigation district delivering a combination of groundwater and any other type of water for irrigation purposes.

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6). Section R12-15-1001 renumbered to R12-15-1003, new Section R12-15-1001 adopted effective December 12, 1990 (Supp. 90-4). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1002. Form of Annual Account or Annual Report

- A. A person filing an annual account or an annual report shall do so on a form prescribed by the Director, unless the person has requested and received the Director's prior written approval to use an alternative form.
- B. A person may file both an annual account and an annual report in one document. A person required to file an annual account shall designate in the annual account whether the annual account is being filed also as an annual report.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1003. Accuracy of Annual Reports

The quantity of water a responsible party reports in an annual report as having been withdrawn, delivered, received, transported, recharged, replenished, stored, recovered, or used during a year shall not deviate from the quantity of water actually withdrawn, delivered, received, transported, recharged, replenished, stored, recovered, or used by the responsible party during the year unless both of the following apply:

1. The deviation is 10 percent or less.

2. The deviation is not the result of an intentional act of misrepresentation by the responsible party.

Historical Note

Section R12-15-1003 renumbered from R12-15-1001 effective December 12, 1990 (Supp. 90-4). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1004. Annual Reports Filed on Behalf of a Responsible Party

- A. A responsible party is liable for any fines, penalties, or other sanctions resulting from or attributable to the filing or content of an annual report filed on behalf of the responsible party by an irrigation district pursuant to A.R.S. § 45-632, or by another person in a form acceptable to the Director.
- B. If a responsible party has not filed an annual report for a calendar year, and the Department receives an annual report for that calendar year purportedly filed on behalf of the responsible party by an irrigation district pursuant to A.R.S. § 45-632, or by another person in a form acceptable to the Director, there is a rebuttable presumption that the annual report was filed with the responsible party's knowledge, consent, and authorization.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1005. Management Plan Monitoring and Reporting Requirements

A responsible party who is required by a provision of a management plan to comply with monitoring and reporting requirements shall comply with such requirements and shall include all such information in an annual account or annual report.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1006. Reporting Requirements for Holders of Recovery Well Permits

A responsible party recovering water during a year pursuant to a recovery well permit shall include in the annual report required by A.R.S. § 45-875.01 the names of any persons, other than non-irrigation customers of cities, towns, private water companies and irrigation districts, to whom the responsible party delivered the recovered water during the year, the quantity of recovered water delivered to each person named, and the uses to which the recovered water was applied. If the recovered water included commingled groundwater, decreed or appropriative surface water other than spillwater, central Arizona project water, effluent or spillwater, the responsible party shall include in the annual report an estimate of the quantity of each type of water delivered to each person named in the annual report or put to a specific use by the responsible party.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1007. Reporting Requirements for Annual Account

A person required to file an annual account pursuant to A.R.S. § 45-468 shall account for water provided to the following classes of users:

1. Cities and towns,
2. Private water companies,
3. Irrigation districts,
4. Dairies,
5. Metal mining facilities,

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

6. Cattle feed lots,
7. Turf-related facilities,
8. Sand and gravel facilities,
9. Electrical power generation facilities,
10. Other industrial users.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1008. Information Required to Maintain an Operating Flexibility Account

A. A responsible party who withdraws, receives, or uses groundwater during a calendar year pursuant to an irrigation grandfathered right, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01, shall include the following information for the calendar year in an annual report filed pursuant to A.R.S. § 45-467 or 45-632:

1. The quantity of groundwater withdrawn from each well.
2. The quantity of groundwater withdrawn and delivered to another person for irrigation purposes.
3. The quantity of groundwater received from a city, town, private water company, or irrigation district, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
4. The quantity of groundwater received from a person other than a city, town, private water company, or irrigation district, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
5. The quantity of effluent received.
6. The quantity of decreed or appropriate surface water received, other than normal flow and spillwater.
7. The quantity of normal flow received.
8. The quantity of spillwater received.
9. The quantity of tailwater used.
10. The quantity of tailwater delivered in accordance with the provisions of R12-15-1010(A), and the farm or irrigation district to which the tailwater was delivered.
11. The quantity of central Arizona project water received.
12. The quantity of any surface water received and not accounted for pursuant to subsections (6) through (11) of this subsection.
13. The number of surface water right acres in the farm to which the irrigation grandfathered right is appurtenant.
14. The quantity of water used for the legal irrigation of acres in the farm to which irrigation grandfathered rights are not appurtenant. If the responsible party omits this information, the Director shall presume that the total amount of water received or used for the irrigation of the farm was applied to acres to which irrigation grandfathered rights are appurtenant.
15. Any other information the Director may reasonably require to accomplish the management goals of the applicable active management area.

B. A water deliverer shall include the following information for an accounting period in an annual account filed pursuant to A.R.S. § 45-468:

1. The quantity of groundwater delivered to each farm, including any in lieu water delivered pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
2. The quantity of normal flow delivered to each farm.
3. The quantity of spillwater delivered to each farm.

4. The quantity of decreed or appropriate surface water, other than normal flow and spillwater, delivered to each farm.
5. The quantity of central Arizona project water delivered to each farm.
6. The quantity of decreed or appropriate surface water, other than normal flow and spillwater, delivered for use within the service area of the water deliverer, including all farm and non-farm deliveries.
7. The number of surface water right acres within the service area of the water deliverer.
8. The quantity of effluent delivered to each farm.
9. Any other information the Director may reasonably require to accomplish the purposes of A.R.S. § 45-468.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1009. Credits to Operating Flexibility Account

- A.** Except as provided in subsection (B) of this Section and in R12-15-1010, if the total amount of water from all sources other than spillwater used by a farm for irrigation purposes in a calendar year is less than the farm's maximum annual groundwater allotment for the year, the Director shall register the difference as a credit to the farm's operating flexibility account.
- B.** If a farm is within the service area of a water deliverer, the Director shall reduce the credit as calculated pursuant to subsection (A) of this Section by an amount equal to the difference between the farm's pro rata share of the total quantity of decreed or appropriate surface water, other than normal flow or spillwater, delivered by the water deliverer during the year for use within its service area, and the quantity of water actually received by the farm during the year. The Director shall determine the farm's pro rata share by dividing the number of surface water right acres in the farm that are within the service area of the water deliverer by the total number of surface water right acres within the service area of the water deliverer, and multiplying the quotient by the total quantity of decreed or appropriate surface water, other than normal flow or spillwater, delivered by the water deliverer during the year for use within its service area.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1010. Operating Flexibility Account; Tailwater

- A.** When calculating credits or debits to a farm's operating flexibility account for a year, the Director shall exclude from the total amount of water used on the farm during that year the amount of any tailwater that originated on the farm and that was delivered from the farm to another farm or to an irrigation district for irrigation purposes during the year if all of the following apply:
1. Prior to January 1 of the year in which the deliveries of tailwater take place, the Director approves a written plan to measure and record the tailwater deliveries. The plan shall include:
 - a. The installation and use of a totalizing water measuring device that will record tailwater deliveries with no greater than a 10 percent margin of error.
 - b. Procedures for keeping accurate records of the tailwater deliveries.
 - c. A description of how the tailwater will be delivered.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- d. An identification of the farm or irrigation district to which the tailwater will be delivered.
2. The person has measured, recorded, and delivered the tailwater in accordance with the plan approved under subsection (A)(1) of this Section.
3. The tailwater was delivered directly from the farm on which it originated to:
 - a. A specified farm that used the tailwater for the legal irrigation of irrigation acres or surface water right acres on that farm, or
 - b. A specified irrigation district that delivered the tailwater for the legal irrigation of irrigation acres or surface water right acres within that district.
- B.** A person who delivers tailwater in accordance with subsection (A) of this Section, and a person who directly receives and uses the tailwater pursuant to subsection (A)(3)(a) of this Section, shall account for and report the tailwater as if it were comprised of a mixture of groundwater, decreed and appropriative surface water other than normal flow, central Arizona project water, spillwater, other surface water, and effluent, as applicable, in the same proportions as those types of water comprise the total amount of water other than normal flow received or withdrawn for irrigation use during the calendar year on the farm on which the tailwater originated.
- C.** A person who uses tailwater that has not been delivered and accounted for as provided in subsections (A) and (B) of this Section may credit against the person's use of groundwater in a calendar year the amount of the tailwater used during the calendar year if the use of such tailwater would cause a debit to be incurred. The credit shall be applied only against the person's operating flexibility account debits that otherwise would have been incurred that year and shall not be used to discharge debits from prior years or accumulate credits for future years. For purposes of calculating credits to the person's operating flexibility account, the Director shall treat tailwater as groundwater, unless reported otherwise according to its source.
- D.** An irrigation district that receives tailwater pursuant to subsection (A)(3)(b) shall account for the water in the same manner as other water in the district's distribution system.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1011. Statement of Operating Flexibility Account

- A.** The Director shall annually issue to each owner or user of an irrigation grandfathered right for which a current annual report has been filed a statement of the operating flexibility account setting forth the status of the operating flexibility account for the farm, based on the information submitted in the annual report filed for the right.
- B.** Upon a motion or on the initiative of the Director, the Director may amend a statement of operating flexibility account at any time to correct clerical mistakes or to adjust the balance of the account based on information submitted in an amended or late annual report. The Director shall give written notice of any amendments made pursuant to this subsection to the person to whom the statement of operating flexibility account was issued.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1012. Rule of Construction

Nothing in A.A.C. R12-15-1001 through R12-15-1011 shall be construed to determine the legality of any water use for which an accounting is required under these rules.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1013. Retention of Records for Annual Accounts and Annual Reports

The responsible party shall keep and maintain, for at least three calendar years following the filing of an annual account or an annual report, all records which may be necessary to verify the information and data contained therein.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1014. Late Filing or Payment of Fees; Extension Penalties

- A.** An annual account, an annual report, or a request for extension pursuant to subsection (E) of this rule shall be deemed to be filed at the time a complete annual account, a complete annual report or a request for extension is hand-delivered to any Department office, or at the time the envelope in which it is mailed is postmarked.
- B.** Except as provided in subsection (C) of this Section, groundwater withdrawal fees and long-term storage credit recovery fees are deemed paid at the time the fees are hand-delivered to any Department office, or at the time the envelope in which they are mailed is postmarked.
- C.** If any groundwater withdrawal fees or long-term storage credit recovery fees are paid with a negotiable instrument that is not honored and paid upon the Department's initial demand, the fees are deemed paid at the time the Department actually receives the fees in cash or when the negotiable instrument is honored and paid to the Department.
- D.** If an annual account or an annual report filed on or before the date required by the applicable statute is found by the Director to be incomplete, the Director shall notify the responsible party of the inadequacies and allow the responsible party 30 days from the date of the notice to provide the missing information in a form prescribed by the Director. If the responsible party does not provide the missing information within 30 days from the date of the notice, late penalties under A.R.S. §§ 45-437, 45-632, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004 shall begin to accrue on the 31st day following the date of the notice. The Director shall not recommend to a court, pursuant to A.R.S. §§ 45-634, 45-635, 45-881.01, 45-882.01, 45-1062 or 45-1063, that civil penalties be imposed through the first 30 days following the date of the notice. However, if the inadequacy included the failure to pay all groundwater withdrawal fees due or all long-term storage credit recovery fees due, late penalties under A.R.S. §§ 45-614 or 45-874.01 shall begin to accrue on April 1, except as provided in subsection (E) of this Section.
- E.** A responsible party required to file an annual account or annual report for a year may request a 30-day extension of the first day of accrual of the late penalties under A.R.S. §§ 45-437, 45-614, 45-632, 45-874.01, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004 and of the civil penalties that the Director may recommend that a court impose pursuant to A.R.S. §§ 45-634, 45-635, 45-881.01, 45-882.01, 45-1062 or 45-1063. The request shall be filed no later than the date the annual account or annual report is required to be filed under the applicable statute. The Director shall grant a request for a 30-day extension if good cause is shown. If the Director grants the request, the late penalties and civil penalties shall begin to accrue on the first day after the 30-day extension period,

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

except that if the Director finds that the person making the request presented false or misleading information to the Director and the Director relied on that information in granting the request, the late penalties and civil penalties shall begin to accrue as if the request was not granted. The Director shall not grant an extension to a responsible party who was granted an extension in the preceding calendar year and who subsequently failed to file a complete annual account or annual report and pay all groundwater withdrawal fees and all long-term storage credit recovery fees due within the 30-day extension period.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1015. Reporting Requirements for Conveyances of Grandfathered Rights and Groundwater Withdrawal Permits

- A. A person who is required by A.R.S. § 45-482 to notify the Director of a conveyance of a grandfathered right shall file a notice of conveyance, on a form prescribed by the Director, within 30 days of the conveyance. All parties to the conveyance may use a single form for the required notice. Except provided in subsection (B) of this rule, the notice of conveyance shall include an accounting of the amount of water withdrawn or received pursuant to that grandfathered right from January 1 to the date of conveyance for that calendar year.
- B. If the person to whom a grandfathered right is conveyed is unable, because of extraordinary circumstances and good cause shown, to perform the accounting otherwise required by subsection (A) of this rule, the Director may waive the requirement for that person.
- C. If a person, including a person who is granted a waiver pursuant to subsection (B) of this rule, fails to include the required accounting in a timely filed notice of conveyance pursuant to subsection (A) of this rule, the Director shall determine the amount of groundwater withdrawn or received pursuant to the grandfathered right from January 1 to the date of conveyance for that calendar year. Such a person shall bear the burden, in any subsequent administrative or judicial proceeding, of establishing by clear and convincing evidence that the Director's determination was incorrect.
- D. A person requesting the Director's approval of a proposed conveyance of a groundwater withdrawal permit pursuant to A.R.S. § 45-520(B) shall include with such request the quantity of groundwater withdrawn pursuant to the groundwater withdrawal permit for that calendar year and all other information required to be submitted pursuant to A.R.S. § 45-632.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1016. Spillwater Reporting by Water Deliverers

A water deliverer that delivers spillwater during a year shall include the following information in the annual account or annual report submitted by the water deliverer for that year:

1. The total quantity of spillwater delivered for non-irrigation uses during the year.
2. The total quantity of spillwater delivered for irrigation uses during the year.
3. Any other information the Director may reasonably require to determine whether the water qualifies as spillwater under R12-15-1001(10).

Historical Note

New Section made by final rulemaking at 11 A.A.R.

5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1017. Maintenance and Filing of Annual Reports Required by A.R.S. § 45-343

A community water system required to file an annual report under A.R.S. § 45-343 shall maintain the report on a calendar year basis and shall file the report with the Director no later than June 1 of each year for the preceding calendar year.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

ARTICLE 11. INSPECTIONS AND AUDITS**R12-15-1101. Inspections**

- A. For the purpose of this rule, "inspection" means an entry by the Director at reasonable times onto private or public property for any of the following purposes:
 1. To obtain factual data or access to records required to be kept under A.R.S. §§ 45-632, 45-879.01, or 45-1004.
 2. To inspect a well or another facility for the withdrawal, transportation, use, measurement, or recharge of groundwater under A.R.S. § 45-633.
 3. To inspect a facility that is used for the purpose of water storage, stored water recovery, or stored water use under A.R.S. § 45-880.01(A).
 4. To inspect a body of water under A.R.S. § 45-135 or to ascertain compliance with A.R.S. Title 45, Chapter 1, Article 3.
 5. To inspect or to obtain factual data or access to records pursuant to any Section of A.R.S. Title 45 that requires the Director to adopt rules for conducting inspections, examining records, and obtaining warrants.
 6. To inspect facilities used for the withdrawal, diversion, or use of water pursuant to a water exchange under A.R.S. § 45-1061.
- B. Not less than seven days prior to an inspection, the Director shall mail notice of the inspection by first class letter to the owner, manager or occupant of the property. The notice shall include the statutory authorization and purpose for the inspection. The notice shall specify a date and time certain or a seven-day period within which the inspection may take place. If a request is made before the seven-day period, the Director shall schedule the inspection for a time certain within the seven-day period to allow an opportunity for a representative of the property to be present at the inspection. The notice shall include the name and telephone number of a Department employee who may be contacted to arrange such an appointment.
- C. Whenever practical, Department employees shall minimize disruptions to on-going operations caused by an inspection.
- D. If the property is controlled or secured against entry at the time specified in the notice of inspection but consent to the inspection was not denied, the Director shall give a second notice in the manner prescribed in subsection (B) before seeking a search warrant or its equivalent. The second notice shall request that a representative of the property be present at the inspection to accompany Department personnel.
- E. If the Director gives notice of an inspection and is not permitted to conduct an inspection, the Director may apply for and obtain a search warrant or its equivalent.
- F. Notice of inspection shall not be required under subsections (B) and (D) of this rule if the Director reasonably believes that notice would frustrate the enforcement of A.R.S. Title 45, or where entry is sought for the sole purpose of inspecting water measuring devices required pursuant to A.R.S. § 45-604.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- G.** The Director shall mail a copy of the report of the inspection either to the person to whom the notice of inspection was directed, or to the owner, manager or occupant of the property if no notice of inspection was given. The report shall include the date of the inspection and a short summary of the findings. If no notice was given, the report shall include an explanation of the reason for determining that notice would not be given, unless providing the explanation would frustrate enforcement of A.R.S. Title 45. An aggrieved person may file with the Director written comments on the report within 30 days after the report is mailed.
- H.** The owner, manager or occupant of the property may waive the provisions for notice contained in this rule.
- I.** The Director shall comply with the requirements of A.R.S. § 41-1009 when conducting inspections under this Section.

Historical Note

Adopted effective August 31, 1992 (Supp. 92-3).
Amended effective July 22, 1994 (Supp. 94-3). Amended
by final rulemaking at 11 A.A.R. 5395, effective
February 4, 2006 (Supp. 05-4).

R12-15-1102. Audits

- A.** For the purpose of this rule, “representative” means
1. An officer or director of a corporation subject to the audit,
 2. A general partner of a partnership subject to the audit, or
 3. A person who appears at an audit and produces a signed authorization to act on behalf of the person subject to the audit.
- B.** This rule applies to audits conducted pursuant to A.R.S. §§ 45-633(C), 45-880.01, and any other Section of A.R.S. Title 45 that authorizes the Director to require a person to appear at the Director’s office and produce records and information and that also requires the Director to adopt rules for conducting inspections, examining records, and obtaining warrants.
- C.** No less than 20 days prior to an audit, the Director shall mail notice of the audit by first class letter to the person that is the subject of the audit. The notice shall state the date, time and place of the audit. The notice shall specify the records or information which the person must produce. The notice shall also include the statutory authorization and purpose for the audit and the name and telephone number of a Department employee who may be contacted for further information. The audit shall be held at the Department’s offices, unless the Director grants a request to have the audit conducted at a different location.
- D.** The person subject to the audit or a representative shall appear at the scheduled time and shall produce the records and information specified in the notice. The person subject to the audit or a representative may make one request to reschedule the audit, which the Department shall grant if practicable.
- E.** The Director shall mail a copy of the report of the audit to the person subject to the audit. An aggrieved person may file with the Director written comments on the report within 30 days after the report is mailed.
- F.** The person subject to the audit may waive the provisions for notice contained in this rule.

Historical Note

Adopted effective August 31, 1992 (Supp. 92-3).
Amended effective July 22, 1994 (Supp. 94-3).

ARTICLE 12. DAM SAFETY PROCEDURES**R12-15-1201. Applicability**

- A.** This Article applies to any artificial barrier meeting the specifications of A.R.S. § 45-1201(1) as interpreted by R12-15-1204. This Article applies to an application for the construction of a dam and reservoir; an application to reconstruct,

repair, alter, enlarge, breach, or remove an existing dam and reservoir, including a breached or damaged dam; operation and maintenance of an existing dam and reservoir; and enforcement. A structure identified in R12-15-1203 is exempt from this Article.

- B.** This Article is applicable to any dam regardless of hazard potential classification, with the following exceptions:
1. R12-15-1208, R12-15-1209, R12-15-1213, R12-15-1221, R12-15-1225, and R12-15-1226 apply only to a dam classified as a high or significant hazard potential dam.
 2. R12-15-1210 applies only to a dam classified as a low hazard potential dam. A low hazard potential dam is exempt from R12-15-1208, R12-15-1209, R12-15-1211, R12-15-1213, R12-15-1221, R12-15-1225, and R12-15-1226.
 3. R12-15-1211 applies only to a dam classified as a very low hazard potential dam. A very low hazard potential dam is exempt from R12-15-1208, R12-15-1209, R12-15-1210, R12-15-1212, R12-15-1213, R12-15-1215, R12-15-1216, R12-15-1221, R12-15-1225, and R12-15-1226.
 4. R12-15-1216(B) applies only to an embankment dam.

Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-01 renumbered without change as Section R12-15-1201 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1202. Definitions

In addition to the definitions provided in A.R.S. § 45-1201, the following definitions are applicable to this Article:

1. “Alteration or repair of an existing dam or appurtenant structure” means to make different from the originally approved construction drawings and specifications or current condition without changing the height or storage capacity of the dam or reservoir, except for ordinary repairs and general maintenance as prescribed in R12-15-1217.
2. “Appurtenant structure” means any structure that is contiguous and essential to the safe operation of the dam including embankments, saddle dikes, outlet works and controls, diversion ditches, spillway and controls, access structures, bridges, and related housing at a dam.
3. “Classification of dams” means the placement of dams into categories based upon an evaluation of the size and hazard potential, regardless of the condition of the dam.
4. “Concrete dam” means any dam constructed of concrete, including arch, gravity, arch-gravity, slab and buttress, and multiple arch dams. A dam that only has a concrete facing is not a concrete dam.
5. “Construction” means any activity performed by the owner or someone employed by the owner that is related to the construction, reconstruction, repair, enlargement, removal, or alteration of any dam, unless the context indicates otherwise. Construction is performed after approval of an application and before issuance of a license.
6. “Dam failure inundation map” means a map depicting the maximum area downstream from a dam that would be flooded in the event of the worst condition failure of the dam.
7. “Department” means the Arizona Department of Water Resources.
8. “Director” means the Director of the Arizona Department of Water Resources or the Director’s designee.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

9. "Embankment dam" means a dam that is constructed of earth or rock material.
10. "Emergency spillway" means a spillway designed to safely pass the inflow design flood routed through the reservoir. If the flow is controlled by gates, it is a controlled spillway. If the flow is not controlled by gates, it is an uncontrolled spillway.
11. "Engineer" means a Professional Engineer registered and licensed in accordance with A.R.S. Title 32, Chapter 1, with proficiency in engineering and knowledge of dam technology.
12. "Enlargement to an existing dam or appurtenant structure" means any alteration, modification, or repair that increases the vertical height of a dam or the storage capacity of the reservoir.
13. "Flashboards" mean timber, concrete, or steel sections placed on the crest of a spillway to raise the retention water level that may be quickly removed at time of flood either by a tripping device or by designed failure of the flashboards or their supports.
14. "Flood control dam" means a dam that uses all of its reservoir storage capacity for temporary impoundment of flood waters and collection of sediment or debris.
15. "Hazard potential" means the probable incremental adverse consequences that result from the release of water or stored contents due to failure or improper operation of a dam or appurtenances.
16. "Hazard potential classification" means a system that categorizes dams according to the degree of probable incremental adverse consequences of failure or improper operation of a dam or appurtenances. The hazard potential classification does not reflect the current condition of the dam with regard to safety, structural integrity, or flood routing capacity.
17. "Height" means the vertical distance from the lowest elevation of the outside limit of the barrier at its intersection with the natural ground surface to the spillway crest elevation. For the purpose of determining jurisdictional status, the lowest elevation of the outside limit of the barrier may be the outlet pipe invert elevation if the outlet is constructed below natural ground.
18. "Impound" means to cause water or a liquid to be confined within a reservoir and held with no discharge.
19. "Incremental adverse consequences" means under the same loading conditions, the additional adverse consequences such as economic, intangible, lifeline, or human losses, that would occur due to the failure or improper operation of the dam over those that would have occurred without failure or improper operation of the dam.
20. "Inflow design flood" or "IDF" means the reservoir flood inflow magnitude selected on the basis of size and hazard potential classification for emergency spillway design requirements of a dam.
21. "Intangible losses" means incremental adverse consequences to property that are not economic in nature, including property related to social, cultural, unique, or resource-based values, including the loss of irreplaceable and unique historic and cultural features; long-lasting pollution of land or water; or long-lasting or permanent changes to the ecology, including fish and endangered species habitat identified and evaluated by a public natural resource management or protection agency.
22. "Jurisdictional dam" means a barrier that meets the definition of a dam prescribed in A.R.S. § 45-1201 that is not exempted by R12-15-1203 over which the Department of Water Resources exercises jurisdiction.
23. "Levee" means an embankment of earth, concrete, or other material used to prevent a watercourse from spreading laterally or overflowing its banks. A levee is not used to impound water.
24. "License" means license of final approval issued by the Director upon completion or enlargement of a dam under A.R.S. § 45-1209.
25. "Lifeline losses" mean disruption of essential services such as water, power, gas, telephone, or emergency medical services.
26. "Liquid-borne material" means mine tailings or other milled ore products transported in a slurry to a storage impoundment.
27. "Maximum credible earthquake" means the most severe earthquake that is believed to be possible at a point on the basis of geologic and seismological evidence.
28. "Maximum water surface" means the maximum elevation of the reservoir water level attained during routing of the inflow design flood.
29. "Natural ground surface" means the undisturbed ground surface before excavation or filling, or the undisturbed bed of the stream or river.
30. "Outlet works" means a closed conduit under or through a dam or through an abutment for the controlled discharge of the contents normally impounded by a dam and reservoir. The outlet works include the inlet and outlet structures appurtenant to the conduit. Outlet works may be controlled or uncontrolled.
31. "Probable" means likely to occur, reasonably expected, and realistic.
32. "Probable maximum flood" or "PMF" means the flood runoff expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region, including rain and snow where applicable. 1/2 PMF is that flood represented by the flood hydrograph with ordinates equal to 1/2 the corresponding ordinates of the PMF hydrograph.
33. "Probable maximum precipitation" means the greatest depth of precipitation for a given duration that is theoretically physically possible over a particular size storm area at a particular geographical location at a particular time of year.
34. "Reservoir" means any basin that contains or is capable of containing water or other liquids impounded by a dam.
35. "Residual freeboard" means the vertical distance between the highest water surface elevation during the inflow design flood and the lowest point at the top of the dam.
36. "Restricted storage" means a condition placed on a license by the Director to reduce the storage level of a reservoir because of a safety deficiency.
37. "Saddle dike or saddle dam" means any dam constructed in a topographically low area on the perimeter of a reservoir, required to contain the reservoir at the highest water surface elevation.
38. "Safe" means that a dam has sufficient structural integrity and flood routing capacity to make failure of the dam unlikely.
39. "Safe storage level" means the maximum reservoir water surface elevation at which the Director determines it is safe to impound water or other liquids in the reservoir.
40. "Safety deficiency" means a condition at a dam that impairs or adversely affects the safe operation of the dam.
41. "Safety inspection" means an investigation by an engineer or a person under the direction of an engineer to assess the safety of a dam and determine the safe storage level for a reservoir, which includes review of design

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

reports, construction documents, and previous safety inspection reports of the dam, spillways, outlet facilities, seepage control and measurement systems, and permanent monument or monitoring installations.

- 42. "Spillway crest" means the highest elevation of the floor of the spillway along a centerline profile through the spillway.
- 43. "Storage capacity" means the maximum volume of water, sediment, or debris that can be impounded in the reservoir with no discharge of water, including the situation where an uncontrolled outlet becomes plugged. The storage capacity is reached when the water level is at the crest of the emergency spillway, or at the top of permanently mounted emergency spillway gates in the closed position. Storage capacity excludes dead storage below the natural ground surface.
- 44. "Surcharge storage" means the additional water storage volume between the emergency spillway crest or closed gates, and the top of the dam.
- 45. "Total freeboard" means the vertical distance between the emergency spillway crest and the top of the dam.
- 46. "Unsafe" means that safety deficiencies in a dam or spillway could result in failure of the dam with subsequent loss of human life or significant property damage.

Historical Note

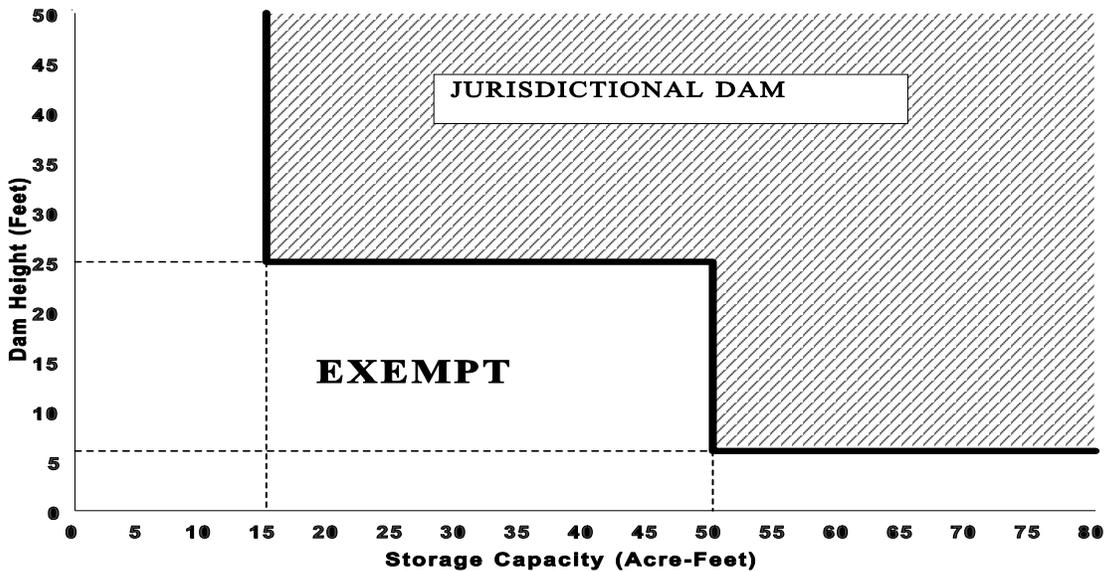
Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-02 renumbered without change as Section R12-15-1202 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2).

R12-15-1203. Exempt Structures

The following structures are exempt from regulation by the Department:

- 1. Any artificial barrier identified as exempt on Table 1 and defined as follows:

Table 1. Exempt Structures



Historical Note

- a. Less than 6 feet in height, regardless of storage capacity.
- b. Between 6 and 25 feet in height with a storage capacity of less than 50 acre-feet.
- c. Greater than 25 feet in height with 15 acre-feet or less of storage capacity.
- 2. A dam owned by the federal government. A dam designed by the federal government for any non-federal entity or person that will subsequently be owned or operated by a person or entity defined as an owner in A.R.S. § 45-1201 is subject to jurisdiction, beginning with design and construction of the dam.
- 3. A dam owned or operated by an agency or instrumentality of the federal government, if a dam safety program at least as stringent as this Article is applicable to and enforced against the agency or instrumentality.
- 4. A transportation structure such as a highway, road, or railroad fill that exists solely for transportation purposes. A transportation structure designed, constructed, or modified with the intention of impounding water on an intermittent or permanent basis and meeting the definition of dam in A.R.S. § 45-1201 is subject to jurisdiction.
- 5. A levee constructed adjacent to or along a watercourse, primarily to control floodwater.
- 6. A self-supporting concrete or steel water storage tank.
- 7. An impoundment for the purpose of storing liquid-borne material.
- 8. A release-contained barrier as defined by A.R.S. § 45-1201(5).

Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-03 renumbered without change as Section R12-15-1203 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1204. Provision for Guidelines

The Department may develop and adopt substantive policy statements that serve as dam safety guidelines to aid a dam owner or engineer in complying with this Article. The Department recommends that dam owners and engineers consult design guidelines published by agencies of the federal government, including the U.S. Bureau of Reclamation, the U.S. Army Corps of Engineers, the Natural Resources Conservation Service, and the Federal Energy Regulatory Commission, for the design of concrete, roller compacted concrete, stone masonry, timber, inflatable rubber, and mechanically-stabilized earth dams. The Director may require that other criteria be used or revise any of the specific criteria for the purpose of dam safety. An owner shall obtain advance approval by the Director of design criteria.

Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-04 renumbered without change as Section R12-15-1204 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1205. General Responsibilities

- A. Each owner is responsible for the safe design, operation, and maintenance of a dam. The owner shall operate, maintain, and regularly inspect a dam so that it does not constitute a danger to human life or property. The owner of a high or significant hazard potential dam shall provide timely warning to the Department and all other persons listed in the emergency action plan of problems at the dam. The owner shall develop and maintain effective emergency action plans and coordinate those plans with local officials as prescribed in R12-15-1221.
- B. The owner shall conduct frequent observation of the dam, as prescribed in the emergency action plan and as follows:
 1. The owner shall increase the frequency of observation when the reservoir is full, during heavy rains or flooding, and following an earthquake.
 2. The owner shall report to the Director any condition that threatens the safety of the dam as prescribed in R12-15-1224(A). The owner shall make the report as soon as possible, but not later than 12 hours after discovery of the conditions.
 3. If dam failure appears imminent, the owner shall notify the county sheriff or other emergency official immediately.
 4. The owner is responsible for the safety of the dam and shall take action to lower the reservoir if it appears that the dam has weakened or is in danger of failing.
- C. The owner of a dam shall install, maintain, and monitor instrumentation to evaluate the performance of the dam. The Director shall require site-specific instrumentation that the Director deems necessary for monitoring the safety of the dam when failure may endanger human life and property. Conditions that may require monitoring include land subsidence, earth fissures, embankment cracking, phreatic surface, seepage, and embankment movements.
- D. The owner shall perform timely maintenance and ordinary repair of a dam. The owner shall implement an annual plan to inspect the dam and accomplish the maintenance and ordinary repairs necessary to protect human life and property.
- E. If a change of ownership of a dam occurs, the new owner shall notify the Department within 15 days after the date of the transaction and provide the mailing address and telephone number where the new owner can be contacted. Within 90 days after the date of the transaction, the new owner shall pro-

vide the name and telephone number of the individual or individuals who are responsible for operating and maintaining the dam.

Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-05 renumbered without change as Section R12-15-1205 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1206. Classification of Dams

- A. Size Classification. Dams are classified by size as small, intermediate, or large. Size is determined with reference to Table 2. An owner or engineer shall determine size by storage capacity or height, whichever results in the larger size.
- B. Hazard Potential Classification
 1. The Department shall base hazard potential classification on an evaluation of the probable present and future incremental adverse consequences that would result from the release of water or stored contents due to failure or improper operation of the dam or appurtenances, regardless of the condition of the dam. The evaluation shall include land use zoning and development projected for the affected area over the 10 year period following classification of the dam. The Department considers all of the following factors in hazard potential classification: probable loss of human life, economic and lifeline losses, and intangible losses identified and evaluated by a public resource management or protection agency.
 - a. The Department bases the probable incremental loss of human life determination primarily on the number of permanent structures for human habitation that would be impacted in the event of failure or improper operation of a dam. The Department considers loss of human life unlikely if:
 - i. Persons are only temporarily in the potential inundation area;
 - ii. There are no residences or overnight campsites; and
 - iii. The owner has control of access to the potential inundation area and provides an emergency action plan with a process for warning in the event of a dam failure or improper operation of a dam.
 - b. The Department bases the probable economic, lifeline, and intangible loss determinations on the property losses, interruptions of services, and intangible losses that would be likely to result from failure or improper operation of a dam.
 2. The 4 hazard potential classification levels are very low, low, significant, and high, listed in order of increasing probable adverse incremental consequences, as prescribed in Table 3. The Director shall classify intangible losses by considering the common or unique nature of features or habitats and temporary or permanent nature of changes.
 - a. Very Low Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life and would produce no lifeline losses and very low economic and intangible losses. Losses would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long-term lease. The Department considers

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

loss of life unlikely because there are no residences or overnight camp sites.

- b. Low Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life, but would produce low economic and intangible losses, and result in no disruption of lifeline services that require more than cosmetic repair. Property losses would be limited to rural or agricultural property, including equipment, and isolated buildings.
 - c. Significant Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life but may cause significant or high economic loss, intangible damage requiring major mitigation, and disruption or impact on lifeline facilities. Property losses would occur in a predominantly rural or agricultural area with a transient population but significant infrastructure.
 - d. High Hazard Potential. Failure or improper operation of a dam would be likely to cause loss of human life because of residential, commercial, or industrial development. Intangible losses may be major and potentially impossible to mitigate, critical lifeline services may be significantly disrupted, and property losses may be extensive.
3. An applicant shall demonstrate the hazard potential classification of a dam before filing an application to construct. The Department shall review the applicant's demonstration early in the design process at pre-application meetings prescribed in R12-15-1207(D).
 4. The Department shall review the hazard potential classification of each dam during each subsequent dam safety inspection and revise the classification in accordance with current conditions.

Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-06 renumbered without change as Section R12-15-1206 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

Exhibit A. Repealed

Historical Note

Exhibit repealed by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000; a Historical Note for Exhibit A did not exist before this date (Supp. 00-2).

Table 2. Size Classification

Category	Storage Capacity (acre-feet)	Height (feet)
Small	50 to 1,000	25 to 40
Intermediate	greater than 1,000 and not exceeding 50,000	higher than 40 and not exceeding 100
Large	greater than 50,000	higher than 100

Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558,

effective June 12, 2000 (Supp. 00-2).

Table 3. Downstream Hazard Potential Classification

Hazard Potential Classification	Probable Loss of Human Life	Probable Economic, Lifeline, and Intangible Losses
Very Low	None expected	Economic and lifeline losses limited to owner's property or 100-year floodplain. Very low intangible losses identified.
Low	None expected	Low
Significant	None expected	Low to high
High	Probable - One or more expected	Low to high (not necessary for this classification)

Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1207. Application Process

- A. An applicant shall obtain written approval from the Director before constructing, reconstructing, repairing, enlarging, removing, altering, or breaching a dam. Application requirements differ according to the hazard potential of the dam.
 1. To construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam, the applicant shall comply with R12-15-1208.
 2. To breach or remove a high or significant hazard potential dam, the applicant shall comply with R12-15-1209.
 3. To construct, reconstruct, repair, enlarge, alter, breach, or remove a low hazard potential dam, the applicant shall comply with R12-15-1210.
 4. To construct, reconstruct, repair, enlarge, alter, breach, or remove a very low hazard potential dam, the applicant shall comply with R12-15-1211.
- B. An application shall not be filed with the Director under the following circumstances:
 1. The dam is exempt under R12-15-1203;
 2. A dam owner starts repairs to an existing dam that are necessary to safeguard human life or property and the Director is notified without delay;
 3. The owner performs general maintenance or ordinary repairs as prescribed in R12-15-1217(A) or (B); or
 4. Breach, removal, or reduction of a very low hazard dam as prescribed in R12-15-1211(C).
- C. An applicant is not required to comply with a requirement in this Article if the Director finds that, considering the site characteristics and the proposed design, the requirement is unduly burdensome or expensive and is not necessary to protect human life or property. The Director shall consider the size, hazard potential classification, physical site conditions, and applicability of a requirement to a proposed dam. The Director shall state in writing the reason or reasons the applicant is not required to comply with a requirement.
- D. An applicant shall schedule pre-application conferences with the Department to discuss the requirements of this Article and to resolve issues essential to the design of a dam while the design is in preliminary stages. The Director shall view the dam site during the pre-application process. The following are examples of issues for pre-application conferences: the hazard

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

potential classification, the approximate inflow design flood, the basic design concepts, and any requirements that may be found by the Director to be unduly burdensome or expensive and not necessary to protect human life or safety. In addition, the applicant may submit preliminary design calculations to the Department for review and comment. The Department shall comment as soon as practicable, depending on the size of the submittal and the current workload.

E. The Department shall review applications as follows:

1. Applications will be received by appointment. During this meeting the Department shall make a brief review of the application to determine that the application contains each of the items required by R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211.
2. Following receipt of an application submitted under R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211, the Director shall complete an administrative review as prescribed in R12-15-401(1) and notify the applicant in writing whether the application is administratively complete. If the application is not administratively complete, the notification shall include a list of additional information that is required to complete the application.
3. After finding the application submitted under R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211 administratively complete, the Director shall complete a substantive review as prescribed in R12-15-401(3) and notify the applicant in writing of the Director's approval or disapproval. If during this review period, the Director determines that there are defects in the application that would impact human life and property, a written notice of the defects shall be sent to the applicant.
4. An applicant may request in writing that the Director expedite the review of an application by employing an expert consultant on a contract basis under A.R.S. § 45-104(D). The Director shall establish on-call contracts with expert consultants to facilitate the process of expediting review. The Director may retain a consultant to review all or a portion of the application as necessary to expedite the process in response to an owner's request or to comply with time-frame rules. Before conducting the review, the consultant shall provide the Director and the applicant with a proposed time schedule and cost estimate. If the applicant agrees to the consultant's proposal for an expedited review of an application and the Director employs the consultant, the applicant shall pay to the Department the cost of the consultant's services in addition to the application fees. The Director retains the authority to review and approve, disapprove, or modify the findings and recommendations of the consultant.
5. The Director shall not approve an application in less than 10 days from the date of receipt.
6. If the Director disapproves the application, the Director shall provide the applicant with a statement of the Director's objections.
7. If the Director approves an application, the applicant shall submit in triplicate revised drawings and specifications that incorporate any required changes.
 - a. The Director shall return to the applicant 1 set of final construction drawings and specifications with the Department's approval stamp to be retained onsite during construction;
 - b. The Director shall retain for permanent state record 1 set of final construction drawings and specifications with the Department's approval stamp; and
 - c. The Director shall retain for use by the Department during construction the 3rd set of final construction

drawings and specifications with the Department's approval stamp.

8. The Director shall impose conditions and limitations that the Director deems necessary to safeguard human life and property. Examples of the conditions of approval include but are not limited to:
 - a. The applicant shall not cover the foundation or abutment with the material of the dam until the Department has been given notice and a reasonable time to inspect and approve them.
 - b. The applicant shall start construction within 1 year from the date of approval.
 - c. The applicant shall maintain a safe storage level for an existing dam being reconstructed, repaired, enlarged, altered, or breached.
- F.** An approval to construct a new dam or repair, enlarge, alter, breach, or remove an existing dam is valid for 1 year.
 1. If construction does not begin within 1 year, the approval is void.
 2. Upon written request and good cause shown by the owner, the time for commencing construction may be extended. An applicant shall not start construction before the Director reviews the application for changes and grants approval.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1208. Application to Construct, Reconstruct, Repair, Enlarge, or Alter a High or Significant Hazard Potential Dam

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director.
 2. A design information summary or checklist of items prepared in duplicate on forms provided by the Director.
 3. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
 4. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
 5. Two complete sets of construction drawings as prescribed in R12-15-1215(1).
 6. Two complete sets of construction specifications as prescribed in R12-15-1215(2).
 7. An engineering design report that includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in R12-15-1215(3). The engineering design report shall recommend a safe storage level for existing dams being reconstructed, repaired, enlarged, or altered.
 8. A construction quality assurance plan describing all aspects of construction supervision.
 9. A description of the use for the impounded or diverted water, proof of a right to appropriate, and a permit to store water as prescribed in A.R.S. §§ 45-152 and 45-161.
 10. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to construct, operate, and maintain the dam in a safe man-

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.

- B.** The following may be submitted with the application or during construction.
1. An emergency action plan as prescribed in R12-15-1221.
 2. An operation and maintenance plan to accomplish the annual maintenance.
 3. An instrumentation plan regarding instruments that evaluate the performance of the dam.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-1209. Application to Breach or Remove a High or Significant Hazard Potential Dam

- A.** An applicant shall excavate the dam down to the level of the natural ground at the maximum section. Upon approval of the Director, additional breaches may be made. This provision shall not be construed to require more than total removal of the dam regardless of the flood magnitude. The breach or breaches shall be of sufficient width to pass the greater of:
1. The 100 year flood at a depth of less than 5 feet, or
 2. The 100 year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the dam.
- B.** The sides of each breach shall be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.
- C.** Each breach shall be designed to prevent silt that has previously been deposited on the reservoir bottom and the excavated material from the breach from washing downstream.
- D.** Before breaching the dam, the reservoir shall be emptied in a controlled manner that will not endanger lives or damage downstream property. The applicant shall obtain approval from the Director for the method of breaching or removal.
- E.** An application package to breach or remove a high or significant hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11).
1. The construction drawing or drawings for the breach or removal of a dam, including the location, dimensions, and lowest elevation of each breach.
 2. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to breach or remove the dam in a safe manner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to breach or remove the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.
 3. A construction quality assurance plan describing all aspects of construction supervision.
- F.** Reduction of a high or significant downstream hazard potential dam to nonjurisdictional size may be approved by letter under the following circumstances:
1. The owner shall submit a completed application form and construction drawings for the reduction and the appropri-

ate specifications, prepared by or under the supervision of an engineer as defined in R12-15-1202(11).

2. The construction drawings and specifications shall contain sufficient detail to enable a contractor to bid on and complete the project.
3. The plans shall comply with all requirements of this Section except that the breach is not required to be to natural ground.
4. Upon completion of an alteration to nonjurisdictional size, the engineer shall file as constructed drawings and specifications with the Department.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a low hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director.
 2. An initial application fee based on the total estimated project cost, computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
 3. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
 4. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
 5. A statement by the responsible engineer that classifies the dam as low hazard in accordance with R12-15-1206(B). The responsible engineer shall submit a map of the area that would be inundated by failure or improper operation of the dam. The responsible engineer shall demonstrate that failure or improper operation of the dam would be unlikely to result in:
 - a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;
 - b. Significant incremental adverse consequences; or
 - c. Significant intangible losses, as defined in R12-15-1202(21) and identified and evaluated by a public natural resource management or protection agency.
 6. Two complete sets of construction drawings as prescribed by R12-15-1215(1).
 7. Two complete sets of construction specifications as prescribed by R12-15-1215(2).
 8. An engineering design report that includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in R12-15-1215(3).
 9. A description of the use for the impounded or diverted water, proof of a right to appropriate, and a permit to store water as prescribed in A.R.S. §§ 45-152 and 45-161.
 10. A construction quality assurance plan clearly describing all aspects of construction supervision.
 11. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to construct, operate, and maintain the dam in a safe man-

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.

- B.** An application package for the breach or removal of a low hazard potential dam shall include the following:
1. A completed application filed in duplicate on forms provided by the Director that contains the following information:
 - a. The name and address of the owner of the dam or the agent of the owner.
 - b. A description of the proposed removal.
 - c. The proposed time for beginning and completing the removal.
 2. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
 3. A statement by the responsible engineer demonstrating both of the following:
 - a. That the dam will be excavated to the level of natural ground at the maximum section; and
 - b. That the breach or breaches will be of sufficient width to pass the greater of:
 - i. The 100 year flood at a depth of less than 5 feet, or
 - ii. The 100 year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the dam,
 - iii. Subsection (B)(3)(b) shall not be construed to require more than a total removal of the dam regardless of flood magnitude.
 - c. That the sides of the breach will be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.
 4. A detailed estimate of project costs. Project costs are all costs associated with the removal of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of removal, and any other engineering costs.
- C.** An applicant intending to reduce a low hazard potential dam to nonjurisdictional size shall submit a written notice to the Director at least no less than 60 days before the date that construction begins.
- D.** Within 45 days after receipt of a complete application package as prescribed by subsection (A) or (B), the Director shall either:
1. Determine that the dam falls within the low hazard potential classification, or
 2. Issue a written notice that the dam does not fall within the low hazard potential classification.
- E.** The Director's determination that the proposed dam does not fall within the low hazard classification is an appealable agency action and subject to administrative and judicial review under A.R.S. Title 41, Chapter 6, Article 10.
- F.** Upon completion of construction, the owner shall notify the Department in writing. The owner shall not use the dam or reservoir before issuance of a license unless the Director issues written approval.
- G.** Within 90 days after completing construction, reconstruction, repair, enlargement, or alteration of a low hazard potential dam, the owner shall file the following:
1. An affidavit showing the actual cost of construction, reconstruction, repair, enlargement, or alteration of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7), based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
 3. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The engineer shall indicate:
 - a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
 - b. That the dam as constructed has structural integrity and flood routing capacity consistent with its hazard potential classification; and
 - c. That the as constructed drawings and the report accurately represent the construction of the dam.
 4. As constructed drawings prepared and sealed by the engineer who supervised the construction. The owner and the engineer shall maintain a record of the drawings.
- H.** Upon receiving the Director's written approval, the owner may operate the dam and appurtenant works. Within 30 days after receipt of the information in subsection (G), the Director shall issue to the owner either a license or a notice that the dam and appurtenant works shall not be operated because the dam and appurtenant works do not qualify as low hazard or were not built according to the submitted design. The license shall include conditions of operation, including:
1. The safe storage level of the reservoir,
 2. A requirement that the dam be operated and maintained so that it does not constitute a danger to human life and property,
 3. A requirement that the conditions resulting in the low hazard classification be maintained throughout the life of the dam, and
 4. A requirement that the owner demonstrate in writing the low hazard classification in the manner prescribed by subsection (A)(5) every five years.
- I.** Within 90 days after completing removal of a low hazard potential dam, the owner shall file the following. The Director shall remove the dam from jurisdiction upon approval of the submittal.
1. An affidavit showing the actual cost of removal of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7), based on the actual cost of removal.
 3. A brief completion report, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The engineer shall certify that the as removed drawings and the report accurately represent the actual removal of the dam.
 4. As-removed drawings prepared and sealed by the engineer who supervised the removal. The owner and the engineer shall maintain a record of the drawings.
- J.** An owner shall immediately commence repairs necessary to safeguard human life and property and prevent failure and improper operation of a low hazard potential dam. The owner shall notify the Department as soon as reasonably possible and in all cases within 10 days of commencing the required repairs.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2).

Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-1211. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Very Low Hazard Potential Dam

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a very low hazard potential dam shall include the following prepared by an engineer or a person under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director that contains the following information:
 - a. The name and address of the owner of the dam or the agent of the owner.
 - b. The location, type, size, and height of the proposed dam and appurtenant works.
 - c. The storage capacity of the reservoir associated with the proposed dam.
 - d. The proposed time for beginning and completing construction.
 - e. A description of the use for the impounded or diverted water and proof of a right to impound that water.
 2. The means, plans, and specifications by which the stream or body of water is to be dammed, by-passed, or controlled during construction.
 3. Maps, drawings, and specifications of the proposed dam.
 4. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
 5. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
 6. A statement by the responsible engineer that classifies the dam as very low hazard in accordance with R12-15-1206(B). The responsible engineer shall submit a map of the area that would be inundated by failure or improper operation of the dam. The responsible engineer shall demonstrate that failure or improper operation would be unlikely to result in:
 - a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;
 - b. Significant incremental adverse consequences; or
 - c. Significant intangible losses, as defined in R12-15-1202(21) and identified and evaluated by a public natural resource management protection agency, because the dam has a size classification of either small or intermediate under R12-15-1206(A) and any release would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long-term lease.
 7. The seal and signature of the responsible engineer in accordance with A.R.S. Title 32, Chapter 1.
 8. The drawings required by subsection (A)(3) shall include a plan view and maximum section of the dam; the outlet works; and the spillway plan, profile, and cross section.
 9. The specifications required by subsection (A)(3) shall include the construction materials, testing criteria, and installation techniques.
- B.** The Director may make other requirements for drawings and specifications for the proposed repair or alteration of a very low hazard potential dam. In determining other requirements, the Director shall consider the size and extent of the repair or alteration, the portions of the dam that will be repaired or altered, and whether the requirements elicit a description of the proposed construction work that is adequate to allow the Director to evaluate the repair or alteration.
- C.** An owner intending to breach, remove, or reduce a very low hazard potential dam to nonjurisdictional size shall submit written notice to the Director at least 60 days before the date that construction begins.
- D.** After receipt of a complete application package as prescribed by subsection (A), the Director shall either:
1. Determine that the dam falls within the very low hazard classification and approve the application in writing; or
 2. Issue a written notice that the dam does not fall within the very low hazard classification.
- E.** The Director's determination that the proposed dam does not fall within the very low hazard classification is an appealable agency action and subject to administrative and judicial review under A.R.S. Title 41, Chapter 6, Article 10.
- F.** Upon completion of construction, the owner shall notify the Department in writing. The owner shall not use the dam and reservoir before receipt of a license unless the Director issues written approval.
- G.** Within 90 days after completion of the construction, reconstruction, repair, enlargement, or alteration of a very low hazard potential dam, the owner shall file the following:
1. An affidavit showing the actual cost of construction, reconstruction, repair, enlargement, or alteration of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7), based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
 3. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction in accordance with A.R.S. Title 32, Chapter 1. The report shall include:
 - a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
 - b. That the dam as constructed has structural integrity and flood routing capacity consistent with its hazard potential classification; and
 - c. That the as constructed drawings and the report accurately represent the construction of the dam.
 4. As constructed drawings prepared by the engineer who supervised the construction. The owner and the engineer shall maintain a record of the drawings.
- H.** Within 30 days after receipt of the information in subsection (G), the Director shall issue to the owner either a license or a notice that the dam and appurtenant works shall not be operated because the dam and appurtenant works do not qualify as very low hazard or were not built according to the submitted design. Upon receiving the Director's written approval, the

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

owner may operate the dam and appurtenant works. The license shall include conditions of operation, including:

1. The safe storage level of the reservoir,
 2. A requirement that the conditions resulting in the very low hazard classification be maintained throughout the life of the dam, and
 3. A requirement that the owner demonstrate in writing the very low hazard classification in the manner prescribed by subsection (A)(6) every five years.
- I.** An owner shall immediately commence repairs necessary to safeguard human life and property and prevent failure or improper operation of a very low hazard potential dam. The owner shall notify the Department as soon as reasonably possible and in all cases within 10 days of commencing the required repairs.
- J.** The Department may periodically inspect construction to confirm that it is proceeding according to the approved design and that proper construction quality assurance is being exercised by the owner's engineer. The owner, or the owner's engineer under the direction of the owner, shall remedy any unsatisfactory condition using the contractor.
- K.** The owner shall provide the Department access to the dam site for purposes of inspecting all phases of construction, including the foundation, embankment and concrete placement, inspection and test records, and mechanical installations.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-1212. Construction of a High, Significant, or Low Hazard Potential Dam

- A.** Before commencement of construction activities, the owner shall invite to a pre-construction conference all involved regulatory agencies, the prime contractor, and all subcontractors. At this meeting the Department shall identify, to the extent possible, the key construction stages at which an inspection will be made. At least 48 hours before each key construction stage identified for inspection, the owner or the owner's engineer shall provide notice to the Department.
- B.** The owner and the owner's engineer shall oversee construction of a new dam or reconstruction, repair, enlargement, alteration, breach, or removal of an existing dam. Failure to perform the work in accordance with the construction drawings and specifications approved by the Director renders the approval revocable. The owner's engineer shall exercise professional judgment independent of the contractor.
- C.** A professional engineer with proficiency in engineering and knowledge of dam technology shall supervise or direct the supervision of construction in accordance with the construction quality assurance plan.
- D.** The owner's engineer shall submit summary reports of construction activities and test results according to a schedule approved by the Department.
- E.** The owner shall immediately report to the Department any condition encountered during construction that requires a deviation from the approved plans and specifications.
- F.** The owner shall promptly submit a written request for approval of any necessary change and sufficient information to justify the proposed change. The owner shall not commence construction without the written approval of the Director unless the change is a minor change. A minor change is a

change that complies with the requirements of this Article and provides equal or better safety performance.

- G.** Upon completion of construction, the owner shall notify the Department in writing. The Department shall make a final inspection. The owner shall correct any deficiencies noted during the inspection.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1213. Completion Documents for a Significant or High Hazard Potential Dam

Within 90 days after completion of the construction or removal work for a significant or high hazard potential dam and final inspection by the Department, the owner shall file the following:

1. An affidavit showing the actual cost of the construction. The owner shall submit a detailed accounting of the costs, including all engineering costs.
2. An additional fee or refund request based on the actual cost of the construction, computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7).
3. One set of full sized as constructed drawings prepared and sealed by the engineer who supervised the construction. If changes were made during construction, the owner shall file supplemental drawings showing the dam and appurtenances as actually constructed.
4. Construction records, including grouting, materials testing, and locations and baseline readings for permanent bench marks and instrumentation, initial surveys, and readings.
5. Photographs of construction from exposure of the foundation to completion of construction.
6. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved drawings and specifications that were made during the construction phase.
7. A schedule for filling the reservoir, specifying fill rates, water level elevations to be held for observation, and a schedule for inspecting and monitoring the dam. The owner shall monitor the dam monthly during the first filling.
8. An operating manual for the dam and its appurtenant structures. The operating manual shall include a process for safety inspections prescribed in R12-15-1219. The operating manual shall include schedules for surveillance activities and baseline information for any installed instrumentation as follows:
 - a. The frequency of monitoring,
 - b. The data recording format,
 - c. A graphical presentation of data, and
 - d. The person who will perform the work.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-1214. Licensing

- A.** Upon review and approval of the documents filed under R12-15-1213 and finding that the construction at the dam has been completed in accordance with the approved plans and specifications and finding that the dam is safe, the Director shall

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

issue a license. The license shall specify the safe storage level for the reservoir and shall specify conditions for the safe operation of the dam. The dam and reservoir shall not be used before issuance of a license unless the Director issues written approval. Procedures for issuance of a license for low and very low hazard potential dams are prescribed in R12-15-1210(H) and R12-15-1211(H), respectively.

- B.** A new license shall be issued in the following instances:
1. Upon change of ownership of a dam.
 2. Upon change of the safe storage level.
 3. Upon expiration of time to appeal a notice issued under R12-15-1223(B).
 4. Upon expiration of time to appeal an order issued by the Director under R12-15-1223(D).
 5. Upon expiration of time to appeal an order of a court.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1215. Construction Drawings, Construction Specifications, and Engineering Design Report for a High, Significant, or Low Hazard Potential Dam

The owner and engineer are responsible for complete and adequate design of a dam and for including in the application all aspects of the design pertaining to the safety of the dam.

1. Construction Drawing Requirements. The construction drawings required by R12-15-1208(5), R12-15-1209(E)(1), and R12-15-1210(A)(6) shall include the following:
 - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
 - b. One or more topographic maps of the dam, spillway, outlet works, and reservoir on a scale large enough to accurately locate the dam and appurtenances, indicate cut and fill lines, and show the property lines and ownership status of the land. Contour intervals shall be compatible with the height and size of the dam and its appurtenances and shall show design and construction details.
 - c. A reservoir area and capacity curve that reflect area in acres and capacity in acre-feet in relation to depth of water and elevation in the reservoir. The construction drawings shall show the spillway invert and top of dam elevations. The construction drawings shall also show the reservoir volume and space functional allocations. The construction drawings may include alternate scales as required for the owner's use.
 - d. Spillway and outlet works rating curves and tables at a scale or scales that allow determination of discharge rate in cubic feet per second at both low and high flows as measured by depth of water passing over the spillway control section.
 - e. A location map showing the dam footprint and all exploration drill holes, test pits, trenches, adits, borrow areas, and bench marks with elevations, reference points, and permanent ties. This map shall use the same vertical and horizontal control as the topographic map.
 - f. Geologic information including 1 or more geologic maps, profile along the centerline, and other pertinent cross sections of the dam site, spillway or spillways, and appurtenant structures, aggregate and material sources, and reservoir area at 1 or more scales compatible with the site and geologic complexity, showing logs of exploration drill holes, test pits, trenches, and adits.
 - g. One or more plans of the dam to delineate design and construction details.
 - h. Foundation profile along the dam centerline at a true scale where the vertical scale is equal to the horizontal scale, showing the existing ground and proposed finished grade at cut and fill elevations, including anticipated geologic formations. The foundation profile shall include any proposed grout and drain holes.
 - i. Profile and a sufficient number of cross sections of the dam to delineate design and construction details. The drawings shall illustrate and show dimensions of camber, details of the top, core zone, interior filters and drains, and other zone details. The profile of the dam may be drawn to different horizontal and vertical scales if required for detail. A maximum section of the dam shall be drawn to a true scale, where the vertical scale is equal to the horizontal scale. The outlet conduit may be shown on the maximum section if this is typical of the proposed construction.
 - j. One or more dam foundation plans showing excavation grades and cut slopes with any proposed foundation preparation, grout and drain holes, and foundation dewatering requirements.
 - k. Plan, profile, and details of the outlet works, including the intake structure, the gate system, conduit, trashrack, conduit filter diaphragm, conduit concrete encasement, and the downstream outlet structure. The drawings shall include all connection and structural design details.
 - l. Plan, profile, control section, and cross sections of the spillway, including details of any foundation preparation, grouting, or concrete work that is planned. A complex control structure, a concrete chute, or an energy dissipating device for a terminal structure shall include both hydraulic and structural design details.
 - m. Hydrologic data, drainage area and flood routing, and diversion criteria.
2. Construction Specification Requirements. The construction specifications required by R12-15-1208(6) and R12-15-1210(A)(7) shall include the following:
 - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
 - b. The statement that the construction drawings and specifications shall not be materially changed without the prior written approval of the Director.
 - c. A detailed description of the work to be performed and a statement of the requirements for the various types of materials and installation techniques that will enter into the permanent construction.
 - d. The statement that construction shall not be considered complete until the Director has approved the construction in writing.
 - e. The statement that the owner's engineer shall control the quality of construction.
 - f. The following construction information:
 - i. All earth and rock material descriptions, placement criteria, and construction requirements for all elements of the dam and related structures.
 - ii. All concrete, grout, and shotcrete material and mix descriptions, placement and consolidation criteria, temperature controls, and construction requirements for all elements of the dam and related structures.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- iii. Material criteria and material testing, cleaning, and treatment. If foundation or curtain grouting is required, the specifications shall describe the type of grout, grouting method, special equipment necessary, recording during grouting, and foundation monitoring to avoid disturbance from grouting.
 - iv. All materials testing that will be performed by the contractor for pre-qualification of materials, including special performance testing, such as water pressure tests in conduits. The Director shall accept materials that are pre-tested successfully and constructed in-place in accordance with specifications.
 - v. A plan for control or diversion of surface water during construction. The design engineer may determine frequency of storm runoff to be controlled during construction, commensurate with the risk of economic loss during construction.
 - vi. Criteria for blast monitoring and acceptable blast vibration levels, including particle velocities for the dam and other critical appurtenances. Monitoring equipment and monitoring locations shall be specified.
 - vii. Instrumentation material descriptions, placement criteria, and construction requirements and a statement that instrumentation shall be installed by experienced speciality subcontractors.
3. Engineering Design Report Requirements. The engineering design report required by R12-15-1208(7) and R12-15-1210(A)(8) shall include the following:
- a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
 - b. The classification under R12-15-1206 of the proposed dam, or for the proposed enlargement of an existing dam or reservoir.
 - c. Hydrologic considerations, including calculations and a summary table of data used in determining the required emergency spillway capacity and freeboard, and design of any diversion or detention structures. The design report shall include input and output listings on both hard copy and computer diskette.
 - d. Hydraulic characteristics, engineering data, and calculations used in determining the capacities of the outlet works and emergency spillway. The design report shall include input and output listings on both hard copy and computer diskette.
 - e. Geotechnical investigation and testing of the dam site and reservoir basin. Results and analysis of subsurface investigations, including logs of test borings and geologic cross sections.
 - f. Guidelines and criteria for blasting to be used by the contractor in preparing the blasting plan.
 - g. Details of the plan for control or diversion of surface water during construction.
 - h. Details of the dewatering plan for subsurface water during construction.
 - i. Testing results of earth and rock materials, including the location of test pits and the logs of these pits.
 - j. Discussion and design of the foundation blanket grouting, grout curtain, and grout cap based on foundation stability and seepage considerations.
 - k. Calculations and basic assumptions on loads and limiting stresses for reinforced concrete design. The design report shall include input and output listings on both hard copy and computer diskette.
 - l. A discussion and stability analysis of the dam including appropriate seismic loading, safety factors, and embankment zone strength characteristics. Analyses shall include both short-term and long-term loading on upstream and downstream slopes. The design report shall include input and output listings on both hard copy and computer diskette.
 - m. A discussion of seismicity of the project area and activity of faults in the vicinity. The design report shall use both deterministic and statistical methods and identify the appropriate seismic coefficient for use in analyses.
 - n. Discussion and design of the cutoff trench based on seepage and other considerations.
 - o. Permeability characteristics of foundation and dam embankment materials, including calculations for seepage quantities through the dam, the foundation, and anticipated in the internal drain system. The design report shall include input and output listings on both hard copy and computer diskette. The design report shall include copies of any flow nets used.
 - p. Discussion and design of internal drainage based on seepage quantity calculations. The design report shall include instrumentation necessary to monitor the drainage system and filter design calculations for protection against piping of foundation and embankment.
 - q. Erosion protection against waves and rainfall runoff for both the upstream and downstream slopes, as appropriate.
 - r. Discussion and design of foundation treatment to compensate for geological weakness in the dam foundation and abutment areas and in the spillway foundation area.
 - s. Post-construction vertical and horizontal movement systems.
 - t. Discussion of foundation conditions including the potential for subsidence, fissures, dispersive soils, collapsible soils, and sink holes.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1216. Design of a High, Significant, or Low Hazard Potential Dam**A. General Requirements.**

- 1. Emergency Spillway Requirements. An applicant shall:
 - a. Construct each spillway in a manner that avoids flooding in excess of the flooding that would have occurred in the same location under the same conditions before construction. The owner of a dam shall demonstrate that a spillway discharge would not result in incremental adverse consequences. In determining whether a spillway discharge of a dam would result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to downstream property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flow easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and flood channel.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- b. Include a control structure to avoid head cutting and lowering of the spillway crest for spillways excavated in soils or soft rock. In the alternative, the design may provide evidence acceptable to the Director that erosion during the inflow design flood will not result in a sudden release of the reservoir.
 - c. Provide each spillway and channel with a minimum width of 10 feet and suitable armor to prevent erosion during the discharge resulting from the inflow design flood.
 - d. Ensure that downstream spillway channel flows do not encroach on the dam unless suitable erosion protection is constructed.
 - e. Ensure that each spillway, in combination with outlets, is able to safely pass the peak discharge flow rate, as calculated on the basis of the inflow design flood.
 - f. Not construct bridges or fences across a spillway unless the construction is approved in writing by the Director. The Director's approval may include conditions regarding the design and operation of the spillway and fencing, based on safety concerns.
 - g. Not use a pipe or culvert as an emergency spillway unless the Director approves the use following review of the dam design and site characteristics.
2. Inflow Design Flood Requirements
- a. Unless directed otherwise in writing by the Director, the inflow design flood requirements for determining the spillway minimum capacity are stated in Table 4.
 - b. As an alternative to the requirements prescribed in Table 4, the Director may accept an inflow design flood determined by an incremental damage assessment study, based on the relative safety of the alternatives.
 - c. The Director may accept site-specific probable maximum precipitation studies in determination of the inflow design flood.
 - d. An applicant shall ensure that the total freeboard is the largest of the following:
 - i. The sum of the inflow design flood maximum water depth above the spillway crest plus wave run up.
 - ii. The sum of the inflow design flood maximum water depth above the spillway crest plus 3 feet.
 - iii. A minimum of 5 feet.
3. Outlet Works Requirements. An applicant shall ensure that a dam has a low level outlet works that:
- a. Is capable of draining the reservoir to the sediment pool level. A low level outlet works for a high or significant hazard potential dam shall be a minimum of 36 inches in diameter. A low level outlet works for a low hazard potential dam shall be a minimum of 18 inches in diameter.
 - b. For a high or significant hazard potential dam, has the capacity to evacuate 90% of the storage capacity of the reservoir within 30 days, excluding reservoir inflows.
 - c. Has a filter diaphragm or other current practice measures to reduce the potential for piping along the conduit.
 - d. Has accessible outlet controls when the spillway is in use.
 - e. Has an emergency manual override system or can be operated manually.
 - f. Is constructed of materials appropriate for loading condition, seismic forces, thermal expansion, cavitation, corrosion, and potential abrasion. The applicant shall not use corrugated metal pipes or other thin-walled pipes except as a form for a cast-in-place concrete conduit. The applicant shall construct outlet conduits of cast-in-place reinforced concrete. The applicant shall design each outlet to maintain water tightness. The applicant shall construct each outlet to prevent the occurrence of piping adjacent to the outlet.
 - g. Has an operating or guard gate on the upstream end of any gated outlet.
 - h. Has an outlet conduit near the base of 1 of the abutments on native bedrock or other competent material. The applicant shall support the entire length of the conduit on foundation materials of uniform density and consistency to prevent adverse differential settlement.
 - i. Has an upstream valve or gate capable of controlling the discharge through all ranges of flow on any gated outlet conduit.
 - j. Has a trashrack designed for a minimum of 25% of the reservoir head to which it would be subjected if completely clogged at the upstream end of the outlet.
 - k. Has an air vent pipe just downstream of the control gate. The applicant shall include a blow-off valve at or near the downstream toe of the dam for an outlet conduit that is connected directly to a distribution system.
 - l. Has an outlet conduit designed for internal pressure equal to the full reservoir head and for superimposed embankment loads, acting separately.
4. Dam Site And Reservoir Area Requirements
- a. An applicant shall demonstrate that reservoir storage during the inflow design flood will not result in incremental adverse consequences and that the design will not result in the inundation or wave damage of properties within the reservoir, except marina-type structures, during the inflow design flood. In determining whether a discharge will result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to upstream affected property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flood easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and reservoir. Permanent habitations are not allowed within the reservoir below the spillway elevation.
 - b. The applicant shall clear the reservoir storage area of logs and debris.
 - c. The applicant shall place borrow areas a safe distance from the upstream toe and the downstream toe of the dam to prevent a piping failure of the dam.
 - d. The applicant shall keep the top of the dam and appurtenant structures accessible by equipment and vehicles for emergency operations and maintenance.
5. Geotechnical Requirements
- a. The applicant shall provide an evaluation of the static stability of the foundation, dam, and slopes of the reservoir rim and demonstrate that sufficient

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

material is available to construct the dam as designed.

- b. The applicant shall not construct a dam on active faults, collapsible soils, dispersive soils, sink holes, or fissures, unless the applicant demonstrates that the dam can safely withstand the anticipated offset or other unsafe effects on the dam.

6. Seismic Requirements

- a. The applicant shall submit a review of the seismic or earthquake history of the area around the dam within a radius of 100 miles to establish the relationship of the site to known faults and epicenters. The review shall include any known earthquakes and the epicenter locations and magnitudes of the earthquakes.
- b. The applicant shall identify the location of active or potentially active faults that have experienced Holocene or Late Pleistocene displacement within a radius of 100 miles of the site.
- c. For a high or significant hazard potential dam, the applicant shall design the dam to withstand the maximum credible earthquake.
- d. For a low hazard potential dam, the applicant shall use probabilistic or deterministic methods to determine the design earthquake. The magnitude of the design earthquake shall vary with the size of the dam, site condition, and specific location.

B. Embankment Dam Requirements.

1. Geotechnical Requirements. Table 5 states minimum factors of safety for embankment stability under various loading conditions. For an embankment dam an applicant shall provide a written analysis of minimum factors of safety for stability.

- a. The analysis of minimum factors of safety shall include the effects of anisotropy on the phreatic surface position by using a ratio of horizontal permeability to vertical permeability of at least 10. The Director may require ratios of up to 100 if the material types and construction techniques will cause excessive stratification.
- b. The applicant shall use tests modeling the conditions being analyzed to determine the strengths used in the stability analysis. The stability analysis shall include total and effective stress strengths appropriate for the different material zones and conditions analyzed. The stability analysis shall use undrained strengths or strength parameters for all saturated materials.
- c. The applicant shall perform an analysis of the upstream slope stability for a partial pool with steady seepage considering the reservoir level that provides the lowest factor of safety.
- d. A stability analysis is not required for low hazard potential dams if the owner or the owner's engineer demonstrates that conservative slopes and competent materials are included in the design.

2. Seismic Requirements

- a. The applicant shall determine the seismic characteristics of the site as prescribed in subsection (A)(6).
- b. The applicant shall determine the liquefaction susceptibility of the embankment, foundation, and abutments. The applicant shall use standard penetration testing, cone penetration testing, shear wave velocity measurements, or a combination of these methods to make this determination. The applicant shall compute the minimum factor of safety against liquefaction at specific points and make a determination of whether the overall site is subject to liquefaction.

- c. The applicant shall determine the safety of the dam under seismic loading using a pseudo static stability analysis, computing the minimum factor of safety if the embankment, foundation or abutment is not subject to liquefaction and has a maximum peak acceleration of 0.2g or less, or a maximum peak acceleration of 0.35g or less, and consists of clay on a clay or bedrock foundation. The applicant shall use in the pseudo static stability analysis a pseudo static coefficient that is at least 60% of the maximum peak bedrock acceleration at the site.

- d. The applicant shall compute a minimum factor of safety against overtopping due to deformation and settlement in each of the following cases. The minimum factor of safety against overtopping can be no less than 2.5, determined by dividing the total pre-earthquake freeboard by the estimated vertical settlement in feet. The applicant shall determine the total vertical settlement by adding the settlement values of the upstream and downstream slopes.

- i. The minimum factor of safety in a pseudo static analysis is less than 1.0;
- ii. An embankment, foundation, or abutment is not subject to liquefaction, has a maximum peak acceleration of more than 0.2g or a maximum peak acceleration of more than 0.35g and consists of clay on a clay or bedrock foundation; or
- iii. The embankment, foundation or abutment is subject to liquefaction.

- e. The applicant shall perform a liquefaction analysis to establish approximate boundaries of liquefiable zones and physical characteristics of the soil following liquefaction for an embankment, foundation, or abutment subject to liquefaction. The applicant shall perform an analysis of the potential for flow liquefaction.

- f. Other, more sophisticated analytical procedures may be required by the Director for sites with high seismicity or low strength embankment or foundation soils.

3. Miscellaneous Design Requirements

- a. The design of any significant or high hazard potential dam shall provide seepage collection and prevent internal erosion or piping due to embankment cracking or other causes.

- b. The Director shall review the filter and permeability design for a chimney drain, drain blanket, toe drain, or outlet conduit filter diaphragms on the basis of unique site characteristics.

- i. The minimum thickness of an internal drain is 3 feet.

- ii. The minimum width of a chimney drain is 6 feet.

- iii. The applicant shall filter match an internal drain to its adjacent material.

- iv. The applicant shall design internal drains with sufficient capacity for the expected drainage without the use of drainpipes using only natural granular materials.

- c. The use of a geosynthetic is not permitted in a design if it serves as the sole defense against dam failure. The use of geotextiles and geonets as a filter or drain material or a geomembrane liner is permitted only in a location that is easily accessible for repair or if its excavation cannot create an unsafe

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

condition at the dam. A geosynthetic liner is allowed under special conditions and in specific situations if it is subject to monitoring and redundant safety controls. The Director may impose conditions, including monitoring appropriate to the hazard classification, inspection, and necessary repairs, each performed every 5 years.

- d. The applicant shall use armoring on any upstream slope of an embankment dam that impounds water for more than 30 days at a time. If the applicant uses rock riprap, it shall be well-graded, durable, sized to withstand wave action, and placed on a well-graded pervious sand and gravel bedding or geotextile with filtering capacity appropriate for the site.
- e. The applicant shall protect the downstream slopes and groins of an embankment dam from erosion.
- f. The minimum width of the top of an embankment dam is equal to the structural height of the dam divided by 5 plus an additional 5 feet. The required minimum width for any embankment dam is 12 feet. The maximum width for any embankment dam is 25 feet.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

Table 4. Inflow Design Flood

Dam Hazard Class	Dam Size Classification	IDF Magnitude
Very Low	All Sizes	100-year
Low	All Sizes	0.25 PMF
Significant	Small Intermediate Large	0.25 PMF 0.5 PMF 0.5 PMF
High*	All Sizes	*

* For a high hazard potential dam, the applicant shall design the dam to withstand an inflow design flood that varies from .5 PMF to the full PMF, with size increasing based on persons at risk and potential for downstream damage. The applicant shall consider foreseeable future conditions.

Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

Table 5. Minimum Factors of Safety for Stability¹

Embankment Loading Condition	Minimum Factor of Safety
End of construction case – upstream and downstream slopes	1.3
End of construction case for embankments greater than 50 feet in height on weak foundations	1.4
Steady state seepage - upstream (critical partial pool) and downstream slope (full pool)	1.5
Instantaneous drawdown - upstream slope	1.2

¹ Not applicable to an embankment on a clay shale foundation.

Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558,

effective June 12, 2000 (Supp. 00-2).

R12-15-1217. Maintenance and Repair; Emergency Actions

- A. An owner shall perform general maintenance and ordinary repairs that do not impair the safety of the dam. General maintenance and ordinary repair activities listed under this subsection do not require prior approval of the Director. These repair activities include:
 - 1. Removing brush or tall weeds.
 - 2. Cutting trees and removing slash from the embankment or spillway. Small stumps may be removed provided no excavation into the embankment occurs.
 - 3. Exterminating rodents by trapping or other methods. Rodent damage may be repaired provided it does not involve excavation that extends more than 2 feet into the embankment and replacement materials are compacted as they are placed.
 - 4. Repairing erosion gullies less than 2 feet deep on the embankment or in the spillway.
 - 5. Grading the surface on the top of the dam embankment or spillway to eliminate potholes and provide proper drainage, provided the freeboard is not reduced.
 - 6. Placing additional riprap and bedding on the upstream slope, or in the spillway in areas that have sustained minor damage and restoring the original riprap protection where the damage has not yet resulted in erosion and weakening of the dam.
 - 7. Painting, caulking, or lubricating metal structures.
 - 8. Patching or caulking spalled or cracked concrete to prevent deterioration.
 - 9. Removing debris, rock, or earth from outlet conduits or spillway channels and basins.
 - 10. Patching to prevent deterioration within outlet works.
 - 11. Replacing worn or damaged parts on outlet valves or controls to restore them to original condition or its equivalent.
 - 12. Repairing or replacing fences intended to keep traffic or livestock off the dam or spillway.
- B. General maintenance and ordinary repair that may impair or adversely effect safety, such as excavation into or near the toe of the dam, construction of new appurtenant structures for the dam, and repair of damage that has already significantly weakened the dam shall be performed in accordance with this Article. The Director may approve maintenance performed according to a standard detail or method of repair on file with the Department upon submittal of a letter. The Director shall determine whether general maintenance and ordinary repair activities not listed in subsection (A) will impair safety.
- C. Emergency actions not impairing the safety of the dam may be taken before guidance can be provided by an engineer and do not require prior approval of the Director. Emergency actions do not excuse an owner's responsibility to promptly undertake a permanent solution. Emergency actions include:
 - 1. Stockpiling materials such as riprap, earth fill, sand, sandbags, and plastic sheeting.
 - 2. Lowering the reservoir level by making releases through the outlet or a gated spillway, by pumping, or by siphoning.
 - 3. Armoring eroded areas by placing sandbags, riprap, plastic sheeting, or other available material.
 - 4. Plugging leakage entrances on the upstream slope.
 - 5. Increasing freeboard by placing sandbags or temporary earth fill on the dam.
 - 6. Diverting flood waters to prevent them from entering the reservoir basin.
 - 7. Constructing training berms to control flood waters.

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

8. Placing sandbag ring dikes or reverse filter materials around boils at the downstream toe to provide back pressure.
 9. Removing obstructions from outlet or spillway flow areas.
- D.** Emergency actions impairing the safety of the dam require prior approval of the Director. An owner shall not lower the water level by excavating the spillway or embankment unless failure is imminent.
- E.** For all high and significant hazard potential dams, the emergency action plan shall be implemented with any emergency actions taken at the dam.
- F.** The owner shall notify the Director immediately of any emergency condition that exists and any emergency action taken.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1218. Safe Storage Level

The Director has the authority to determine the safe storage level for the reservoir behind each dam, including the storage level of an existing dam while it is being repaired, enlarged, altered, breached, or removed. The elevation of the safe storage level is stated on the license. The owner shall not store water in excess of the level determined by the Director to be safe. The owner shall not place flashboards or other devices in the emergency spillway without approval of an alteration of the dam in accordance with this Article.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1219. Safety Inspections; Fees

- A.** Except as provided in subsection (E), the Director shall conduct a dam safety inspection annually or more frequently for each high hazard potential dam, triennially for each significant hazard potential dam, and once every five years for each low and very low hazard potential dam. An owner of a dam shall pay the inspection fee required by R12-15-105 for each inspection of the dam pursuant to this subsection.
- B.** An engineer is considered qualified to provide information to the Director regarding the safe storage level of a reservoir if the engineer:
1. Meets the criteria in R12-15-1202(11),
 2. Has three years of experience in the field of dam safety, and
 3. Has actual experience in conducting dam safety inspections.
- C.** A dam safety inspection includes:
1. Review of previous inspections, reports, and drawings;
 2. Inspection of the dam, spillways, outlet facilities, seepage control, and measurement systems;
 3. Inspection of any permanent monument or monitoring installations;
 4. Assessment of all parts of the dam that are related to the dam's safety; and
 5. A recommendation regarding the safe storage level of the reservoir.
- D.** The engineer shall submit a safety inspection report that describes the findings and lists actions that will improve the safety of the dam. The report shall include the engineer's recommendation of the safe storage level. The engineer shall use a report form approved by the Director.
- E.** Inspections by the Owner
1. An owner may provide to the Director, at the owner's expense, a safety inspection report that complies with the requirements of subsections (B), (C), and (D) in place of

an inspection by the Department. The owner's engineer shall notify the Director and submit a written summary of the engineer's qualifications at least 14 days before the scheduled safety inspection.

2. The Director may refuse to accept an inspection that does not conform to this Article.
 3. A safety inspection report submitted pursuant to this subsection shall include the fee required by R12-15-105(D).
- F.** Inspections by the Department
1. The Director may enter at reasonable times upon private or public property and the owner shall permit such entry, where a dam is located, including a dam under construction, reconstruction, repair, enlargement, alteration, breach, or removal, for any of the following purposes:
 - a. To enforce the conditions of approval of the construction drawings and specifications related to an application for construction, reconstruction, repair, enlargement, alteration, breach, or removal.
 - b. To inspect a dam that is subject to this Article.
 - c. To investigate or assemble data to aid review and study of the design and construction of dams, reservoirs, and appurtenances or make watershed investigations to facilitate decisions on public safety to fulfill the duties of A.R.S. § 45-1214.
 - d. To ascertain compliance with this Article and A.R.S. Title 45, Chapter 6.
 2. Upon receipt of a complaint that a dam is endangering people or property:
 - a. The Director shall inspect the dam unless there is substantial cause to believe the complaint is without merit.
 - b. If the complainant files a complaint in writing and deposits with the Director sufficient funds to cover the costs of the inspection, the Director shall make an inspection.
 - c. The Director shall provide a written report of the inspection to the complainant and the dam owner.
 - d. If an unsafe condition is found, the Director shall cause it to be corrected and return the deposit to the complainant. If the complaint was without merit the deposit shall be paid into the general fund.
 3. The Director may employ qualified on-call consultants to conduct inspections.
 4. Inspections under subsection (A) shall comply with the requirements of A.R.S. § 41-1009.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-1220. Existing Dams

- A.** The requirements of this Article apply to existing dams, except as provided in subsections (B) and (C).
- B.** If the Director has determined that an existing dam is in a safe condition, the owner is not required to comply with R12-15-1216 unless the Director determines that it is cost effective to upgrade the dam to comply with the requirements of R12-15-1216 at the time a major alteration or major repair is planned. In determining whether it is cost effective to upgrade a dam, the Director shall consider:
1. The hazard potential classification of the dam;

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

2. Whether the cost of the upgrade would exceed 25% of the total cost of the major alteration or major repair; and
 3. Whether there is a more cost effective alternative that would provide an equivalent increase in safety.
- C. If the Director has determined that a dam is in an unsafe condition, the owner shall comply with the requirements in R12-15-1216. The owner is not required to comply with a requirement in this Article if the Director finds that, considering the site characteristics and the proposed design, the requirement is unduly burdensome or expensive and is not necessary to protect human life or property. The Director shall consider the size, hazard potential classification, physical site conditions, and applicability of a requirement to the dam. The Director shall state in writing the reason or reasons the owner is not required to comply with a requirement.
- D. The owner shall ensure that installation of utilities beneath or through an existing dam is accomplished by open cuts or jacking and boring methods.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1221. Emergency Action Plans

- A. Each owner of a high or significant hazard potential dam shall prepare, maintain, and exercise a written emergency action plan for immediate defensive action to prevent failure of the dam and minimize any threat to downstream development. The emergency action plan shall contain a:
1. Notification chart showing the priority for notification in an emergency situation. The owner shall notify local emergency response agencies, affected downstream populations, county emergency management agencies, and affected flood control districts;
 2. Description of the demand reservoir and scope of the emergency action plan;
 3. Delineation of potentially unsafe conditions, evaluation procedures, and triggering events that require the initiation of partial or full emergency notification procedures, based on the urgency of the situation;
 4. Delineation of areas of responsibility of the owner and other parties. The emergency action plan shall clearly identify individuals responsible for notifications and declaring an emergency;
 5. Specific notification procedure for each emergency situation anticipated;
 6. Description of emergency supplies and resources, equipment access to the site, and alternative means of communication. The emergency action plan shall also identify specific preparedness activities required, such as annual full or partial mock exercises and updates of the emergency action plan; and
 7. Map showing the area that would be subject to flooding due to spillway flows and dam failures.
- B. The owner shall use the Director's model emergency action plan, which is available at no cost, or an equivalent model, for guidance in preparing the emergency action plan.
- C. The owner shall submit a copy of the proposed emergency action plan for review by the Arizona Division of Emergency Management and all local emergency coordinators involved in the plan. The owner shall incorporate appropriate recommendations generated by the reviews and submit the revised emergency action plan to the Department.
- D. The owner shall review and update the emergency action plan annually or more frequently to incorporate changes such as new personnel, changing roles of emergency agencies, emergency response resources, conditions of the dam, and informa-

tion learned from mock exercises. The owner shall send updated portions of the plan to persons and agencies holding copies of the plan within 15 days after preparation of an update.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1222. Right of Review

- A. An applicant or owner aggrieved by a decision of the Director regarding the determination of hazard classification, jurisdictional status, or the Director's application of this Article may seek review of an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.
- B. An applicant or owner aggrieved by a decision of the Director that requires the exercise of professional engineering judgment or discretion or the assessment of risk to human life or property, such as the adequacy of an applicant's project documentation, dam design, safe storage level, requirements for existing dams, or maintenance, may seek review by a board of review under A.R.S. §§ 45-1210 and 45-1211.
- C. The following actions are not subject to review:
1. Emergency measures taken under A.R.S. §§ 45-1212 or 45-1221.
 2. Agency decisions made under A.R.S. §§ 41-1009(E) or (F).
 3. Agency actions made exempt from review by law.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1223. Enforcement Authority

- A. The Department may exercise its discretion to take action necessary to prevent danger to human life or property. The Director may take any legal action that is proper and necessary for the enforcement of this Chapter.
- B. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1, the Director may issue a notice directing the owner to remedy the safety deficiency or correct the violation. The owner may appeal a notice issued under this subsection as an appealable agency action in accordance with A.R.S. Title 41, Chapter 6, Article 10. If the owner does not appeal within 30 days after the date on the notice, the notice becomes final and may be incorporated as a condition of any license based on the duration of the requirement.
- C. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1, the Director may proceed under A.R.S. § 45-1221 to initiate a contested case under A.R.S. Title 41, Chapter 6, Article 10 by requesting an administrative hearing.
- D. Following a written decision by an administrative law judge, the Director shall issue a decision and order accepting, rejecting, or modifying the administrative law judge's decision. Upon expiration of time to appeal, the decision and order becomes final and may be incorporated as a condition of any license based on the duration of the requirement.
- E. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1 the Director may commence an action in a court of appropriate jurisdiction if:
1. The violation is an emergency requiring appropriate steps to be taken without delay; or
 2. The Director has cause to believe that use of the administrative procedure would be ineffective or that delay

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

would ensue and a deterioration in the safety of the dam would occur.

- F. If the Director commences an action it shall be brought in a court of appropriate jurisdiction in which:
1. The cause or some part of the cause arose; or
 2. The owner or person complained of has his or her place of business; or
 3. The owner or person complained of resides.
- G. A person determined to be in violation of this Article; A.R.S. Title 45, Chapter 6; a license; or order may be assessed a civil penalty not exceeding \$1,000 per day of violation. The Director may offer evidence relating to the amount of the penalty in accordance with A.R.S. § 45-1222.
- H. A violation of A.R.S. Title 45, Chapter 6, Article 1 regarding Supervision of Dams, Reservoirs, and Projects is a class 2 misdemeanor, in accordance with A.R.S. § 45-1216.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1224. Emergency Procedures

- A. The owner of a dam shall immediately notify the Department and responsible authorities in adjacent and downstream communities, including emergency management authorities, of a condition that may threaten the safety of the dam. The owner shall take necessary actions to protect human life and property, including action required under an emergency action plan or order issued under this Article.
1. A condition that may threaten the safety of a dam includes:
 - a. Sliding of upstream or downstream slopes or abutments contiguous to the dam;
 - b. Sudden subsidence of the top of the dam;
 - c. Longitudinal or transverse cracking of the top of the dam;
 - d. Unusual release of water from the downstream slope or face of the dam;
 - e. Other unusual conditions at the downstream slope of the dam;
 - f. Significant landslides in the reservoir area;
 - g. Increasing volume of seepage;
 - h. Cloudy seepage or recent deposits of soil at seepage exit points;
 - i. Sudden cracking or displacement of concrete in a concrete or masonry dam spillway or outlet works;
 - j. Loss of freeboard or dam cross section due to storm wave erosion;
 - k. Flood waters overtopping an embankment dam; or
 - l. Spillway backcutting that threatens evacuation of the reservoir.
 2. In case of an emergency, the owner shall telephone the Arizona Department of Public Safety's emergency numbers at (800) 411-2336 or (602) 223-2000.
- B. The Director shall issue an emergency approval to repair, alter, or remove an existing dam if the Director finds that immediate remedial action is necessary to alleviate an imminent threat to human life or property.
1. The emergency approval shall be provided in writing on a form developed for this purpose.
 2. The emergency approval may contain conditions the Director determines are appropriate to protect human life or property.
 3. The emergency approval is effective immediately for 30 days after notice is issued unless extended in writing by the Director. The Director shall also send notice to the county flood control district of the county in which the

dam is located, all municipalities within 5 miles downstream of the dam, and any additional persons identified in the emergency action plan.

4. The Director may institute legal or administrative proceedings that the Director deems appropriate for violations of the emergency approval or conditions of the emergency approval.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1225. Emergency Repairs

- A. The Director shall use monies from the dam repair fund, established under A.R.S. § 45-1212.01 to employ any remedial measure necessary to protect human life and property resulting from a condition that threatens the safety of a dam if the dam owner is unable or unwilling to take action and there is not sufficient time to issue and enforce an order.
- B. The deputy director may authorize an expenditure not to exceed \$10,000 from the dam repair fund for remedial measures under A.R.S. § 45-1212. The expenditure of any additional funds shall be approved by the Director.
- C. The Director shall hold a lien against all property of the owner in accordance with A.R.S. § 45-1212.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1226. Non-Emergency Repairs; Loans and Grants

- A. If the Director determines that a dam represents a threat to human life and property but is not in an emergency condition, the Director may use the dam repair fund, established under A.R.S. § 45-1212.01, as prescribed in this Article to defray the costs of repair.
- B. Monies from the dam repair fund may be used for loans and grants to owners as provided in A.R.S. §§ 45-1218 and 45-1219.
- C. To qualify for a loan or grant from the dam repair fund, a dam shall be classified as unsafe by the Director.
- D. The Director may authorize grant funds for all or part of the cost of engineering studies or construction needed to mitigate the threat to human life and property created by a dam.
 1. The Director and the grantee shall execute a financial assistance agreement that includes terms of financial assistance, the work progress, and payment schedule.
 2. The Director shall disburse grant funds in accordance with the financial assistance agreement.
 3. The Director shall establish a priority ranking for grants based on factors including the potential for failure of a dam, the number of lives at risk, and the capability of the owner to pay a portion of the costs.
- E. The Director may loan funds for engineering studies or for all or part of construction as prescribed in A.R.S. § 45-1218.
 1. The Director and the dam owner shall execute a loan repayment agreement. The loan repayment agreement shall be delivered to and held by the Department.
 2. The Director shall establish a priority ranking for loans based on factors including the potential for failure of a dam, the number of human lives at risk, and the capability of the owner to pay a portion of the costs.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

**ARTICLE 13. WELL SPACING REQUIREMENTS;
REPLACEMENT WELLS IN APPROXIMATELY THE
SAME LOCATION****R12-15-1301. Definitions**

In addition to the definitions in A.R.S. §§ 45-101, 45-402, and 45-591, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned well" means a well for which a well abandonment completion report has been filed pursuant to R12-15-816(E) or for which a notification of abandonment has been filed pursuant to R12-15-816(K).
2. "Additional drawdown" means a lowering in the water levels surrounding a well that is the result of the operation of the well and that is not attributable to existing regional rates of decline or existing impacts from other wells.
3. "Applicant" means any of the following:
 - a. A person who has filed an application for a permit to construct a new well or a replacement well in a new location under A.R.S. § 45-599;
 - b. A person who has filed an application for a recovery well permit under A.R.S. § 45-834.01 for a new well as defined in A.R.S. § 45-591 or, except as provided in A.R.S. § 45-834.01(B)(2) or (3), an existing well as defined in A.R.S. § 45-591;
 - c. A person who has filed an application for approval to use a well to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559; or
 - d. A person, other than a city, town, private water company, or irrigation district, who has filed an application for a water exchange permit under A.R.S. § 45-1041.
4. "ADEQ" means the Arizona Department of Environmental Quality.
5. "Contaminated groundwater" means groundwater that has been contaminated by a release of a hazardous substance, as defined in A.R.S. § 49-201, or a pollutant, as defined in A.R.S. § 49-201.
6. "DOD" means the United States Department of Defense.
7. "EPA" means the United States Environmental Protection Agency.
8. "LCR plateau groundwater transporter" means a person transporting groundwater from the Little Colorado River plateau groundwater basin to another groundwater basin pursuant to A.R.S. § 45-544(B)(1).
9. "Notice of water exchange participant" means a person, other than a city, town, private water company, or irrigation district, named as a participant in a water exchange in a notice of water exchange filed under A.R.S. § 45-1051.
10. "Original well" means the well replaced by a replacement well in approximately the same location, except that if the replacement well is the latest in a succession of two or more wells drilled as replacement wells in approximately the same location under R12-15-1308 or temporary rule R12-15-840 adopted by the director on March 11, 1983, "original well" means the well replaced by the first replacement well in approximately the same location.
11. "Remedial action site" means any of the following:
 - a. The site of a remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act ("CERCLA") of 1980, as amended, 42 U.S.C. 9601, et seq., commonly known as a "superfund" site;
 - b. The site of a corrective action undertaken pursuant to A.R.S. Title 49, Chapter 6, commonly known as a leaking underground storage tank ("LUST") site;
 - c. The site of a voluntary remediation action undertaken pursuant to A.R.S. Title 49, Chapter 1, Article 5;
 - d. The site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5, commonly known as a water quality assurance revolving fund ("WQARF") site;
 - e. The site of a remedial action undertaken pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, et seq.; or
 - f. The site of remedial action undertaken pursuant to the Department of Defense Environmental Restoration Program, 10 U.S.C. 2701, et seq., commonly known as a "Department of Defense site" or a "DOD site."
12. "Replacement well" means a well drilled for the purpose of replacing another well.
13. "Replacement well in a new location" means a replacement well that does not qualify as a replacement well in approximately the same location under R12-15-1308.
14. "Replacement well in approximately the same location" means a replacement well that qualifies as a replacement well in approximately the same location under R12-15-1308.
15. "Well" has the meaning prescribed in A.R.S. § 45-402. An abandoned well is not a well.
16. "Well of record" means, with respect to an applicant, an LCR plateau groundwater transporter, or a notice of water exchange participant, any well or proposed well not owned by the applicant, LCR plateau groundwater transporter, or notice of water exchange participant, or proposed to be drilled by the applicant, LCR plateau groundwater transporter, or notice of water exchange participant, to which any of the following apply:
 - a. The well is an existing well as defined in A.R.S. § 45-591 and the owner or operator has registered the well with the Department, unless the current well information on file with the Department identifies the sole purpose or purposes of the well as one or more of the following:
 - i. Cathodic protection;
 - ii. Use as a sump pump or heat pump;
 - iii. Air sparging;
 - iv. Injection of liquids or gasses into the aquifer or vadose zone, including injection wells that are part of an underground storage facility permitted under A.R.S. Title 45, Chapter 3.1;
 - v. Monitoring water levels or water quality, including a piezometer well;
 - vi. Obtaining geophysical, mineralogical, or geo-technical data;
 - vii. Grounding;
 - viii. Soil vapor extraction;
 - ix. Electrical energy generation pursuant to a temporary permit for electrical energy generation issued under A.R.S. § 45-517;
 - x. Dewatering pursuant to a dewatering permit issued under A.R.S. § 45-513 or a temporary dewatering permit issued under A.R.S. § 45-518;
 - xi. Drainage pursuant to a drainage water withdrawal permit issued under A.R.S. § 45-519; or

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- xii. Hydrologic testing pursuant to a hydrologic testing permit issued under A.R.S. § 45-519.01.
 - b. The well is a new well as defined in A.R.S. § 45-591 for which a notice of intention to drill was not filed pursuant to A.R.S. § 45-596 and for which a permit was not issued pursuant to A.R.S. §§ 45-599 or 45-834.01, and the owner or operator has registered the well with the Department, unless the current well information on file with the Department identifies the sole purpose or purposes of the well as one or more of the purposes in subsection (16)(a)(i) through (xii) of this Section;
 - c. A filing has been made for the well pursuant to A.R.S. § 45-596(A) or (B), unless any of the following apply:
 - i. The filing has expired pursuant to A.R.S. § 45-596(E);
 - ii. The filing identifies the sole purpose or purposes of the well as one or more of the purposes in subsection (16)(a)(i) through (xii) of this Section; or
 - iii. The well is an exempt well and the director is prohibited by A.R.S. § 45-454(D)(4) from considering impacts on the well when determining whether to approve or reject a permit application filed under A.R.S. § 45-599.
 - d. An application for a permit to drill the well has been received by the Department pursuant to A.R.S. § 45-599, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well in a timely manner pursuant to A.R.S. § 45-599(G);
 - e. An application for a permit pursuant to A.R.S. §§ 45-514 or 45-516 has been received by the Department pursuant to A.R.S. § 45-521, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well before expiration of the drilling authority; or
 - f. An application for a permit to drill a recovery well has been received by the Department pursuant to A.R.S. § 45-834.01, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well in a timely manner pursuant to A.R.S. § 45-834.01(F).
- B.** The director shall determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the withdrawals from the proposed well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
 2. The director determines that the proposed well or wells will be located in an area of known land subsidence and the withdrawals from the proposed well or wells will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the withdrawals from the proposed well or wells on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
 3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that withdrawals from the proposed well or wells will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of the receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the withdrawals from the proposed well or wells will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1302. Well Spacing Requirements - Applications to Construct New Wells or Replacement Wells in New Locations Under A.R.S. § 45-599

- A.** The director shall not approve an application for a permit to construct a new well or a replacement well in a new location under A.R.S. § 45-599 if the director determines that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.

- C.** In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section, if the proposed well is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the proposed withdrawals from the replacement well if the applicant submits a hydrological study demonstrating those collective effects to the satisfaction of the director.
- D.** If the director determines under subsection (B)(1) of this Section that the probable impact of the withdrawals from the proposed well or wells on one or more wells of record in existence

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:

1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals from the proposed well or wells. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. If the director determines that withdrawals from the proposed well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals from the proposed well or wells. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F. At any time before a final determination under this Section, the applicant may:
1. Amend the application to change the location of the proposed well or wells or the amount of groundwater to be withdrawn from the proposed well or wells to lessen the degree of impact on wells of record or regional land subsidence; or
 2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the well permit that compliance with the agreement is a condition of the well permit.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1303. Well Spacing Requirements - Applications for Recovery Well Permits Under A.R.S. § 45-834.01

- A. The director shall not approve an application for a recovery well permit under A.R.S. § 45-834.01 that is filed for a new well as defined in A.R.S. § 45-591 or, except as provided in

A.R.S. § 45-834.01(B)(2) or (3), for an existing well as defined in A.R.S. § 45-591, if the director determines that the recovery of stored water from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.

- B. The director shall determine that the recovery of stored water from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the recovery of stored water from the proposed well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the recovery of stored water from the proposed well or wells. To assist the director in making a determination under this subsection, the applicant shall submit with the application a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of the recovery of stored water from the proposed well or wells;
 2. The director determines that the proposed recovery well or wells will be located in an area of known land subsidence and the recovery of stored water from the proposed well or wells will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the recovery of stored water from the proposed recovery well or wells on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
 3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that the recovery of stored water from the proposed well or wells will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the recovery of stored water from the proposed well or wells will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.
- C. In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section:
1. If the proposed recovery well is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the proposed

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

recovery of stored water from the replacement well if the applicant submits a hydrological study demonstrating those collective effects to the satisfaction of the director.

2. If the proposed recovery well will be located within the area of impact, as defined in A.R.S. § 45-802.01, of an underground storage facility and the applicant will account for all of the water recovered from the well as water stored at the facility, the director shall take into account the effects of water storage at the facility on the proposed recovery of stored water from the recovery well if the applicant submits a hydrological study demonstrating those effects to the satisfaction of the director.
- D. If the director determines under subsection (B)(1) of this Section that the probable impact of the recovery of stored water from the proposed recovery well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the recovery of stored water from the proposed recovery well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the recovery of stored water from the proposed recovery well or wells. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. If the director determines that the recovery of stored water from the proposed recovery well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the recovery of stored water from the proposed recovery well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the recovery of stored water from the proposed recovery well or wells. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F. At any time before a final determination under this Section, the applicant may:
1. Amend the application to change the location of the proposed recovery well or wells or the amount of stored water to be recovered from the proposed recovery well or wells to lessen the degree of impact on wells of record or regional land subsidence; or
 2. Agree to construct or operate the proposed recovery well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the recovery well permit that compliance with the agreement is a condition of the recovery well permit.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1304. Well Spacing Requirements - Wells Withdrawing Groundwater From the Little Colorado River Plateau Groundwater Basin for Transportation to Another Groundwater Basin Under A.R.S. § 45-544(B)(1)

- A. An LCR plateau groundwater transporter may not withdraw groundwater from a well or wells drilled in the Little Colorado river plateau groundwater basin after January 1, 1991, except a replacement well in approximately the same location or a well drilled after that date pursuant to a notice of intention to drill filed on or before that date, for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1) if the director determines that the withdrawals for that purpose will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.
- B. The director shall determine that the withdrawals of groundwater from the well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the withdrawals of groundwater from the well or wells on any well of record in existence when the withdrawals commenced or are proposed to commence will exceed 10 feet of additional drawdown after the first five years of the withdrawals. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study delineating those areas surrounding the LCR plateau groundwater transporter's well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of the withdrawals. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
 2. The director determines that the well or wells from which the groundwater is withdrawn are located in an area of known land subsidence and the withdrawals of groundwater will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the withdrawals on regional land subsidence. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that the withdrawals of groundwater from the well or wells will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence when the groundwater withdrawals commenced or are proposed to commence, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study demonstrating whether the withdrawals of groundwater will have the effect described in this subsection. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.
- C. In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section, if a well from which the groundwater is withdrawn is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the withdrawals from the replacement well if the LCR plateau groundwater transporter submits a hydrological study demonstrating those collective effects to the satisfaction of the director.
- D. If the director determines under subsection (B)(1) of this Section that the probable impact of the withdrawals of groundwater from the well or wells on any well of record in existence when the withdrawals commenced or are proposed to commence will exceed 10 feet of additional drawdown after the first five years of the withdrawals, the director shall notify the LCR plateau groundwater transporter in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the LCR plateau groundwater transporter submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The LCR plateau groundwater transporter shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the LCR plateau groundwater transporter made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. If the director determines that the withdrawals of groundwater from the well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence when the groundwater withdrawals commenced or are proposed to commence, the director shall notify the LCR plateau groundwater transporter in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the LCR plateau groundwater transporter submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The LCR plateau groundwater transporter shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the LCR plateau groundwater transporter made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F. At any time before a final determination under this Section, the LCR plateau groundwater transporter may agree to construct or operate the well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. Compliance with the agreement is a condition for the use of the well or wells to withdraw groundwater for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1305. Well Spacing Requirements - Applications to Use a Well to Withdraw Groundwater for Transportation to an Active Management Area Under A.R.S. § 45-559

- A. The director shall not approve an application to use a well or wells constructed after September 21, 1991, to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559 if the director determines that the withdrawals for that purpose will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.
- B. The director shall determine that the withdrawals of groundwater will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the groundwater withdrawals on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the withdrawals. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts of the groundwater withdrawals on water levels will exceed 10 feet of additional drawdown after the first five years of the withdrawals. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
 2. The director determines that the proposed well or wells will be located in an area of known land subsidence and the groundwater withdrawals will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the groundwater

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

withdrawals on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or

3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the groundwater withdrawals will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the groundwater withdrawals will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.
- C.** If the director determines under subsection (B)(1) of this Section that the probable impact of the groundwater withdrawals on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the withdrawals, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the groundwater withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- D.** If the director determines that the groundwater withdrawals will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the groundwater withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E.** At any time before a final determination under this Section, the applicant may:
1. Amend the application to change the location of the proposed well or wells or the amount of groundwater to be withdrawn from the proposed well or wells to lessen the degree of impact on wells of record or regional land subsidence; or
 2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the permit that compliance with the agreement is a condition of the permit to use the well or wells to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1306. Well Spacing Requirements - Applications for Water Exchange Permits Under A.R.S. § 45-1041

- A.** The director shall not approve an application for a water exchange permit filed under A.R.S. § 45-1041 by a person other than a city, town, private water company or irrigation district if the director determines that any new or increased pumping by the applicant from a well or wells within an active management area pursuant to the water exchange will cause unreasonably increasing damage to surrounding land or other water users under subsection (B) of this Section.
- B.** The director shall determine that new or increased pumping by the applicant from a well or wells within an active management area will cause unreasonably increasing damage to surrounding land or other water users if any of the following apply:
1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the new or increased pumping on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the pumping. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts of the new or increased pumping on water levels will exceed 10 feet of additional drawdown after the first five years of the pumping. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
 2. The director determines that the new or increased pumping will occur in an area of known land subsidence and the pumping will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the new or increased pumping on regional land subsidence. The director may require the applicant to submit such a hydrological study if the

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

- director determines that the study will assist the director in making a determination under this subsection; or
3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the new or increased pumping will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit with the application a hydrological study demonstrating whether the new or increased pumping will have the effect described in this subsection. If the applicant does not submit such a hydrological study with the application, the director may require the applicant to submit the study if the director determines that the study will assist the director in making a determination under this subsection.
- C. If the director determines under subsection (B)(1) of this Section that the probable impact of the new or increased pumping on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the pumping, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
 1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
 - D. If the director determines that the new or increased pumping will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
 1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
 - E. At any time before a final determination under this Section, the applicant may:
 1. Amend the application to change the location of the proposed well or wells or the amount of the new or increase pumping to lessen the degree of impact on wells of record or regional land subsidence; or
 2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the water exchange permit that compliance with the agreement is a condition of the water exchange permit.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1307. Well Spacing Requirements - Notices of Water Exchange Under A.R.S. § 45-1051

- A. A notice of water exchange participant may not participate in a water exchange for which a notice is filed under A.R.S. § 45-1051 if the director determines that any new or increased pumping by the person from a well or wells within an active management area pursuant to the water exchange will cause unreasonably increasing damage to surrounding land or other water users under subsection (B) of this Section.
- B. The director shall determine that new or increased pumping from the well or wells in an active management area will cause unreasonably increasing damage to surrounding land or other water users if any of the following apply:
 1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the new or increased pumping on any well of record in existence when the pumping commenced or is proposed to commence will exceed 10 feet of additional drawdown after the first five years of the pumping. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director a hydrological study delineating those areas surrounding the notice of water exchange participant's well or wells in which the projected impacts of the new or increased pumping on water levels will exceed 10 feet of additional drawdown after the first five years of the pumping. The director may require the notice of water exchange participant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
 2. The director determines that the new or increased pumping is in an area of known land subsidence and the pumping will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the pumping on regional land subsidence. The director may require the notice of water exchange participant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
 3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

new or increased pumping will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence when the pumping commenced or is proposed to commence, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director a hydrological study demonstrating whether the new or increased pumping will have the effect described in this subsection. The director may require the notice of water exchange participant to submit such a study if the director determines that the study will assist the director in making a determination under this subsection.

- C. If the director determines under subsection (B)(1) of this Section that the probable impact of the new or increased pumping on any well of record in existence when the pumping commenced or is proposed to commence will exceed 10 feet of additional drawdown after the first five years of the pumping, the director shall notify the notice of water exchange participant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the notice of water exchange participant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The notice of water exchange participant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the notice of water exchange participant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- D. If the director determines that the new or increased pumping will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence when the pumping commenced or is proposed to commence, the director shall notify the notice of water exchange participant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the notice of water exchange participant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The notice of water exchange participant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the notice of water exchange participant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. At any time before a final determination under this Section, the notice of water exchange participant may agree to construct or operate the well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. Compliance with the agreement is a condition for the use of the well to pump water for the water exchange.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1308. Replacement Wells in Approximately the Same Location

- A. For purposes of A.R.S. §§ 45-544, 45-596, and 45-597, a replacement well in approximately the same location is a proposed well to which all of the following apply:
1. The proposed well will be located no greater than 660 feet from the original well, and the location of the original well can be determined at the time the notice of intention to drill the proposed well is filed;
 2. Except as provided in subsections (A)(3) and (A)(4) of this Section, the proposed well will not annually withdraw an amount of water in excess of the maximum annual capacity of the original well. The director shall determine the maximum annual capacity of the original well by multiplying the maximum pump capacity of the original well in gallons per minute by 525,600, and then converting the result into acre-feet by dividing the result by 325,851 gallons. The director shall presume that the maximum pump capacity of the original well is the maximum pump capacity of the well in gallons per minute as shown in the Department's well registry records, except that:
 - a. If the director has reason to believe that the maximum pump capacity as shown in the Department's well registry records is inaccurate, or if the applicant submits evidence demonstrating that the maximum pump capacity as shown in the Department's well registry records is inaccurate, the director shall determine the maximum pump capacity by considering all available evidence, including the depth and diameter of the well and any evidence submitted by the applicant; or
 - b. If the Department's well registry records do not show the maximum pump capacity of the original well, the director shall not approve the proposed well as a replacement well in approximately the same location unless the applicant demonstrates to the director's satisfaction the maximum pump capacity of the original well;
 3. If a well permit was issued for the original well under A.R.S. § 45-599, the proposed well will not annually withdraw an amount of groundwater in excess of the maximum annual volume set forth in the well permit;
 4. If a recovery well permit was issued for the well to be replaced pursuant to A.R.S. § 45-834.01(B) and the permit sets forth a maximum annual volume of stored water that may be recovered from the well, the proposed well will not annually recover an amount of stored water in excess of the maximum annual volume set forth in the recovery well permit;

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

5. If the well to be replaced has been physically abandoned in accordance with R12-15-816, a notice of intention to drill the proposed well is filed no later than 90 days after the well to be replaced was physically abandoned; and
 6. If the proposed well will be used to withdraw groundwater from the Little Colorado river plateau groundwater basin for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1), one of the following applies:
 - a. The original well was drilled on or before January 1, 1991, or was drilled after that date pursuant to a notice of intention to drill that was on file with the Department on that date; or
 - b. The director previously determined that the withdrawal of groundwater from the original well for transportation away from the Little Colorado river plateau groundwater basin complies with R12-15-1304.
- B.** After a replacement well in approximately the same location is drilled, the replacement well may be operated in conjunction with the original well and any other wells that replaced the original well if the total annual withdrawals from all wells do not exceed the maximum amount allowed under subsection (A)(2), (A)(3), or (A)(4) of this Section, whichever applies.
- C.** A proposed well may be drilled as a replacement well in approximately the same location for more than one original well if the criteria in subsections (A)(1), (A)(5), and (A)(6) of this Section are met with respect to each original well and if the total annual withdrawals from the proposed well will not exceed the combined maximum annual amounts allowed for each original well under subsections (A)(2), (A)(3), or (A)(4) of this Section, whichever apply.
 - D.** The director may include conditions in the approval of the notice of intention to drill the replacement well to ensure that the drilling and operation of the replacement well meets the requirements of this Section.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

TAB C

***General and Specific Statutes
Authorizing the Rule***

TAB C1

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 3. Bodies of Water (Refs & Annos)

A.R.S. § 45-133

§ 45-133. Permit for interim water use; application; fee; surcharge on use of groundwater

Currentness

A. A person otherwise subject to the prohibitions of § 45-132 may use groundwater withdrawn pursuant to a type 1 or type 2 non-irrigation grandfathered right or water other than groundwater to fill or refill all or a portion of a body of water until sufficient effluent is available to fill or refill the body of water if the person applies for and obtains a permit for interim water use from the director. The director may issue a permit if the applicant demonstrates to the satisfaction of the director that all of the following apply:

1. The applicant otherwise has a right to use the water for the proposed purpose.
2. Sufficient effluent to fill or refill the body of water is not reasonably available but it has been demonstrated by clear and convincing evidence that sufficient effluent will be available no later than five years from the date the permit is issued.
3. The applicant has:
 - (a) Provided the necessary easements for an on-site treatment facility or access to an off-site treatment facility and for transportation of a permanent effluent supply to the body of water.
 - (b) Provided the site location for the facility and received approval for the facility from the department of environmental quality, if an on-site treatment facility will be used.
 - (c) Recorded the easements and any site location for an on-site treatment facility on the plat of record for the subdivision or development within which the body of water is located.
4. The body of water will store effluent that will be applied to grow landscaping plants on common areas or will be used for other beneficial purposes that would otherwise require use of surface water or groundwater.
5. The development or facility in which the body of water is located will include an effective water conservation program. The specific conservation requirements in the water conservation program shall be consistent with and shall not by this paragraph be required to be more strict than any specific conservation requirements in the applicable management plan.

6. The body of water otherwise complies with this article.

B. The director may issue a permit under this section for a period of up to three years. The director shall specify the amount of water that may be used each year pursuant to the permit. The director shall determine the duration of the permit and the amount of water that may be used pursuant to the permit on the basis of the estimated time until sufficient effluent will be available to fill and refill the body of water. The director shall monitor the use of water pursuant to the permit and shall modify the terms of the permit as necessary and terminate the permit if any of the conditions for issuance of the permit no longer apply. The director may renew a permit for no more than two successive one-year periods subject to the same criteria used in granting the original permit.

C. An application for a permit under this section shall be made on a form prescribed and furnished by the director. The director shall levy and collect a reasonable application fee to cover the costs of administrative services and expenses, which shall be remitted to the augmentation and conservation assistance fund described in § 45-615, paragraph 1.

D. The director shall levy and collect an annual surcharge from each holder of a permit for interim groundwater use. The amount of the surcharge shall be as follows:

1. For the first year following issuance of the permit, twenty-five dollars per acre-foot of groundwater withdrawn pursuant to the permit.

2. For the second year following issuance of the permit, fifty dollars per acre-foot of groundwater withdrawn pursuant to the permit.

3. For the third year following issuance of the permit, one hundred dollars per acre-foot of groundwater withdrawn pursuant to the permit.

4. For the fourth year following issuance of the permit, two hundred dollars per acre-foot of groundwater withdrawn pursuant to the permit.

5. For the fifth year following issuance of the permit, four hundred dollars per acre-foot of groundwater withdrawn pursuant to the permit.

E. All monies collected pursuant to subsection D of this section shall be remitted as follows:

1. Fifty per cent to the augmentation and conservation assistance fund described in § 45-615, paragraph 1, or if a water district is organized in the active management area under title 48, chapter 28,¹ to the general fund of the district.

2. Fifty per cent to the purchase and retirement fund described in § 45-615, paragraph 2.

F. If the holder of a permit for interim groundwater use fails to pay the surcharge levied pursuant to subsection D of this section by the date set by the director, the director shall revoke the permit.

Credits

Added by Laws 1987, Ch. 238, § 1. Amended by Laws 1990, Ch. 181, § 3; Laws 1990, Ch. 320, § 1; Laws 1992, Ch. 270, § 2; Laws 1992, Ch. 282, § 2.

Footnotes

1 Section 48-4801 et seq.

A. R. S. § 45-133, AZ ST § 45-133

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 7. Water Rights Registration (Refs & Annos)

A.R.S. § 45-183

§ 45-183. Contents of statement of claim; filing procedure; fee

Effective: July 29, 2010

[Currentness](#)

A. The statement of claim for each water right shall include the following:

1. The name and mailing address of the person filing the claim.
2. The name of the watercourse or water source from which the right to divert or make use of water is claimed.
3. The quantities of water and times of year use is claimed.
4. The legal description to the nearest forty-acre tract or by other appropriate description of the point or points of diversion and place of use of the waters.
5. The purpose and extent of use.
6. The approximate dates of first putting water to beneficial use for the various amounts and times claimed in paragraph 3 of this subsection.
7. The legal basis for the claim.
8. The sworn statement that the claim set forth is true and correct.

B. A statement of claim for a water right may be verified by the person claiming the right or may be verified by an authorized agent of such person.

C. Filing of a statement of claim shall be complete upon timely receipt by the department of a properly executed statement of claim and a five dollar filing fee for each such claim. The director shall deposit, pursuant to §§ 35-146 and 35-147, the fees received pursuant to this subsection in the water resources fund established by § 45-117.

Credits

Added as § 45-182 by Laws 1974, Ch. 122, § 2. Amended by Laws 1979, Ch. 139, § 29, eff. April 24, 1979; Laws 1980, 4th S.S., Ch. 1, § 59, eff. June 12, 1980. Renumbered as § 45-183 by Laws 1987, Ch. 2, § 1, eff. Feb. 27, 1987. Amended by [Laws 2010, Ch. 282, § 5](#).

A. R. S. § 45-183, AZ ST § 45-183

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 10. Registration of Stockponds (Refs & Annos)

A.R.S. § 45-273

§ 45-273. Claim of water right; penalty; fee

Effective: July 29, 2010

[Currentness](#)

A. A claim of water right for a stockpond and application for certification of such right shall be typewritten or legibly written in ink and filed in duplicate with the director upon a printed form furnished by the director. Each blank in the form shall be completed with the required information pursuant to instructions furnished by the director.

B. A claim which does not contain the required information or which is not accompanied by the required filing fee shall not be accepted, but shall be returned to the sender.

C. A separate claim shall be filed for each stockpond.

D. All claims shall be certified as true under penalty of perjury.

E. Each claim shall be accompanied by a filing fee of ten dollars.

F. The director shall deposit, pursuant to §§ [35-146](#) and [35-147](#), all fees received pursuant to this section in the water resources fund established by [§ 45-117](#).

Credits

Added as § 45-403 by Laws 1977, Ch. 69, § 2. Amended by Laws 1979, Ch. 139, § 71, eff. April 24, 1979. Renumbered as § 45-273 and amended by Laws 1980, 4th S.S., Ch. 1, §§ 74, 76, eff. June 12, 1980. Amended by [Laws 2010, Ch. 282, § 6](#).

A. R. S. § 45-273, AZ ST § 45-273

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 11. Exportation of Water from this State (Refs & Annos)

A.R.S. § 45-292

§ 45-292. Approval required to transport water out of state; application; fee; criteria; hearing

Effective: July 29, 2010

[Currentness](#)

A. A person may withdraw, or divert, and transport water from this state for a reasonable and beneficial use in another state if approved by the director pursuant to this article. A person shall not transport water from this state unless approved by the director, but this article does not apply to or prohibit transporting water from this state as required by interstate compact, federal law or international treaty.

B. An application to transport water from this state for use in another state shall be filed with the director, including a fee established by the director by rule. In establishing a fee by rule, the director may consider factors including the amount of time likely to be expended in processing the application, the amount of preexisting hydrological information available, if any, and the complexity of the application. The application shall include:

1. The name and address of the applicant's statutory agent in this state for service of process and other legal notices.
2. The legal basis for acquiring the water to be transported.
3. The purpose for which the water will be used.
4. The annual amount of water in acre-feet for which the application is made.
5. The proposed duration of the permit, not to exceed fifty years with an option to renew.
6. Studies satisfactory to the director of the probable hydrologic impact on the area from which the water is proposed to be transported.
7. Any other information which the director may require.

C. The director shall approve or reject the application. If the director approves the application, the director may prescribe terms and conditions for the approval. In determining whether to approve the application the director shall consider:

1. Whether the proposed action would be consistent with conservation of water, including any applicable management goals and plans.
2. Potential harm to the public welfare of the citizens of this state.
3. The supply of water to this state and current and future water demands in this state in general and the proposed source area in particular.
4. The feasibility of intrastate transportation of the water that is the subject of the application to alleviate water shortages in this state.
5. The availability of alternative sources of water in the other state.
6. The demands placed on the applicant's supply in the other state.
7. Whether the proposed action is prohibited or affected by other law, including §§ 45-165 and 45-172 and chapter 2 of this title.¹

D. This article does not authorize and the director shall not approve transporting from this state water allocated to this state by federal law or interstate compact.

E. An administrative hearing shall be held on the application, and the director shall give notice of the hearing by publication once a week for three consecutive weeks in a newspaper of general circulation in the county or counties from which the applicant proposes to transport the water. The hearing shall be conducted in the area from which water is proposed to be transported. Any interested person, including the department, may appear and give oral or written testimony on all issues involved.

F. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section.

G. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this section in the water resources fund established by § 45-117.

Credits

Added by Laws 1989, Ch. 168, § 3. Amended by Laws 1998, Ch. 57, § 79; Laws 2008, Ch. 153, § 1; Laws 2010, Ch. 282, § 7.

Footnotes

¹ Section 45-401 et seq.

A. R. S. § 45-292, AZ ST § 45-292

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 2. Groundwater Code (Refs & Annos)

Article 5. Grandfathered Groundwater Rights in Active Management Areas (Refs & Annos)

A.R.S. § 45-467

§ 45-467. Withdrawals in excess of irrigation grandfathered right; withdrawals less than irrigation grandfathered right; flexibility account; conveyances; variance; exemption

Effective: July 29, 2010

[Currentness](#)

A. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may:

1. In an active management area other than the Santa Cruz active management area, use groundwater in excess of the amount allowed by the right in an amount determined pursuant to subsection I of this section.
2. In the Santa Cruz active management area, use water, other than stored water, withdrawn from a well in excess of the farm's current irrigation water duty multiplied by the farm's water duty acres in an amount determined pursuant to subsection J of this section.
3. Use less than the amount allowed by the right in one accounting period and use the remaining amount allowed by the right in a succeeding accounting period or periods.

B. The director shall establish rules for the maintenance of a flexibility account for each farm in an active management area.

C. If a farm located in an active management area other than the Santa Cruz active management area is irrigated solely with groundwater, the director shall:

1. Register a debit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.
2. Register a credit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

D. Except as provided in subsection G of this section, if a farm located in an active management area other than the Santa Cruz active management area is irrigated with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for

beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.
2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been groundwater shall be registered as a credit to the account.

E. If a farm located in the Santa Cruz active management area is irrigated solely with water, other than stored water, withdrawn from a well, the director shall:

1. Register a debit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm. The amount of the debit shall equal the amount of the excess.
2. Register a credit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

F. If a farm located in the Santa Cruz active management area is irrigated with a combination of surface water not withdrawn from a well and effluent, or both, and water, other than stored water, withdrawn from a well, and uses of water by the farm from all sources for irrigation purposes in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water, other than stored water, withdrawn from a well and used on the farm up to the amount of the excess, less any effluent used that does not qualify as stored water, shall be registered as a debit to the account.
2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been water, other than stored water, withdrawn from a well shall be registered as a credit to the account.

G. Beginning January 1, 1995 through December 31, 1999, if a farm that qualifies under this subsection as determined pursuant to subsection H of this section is irrigated during an accounting period with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the first intermediate irrigation water duty established for the farm pursuant to [§ 45-565](#) multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used that would have been groundwater shall be registered as a credit to the account.

3. Exceed or equal the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm but are less than or equal to the amount of the first intermediate irrigation water duty established for the farm pursuant to § 45-565 multiplied by the water duty acres in the farm, no credit or debit may be registered to the account.

H. A farm qualifies under subsection G of this section if it is located in an active management area other than the Santa Cruz active management area and either of the following applies:

1. The amount of groundwater used to irrigate the farm during the accounting period does not exceed an amount computed by multiplying the water duty acres in the farm by one and one-half acre-feet of water, except that an electrical district organized under title 48, chapter 12¹ or an irrigation district may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the district that do not qualify under paragraph 2 of this subsection. The director shall grant the increase if the district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the use of groundwater during that year by all of the farms within the boundaries of the district that do not qualify under paragraph 2 of this subsection in an amount that does not exceed one and one-half acre-feet of water multiplied by the total number of water duty acres of those farms would result in the district being unable to use its hydroelectric power capacity entitlement under the contract. If the director grants the increase, the director shall compute the maximum amount of groundwater that may be used by a farm within the district during the year in order to qualify under subsection G of this section as follows:

(a) Determine the total amount of groundwater that must be used during the year by all farms in the district that do not qualify under paragraph 2 of this subsection to enable the district to efficiently use its hydroelectric kilowatt demand allocation.

(b) Divide the amount determined in subdivision (a) of this paragraph by the total number of water duty acres of the farms in the district that do not qualify under paragraph 2 of this subsection.

(c) Multiply the farm's water duty acres by the quotient in subdivision (b) of this paragraph or two acre-feet of water, whichever is less.

2. The farm is irrigated with water supplied by an irrigation district that owns or leases and operates all of the wells used to withdraw groundwater for irrigation use within the district, and the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water, except that the irrigation district or an electrical district organized under title 48, chapter 12 may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the irrigation district. The director shall grant the increase if the irrigation district or electrical district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the irrigation district or electrical district would be unable to use its hydroelectric power capacity entitlement under the contract if the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water. If the director grants the increase, the maximum amount of groundwater that may be supplied by the irrigation district for irrigation use during the year in order for

the farms located within the boundaries of the irrigation district to qualify under subsection G of this section shall be the lesser of the following:

(a) The amount of groundwater that the director determines must be supplied by the irrigation district for irrigation use during the year to enable the irrigation district or electrical district to efficiently use its hydroelectric kilowatt demand allocation.

(b) An amount of groundwater computed by multiplying the total number of water duty acres within the irrigation district by two acre-feet of water.

I. The maximum excess amount of groundwater that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. An owner of an irrigation grandfathered right and the person using groundwater pursuant to the right violate this section if the flexibility account for the farm in which the irrigation acres to which the right is appurtenant are located is in arrears at any time in excess of this amount. Groundwater equal to the credit balance in the flexibility account may be used at any time.

J. In the Santa Cruz active management area, the maximum excess amount of water, other than stored water, withdrawn from a well that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. A person using water, other than stored water, withdrawn from a well for an irrigation use in the Santa Cruz active management area violates this section if the flexibility account for the farm is in arrears at any time in excess of this amount. Water, other than stored water, withdrawn from a well in an amount equal to the credit balance in the flexibility account may be used at any time, except that if the water is surface water, the amount that may be used shall not exceed the amount allowed by the decreed or appropriative surface water right.

K. If an irrigation grandfathered right is conveyed for an irrigation use pursuant to § 45-472, each acre conveyed shall carry with it a proportional share of any debits or credits in the flexibility account for the farm. If an irrigation grandfathered right is conveyed for a non-irrigation use pursuant to § 45-472, each acre conveyed shall carry with it a proportional share of any debits in the flexibility account for the farm.

L. A person in an active management area other than the Santa Cruz active management area who is using groundwater pursuant to an irrigation grandfathered right and who is operating under a variance to the irrigation water duty pursuant to § 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection C or D of this section.

M. A person in the Santa Cruz active management area who is using water, other than stored water, withdrawn from a well for an irrigation use and who is operating under a variance to the irrigation water duty pursuant to § 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection E or F of this section.

N. In an active management area other than the Santa Cruz active management area, a person using groundwater pursuant to an irrigation grandfathered right shall file a report with the director each year which shall include the amount of groundwater used pursuant to the irrigation grandfathered right and such other information as the director shall require. In the Santa Cruz active management area, a person using water, other than stored water, withdrawn from a well for irrigation use shall file a report with the director each year which shall include the amount of water used on the farm and such other information as the director shall require. The director may consolidate the reporting requirements of this section with the reporting requirements of § 45-632. A person using groundwater pursuant to an irrigation grandfathered right that is regulated under a best management practices program adopted by the director, pursuant to § 45-566.02, subsection F, § 45-567.02, subsection G or § 45-568.02, subsection F, is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right, except that the person shall file a report with the director each year that includes the information required by the best management practices program. A person using groundwater pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.

2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter² or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.

3. Groundwater is withdrawn from land that is both owned by the owner of the irrigation grandfathered right and contiguous to the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.

O. A person who owns an irrigation grandfathered right that is appurtenant to irrigation acres that were capable of being irrigated as of December 31 of the preceding calendar year and whose farm has registered a credit balance to its flexibility account may convey or sell all or a portion of the credit balance to any person, including the conveyor or seller of the credit balance, who owns another irrigation grandfathered right or who uses groundwater pursuant to another irrigation grandfathered right, except that:

1. A credit balance that is registered to the flexibility account of a farm located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same irrigation district.

(b) The flexibility account of a farm that is located outside of that irrigation district if both farms are located in the same groundwater subbasin and the same active management area and if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

2. A credit balance that is registered to the flexibility account of a farm that is not located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is not located within an irrigation district.

(b) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is located within an irrigation district if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

3. A credit registered to a flexibility account for a year may be conveyed or sold only during the second calendar year following the year for which the credit was registered.

4. A person who owns a farm that includes protected farmland may not sell or otherwise convey any credit registered to the farm's flexibility account.

P. A person who sells or conveys all or a portion of a credit balance pursuant to subsection O of this section, and the person to whom the credit balance is sold or conveyed, shall notify the director of the sale or conveyance within thirty days after the sale or conveyance on a form prescribed and furnished by the director.

Q. The director shall establish and collect a reasonable fee from the conveyee or purchaser of a credit balance pursuant to subsection O of this section to cover the cost of administrative services and other expenses associated with registering a deduction to the conveyor's or seller's flexibility account balance and an addition to the conveyee's or purchaser's flexibility account balance pursuant to subsection R of this section. The conveyee or purchaser shall pay the fee at the time the notice required pursuant to subsection P of this section is given to the director. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this subsection in the water resources fund established by § 45-117.

R. A sale or conveyance of all or part of a credit balance under subsection O of this section is effective only if the director receives the notice required by subsection P of this section and the fee required by subsection Q of this section within thirty days after the sale or conveyance. After receiving the notice and the fee, the director shall register a deduction of the credit amount conveyed or sold from the conveyor's or seller's flexibility account balance and the corresponding addition to the conveyee's or purchaser's flexibility account balance. The deduction and addition to the flexibility account balances are effective as of the date of the sale or conveyance.

S. The director shall report to the president of the senate and the speaker of the house of representatives no later than June 30, 2002 on the effect of conveyances of flexibility account credit balances pursuant to subsection O, paragraph 2 of this section on the achievement of the management goal of each active management area as stated in § 45-562 and on the conservation program included in the management plan for each active management area as provided in § 45-565, and any recommended changes to subsection O, paragraph 2 of this section.

T. Except for subsection N of this section, this section does not apply to:

1. A farm if the person entitled to use groundwater on the farm is exempt from the irrigation water duties established for the farm as provided in § 45-563.02, subsection A or if the director may not establish irrigation water duties for the farm as provided in § 45-563.02, subsection B.

2. A farm if water use within the farm is regulated under a best management practices program adopted by the director pursuant to § 45-566.02, subsection F, § 45-567.02, subsection G or § 45-568.02, subsection F.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1990, Ch. 71, § 2; Laws 1991, Ch. 67, § 3; Laws 1991, Ch. 112, § 3; Laws 1992, Ch. 57, § 1, eff. April 29, 1992; Laws 1992, Ch. 97, § 1; Laws 1992, Ch. 183, § 1; Laws 1992, Ch. 319, § 47; Laws 1993, Ch. 107, § 1; Laws 1994, Ch. 249, § 4; Laws 1994, Ch. 296, § 11, eff. April 25, 1994; Laws 1995, Ch. 258, § 5; Laws 1998, Ch. 47, § 3; Laws 1999, Ch. 187, § 3; Laws 2002, Ch. 5, § 3; Laws 2003, Ch. 98, § 3; Laws 2010, Ch. 282, § 9.

Footnotes

1 Section 48-1701 et seq.

2 Section 45-491 et seq.

A. R. S. § 45-467, AZ ST § 45-467

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 2. Groundwater Code (Refs & Annos)

Article 5. Grandfathered Groundwater Rights in Active Management Areas (Refs & Annos)

A.R.S. § 45-476.01

§ 45-476.01. Late applications for certificates of grandfathered rights; definition

Effective: July 29, 2010

[Currentness](#)

A. A person who claims the right to withdraw or receive and use groundwater in an initial active management area pursuant to a grandfathered right and who failed to file an application on or before July 1, 1983 as required by law may file a late application for a certificate of grandfathered right pursuant to this section on a form provided by the department.

B. A late application for a certificate of grandfathered right shall include the information required in [§ 45-476](#). The fee for filing a late application is one hundred dollars. The director shall deposit, pursuant to [§§ 35-146](#) and [35-147](#), all fees received under this subsection in the water resources fund established by [§ 45-117](#).

C. The director shall review each late application for a certificate of grandfathered right submitted pursuant to this section and may conduct such investigations as the director deems necessary to determine whether the information contained in the application is correct and sufficient to issue a certificate.

D. A person who files a late application for a certificate of grandfathered right pursuant to this section has the burden of establishing by clear and convincing evidence that the necessary statutory requirements for issuing the certificate of grandfathered right have been met.

E. The director's decision on a late application for a certificate of grandfathered right submitted pursuant to this section, is subject to administrative review. A person aggrieved by the director's decision is not entitled to an administrative hearing. A final decision of the director approving or denying the application is not subject to judicial review.

F. If the director, after reviewing a late application, determines that the statutory requirements for issuing the certificate of grandfathered right have been met, the director shall issue a certificate of grandfathered right to the applicant pursuant to [§ 45-481](#). A holder of a certificate of grandfathered right issued pursuant to this section has the same rights and duties as all other holders of certificates of grandfathered rights.

G. Notwithstanding [§ 41-1092.02, subsection D](#), this section is not subject to title 41, chapter 6, article 10.¹

H. For the purposes of this article, “late application for a certificate of grandfathered right” means an application that is filed after July 1, 1983 for a certificate of grandfathered right to withdraw or receive and use groundwater in an initial active management area.

Credits

Added by Laws 1987, Ch. 347, § 4, eff. May 22, 1987. Amended by [Laws 1998, Ch. 57, § 89](#); [Laws 2010, Ch. 282, § 10](#).

Footnotes

[1](#) Section 41-1092 et seq.

A. R. S. § 45-476.01, AZ ST § 45-476.01

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-595

§ 45-595. Well construction requirements; licensing of well drillers

Effective: July 29, 2010

[Currentness](#)

A. New well construction, including modifications of wells, shall be performed under the direct and personal supervision of a well driller who holds a well driller's license pursuant to subsection B of this section.

B. A person who intends to construct or modify one or more wells in this state shall file an application for a well driller's license with the director. The application shall include:

1. The name, mailing address and place of business of the applicant.
2. The applicant's experience and qualifications.
3. Such other information as the director may require.

C. The director, by rule, shall establish qualifications and a reasonable fee of not more than fifty dollars for licenses for well drillers and establish procedures for the evaluation and licensing of applicants. A nontransferable well driller's license shall be issued if the director finds that the applicant meets the qualifications established pursuant to this subsection. The director may revoke a well driller's license for good cause.

D. A person who drills or modifies an exempt well on land owned by that person shall first obtain a single well license from the department. The department shall issue the license to drill the well according to standard small well construction standards. No fee may be charged for a single well license.

E. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this section in the water resources fund established by § 45-117.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1981, Ch. 192, § 19, eff. April 22, 1981; Laws 1981, Ch. 221, § 34, eff. July 1, 1981; Laws 1982, Ch. 292, § 36; [Laws 2010, Ch. 282, § 11](#).

A. R. S. § 45-595, AZ ST § 45-595

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-596

§ 45-596. Notice of intention to drill; fee

Effective: July 29, 2010

[Currentness](#)

A. In an area not subject to active management, a person may not drill or cause to be drilled any well or deepen an existing well without first filing notice of intention to drill pursuant to subsection C of this section or obtaining a permit pursuant to [§ 45-834.01](#). Only one notice of intention to drill is required for all wells that are drilled by or for the same person to obtain geophysical, mineralogical or geotechnical data within a single section of land.

B. In an active management area, a person may not drill or cause to be drilled an exempt well, a replacement well in approximately the same location or any other well for which a permit is not required under this article, article 7 of this chapter¹ or [§ 45-834.01](#) or deepen an existing well without first filing a notice of intention to drill pursuant to subsection C of this section. Only one notice of intention to drill is required for all wells that are drilled by or for the same person to obtain geophysical, mineralogical or geotechnical data within a single section of land.

C. A notice of intention to drill shall be filed with the director on a form that is prescribed and furnished by the director and that shall include:

1. The name and mailing address of the person filing the notice.
2. The legal description of the land on which the well is proposed to be drilled and the name and mailing address of the owner of the land.
3. The legal description of the location of the well on the land.
4. The depth, diameter and type of casing of the proposed well.
5. Such legal description of the land on which the groundwater is proposed to be used as may be required by the director to administer this chapter.
6. When construction is to begin.

7. The proposed uses to which the groundwater will be applied.
8. The name and well driller's license number of the well driller who is to construct the well.
9. The design pumping capacity of the well.
10. If for a replacement well, the maximum capacity of the original well and the distance of the replacement well from the original well.
11. Proof that the director determines to be satisfactory that the person proposing to construct the well holds a valid license issued by the registrar of contractors pursuant to title 32, chapter 10² and that the license is of the type necessary to construct the well described in the notice of intention to drill. If the proposed well driller does not hold a valid license, the director may accept proof that the proposed well driller is exempt from licensing as prescribed by § 32-1121.
12. If any water from the proposed well will be used for domestic purposes as defined in § 45-454, evidence of compliance with the requirements of subsection F of this section.
13. If for a second exempt well at the same location for the same use pursuant to § 45-454, subsection I, proof that the requirements of that subsection are met.
14. If for a well to obtain geophysical, mineralogical or geotechnical data within a single section of land, the information prescribed by this subsection for each well that will be included in that section of land before each well is drilled.
15. Such other information as the director may require.

D. On receiving a notice of intention to drill and the fee required by subsection L of this section, the director shall endorse on the notice the date of its receipt. The director shall then determine whether all information that is required has been submitted and whether the requirements of subsection C, paragraphs 11 and 12 and subsection I of this section have been met. If so, within fifteen days of receipt of the notice, or such longer time as provided in subsection J of this section, the director shall record the notice, mail a drilling card that authorizes the drilling of the well to the well driller identified in the notice and mail written notice of the issuance of the drilling card to the person filing the notice of intention to drill at the address stated in the notice. On receipt of the drilling card, the well driller may proceed to drill or deepen the well as described in the notice of intention to drill. If the director determines that the required information has not been submitted or that the requirements of subsection C, paragraphs 11 and 12 or subsection I of this section have not been met, the director shall mail a statement of the determination to the person giving the notice to the address stated in the notice, and the person giving the notice may not proceed to drill or deepen the well.

E. The well shall be completed within one year after the date of the notice unless the director approves a longer period of time pursuant to this subsection. If the well is not completed within one year or within the time approved by the director pursuant to this subsection, the person shall file a new notice before proceeding with further construction. At the time the drilling card for the well is issued, the director may provide for and approve a completion period that is greater than one year but not to exceed five years from the date of the notice if both of the following apply:

1. The proposed well is a nonexempt well within an active management area and qualifies as a replacement well in approximately the same location as prescribed in rules adopted by the director pursuant to § 45-597.

2. The applicant has submitted evidence that demonstrates one of the following:

(a) This state or a political subdivision of this state has acquired or has begun a condemnation action to acquire the land on which the original well is located.

(b) The original well has been rendered inoperable due to flooding, subsidence or other extraordinary physical circumstances that are beyond the control of the well owner.

F. If any water from a proposed well will be used for domestic purposes as defined in § 45-454 on a parcel of land of five or fewer acres, the applicant shall submit a well site plan of the property with the notice of intention to drill. The site plan shall:

1. Include the county assessor's parcel identification number.

2. Show the proposed well location and the location of any septic tank or sewer system that is either located on the property or within one hundred feet of the proposed well site.

3. Show written approval by the county health authority that controls the installation of septic tanks or sewer systems in the county, or by the local health authority in areas where the authority to control installation of septic tanks or sewer systems has been delegated to a local authority. In areas where there is no local or county authority that controls the installation of septic tanks or sewer systems, the applicant shall apply for approval directly to the department of water resources.

G. Before approving a well site plan submitted pursuant to subsection F of this section, the county or local health authority or the department of water resources, as applicable, pursuant to subsection F of this section, shall review the well site plan and determine whether the proposed well location complies with applicable local laws, ordinances and regulations and any laws or rules adopted under this title and title 49 regarding the placement of wells and the proximity of wells to septic tanks or sewer systems. If the health authority or the department of water resources, as applicable, pursuant to subsection F of this section, finds that the proposed well location complies with this title and title 49³ and with local requirements, it shall endorse the site plan and the proposed well placement in a manner indicating approval. On endorsement, the director of water resources shall approve the construction of the well, if all remaining requirements have been met. If the health authority is unable to determine whether the proposed well location complies with this title and title 49 and local requirements, it shall indicate this on the site plan and the decision to approve or reject the proposed construction rests with the director of water resources. If parcel size, geology or location of improvements on the property prevents the well from being drilled in accordance with this title and title 49 or local requirements, the property owner may apply for a variance. The property owner shall make the request for a variance to the county or local authority if a county or local law, ordinance or regulation prevents the proposed construction. If a law or rule adopted under this title or title 49 prevents the proposed construction, the property owner shall make the request for a variance directly to the department of water resources. The request for a variance shall be in the form and shall contain the information that the department of water resources, county or local authority may require. The department of water resources, or the county or local authority whose law, ordinance or regulation prevents the proposed construction, may expressly require

that a particular variance shall include certification by a registered professional engineer or geologist that the location of the well will not pose a health hazard to the applicant or surrounding property or inhabitants. If all necessary variances are obtained, the director of water resources shall approve the construction of the well if all remaining requirements have been met.

H. If a well that was originally drilled as an exploration well, a monitor well or a piezometer well or for any use other than domestic use is later proposed to be converted to use for domestic purposes as defined in § 45-454, the well owner shall file a notice of intention to drill and shall comply with this section before the well is converted and any water from that well is used for domestic purposes.

I. Except as prescribed in subsection K of this section, the director shall not approve the drilling of the well if the director determines that the well will likely cause the migration of contaminated groundwater from a remedial action site to another well, resulting in unreasonably increasing damage to the owner of the well or persons using water from the well. In making this determination, the director of water resources shall follow the applicable criteria in the rules adopted by the director of water resources pursuant to § 45-598, subsection A and shall consult with the director of environmental quality. For the purposes of this subsection:

1. “Contaminated groundwater” means groundwater that has been contaminated by a release of a hazardous substance, as defined in § 49-201, or a pollutant, as defined in § 49-201.

2. “Remedial action site” means any of the following:

(a) The site of a remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code §§ 9601 through 9657), commonly known as “superfund”.

(b) The site of a corrective action undertaken pursuant to title 49, chapter 6.⁴

(c) The site of a voluntary remediation action undertaken pursuant to title 49, chapter 1, article 5.⁵

(d) The site of a remedial action undertaken pursuant to title 49, chapter 2, article 5, including mitigation of a nonhazardous release undertaken pursuant to an order issued by the department of environmental quality pursuant to § 49-286.

(e) The site of a remedial action undertaken pursuant to the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code §§ 6901 through 6992).

(f) The site of remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code § 2701).

J. Except as prescribed in subsection K of this section, the director shall approve or deny the drilling of a well within forty-five days after receipt of the notice of intention to drill if one of the following applies:

1. The proposed well is located within a remedial action site.

2. The proposed well is located within one mile of any of the following remedial action sites:
 - (a) A remedial action undertaken pursuant to title 49, chapter 2, article 5⁶, including mitigation of a nonhazardous release undertaken pursuant to an order issued by the department of environmental quality pursuant to § 49-286.

 - (b) A remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code §§ 9601 through 9657), commonly known as “superfund”.

 - (c) A remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code § 2701).

3. The proposed well is located within one-half mile of either of the following remedial action sites:

- (a) A remedial action undertaken pursuant to title 49, chapter 1, article 5.

- (b) A remedial action undertaken pursuant to the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code §§ 6901 through 6992).

4. The proposed well is located within five hundred feet of the site of a corrective action undertaken pursuant to title 49, chapter 6.

K. Subsections I and J of this section do not apply to the deepening of a well or to the drilling of a replacement well in approximately the same location.

L. A notice of intention to drill filed under this section shall be accompanied by a filing fee of one hundred fifty dollars, except that a notice filed for a proposed well that will not be located within an active management area or an irrigation nonexpansion area, that will be used solely for domestic purposes as defined in § 45-454 and that will have a pump with a maximum capacity of not more than thirty-five gallons per minute shall be accompanied by a filing fee of one hundred dollars. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees collected pursuant to this subsection in the well administration and enforcement fund established by § 45-606.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1985, Ch. 323, § 19, eff. May 10, 1985; Laws 1986, Ch. 289, § 8; Laws 1988, Ch. 104, § 17, eff. May 24, 1988; Laws 1990, Ch. 176, § 3; Laws 1991, Ch. 19, § 6; Laws 1992, Ch. 270, § 5; Laws 1992, Ch. 280, § 1; Laws 1993, Ch. 107, § 6; Laws 1994, Ch. 291, § 26; Laws 1994, Ch. 300, § 1; Laws 2000, Ch. 85, § 2; Laws 2002, Ch. 133, § 4; Laws 2003, Ch. 165, § 1, eff. May 7, 2003; Laws 2005, Ch. 254, § 2; Laws 2006, Ch. 56, § 1; Laws 2007, Ch. 209, § 1; Laws 2010, Ch. 309, § 13.

Notes of Decisions (1)

Footnotes

- 1 Section 45-511 et seq.
- 2 Section 32-1101 et seq.
- 3 Sections 45-101 et seq., 49-101 et seq.
- 4 Section 49-1001 et seq.
- 5 Section 49-171 et seq.
- 6 Section 49-281 et seq.

A. R. S. § 45-596, AZ ST § 45-596

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-599

§ 45-599. Permit application; contents; correction
of defective application; issuance of permit; fee

Currentness

A. An application for a permit to construct a new well or replacement well in a new location shall be made on a form that is prescribed and furnished by the director and that includes:

1. The name and mailing address of the applicant.
2. The legal description of the land upon which the new well is proposed to be constructed and the name and mailing address of the owner of the land.
3. The legal description of the proposed location of the new well on the land.
4. If for a replacement well, the legal description of the land upon which the original well is located, the name and mailing address of the owner of the land, the legal description of the location of the original well on the land, the depth and diameter of the original well and evidence of proper abandonment.
5. The depth, diameter and type of casing of the new well.
6. Such legal description of the land upon which the groundwater is proposed to be used as may be required by the director to administer this chapter.
7. When construction is to begin.
8. The proposed use of the groundwater to be withdrawn.
9. The design pumping capacity of the new well.
10. The name and well driller's license number of the well driller who is to construct the well.

11. The estimated time required to complete the well, if more than one year from the date of receipt of the permit.

12. Such other information including any maps, drawings and data as the director may require.

B. Upon receipt of a permit application and the fee required by subsection J of this section, the director shall endorse on the application the date of its receipt. If the application is incorrect or incomplete, the director may request additional information from the applicant. The director may conduct independent investigations as may be necessary to determine whether the application should be approved or rejected.

C. The director shall approve an application for a permit for a new well or a replacement well in a new location if the proposed well complies with the rules adopted pursuant to [§ 45-598, subsection A](#) and, if the proposed well is in the Santa Cruz active management area, if the location of the proposed well is consistent with the management plan for the active management area.

D. Except as provided in subsection E of this section, within sixty days of receipt of a complete and correct application and the fee required by subsection J of this section, the director shall approve or reject the application and mail notice of the action to the applicant.

E. If the director determines that an administrative hearing should be held before approving or rejecting an application, the director shall notify the applicant of the date of the hearing within sixty days of receipt of the complete and correct application and the fee required by subsection J of this section.

F. If at the request of the applicant the director determines that an emergency exists, the director shall expedite all decisions under this section.

G. If the application is approved, the director shall issue a permit and the applicant may proceed to construct the well. If the application is rejected, the applicant shall not proceed with construction of the well. The well shall be completed within one year of receipt of the permit, unless the director in granting the permit approves a longer period to complete the well. If the well is not completed within one year or the longer period approved by the director, the applicant shall file a new application before proceeding with construction.

H. The permit shall state the following:

1. The legal description of the land upon which the well may be constructed.

2. The legal description of the location of the new well on the land.

3. The depth and diameter of the well and type of casing.

4. The maximum pumping capacity of the well.

5. The legal description of the land upon which the groundwater will be used.

6. The use of the groundwater to be withdrawn.

7. The latest date for completing the well.

I. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

J. An application for a permit filed under this section shall be accompanied by a filing fee of one hundred fifty dollars. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees collected pursuant to this subsection in the well administration and enforcement fund established by § 45-606.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1982, Ch. 191, § 24, eff. April 22, 1982; Laws 1983, Ch. 306, § 15, eff. April 28, 1983; Laws 1984, Ch. 148, § 13, eff. April 18, 1984; Laws 1994, Ch. 296, § 19, eff. April 25, 1994; Laws 1998, Ch. 57, § 100; Laws 2002, Ch. 133, § 6; Laws 2003, Ch. 165, § 2, eff. May 7, 2003.

A. R. S. § 45-599, AZ ST § 45-599

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 3.1. Underground Water Storage, Savings and Replenishment (Refs & Annos)

Article 5. Permit Application Procedures, Financial Provisions and Enforcement

A.R.S. § 45-871.01

§ 45-871.01. Permit application; fee; notice of application; objections; hearing; appeal

Effective: July 29, 2010

[Currentness](#)

A. The director shall prescribe and furnish application forms for the permits prescribed by articles 2 and 3 of this chapter.¹ The application forms shall require the applicant to submit the information needed by the director to determine whether the permit may be issued. The director shall establish and collect a reasonable fee from the applicant to cover the cost of administrative services and other expenses associated with evaluating and issuing each permit. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this subsection in the water resources fund established by § 45-117.

B. On receipt of an application for a permit pursuant to this chapter, the director shall endorse on the application the date of its receipt and shall keep a record of the application. Within fifteen days after receipt of an application for an underground storage facility permit, the director shall post notice of the application on the department's website until the director issues a decision on the application. The notice shall state the name of the applicant, the location of the proposed underground storage facility, the date the application was filed and the application number. The notice required by this subsection is in addition to the notice requirement in subsection D of this section. The director shall conduct a review of the application within one hundred days of receipt of the application. If the director determines in the review that the application is incomplete or incorrect, the director shall notify the applicant and the review period is extended by fifteen days. The application is incomplete or incorrect until the applicant files the information requested in the application. The director may conduct independent investigations as necessary to determine whether the application should be approved or rejected.

C. If the application is for water storage at an underground storage facility that is exempt from the requirement for an aquifer protection permit under § 49-250, subsection B, paragraph 12, 13 or 24, the director of water resources shall consult with the director of environmental quality and shall develop a coordinated and unified permit review process, that conforms to the time schedule prescribed by this section, to determine whether the permit application is correct and whether the development of a plan of action for monitoring and data analysis shall be required.

D. Except as provided in subsection E of this section, if the application is determined to be complete and correct and the application is for a storage facility permit or a water storage permit, the director, within fifteen days of that determination or a longer period if requested by the applicant, shall give notice of the application once each week for two consecutive weeks in a newspaper of general circulation in the county or counties in which persons reside who could reasonably be expected to be affected by the water storage. The director shall also give notice by first class mail to each city, town, private water company, conservation district, irrigation district and electrical district that serves land within the area of impact of the stored water. The notice shall state that persons who may be adversely affected by the water storage may file written objections to the issuance of the permit with the director for fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, shall be signed by the objector or the objector's agent or attorney and shall clearly set forth the reasons

why the permit should not be issued. The grounds for objection are limited to whether the application meets the criteria for issuing the permit being requested as prescribed by articles 2 and 3 of this chapter.

E. If the application is determined to be complete and correct and the application is for a water storage permit to store Colorado river water at a storage facility where storage of Colorado river water has previously been permitted, the director may issue the permit within twenty days of that determination if all of the following apply:

1. The holder of the storage facility permit with which the water storage permit will be affiliated has consented to the water storage.
2. The water storage permit will not require a modification of an affiliated water storage facility permit.
3. Colorado river water will be the only type of water stored under the water storage permit.
4. The applicant has the right to use the Colorado river water.

F. Except as provided in [§ 45-834.01, subsection D](#), if the application is determined to be complete and correct and the application is for a recovery well permit, the director, within fifteen days of the determination or a longer period if requested by the applicant, shall give notice of the application once each week for two consecutive weeks in a newspaper of general circulation in the county in which the applicant proposes to recover stored water. If the application is for a well located inside of or within three miles of the exterior boundaries of the service area of a city, town, private water company or irrigation district, the applicant shall give notice of the application by first class mail to each city, town, private water company or irrigation district within that distance. The applicant shall file proof of the notice with the director. The notice shall state that persons who may be adversely affected by the recovery well may file written objections to the issuance of the permit with the director for fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, shall be signed by the objector or the objector's agent or attorney and shall clearly set forth reasons why the permit should not be issued. The grounds for objection are limited to whether the application meets the criteria for issuing a recovery well permit as set forth in [§ 45-834.01, subsection B](#). For the purposes of this subsection, if the proposed recovery well is located within three miles outside of the exterior boundaries of the service area of a city, town, private water company or irrigation district, a city, town, private water company or irrigation district within that distance shall be considered a person who may be adversely affected by the recovery well.

G. In appropriate cases, including cases in which a proper objection to the permit application has been filed, an administrative hearing may be held before the director's decision on the application if the director deems a hearing necessary. At least thirty days before the hearing, the director shall notify the applicant and any person who filed a proper objection to the issuance of the permit. The hearing shall be scheduled for at least sixty days but not more than ninety days after the expiration of the time in which to file objections.

H. If a hearing is not held, the director shall issue a decision and order within six months of the date notice of the application is first given pursuant to subsection D or F of this section, or within ninety days in the case of an application under article 6 of this chapter.² The director shall record and endorse the approval or rejection of the application on the application. If the permit is denied, the director shall return a copy of the application to the applicant specifically stating the reasons for denial.

I. The applicant or any person who filed a proper objection to the application may seek judicial review of the final decision of the director as provided in § 45-114, subsection B in superior court as provided in § 45-405.

J. Section 45-114, subsections A and B govern administrative proceedings, rehearings or review and judicial review of final decisions of the director under this section. If an administrative hearing is held, it shall be conducted in the active management area in which the storage or recovery is located.

K. On receipt of an application for a permit pursuant to this section, the director shall provide written notice of the proposed permit to the city, town or county that has land use jurisdiction over the site that is the subject of the permit. The notice shall be given at the same time and in the same manner as the notices prescribed by subsections D and F of this section in order to provide the city, town or county with the opportunity to comment on the proposed facility's or well's compliance with site planning and operational requirements of the city, town or county. This subsection shall not be construed to limit the exclusive authority of the director to determine the issuance of the permit or the site of the facility or well or to reduce the authority of the city, town or county to enforce its applicable ordinances governing site planning and operational requirements.

Credits

Added by Laws 1994, Ch. 291, § 32. Amended by Laws 1995, Ch. 258, § 24; Laws 1996, Ch. 103, § 17, eff. April 9, 1996; Laws 1996, Ch. 194, § 3; Laws 1997, Ch. 15, § 15, eff. July 21, 1997; Laws 1998, Ch. 48, § 1; Laws 1998, Ch. 57, § 103; Laws 2003, Ch. 155, § 7; Laws 2007, Ch. 161, § 1; Laws 2010, Ch. 282, § 14.

Footnotes

¹ Sections 45-811.01 et seq. and 45-831.01 et seq.

² Section 45-891.01 et seq.

A. R. S. § 45-871.01, AZ ST § 45-871.01

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 4. Water Exchanges (Refs & Annos)
Article 3. Permits for Water Exchanges

A.R.S. § 45-1041

§ 45-1041. Water exchange permits; fee

Effective: July 29, 2010

[Currentness](#)

A. A person who seeks to give surface water, other than Colorado river water, in a water exchange to which neither [§ 45-1002, subsection A](#), paragraph 1 nor 3 applies shall apply to the director for a water exchange permit. The director shall issue either a specific use water exchange permit or a general use water exchange permit, as applicable, if the applicant demonstrates that all of the following apply:

1. The water exchange will be made pursuant to a written contract.
2. The water exchange will not affect vested rights to water.
3. Each party to the water exchange contract has a right to the water the party will give in the water exchange.
4. If an applicant is not a city, town, private water company or irrigation district, any new or increased pumping by the applicant from a well within an active management area pursuant to the water exchange will not unreasonably increase damage to surrounding land or other water users.
5. If an applicant is a city, town, private water company or irrigation district with a service area located partly or wholly in an active management area, any new or increased pumping by the applicant within the applicant's service area pursuant to the water exchange is consistent with the management plan and achievement of the management goal for the active management area.
6. Each party to a water exchange contract either:
 - (a) Receives at least ninety per cent of the quantity of water that the other party gives in the water exchange.
 - (b) Receives at least fifty per cent of the quantity of water that the other party gives in the water exchange, unless otherwise authorized by law, and the director determines the water exchange is beneficial to water management in this state.

B. Subsection A of this section does not apply to the proposed modification of a previously enrolled or permitted water exchange contract that involves surface water other than Colorado river water, if the proposed modification meets both of the following conditions:

1. The proposed modification involves the addition of one or more of the following water sources as the only new or additional water source of exchange:

(a) Colorado river water.

(b) Groundwater.

(c) Effluent.

(d) Surface water that is captured in the additional storage capacity created by modified Roosevelt dam after April 9, 1986.

2. Notice of the proposed modification is filed by the person seeking the modification pursuant to [§ 45-1051](#) and is subject to the requirements of that section and the conditions prescribed by [§ 45-1052](#).

C. Any person may apply for a specific use water exchange permit. A specific use permit allows the parties to exchange specific sources of water in specific quantities for the uses and in the locations specified in the permit.

D. Two or more political subdivisions of this state, or one or more political subdivisions and one or more private water companies, Indian communities, agencies of this state or agencies of the United States may apply for a general use water exchange permit. A general use permit shall specify that the holders may engage in one or more exchanges of water at any time during the term of the permit. The water received pursuant to a general use permit may be used for any lawful purpose specified in the permit. Before making any exchange pursuant to a general use permit, the parties to the permit shall notify the director of the amounts of water to be exchanged and the specific uses to which each source of water will be applied.

E. An application for a water exchange permit shall be accompanied by a filing fee in an amount to be determined by rule by the director to cover the cost of administering this article.

F. The director shall deposit, pursuant to [§§ 35-146](#) and [35-147](#), all fees received under this section in the water resources fund established by [§ 45-117](#).

Credits

Added by [Laws 1992, Ch. 225, § 2](#). Amended by [Laws 1993, Ch. 107, § 12](#); [Laws 1995, Ch. 258, § 26](#); [Laws 1998, Ch. 47, § 8](#); [Laws 2010, Ch. 282, § 17](#).

A. R. S. § 45-1041, AZ ST § 45-1041

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 6. Dams and Reservoirs (Refs & Annos)

Article 1. Supervision of Dams, Reservoirs and Projects (Refs & Annos)

A.R.S. § 45-1204

§ 45-1204. Estimated cost of dam; application fees

Currentness

A. The estimated cost of the dam or alterations thereof shall include the cost of all labor and materials entering into the construction of the dam and appurtenant works. The cost of preliminary investigation and surveys, the construction plant and all other items properly included in the cost of the dam shall be chargeable to the cost of the dam.

B. The director shall establish by rule and the department shall collect a reasonable filing fee which shall be based on the estimated cost of the dam but in no event shall the fee exceed two per cent of the estimated cost. The applicant shall pay the filing fee at the time of filing the application. The fee shall be required of all applicants including the state and its departments, institutions or agencies.

C. An application shall not be considered nor shall construction be permitted until the filing fee has been paid.

Credits

Formerly § 45-704. Renumbered as § 45-1204 by Laws 1987, Ch. 2, § 4, eff. Feb. 27, 1987. Amended by Laws 1987, Ch. 287, § 1; Laws 1999, Ch. 187, § 13.

Notes of Decisions (2)

A. R. S. § 45-1204, AZ ST § 45-1204

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Title 45. Waters

Chapter 9. Weather Control and Cloud Modification (Refs & Annos)

Article 1. In General (Refs & Annos)

A.R.S. § 45-1603

§ 45-1603. Application fee; statement accompanying application

Effective: July 29, 2010

[Currentness](#)

A. At the time of applying for the license, the applicant shall pay to the director a fee of one hundred dollars, and shall file an application in the form prescribed by the director and furnish a statement showing:

1. The name and address of the applicant.
2. The names of the operating personnel, and if unincorporated all individuals connected with the organization, or if a corporation the names of each of the officers and directors thereof, together with the address of each.
3. The scientific qualifications of all operating or supervising personnel.
4. A statement of all other contracts completed or in process of completion at the time the application is made, giving the names and addresses of the persons to whom the services were furnished and the areas in which such operations have been or are being conducted.
5. Methods of operation the licensee will use and the description of the aircraft, ground and meteorological services to be utilized.
6. Names of the contracting parties within the state, including:
 - (a) The area to be served.
 - (b) The months in which operations will be conducted.
 - (c) The dates when evaluations will be submitted.

B. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this section in the water resources fund established by § 45-117.

Credits

Formerly § 45-2403. Amended by Laws 1971, Ch. 49, § 27, eff. April 13, 1971; Laws 1980, 4th S.S., Ch. 1, § 121, eff. June 12, 1980. Renumbered as § 45-1603 by Laws 1987, Ch. 2, § 12, eff. Feb. 27, 1987. Amended by [Laws 2010, Ch. 282, § 21](#).

A. R. S. § 45-1603, AZ ST § 45-1603

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 9. Weather Control and Cloud Modification (Refs & Annos)

Article 1. In General (Refs & Annos)

A.R.S. § 45-1605

§ 45-1605. Equipment license; fee; application; reports required; revocation of license

Effective: July 29, 2010

[Currentness](#)

A. Any individual or corporation engaging in manufacturing, selling or offering for sale, leasing or offering to lease, licensing or offering to license equipment and supplies designed for weather control or cloud modification shall, before engaging in such manufacture, sale or offering for sale, procure a license from the director. The license shall be issued upon payment of a license fee of ten dollars and the filing of an application which shall show:

1. The name and address of the applicant.
2. The full description of the type and design of the equipment and supplies manufactured and sold by the applicant.
3. The operating technique of the equipment or supplies.

B. Within sixty days after issuance of an equipment license and semiannually thereafter, the licensee shall file with the director a copy of all advertising material used in selling or offering for sale, leasing or offering for lease, licensing or offering for license the equipment and supplies manufactured or sold by it.

C. The holder of a license shall within ten days after each sale of equipment or supplies report to the director, in writing, the exact character and quantity of equipment or supplies sold, the date of the sale and the persons to whom the sale was made.

D. Failure to file a copy of advertising material or reports required in this section constitutes grounds for immediate revocation of the equipment license.

E. The director shall deposit, pursuant to §§ [35-146](#) and [35-147](#), all fees received under this section in the water resources fund established by § [45-117](#).

Credits

Formerly § 45-2405. Amended by Laws 1971, Ch. 49, § 29, eff. April 13, 1971; Laws 1980, 4th S.S., Ch. 1, § 123, eff. June 12, 1980. Renumbered as § 45-1605 by Laws 1987, Ch. 2, § 12, eff. Feb. 27, 1987. Amended by [Laws 2010, Ch. 282, § 22](#).

A. R. S. § 45-1605, AZ ST § 45-1605

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

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TAB C2

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C3

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C4

Arizona Revised Statutes Annotated
Title 41. State Government (Refs & Annos)
Chapter 6. Administrative Procedure (Refs & Annos)
Article 7.1. Licensing Time Frames (Refs & Annos)

A.R.S. § 41-1073

§ 41-1073. Time frames; exception

Currentness

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or [§ 49-426](#).

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.

6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

Credits

Added by [Laws 1996, Ch. 102, § 42](#). Amended by [Laws 1998, Ch. 57, § 52](#); [Laws 2002, Ch. 334, § 13](#).

A. R. S. § 41-1073, AZ ST § 41-1073

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

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TAB C5

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 9. Management (Refs & Annos)

A.R.S. § 45-576

§ 45-576. Certificate of assured water supply; designated cities,
towns and private water companies; exemptions; definition

Effective: August 9, 2017

[Currentness](#)

A. Except as provided in subsections G and J of this section, a person who proposes to offer subdivided lands, as defined in [§ 32-2101](#), for sale or lease in an active management area shall apply for and obtain a certificate of assured water supply from the director prior to presenting the plat for approval to the city, town or county in which the land is located, where such is required, and prior to filing with the state real estate commissioner a notice of intention to offer such lands for sale or lease, pursuant to [§ 32-2181](#), unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

B. Except as provided in subsections G and J of this section, a city, town or county may approve a subdivision plat only if the subdivider has obtained a certificate of assured water supply from the director or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section. The city, town or county shall note on the face of the approved plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

C. Except as provided in subsections G and J of this section, the state real estate commissioner may issue a public report authorizing the sale or lease of subdivided lands only on compliance with either of the following:

1. The subdivider, owner or agent has paid any activation fee required under [§ 48-3772, subsection A](#), paragraph 7 and any replenishment reserve fee required under [§ 48-3774.01, subsection A](#), paragraph 2 and has obtained a certificate of assured water supply from the director.

2. The subdivider has obtained a written commitment of water service for the lands from a city, town or private water company designated as having an assured water supply pursuant to this section and the subdivider, owner or agent has paid any activation fee required under [§ 48-3772, subsection A](#), paragraph 7.

D. The director shall designate private water companies in active management areas that have an assured water supply. If a city or town acquires a private water company that has contracted for central Arizona project water, the city or town shall assume the private water company's contract for central Arizona project water.

E. The director shall designate cities and towns in active management areas where an assured water supply exists. If a city or town has entered into a contract for central Arizona project water, the city or town is deemed to continue to have an assured water supply until December 31, 1997. Commencing on January 1, 1998, the determination that the city or town has an assured water supply is subject to review by the director and the director may determine that a city or town does not have an assured water supply.

F. The director shall notify the mayors of all cities and towns in active management areas and the chairmen of the boards of supervisors of counties in which active management areas are located of the cities, towns and private water companies designated as having an assured water supply and any modification of that designation within thirty days of the designation or modification. If the service area of the city, town or private water company has qualified as a member service area pursuant to title 48, chapter 22, article 4,¹ the director shall also notify the conservation district of the designation or modification and shall report the projected average annual replenishment obligation for the member service area based on the projected and committed average annual demand for water within the service area during the effective term of the designation or modification subject to any limitation in an agreement between the conservation district and the city, town or private water company. For each city, town or private water company that qualified as a member service area under title 48, chapter 22² and was designated as having an assured water supply before January 1, 2004, the director shall report to the conservation district on or before January 1, 2005 the projected average annual replenishment obligation based on the projected and committed average annual demand for water within the service area during the effective term of the designation subject to any limitation in an agreement between the conservation district and the city, town or private water company. Persons proposing to offer subdivided lands served by those designated cities, towns and private water companies for sale or lease are exempt from applying for and obtaining a certificate of assured water supply.

G. This section does not apply in the case of the sale of lands for developments that are subject to a mineral extraction and processing permit or an industrial use permit pursuant to §§ 45-514 and 45-515.

H. The director shall adopt rules to carry out the purposes of this section. On or before January 1, 2008, the rules shall provide for a reduction in water demand for an application for a designation of assured water supply or a certificate of assured water supply if a gray water reuse system will be installed that meets the requirements of the rules adopted by the department of environmental quality for gray water systems and if the application is for a certificate of assured water supply, the land for which the certificate is sought must qualify as a member land in a conservation district pursuant to title 48, chapter 22, article 4. For the purposes of this subsection, "gray water" has the same meaning prescribed in § 49-201.

I. If the director designates a municipal provider as having an assured water supply under this section and the designation lapses or otherwise terminates while the municipal provider's service area is a member service area of a conservation district, the municipal provider or its successor shall continue to comply with the consistency with management goal requirements in the rules adopted by the director under subsection H of this section as if the designation was still in effect with respect to the municipal provider's designation uses. When determining compliance by the municipal provider or its successor with the consistency with management goal requirements in the rules, the director shall consider only water delivered by the municipal provider or its successor to the municipal provider's designation uses. A person is the successor of a municipal provider if the person commences water service to uses that were previously designation uses of the municipal provider. Any groundwater

delivered by the municipal provider or its successor to the municipal provider's designation uses in excess of the amount allowed under the consistency with management goal requirements in the rules shall be considered excess groundwater for purposes of title 48, chapter 22. For the purposes of this subsection, "designation uses" means all water uses served by a municipal provider on the date the municipal provider's designation of assured water supply lapses or otherwise terminates and all recorded lots within the municipal provider's service area that were not being served by the municipal provider on that date but that received final plat approval from a city, town or county on or before that date. Designation uses do not include industrial uses served by an irrigation district under § 45-497.

J. Subsections A, B and C of this section do not apply to a person who proposes to offer subdivided land for sale or lease in an active management area if all the following apply:

1. The director issued a certificate of assured water supply for the land to a previous owner of the land and the certificate was classified as a type A certificate under rules adopted by the director pursuant to subsection H of this section.
2. The director has not revoked the certificate of assured water supply described in paragraph 1 of this subsection, and proceedings to revoke the certificate are not pending before the department or a court. The department shall post on its website a list of all certificates of assured water supply that have been revoked or for which proceedings are pending before the department or a court.
3. The plat submitted to the department in the application for the certificate of assured water supply described in paragraph 1 of this subsection has not changed.
4. Water service is currently available to each lot within the subdivided land and the water provider listed on the certificate of assured water supply described in paragraph 1 of this subsection has not changed.
5. The subdivided land qualifies as a member land under title 48, chapter 22 and the subdivider has paid any activation fee required under § 48-3772, subsection A, paragraph 7 and any replenishment reserve fee required under § 48-3774.01, subsection A, paragraph 2.
6. The plat is submitted for approval to a city, town or county that is listed on the department's website as a qualified platting authority.

K. Subsection J of this section does not affect the assignment of a certificate of assured water supply as prescribed by § 45-579.

L. For the purposes of this section, "assured water supply" means all of the following:

1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to § 45-576.02, subsection A, paragraph 1, with respect to an applicant that is a member of the district, "sufficient groundwater" for the purposes of this paragraph means that the proposed groundwater withdrawals that the applicant will cause over a period of one hundred years will be of adequate quality and will not exceed, in combination with other withdrawals from land in the replenishment district, a depth to water of

one thousand feet or the depth of the bottom of the aquifer, whichever is less. In determining depth to water for the purposes of this paragraph, the director shall consider the combination of:

(a) The existing rate of decline.

(b) The proposed withdrawals.

(c) The expected water requirements of all recorded lots that are not yet served water and that are located in the service area of a municipal provider.

2. The projected groundwater use is consistent with the management plan and achievement of the management goal for the active management area.

3. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage facilities or treatment works. The director may accept evidence of the construction assurances required by [§ 9-463.01](#), [11-823](#) or [32-2181](#) to satisfy this requirement.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1981, Ch. 192, § 17, eff. April 22, 1981; Laws 1982, Ch. 191, § 22, eff. April 22, 1982; Laws 1984, Ch. 103, § 8; [Laws 1989, Ch. 230, § 61](#); [Laws 1991, Ch. 112, § 5](#); [Laws 1991, Ch. 211, § 20](#); [Laws 1993, Ch. 200, § 11](#); [Laws 1994, Ch. 203, § 23](#), eff. April 19, 1994; [Laws 1994, Ch. 278, § 7](#); [Laws 1994, Ch. 291, § 21](#); [Laws 1996, Ch. 103, § 9](#), eff. April 9, 1996; [Laws 2003, Ch. 155, § 1](#); [Laws 2004, Ch. 318, § 4](#); [Laws 2005, Ch. 198, § 7](#); [Laws 2006, Ch. 228, § 1](#); [Laws 2010, Ch. 244, § 37](#), eff. Oct. 1, 2011; [Laws 2017, Ch. 298, § 1](#).

[Notes of Decisions \(4\)](#)

Footnotes

[1](#) Section 48-3771 et seq.

[2](#) Section 48-3701 et seq.

A. R. S. § 45-576, AZ ST § 45-576

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C6

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-591.01

§ 45-591.01. Oil, gas, helium and geothermal wells; exemption

Currentness

Wells drilled for oil, gas or helium pursuant to the provisions of title 27¹ are not wells as defined in this chapter. The director, by rule or regulation, may exempt exploration wells from any requirement of this article that the director determines is not necessary for the protection of groundwater. Geothermal wells drilled pursuant to the provisions of title 27 are not wells as defined in this chapter when the director finds that the rules and regulations of the oil and gas conservation commission require the reinjection of all waters associated with the geothermal resource to the producing strata.

Credits

Added by Laws 1982, Ch. 208, § 4.

Footnotes

¹ Section 27-101 et seq.

A. R. S. § 45-591.01, AZ ST § 45-591.01

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-594

§ 45-594. Well construction standards; remedial measures

Currentness

A. The director shall adopt rules establishing construction standards for new wells and replacement wells, the deepening and abandonment of existing wells and the capping of open wells.

B. All well construction, replacement, deepening and abandonment operations shall comply with the rules adopted pursuant to this section. A well owner shall cap an open well according to the rules adopted pursuant to subsection A.

C. If the director determines that a well is not capped in compliance with the rules adopted pursuant to subsection A, that the well is dangerous to property or public health or safety and that there is not sufficient time to issue and enforce an order relative to its capping, the director may employ remedial measures necessary to protect property or public health or safety. The remedial measures may include remaining in full charge and control of the well site until the well has been rendered safe and capping the well. This subsection does not relieve an owner or operator of a well from the legal duties, obligations and liabilities arising from such ownership or operation.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1986, Ch. 154, § 11, eff. April 18, 1986.

A. R. S. § 45-594, AZ ST § 45-594

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-595

§ 45-595. Well construction requirements; licensing of well drillers

Effective: July 29, 2010

[Currentness](#)

A. New well construction, including modifications of wells, shall be performed under the direct and personal supervision of a well driller who holds a well driller's license pursuant to subsection B of this section.

B. A person who intends to construct or modify one or more wells in this state shall file an application for a well driller's license with the director. The application shall include:

1. The name, mailing address and place of business of the applicant.
2. The applicant's experience and qualifications.
3. Such other information as the director may require.

C. The director, by rule, shall establish qualifications and a reasonable fee of not more than fifty dollars for licenses for well drillers and establish procedures for the evaluation and licensing of applicants. A nontransferable well driller's license shall be issued if the director finds that the applicant meets the qualifications established pursuant to this subsection. The director may revoke a well driller's license for good cause.

D. A person who drills or modifies an exempt well on land owned by that person shall first obtain a single well license from the department. The department shall issue the license to drill the well according to standard small well construction standards. No fee may be charged for a single well license.

E. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this section in the water resources fund established by § 45-117.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1981, Ch. 192, § 19, eff. April 22, 1981; Laws 1981, Ch. 221, § 34, eff. July 1, 1981; Laws 1982, Ch. 292, § 36; [Laws 2010, Ch. 282, § 11](#).

A. R. S. § 45-595, AZ ST § 45-595

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-603

§ 45-603. Criteria for rules and regulations

Currentness

In developing rules and regulations under this article, the director shall consider, among other things, water quality, cones of depression and land subsidence.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980.

A. R. S. § 45-603, AZ ST § 45-603

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-605

§ 45-605. Well inspections; cross-contamination; remedial measures; definition

Currentness

A. The director of water resources, in consultation with the director of environmental quality, may inspect wells for vertical cross-contamination of groundwater by hazardous substances and may take appropriate remedial actions to prevent or mitigate the cross-contamination at no cost to the well owner, subject to subsection D of this section. The director shall consult with and seek the voluntary compliance of affected well owners regarding well access, investigations and remedial actions. On receiving permission from the well owner or operator, the director or the director's designee may enter property owned or operated by the well owner at reasonable times under any of the following circumstances:

1. To inspect and collect samples from a well and to inspect and copy all documents or records relating to the well. If a sample is obtained pursuant to this section, the director, before leaving the property, shall give to the well owner or operator a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of these samples shall be furnished promptly to the well owner.

2. To conduct appropriate remedial actions regarding vertical cross-contamination.

B. The director shall provide notice to the director of environmental quality of the results of the inspection, including copies of the department's records and documents and the analysis of any samples taken. If it is determined that the well results in vertical cross-contamination, the director, upon receiving permission from the well owner or operator and approval from the director of the department of environmental quality, may take appropriate remedial actions, including well modification, abandonment or replacement, or provision of a replacement water supply.

C. A well owner who is not a responsible party pursuant to title 49, chapter 2, article 5¹ and who cooperates with the investigation and remedial activities of the director and the department of environmental quality to the extent possible and consistent with the owner's water delivery responsibilities and system operational requirements, shall receive a covenant not to sue from the director of environmental quality pursuant to § 49-282.04, subsection C.

D. Notwithstanding subsection C of this section, if the director takes a remedial action pursuant to subsection A of this section and the well owner or operator is later determined to be responsible under title 49, chapter 2, article 5 for a release or threatened release of hazardous substances that contaminated or may have contaminated the well, the well owner or operator shall reimburse the water quality assurance revolving fund established pursuant to § 49-282 for the owner or operator's proportionate share of the costs incurred in taking the action.

E. The director shall notify an applicant for a permit or a person who files a notice of intent to drill a new or replacement well if the location of the proposed well is within a sub-basin where there is a site on the registry established pursuant to [§ 49-287.01, subsection D](#). The director shall adopt rules requiring the review of notices and applications regarding new or replacement wells to identify whether a well will be located where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination by the well. The rules shall require that a new or replacement well in this type of location be designed and constructed in a manner to prevent vertical cross-contamination within an aquifer.

F. On approval from the director of environmental quality, the department of water resources may be reimbursed for any actions conducted pursuant to title 49, chapter 2, article 5.

G. The well inspection authority granted the director in this section is in addition to any other well inspection authority otherwise prescribed in this title.

H. For purposes of this section, “vertical cross-contamination” has the same meaning prescribed by [§ 49-281](#).

Credits

Added by [Laws 1997, Ch. 287, § 15, eff. April 29, 1997](#).

Footnotes

[1](#) Section 49-281 et seq.

A. R. S. § 45-605, AZ ST § 45-605

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C7

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-604

§ 45-604. Water measuring devices

Currentness

A. Except as provided in subsections B, C and D of this section, a person who withdraws groundwater from a nonexempt well in an active management area or an irrigation non-expansion area, a person who withdraws water from a non-exempt well in the Santa Cruz active management area or a person who withdraws groundwater for transportation to an initial active management area pursuant to article 8.1 of this chapter¹ shall use a water measuring device approved by the director.

B. A person who holds a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit in the amount of ten or fewer acre-feet per year is not required to use a water measuring device to measure withdrawals pursuant to that grandfathered right or groundwater withdrawal permit unless the person holds more than one such right or permit in the aggregate amount of more than ten acre-feet per year and withdraws more than ten acre-feet of groundwater per year pursuant to those rights or permits from one well.

C. In an irrigation non-expansion area:

1. A person who withdraws ten or fewer acre-feet of groundwater per year from a non-exempt well for a non-irrigation use is not required to use a water measuring device to measure withdrawals from that well.

2. A person who withdraws groundwater from a non-exempt well for an irrigation use is not required to use a water measuring device to measure withdrawals from that well if both of the following apply:

(a) Groundwater withdrawn from the well for an irrigation use is used only on land that is owned by a person who has the right under § 45-437 to irrigate ten or fewer contiguous acres at the place of the use.

(b) Groundwater withdrawn from the well is not used on land that is part of an integrated farming operation.

D. In an active management area, a person, other than an irrigation district, who withdraws groundwater from a non-exempt well for use pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is not required to use a water measuring device to measure withdrawals from that well unless groundwater withdrawn from the well is also used pursuant to either a service area right pursuant to article 6 of this chapter² or a grandfathered groundwater right other than an

irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.

E. The director shall adopt rules setting forth the requirements and specifications for water measuring devices.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1984, Ch. 148, § 14, eff. April 18, 1984; Laws 1985, Ch. 323, § 21, eff. May 10, 1985; [Laws 1991, Ch. 212, § 29](#); [Laws 1994, Ch. 249, § 12](#); [Laws 1994, Ch. 296, § 20](#), eff. April 25, 1994; [Laws 1995, Ch. 258, § 15](#).

Footnotes

1 Section 45-551 et seq.

2 Section 45-491 et seq.

A. R. S. § 45-604, AZ ST § 45-604

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

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TAB C8

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 2. Groundwater Code (Refs & Annos)

Article 5. Grandfathered Groundwater Rights in Active Management Areas (Refs & Annos)

A.R.S. § 45-467

§ 45-467. Withdrawals in excess of irrigation grandfathered right; withdrawals less than irrigation grandfathered right; flexibility account; conveyances; variance; exemption

Effective: July 29, 2010

[Currentness](#)

A. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may:

1. In an active management area other than the Santa Cruz active management area, use groundwater in excess of the amount allowed by the right in an amount determined pursuant to subsection I of this section.
2. In the Santa Cruz active management area, use water, other than stored water, withdrawn from a well in excess of the farm's current irrigation water duty multiplied by the farm's water duty acres in an amount determined pursuant to subsection J of this section.
3. Use less than the amount allowed by the right in one accounting period and use the remaining amount allowed by the right in a succeeding accounting period or periods.

B. The director shall establish rules for the maintenance of a flexibility account for each farm in an active management area.

C. If a farm located in an active management area other than the Santa Cruz active management area is irrigated solely with groundwater, the director shall:

1. Register a debit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.
2. Register a credit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

D. Except as provided in subsection G of this section, if a farm located in an active management area other than the Santa Cruz active management area is irrigated with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for

beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.
2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been groundwater shall be registered as a credit to the account.

E. If a farm located in the Santa Cruz active management area is irrigated solely with water, other than stored water, withdrawn from a well, the director shall:

1. Register a debit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm. The amount of the debit shall equal the amount of the excess.
2. Register a credit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

F. If a farm located in the Santa Cruz active management area is irrigated with a combination of surface water not withdrawn from a well and effluent, or both, and water, other than stored water, withdrawn from a well, and uses of water by the farm from all sources for irrigation purposes in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water, other than stored water, withdrawn from a well and used on the farm up to the amount of the excess, less any effluent used that does not qualify as stored water, shall be registered as a debit to the account.
2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been water, other than stored water, withdrawn from a well shall be registered as a credit to the account.

G. Beginning January 1, 1995 through December 31, 1999, if a farm that qualifies under this subsection as determined pursuant to subsection H of this section is irrigated during an accounting period with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the first intermediate irrigation water duty established for the farm pursuant to [§ 45-565](#) multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used that would have been groundwater shall be registered as a credit to the account.

3. Exceed or equal the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm but are less than or equal to the amount of the first intermediate irrigation water duty established for the farm pursuant to § 45-565 multiplied by the water duty acres in the farm, no credit or debit may be registered to the account.

H. A farm qualifies under subsection G of this section if it is located in an active management area other than the Santa Cruz active management area and either of the following applies:

1. The amount of groundwater used to irrigate the farm during the accounting period does not exceed an amount computed by multiplying the water duty acres in the farm by one and one-half acre-feet of water, except that an electrical district organized under title 48, chapter 12¹ or an irrigation district may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the district that do not qualify under paragraph 2 of this subsection. The director shall grant the increase if the district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the use of groundwater during that year by all of the farms within the boundaries of the district that do not qualify under paragraph 2 of this subsection in an amount that does not exceed one and one-half acre-feet of water multiplied by the total number of water duty acres of those farms would result in the district being unable to use its hydroelectric power capacity entitlement under the contract. If the director grants the increase, the director shall compute the maximum amount of groundwater that may be used by a farm within the district during the year in order to qualify under subsection G of this section as follows:

(a) Determine the total amount of groundwater that must be used during the year by all farms in the district that do not qualify under paragraph 2 of this subsection to enable the district to efficiently use its hydroelectric kilowatt demand allocation.

(b) Divide the amount determined in subdivision (a) of this paragraph by the total number of water duty acres of the farms in the district that do not qualify under paragraph 2 of this subsection.

(c) Multiply the farm's water duty acres by the quotient in subdivision (b) of this paragraph or two acre-feet of water, whichever is less.

2. The farm is irrigated with water supplied by an irrigation district that owns or leases and operates all of the wells used to withdraw groundwater for irrigation use within the district, and the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water, except that the irrigation district or an electrical district organized under title 48, chapter 12 may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the irrigation district. The director shall grant the increase if the irrigation district or electrical district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the irrigation district or electrical district would be unable to use its hydroelectric power capacity entitlement under the contract if the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water. If the director grants the increase, the maximum amount of groundwater that may be supplied by the irrigation district for irrigation use during the year in order for

the farms located within the boundaries of the irrigation district to qualify under subsection G of this section shall be the lesser of the following:

(a) The amount of groundwater that the director determines must be supplied by the irrigation district for irrigation use during the year to enable the irrigation district or electrical district to efficiently use its hydroelectric kilowatt demand allocation.

(b) An amount of groundwater computed by multiplying the total number of water duty acres within the irrigation district by two acre-feet of water.

I. The maximum excess amount of groundwater that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. An owner of an irrigation grandfathered right and the person using groundwater pursuant to the right violate this section if the flexibility account for the farm in which the irrigation acres to which the right is appurtenant are located is in arrears at any time in excess of this amount. Groundwater equal to the credit balance in the flexibility account may be used at any time.

J. In the Santa Cruz active management area, the maximum excess amount of water, other than stored water, withdrawn from a well that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. A person using water, other than stored water, withdrawn from a well for an irrigation use in the Santa Cruz active management area violates this section if the flexibility account for the farm is in arrears at any time in excess of this amount. Water, other than stored water, withdrawn from a well in an amount equal to the credit balance in the flexibility account may be used at any time, except that if the water is surface water, the amount that may be used shall not exceed the amount allowed by the decreed or appropriative surface water right.

K. If an irrigation grandfathered right is conveyed for an irrigation use pursuant to § 45-472, each acre conveyed shall carry with it a proportional share of any debits or credits in the flexibility account for the farm. If an irrigation grandfathered right is conveyed for a non-irrigation use pursuant to § 45-472, each acre conveyed shall carry with it a proportional share of any debits in the flexibility account for the farm.

L. A person in an active management area other than the Santa Cruz active management area who is using groundwater pursuant to an irrigation grandfathered right and who is operating under a variance to the irrigation water duty pursuant to § 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection C or D of this section.

M. A person in the Santa Cruz active management area who is using water, other than stored water, withdrawn from a well for an irrigation use and who is operating under a variance to the irrigation water duty pursuant to § 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection E or F of this section.

N. In an active management area other than the Santa Cruz active management area, a person using groundwater pursuant to an irrigation grandfathered right shall file a report with the director each year which shall include the amount of groundwater used pursuant to the irrigation grandfathered right and such other information as the director shall require. In the Santa Cruz active management area, a person using water, other than stored water, withdrawn from a well for irrigation use shall file a report with the director each year which shall include the amount of water used on the farm and such other information as the director shall require. The director may consolidate the reporting requirements of this section with the reporting requirements of § 45-632. A person using groundwater pursuant to an irrigation grandfathered right that is regulated under a best management practices program adopted by the director, pursuant to § 45-566.02, subsection F, § 45-567.02, subsection G or § 45-568.02, subsection F, is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right, except that the person shall file a report with the director each year that includes the information required by the best management practices program. A person using groundwater pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.

2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter² or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.

3. Groundwater is withdrawn from land that is both owned by the owner of the irrigation grandfathered right and contiguous to the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.

O. A person who owns an irrigation grandfathered right that is appurtenant to irrigation acres that were capable of being irrigated as of December 31 of the preceding calendar year and whose farm has registered a credit balance to its flexibility account may convey or sell all or a portion of the credit balance to any person, including the conveyor or seller of the credit balance, who owns another irrigation grandfathered right or who uses groundwater pursuant to another irrigation grandfathered right, except that:

1. A credit balance that is registered to the flexibility account of a farm located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same irrigation district.

(b) The flexibility account of a farm that is located outside of that irrigation district if both farms are located in the same groundwater subbasin and the same active management area and if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

2. A credit balance that is registered to the flexibility account of a farm that is not located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is not located within an irrigation district.

(b) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is located within an irrigation district if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

3. A credit registered to a flexibility account for a year may be conveyed or sold only during the second calendar year following the year for which the credit was registered.

4. A person who owns a farm that includes protected farmland may not sell or otherwise convey any credit registered to the farm's flexibility account.

P. A person who sells or conveys all or a portion of a credit balance pursuant to subsection O of this section, and the person to whom the credit balance is sold or conveyed, shall notify the director of the sale or conveyance within thirty days after the sale or conveyance on a form prescribed and furnished by the director.

Q. The director shall establish and collect a reasonable fee from the conveyee or purchaser of a credit balance pursuant to subsection O of this section to cover the cost of administrative services and other expenses associated with registering a deduction to the conveyor's or seller's flexibility account balance and an addition to the conveyee's or purchaser's flexibility account balance pursuant to subsection R of this section. The conveyee or purchaser shall pay the fee at the time the notice required pursuant to subsection P of this section is given to the director. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this subsection in the water resources fund established by § 45-117.

R. A sale or conveyance of all or part of a credit balance under subsection O of this section is effective only if the director receives the notice required by subsection P of this section and the fee required by subsection Q of this section within thirty days after the sale or conveyance. After receiving the notice and the fee, the director shall register a deduction of the credit amount conveyed or sold from the conveyor's or seller's flexibility account balance and the corresponding addition to the conveyee's or purchaser's flexibility account balance. The deduction and addition to the flexibility account balances are effective as of the date of the sale or conveyance.

S. The director shall report to the president of the senate and the speaker of the house of representatives no later than June 30, 2002 on the effect of conveyances of flexibility account credit balances pursuant to subsection O, paragraph 2 of this section on the achievement of the management goal of each active management area as stated in § 45-562 and on the conservation program included in the management plan for each active management area as provided in § 45-565, and any recommended changes to subsection O, paragraph 2 of this section.

T. Except for subsection N of this section, this section does not apply to:

1. A farm if the person entitled to use groundwater on the farm is exempt from the irrigation water duties established for the farm as provided in § 45-563.02, subsection A or if the director may not establish irrigation water duties for the farm as provided in § 45-563.02, subsection B.

2. A farm if water use within the farm is regulated under a best management practices program adopted by the director pursuant to § 45-566.02, subsection F, § 45-567.02, subsection G or § 45-568.02, subsection F.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1990, Ch. 71, § 2; Laws 1991, Ch. 67, § 3; Laws 1991, Ch. 112, § 3; Laws 1992, Ch. 57, § 1, eff. April 29, 1992; Laws 1992, Ch. 97, § 1; Laws 1992, Ch. 183, § 1; Laws 1992, Ch. 319, § 47; Laws 1993, Ch. 107, § 1; Laws 1994, Ch. 249, § 4; Laws 1994, Ch. 296, § 11, eff. April 25, 1994; Laws 1995, Ch. 258, § 5; Laws 1998, Ch. 47, § 3; Laws 1999, Ch. 187, § 3; Laws 2002, Ch. 5, § 3; Laws 2003, Ch. 98, § 3; Laws 2010, Ch. 282, § 9.

Footnotes

1 Section 48-1701 et seq.

2 Section 45-491 et seq.

A. R. S. § 45-467, AZ ST § 45-467

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 12. Enforcement (Refs & Annos)

A.R.S. § 45-632

§ 45-632. Records and annual report of groundwater
pumping, transportation and use; penalty

Currentness

A. Each person who is required to file an annual report under this section or who files an annual report under subsection E of this section shall maintain current accurate records of the person's withdrawals, transportation, deliveries and use of groundwater and, in the Santa Cruz active management area, current accurate records of the person's withdrawals, deliveries and use of all water withdrawn from a well, as prescribed by the director under subsection P of this section.

B. Except as provided in subsections C and D of this section, an annual report shall be filed with the director by each person who:

1. Owns or leases a right under this chapter to withdraw, receive or use groundwater in an active management area, unless a report is filed for that person by an irrigation district under subsection E of this section or by another person in a form acceptable to the director.

2. Uses groundwater which is transported from an active management area.

3. Is an individual user subject to a municipal conservation requirement for appropriate conservation measures included in a management plan adopted by the director pursuant to article 9 of this chapter.¹

4. Withdraws groundwater for transportation to an initial active management area pursuant to article 8.1 of this chapter.²

5. Withdraws water from a well in the Santa Cruz active management area or who uses water, other than stored water, withdrawn from a non-exempt well in the Santa Cruz active management area.

C. Persons who withdraw groundwater from exempt wells and non-irrigation customers of cities, towns, private water companies and irrigation districts, except customers receiving water pursuant to a permit, are exempt from the record keeping and reporting requirements of this section for such water.

D. A person who owns or leases an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is exempt from the record keeping and reporting requirements of this section for the irrigation grandfathered right unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.
2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter³ or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.
3. Groundwater is withdrawn from land that is both owned by the owner of the irrigation grandfathered right and contiguous to the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.

E. An irrigation district which delivers and distributes groundwater in an active management area may file an annual report with the director for each person who holds an irrigation grandfathered right appurtenant to irrigation acres within the service area of the irrigation district, if the irrigation district delivers all the water used on the person's irrigation acres. If an irrigation district files an annual report for such a person, the irrigation district shall report the following information for each such person:

1. The name of the person and the certificate number of the person's irrigation grandfathered right.
2. The quantity of groundwater, if any, delivered during the calendar year.

F. Persons who are required to report under subsection B, paragraph 1 of this section and who withdraw groundwater during the calendar year in an active management area shall report the following information for each well:

1. The registration number and location of the well.
2. The quantity of groundwater withdrawn from the well during the calendar year. A person who, under § 45-604, subsection B, is not required to use and does not use a water measuring device to measure withdrawals made pursuant to a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit shall estimate the quantity of groundwater withdrawn pursuant to the grandfathered right or withdrawal permit.
3. The quantity of fuel or electricity consumed by the pump during the calendar year.
4. The uses to which the groundwater was applied or the persons to whom the groundwater was delivered during the calendar year.

G. Persons who are required to report under subsection B, paragraph 1 of this section and who use groundwater during the calendar year in an active management area and persons who are required to report under subsection B, paragraph 2 of this section shall report the following information:

1. The source of the groundwater, including:
 - (a) The name of the person from whom the groundwater was obtained.
 - (b) The registration number and location of the well, if known.
2. The quantity of groundwater used during the calendar year.
3. The specific uses to which the groundwater was applied during the calendar year.

H. Persons who are required to report under subsection B, paragraph 4 of this section and who transport groundwater during the calendar year to an initial active management area under article 8.1 of this chapter shall report the following information:

1. The registration number and location of each well.
2. The quantity of groundwater withdrawn from each well during the calendar year.
3. The quantity of groundwater transported during the calendar year to an initial active management area.
4. The quantity of groundwater that was withdrawn during the calendar year and that was not transported to an initial active management area and the uses to which the groundwater was applied.
5. The quantity of fuel or electricity consumed by each pump during the calendar year.
6. The uses to which the groundwater was applied or the persons to whom the groundwater was delivered during the calendar year.

I. Persons who are required to report under subsection B, paragraph 1 of this section and who neither withdraw nor use groundwater during the calendar year shall report the following information:

1. The fact that no groundwater was withdrawn or used during the calendar year.
2. The registration number and location of each well, if any.

J. Persons who are required to report under subsection B, paragraph 5 of this section and who withdraw water from a non-exempt well in the Santa Cruz active management area during the calendar year shall report the following information:

1. The registration number and location of the well.
2. The quantity of water, by type, withdrawn from the well during the calendar year.
3. The quantity of fuel or electricity consumed by the pump during the calendar year.
4. The uses to which the water was applied or the persons to whom the water was delivered during the calendar year.

K. Persons who are required to report under subsection B, paragraph 5 of this section and who use water withdrawn from a non-exempt well in the Santa Cruz active management area during the calendar year shall report the following information:

1. The source of the water, including:
 - (a) The name of the person from whom the water was obtained.
 - (b) The registration number and location of the well, if known.
2. The quantity of the water, by type, used during the calendar year.
3. The specific uses to which the water was applied during the calendar year.

L. If a person both withdraws groundwater in an active management area and uses such water, the person may combine the information required by subsections F and G of this section into one report. If a person both withdraws water, other than stored water, from a non-exempt well in the Santa Cruz active management area and uses such water, the person may combine the information required by subsections J and K of this section into one report.

M. The director may require such other information in the report as may be necessary to accomplish the management goals of the applicable active management area.

N. Each report shall contain either a sworn statement or a certification, under penalty of perjury, that the information contained in the report is true and correct according to the best belief and knowledge of the person filing the report.

O. The annual report shall be maintained on a calendar year basis and shall be filed with the director no later than March 31 of each year for the preceding calendar year. If a person who is required under this section to file an annual report for calendar year 1985 or any subsequent calendar year fails to file a report for the calendar year in question on or before March 31 of the

following year, the director may assess and collect a penalty of twenty-five dollars for each month or portion of a month that the annual report is delinquent. The total penalty assessed under this subsection shall not exceed one hundred fifty dollars. The director shall deposit, pursuant to §§ 35-146 and 35-147, all penalties collected under this subsection in the state general fund.

P. The records and reports required to be kept and filed under this section shall be in such form as the director prescribes. The director shall prepare blank forms and distribute them on a timely schedule throughout each active management area and furnish them upon request. Failure to receive or obtain the forms does not relieve any person from keeping the required records or making any required report. The director shall cooperate with cities and towns, private water companies and irrigation districts in establishing the form of the records and reports to be kept and filed by them.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1984, Ch. 148, § 16, eff. April 18, 1984; Laws 1985, Ch. 323, § 23, eff. May 10, 1985; Laws 1987, Ch. 101, § 9, eff. April 16, 1987; Laws 1988, Ch. 104, § 20, eff. May 24, 1988; Laws 1991, Ch. 212, § 31; Laws 1994, Ch. 249, § 17; Laws 1994, Ch. 296, § 21, eff. April 25, 1994; Laws 1995, Ch. 258, § 19; Laws 1997, Ch. 15, § 12; Laws 2000, Ch. 193, § 524.

Footnotes

1 Section 45-561 et seq.

2 Section 45-551 et seq.

3 Section 45-491 et seq.

A. R. S. § 45-632, AZ ST § 45-632

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C9

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 3. Bodies of Water (Refs & Annos)

A.R.S. § 45-135

§ 45-135. Inspections; investigations

Currentness

A. The director or the director's authorized representative may enter at reasonable times on private or public property where a body of water is located, and the owner, manager or occupant of the property shall permit such entry, to:

1. Inspect the body of water.
2. Ascertain compliance with this article.

B. Inspections and investigations under this section shall be on reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that the notice would frustrate the enforcement of this article. The director shall adopt rules for conducting inspections and obtaining warrants under this section. The director may apply for and obtain warrants. If warrants are required by law, the director shall apply for and obtain warrants for entry and inspection to carry out the administrative and enforcement purposes of this article.

C. The director shall provide a written report of each inspection and investigation under this section to the person subject to such action.

Credits

Added by Laws 1987, Ch. 238, § 1.

A. R. S. § 45-135, AZ ST § 45-135

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 12. Enforcement (Refs & Annos)

A.R.S. § 45-633

§ 45-633. Inspections, investigations and audits

Currentness

A. The director or the director's authorized representative may enter at reasonable times upon private or public property where a well, including a well under construction or a well not used to withdraw groundwater or another facility for the withdrawal, transportation or use of groundwater is located and the owner, manager or occupant of the property shall permit such entry to:

1. Inspect a well, including a well under construction or a well not used to withdraw groundwater, or another facility for the withdrawal, transportation or use of groundwater that is subject to this chapter.
2. Obtain factual data or access to records required to be kept under [§ 45-632](#).
3. Ascertain compliance with this chapter.

B. Inspections and investigations under subsection A of this section shall be upon reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter or where entry is sought for the sole purpose of inspecting water measuring devices required pursuant to [§ 45-604](#). The director shall adopt rules for conducting inspections, examining records and obtaining warrants pursuant to this section. The director may apply for and obtain warrants. If warrants are required by law, the director shall apply for and obtain warrants for entry and inspection to carry out the administrative and enforcement purposes of this chapter.

C. The director may require a person who is required to keep records under [§ 45-632](#) to appear, at reasonable times and upon reasonable notice, at the director's office and produce such records and information as are specified in the notice to determine whether the records and annual reports required by [§ 45-632](#) are complete, true and correct. The director shall audit the records of a sufficient number of persons under this subsection to ensure general compliance with this chapter.

D. The director shall provide a written report of each inspection, investigation and audit under this section to the person subject to such action.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1985, Ch. 323, § 24, eff. May 10, 1985; Laws 1986, Ch. 289, § 11; [Laws 1991, Ch. 211, § 23](#); [Laws 1994, Ch. 291, § 30](#).

A. R. S. § 45-633, AZ ST § 45-633

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 3.1. Underground Water Storage, Savings and Replenishment (Refs & Annos)

Article 5. Permit Application Procedures, Financial Provisions and Enforcement

A.R.S. § 45-880.01

§ 45-880.01. Inspections, investigations and audits

Currentness

A. The director or the director's authorized representative may enter at reasonable times on private or public property where any facilities used for the purposes of water storage, stored water recovery or stored water use are located and the owner, manager or occupant of the property shall permit such entry to:

1. Inspect any facility that is used for the purposes of water storage, stored water recovery or stored water use and that is subject to this chapter.
2. Obtain factual data or access to records required to be kept by this article.
3. Ascertain compliance with this chapter.

B. Inspections and investigations under this section shall be on reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that this notice would frustrate the enforcement of this chapter or if entry is sought for the sole purpose of inspecting water measuring devices required pursuant to § 45-872.01. The director shall adopt rules for conducting inspections, examining records and obtaining warrants pursuant to this section. The director may, and if required by law, shall, apply for and obtain warrants for entry and inspection to carry out the administrative and enforcement purposes of this chapter.

C. The director may require a person who is required to keep records under this article to appear, at reasonable times and on reasonable notice, at the director's office and produce the records and information that are specified in the notice to determine whether the records and annual reports required by this article are complete, true and correct.

D. The director shall provide a written report of each inspection, investigation and audit under this section to the person who is subject to such action.

Credits

Added by [Laws 1994, Ch. 291, § 32](#).

A. R. S. § 45-880.01, AZ ST § 45-880.01

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 4. Water Exchanges (Refs & Annos)
Article 5. Enforcement

A.R.S. § 45-1061

§ 45-1061. Inspections; investigations and audits

Currentness

A. The director or the director's authorized representative may enter at reasonable times on private or public property where water is withdrawn, diverted or used pursuant to a water exchange, and the owner, manager or occupant of the property shall permit the entry to:

1. Inspect facilities for withdrawal, diversion or use of the water.
2. Ascertain compliance with this chapter.

B. Inspections and investigations under this section shall be on reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that the notice would frustrate the enforcement of this chapter. The director shall adopt rules for conducting inspections and obtaining warrants under this section. If warrants are required by law, the director shall apply for and obtain warrants for entry and inspection to carry out the administrative and enforcement purposes of this chapter.

C. The director may require a person who is required to keep records under [§ 45-1004](#) to appear, at reasonable times and on reasonable notice, at the director's office and produce such records and information as are specified in the notice to determine whether the records and annual reports required by [§ 45-1004](#) are complete, true and correct. The director shall audit a sufficient number of persons under this subsection to ensure general compliance with this chapter.

D. The director shall provide a written report of each inspection, investigation and audit under this section to the person who is subject to such action.

Credits

Added by [Laws 1992, Ch. 225, § 2.](#)

A. R. S. § 45-1061, AZ ST § 45-1061

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C10

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 6. Dams and Reservoirs (Refs & Annos)

Article 1. Supervision of Dams, Reservoirs and Projects (Refs & Annos)

A.R.S. § 45-1202

§ 45-1202. Jurisdiction of director of water resources; records; rules; notice of exemption

Currentness

A. All dams are under the jurisdiction of the director of water resources. Dams of the state, or any political subdivisions thereof, or dams of public utilities, and all dams within the state are included within the jurisdiction conferred by this section. It is unlawful to construct, reconstruct, repair, operate, maintain, enlarge, remove or alter any dam except upon approval of the director.

B. The records pertaining to dam supervision are public documents.

C. The director shall adopt and revise rules and issue general orders to effectuate this article.

D. To qualify for an exemption for a release-contained barrier, the owner of an existing or proposed release-contained barrier shall submit to the director a notice of exemption. The director shall accept or reject a notice of exemption within thirty days after receipt of both of the following:

1. A statement signed by the owner that:

(a) The storage capacity of the release-contained barrier would be contained within property that the release-contained barrier owner owns, operates, controls, maintains or manages and that is not open to the public.

(b) The release-contained barrier owner will maintain downstream containment structures or sites with sufficient containment throughout the useful life of the release-contained barrier.

2. A topographic site plan that shows:

(a) The property lines and ownership status of the land.

(b) Any areas of the property that are open to the public.

(c) The locations and storage capacities of the release-contained barrier and the downstream containment structures or sites.

E. The director may conduct site inspections to verify the release-contained barrier exemption.

Credits

Formerly § 45-702. Amended by Laws 1970, Ch. 204, § 193; Laws 1971, Ch. 49, § 14, eff. April 13, 1971; Laws 1980, 4th S.S., Ch. 1, § 88, eff. June 12, 1980. Renumbered as § 45-1202 by Laws 1987, Ch. 2, § 4, eff. Feb. 27, 1987. Amended by [Laws 1999, Ch. 187, § 12](#).

A. R. S. § 45-1202, AZ ST § 45-1202

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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TAB C11

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-598

§ 45-598. New wells and replacement wells in new locations
in active management areas; rules; permit required

Currentness

A. The director shall adopt rules governing the location of new wells and replacement wells in new locations in active management areas to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells.

B. A person entitled to withdraw groundwater in an active management area pursuant to article 5 or 6 of this chapter¹ may construct a new well or a replacement well in a new location if the location of the new well or the replacement well complies with the rules adopted by the director pursuant to subsection A of this section and if the person has applied for and received a permit from the director pursuant to § 45-599.

C. An applicant for a general industrial use permit pursuant to §§ 45-515 and 45-521 who proposes to construct a new well or a replacement well in a new location shall also apply for a permit pursuant to § 45-599.

D. A person who is entitled to withdraw groundwater in an active management area under article 5 or 6 of this chapter may withdraw groundwater under article 5 or 6 of this chapter from a well drilled to withdraw groundwater pursuant to a groundwater withdrawal permit issued under article 7 of this chapter² if the location of the well complies with the rules adopted by the director under subsection A of this section and if the person has applied for and received a permit from the director pursuant to § 45-599. A person entitled to withdraw groundwater in an active management area under a general industrial use permit issued under § 45-515 may withdraw groundwater under § 45-515 from a well used to withdraw groundwater pursuant to another category of groundwater withdrawal permit issued under article 7 of this chapter if the location of the well complies with the rules adopted by the director under subsection A of this section and if the person has applied for and received a permit from the director pursuant to § 45-599.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 1, 1980. Amended by Laws 1983, Ch. 306, § 14, eff. April 28, 1983; Laws 1985, Ch. 323, § 20, eff. May 10, 1985; Laws 1994, Ch. 296, § 18, eff. April 25, 1994; Laws 1995, Ch. 258, § 14.

[Notes of Decisions \(1\)](#)

Footnotes

[1](#) Sections 45-461 et seq., 45-491 et seq.

[2](#) Section 45-511 et seq.

A. R. S. § 45-598, AZ ST § 45-598

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 3.1. Underground Water Storage, Savings and Replenishment (Refs & Annos)

Article 3. Water Storage Permits and Recovery Well Permits

A.R.S. § 45-834.01

§ 45-834.01. Recovery of stored water; recovery well permit;
emergency temporary recovery well permit; well construction

Currentness

A. A person who holds long-term storage credits or who may recover water on an annual basis may recover the water stored pursuant to a water storage permit only:

1. If the person seeking to recover stored water has applied for and received a recovery well permit under this article.

2. For water stored within an active management area, if one of the following applies:

(a) The proposed recovery well is located within the area of impact of the stored water, as determined by the director, and either the person recovering the water is the storer or the stored water to be recovered is Colorado river water. If the stored water to be recovered is effluent that is stored in a managed underground storage facility and if the proposed recovery well is not an already constructed well owned by the person recovering the water and is located within the exterior boundaries of the service area of a city, town, private water company or irrigation district, that city, town, private water company or irrigation district must be notified by the person recovering the stored water and must have the right to offer to recover the water stored on behalf of that person. If the city, town, private water company or irrigation district offers to recover the water on behalf of the person seeking recovery and the water that is offered for recovery is of comparable quality to the water that the person could recover, the person seeking to recover the water shall consider accepting the best offer from the city, town, private water company or irrigation district overlying the area of impact that has offered to recover the stored water.

(b) The proposed recovery well is located outside the area of impact of the stored water, as determined by the director, and all of the following apply:

(i) The proposed recovery well is located within the same active management area as storage.

(ii) The director determines that recovery at the proposed location is consistent with the management plan and achievement of the management goal for the active management area.

(iii) If the proposed recovery well is located within the exterior boundaries of the service area of a city, town, private water company or irrigation district, that city, town, private water company or irrigation district is the person seeking to recover the water or has consented to the location of the recovery well.

(iv) If the proposed recovery well is located outside, but within three miles of, the exterior boundaries of the service area of a city, town, private water company or irrigation district, the closest city, town, private water company or irrigation district has consented to the location of the recovery well.

(c) The proposed recovery well is located within the area of impact of the stored water, as determined by the director, the person recovering the water is not the storer, the stored water to be recovered is not Colorado river water and all of the conditions prescribed by subdivision (b), items (i) through (iv) of this paragraph are met.

3. For water stored outside of an active management area, if recovery will occur within the same irrigation non-expansion area, groundwater basin or groundwater sub-basin, as applicable, in which the water was stored.

B. Before recovering from any well water stored pursuant to a water storage permit, a person shall apply for and receive a recovery well permit from the director. The director shall issue the recovery well permit if the director determines that:

1. If the application is for a new well, as defined in § 45-591, or except as provided in paragraphs 2 and 3 of this subsection for an existing well, as defined in § 45-591, the proposed recovery of stored water will not unreasonably increase damage to surrounding land or other water users from the concentration of wells. The director shall make this determination pursuant to rules adopted by the director.

2. If the applicant is a city, town, private water company or irrigation district in an active management area and the application is for an existing well within the service area of the city, town, private water company or irrigation district, the applicant has a right to use the existing well.

3. If the applicant is a conservation district and the application is for an existing well within the conservation district and within the groundwater basin or sub-basin in which the stored water is located, the applicant has a right to use the existing well.

C. A city, town, private water company or irrigation district in an active management area may apply with a single application to the director to have all existing wells, as defined in § 45-591, that the applicant has the right to use within its service area listed as recovery wells on the recovery well permit, if those wells otherwise meet the requirements of this section.

D. If the applicant is a conservation district, the director may issue an emergency temporary recovery well permit without complying with § 45-871.01, subsection F if the director determines that all of the following apply:

1. The conservation district cannot reasonably continue to supply central Arizona project water directly to a city, town, private water company or irrigation district due to an unplanned failure of a portion of the central Arizona project delivery system.

2. The emergency temporary recovery well permit is necessary to allow the conservation district to provide immediate delivery of replacement water to the city, town, private water company or irrigation district.

3. The application is for an existing well as defined in § 45-591 that is within the groundwater basin or groundwater sub-basin in which the stored water is located, is within the conservation district and is within the service area of the city, town, private water company or irrigation district.

E. An emergency temporary recovery well permit issued pursuant to subsection D of this section may be issued for a period of up to ninety days and may be extended for additional ninety day periods if the director determines that the conditions prescribed in subsection D of this section continue to apply.

F. If the application for a recovery well permit is approved, the director shall issue a permit and the applicant may proceed to construct or use the well. If the application is rejected, the applicant shall not proceed to construct or use the well. A new well shall be completed within one year of receipt of the permit, unless the director in granting the permit approves a longer period to complete the well. If the well is not completed within one year or the longer period approved by the director, the applicant shall file a new application before proceeding with construction.

G. A recovery well permit shall include the following information:

1. The name and mailing address of the person to whom the permit is issued.
2. The legal description of the location of the existing well or proposed new well from which stored water may be recovered pursuant to the permit.
3. The purpose for which the stored water will be recovered.
4. The depth and diameter of the existing well or proposed new well from which stored water may be recovered pursuant to the permit.
5. The legal description of the land on which the stored water will be used.
6. The maximum pumping capacity of the existing well or proposed new well.
7. If the permit is for a proposed new well, the latest date for completing the proposed new well.
8. Any other information as the director may determine.

Credits

Added by [Laws 1994, Ch. 291, § 32](#). Amended by [Laws 1995, Ch. 258, § 23](#); [Laws 2000, Ch. 169, § 1](#); [Laws 2002, Ch. 133, § 11](#); [Laws 2004, Ch. 300, § 1](#).

A. R. S. § 45-834.01, AZ ST § 45-834.01

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

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TAB D

***Economic, Small Business and
Consumer Impact Statements***

TAB D1

**ARIZONA DEPARTMENT OF WATER RESOURCES
FEE RULE AMENDMENTS**

A.R.S. § 41-1055(B)

ECONOMIC, CONSUMER AND SMALL BUSINESS IMPACT STATEMENT

1. *An Identification of the Proposed Rulemaking.*

In 2010, the Arizona Department of Water Resources (“Department”) adopted rules increasing many of its existing fees and establishing several new fees for services performed in fiscal year 2010-2011 through an exempt rulemaking authorized by Laws 2010, 7th Special Session, Ch. 7, § 5. These rules (referred to herein as the FY2010-2011 Fee Rules) will repeal automatically on July 1, 2011, at which time the fee rules in effect prior to fiscal year 2010-2011 (referred to herein as the “Existing Fee Rules”) will become effective again. Through this rulemaking, the Department is repealing the Existing Fee Rules and replacing them with new fee rules (referred to herein as the “New Fee Rules”) that, with certain exceptions, are the same as to the FY2010-2011 Fee Rules.

This rulemaking revises existing fees and establishes several new fees for persons submitting applications and filings in the groundwater, surface water, dam safety, recharge, assured and adequate water supply, water exchange, bodies of water, water exportation and well drilling permit programs and the dam safety inspections program, under Title 45, Arizona Revised Statutes (for purposes of this document, “permitting programs” refers to programs administered by the Department to process applications and filings). This economic, small business and consumer impact statement contains an identification of the increased fees that political subdivisions and businesses that may be impacted will pay for permits and inspections, as well as the specific impacts to the Department and other state agencies from the new fees.

Since 1980, most of the Department’s permit programs and dam safety inspection program have operated from general fund revenues – with few changes to the fees since that time. Since 2003, the well administration and enforcement fund was initiated by the legislature for operation of the well permitting program. In 2005, the legislature authorized the assured and adequate water supply administration fund to partially fund the operation of that permitting program. In 2010, the legislature authorized the dam repair fund to partially fund the operation of the dam safety program. The Department has implemented permit efficiencies and process improvements that will significantly improve the processing times for all of its permitting functions. The Department estimates that the changes to its fees, if implemented based on the average permit actions issued in FY2008 and FY2009, would have recovered approximately \$3,148,003 for permits using the \$118.00 per hour rate and increased fixed fees. The actual estimated revenue under the Existing Fee Rules for the average number of applications in FY 2008 and FY 2009 was \$1,158,660, a difference of \$1,989,343.

The purpose of this rulemaking is not to change any specific conduct of the regulated community. The purpose of this rulemaking is to increase most of the Department’s fees and establish several new fees to allow the Department to come closer to recovering the costs to the Department for permitting and dam safety inspection services by charging \$118 per hour for

permit applications estimated to take an average of five or more hours to process, charging increased or new fixed rate fees for all other permit applications and filings for which the fees are not set in statute, and charging increased fees for dam safety permits and inspections. No changes are being made to fees that are set in statute.

The \$118.00 hourly fee rate has been calculated in the manner explained below. The expenses are based on all current permit staffing positions. Additionally, the Department has established annual performance measures relating to all of its permitting functions.

The Department estimated the hourly rate for water permitting staff based on the permitting work of a full-time employee (FTE) and makes the following assumptions:

HOURS

- Assumes an FTE works 2080 hours annually.
- NON-PROGRAM HOURS include:
 - hours related to employee SVHL (sick, vacation, holiday), calculated at the maximum available of 296 hours;
 - hours related to training, meetings and minor tasks estimated at 331 hours;
 - hours lost due to employee turnover – use a relatively low rate of 5% - 104 hours.
 - TOTAL NON-PROGRAM HOURS estimated at 731 hours annually.
- PROGRAM HOURS include both review hours of specific applications and making decisions thereon, and those not related to review hours of specific applications. Some of the Program Hours are therefore not billable.
 - TOTAL PROGRAM HOURS = 2080 – 731 = 1349 hours
 - Non-billable Program Hours include customer service time, inter-division and inter-agency coordination, permit administration, program development (rules and policies) and travel. This is estimated at 440 hours annually.
 - BILLABLE PROGRAM HOURS = 1349 – 440 = 909 hours

COSTS

- Salaries + employee related expenses (ERE) related to Billable Program Hours performed by an FTE.
 - ERE benefits rate of 40% is used.
 - Non-Program Hours in support of Billable Program Hours are included in costs. This is estimated at 493 hours.
 - Program staff includes Engineers, Hydrologists and the WRS Series at an average hour rate of \$24.68.
Cost = (909 + 493 hours) × \$24.68/hour × 1.4 = \$48,442
 - Management/ Supervisory hours in support of the FTE's work are included in costs, estimated at 200 hours. This includes working Assistant Directors, Managers, and Legal at an average hourly rate of \$40.00.
Cost = (200 hours) × \$40.00/hour × 1.4 = \$11,200
 - Administration Support hours in support of the FTE's work are included in costs, estimated at 200 hours. This includes Water Resource Technicians and Administrative Assistants at an average hourly rate of \$17.94.
Cost = (200 hours) × \$17.94/hour × 1.4 = \$5,023

- Add Indirect expenses (56.35% of personal services and ERE by federal formula) for rent, utilities, etc., estimated at \$36,464.
- Add Other Expenses such as travel, equipment, operating expenses (supplies, etc.) and professional services, estimated at \$6,250.
- Total Costs Related to Permit Process for 1 FTE= \$107,379

HOURLY RATE

- Divide the total costs related to the permitting work of an FTE (\$107,379) by Billable Program Hours (909). This provides the Hourly Rate for Permit Processing (\$118.00).

The fixed fees are based on either: (1) statutorily required fees (no changes to these fees are being made in this rulemaking), or (2) fees based on the estimated average hours assumed to process the application, up to a maximum of five hours. Any applications assumed to take five or more hours to process were captured in the hourly fee proposal.

Under the Existing Fee Rules, dam safety inspection fees are based on dam height and do not differentiate based on a dam's downstream hazard potential. In the New Fee Rules, the dam safety inspection fees for high and significant hazard potential dams are a graduated scale based on the length of the dam. Dam length is a better indicator of time necessary to conduct the inspection and complete the inspection report. The new dam safety inspection fees for low and very low hazard potential dams are a fixed value lower than those for high and significant hazard potential dams due to less time required for review of engineering standards and analyses, operational and maintenance plans and emergency action plans.

The Department estimates that the number of pending permit applications and projections for incoming work equates to more work hours than can be accomplished by the current staffing levels. Therefore, this analysis is based on the amount of work that can be accomplished based on the current number of authorized staff positions for water permitting services -19 technical staff (water resource specialists, engineers and hydrologists), 7 management /supervisor staff, and 4.5 support staff. The Department anticipates that the number of positions will not be increased for water permitting staff. Positions and activities related to permit-related inspections are included in this analysis although these hours and revenues are only a small percentage of the total.

Table I below compares the estimated fees for permit actions and dam safety inspections under the Existing Fee Rules to the estimated fees in the New Fee Rules. The table uses the assumptions for estimated review hours based on permitting staff estimates. These are only estimates as the Department has not historically tracked the hours for each permit type. With these changes, the Department is now tracking in detail the billable hours for each permit type including permits that are identified under the fixed fee rates in order to continue evaluating the necessity of an hourly rate or fixed rate. The estimated review hours and fees under the Existing Fee Rules are based on the estimated average number of review hours to complete a project for permits issued under the permitting programs during calendar years 2008 and 2009 using the Existing Fee Rules. The information in Table I further assumes that the applications are fairly complete. Note that a previously permitted facility will not necessarily experience any impact due to this rulemaking. This rulemaking impacts the costs associated with review and processing

of applications and filings submitted after the New Fee Rules become effective, including applications for renewal or modification of a permit issued prior to the effective date.

Table I. Comparison of Estimated Review Hours and Fees under Existing Fee Rules and New Fee Rules

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
WELLS						
Variance from Well Construction Requirements	5	556	\$0		\$590	***
Late Registration of Well		12	\$10	\$60		500%
Well Drillers License*		31	\$50	\$50		0%
Reissue or Renewal of Well Drillers License		286	\$10	\$50		400%
Amendment of Well Driller's License		6	\$0	\$50		***
Reactivation of Expired Well Drillers License		2	\$20	\$50		150%
Well Assignments - per well cost		52	\$10	\$30/well		Variable**
Well Capping*		20	\$300	\$300		0%
Notice of Intent to Abandon a Well (45-594)*		1,008	\$0	\$150		***
NOI to Drill Non-Exempt Well in same location in AMA, all wells in INA, wells >35gpm outside AMA/INA - (45-596, 597)*		50	\$150	\$150		0%
Notice of Intent to Drill Outside AMA or INA w/pump capacity <35 gpm for domestic use only (45-596)*		2,718	\$100	\$100		0%
Reissuance of Drill Card		30	\$10	\$120		1100%
Application for Permit to Drill Non-Exempt Well - Inside AMA (45-598 & 599)*		43	\$180	\$180		0%
GROUNDWATER RIGHTS & PERMITTING						
GW Withdrawal Permit (45-513, 514, 515, 516, 517, 518, 519, 519.01, 520, 527) Issuance, Renewal, Modification, change in location	20	59	\$200		\$2,360	1080%
Notice of Authority of Irrigate in an INA (45-437)	10	0	\$100		\$1,180	1080%
Restoration of Retired	5	0	\$50		\$590	1080%

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
IGFR (45-469(O))						
Contract by city, town or private water company to Supply Groundwater to another city, town or private water company (45-492(C))	5	1	\$0		\$590	***
Initial Notice of Intent to Establish New Service Area Right	5	2	\$0		\$590	***
Final Petition to Establishment New Service Area	5	2	\$0		\$590	***
Extension of Service Area to provide Disproportionate amount of Water to an Industrial or other large water user (45-493(A)(2))	5	0	\$0		\$590	***
Addition/Exclusion of Acres by Irrigation District (45-494.01)	8	0	\$0		\$944	***
Delivery of GW from an ID to a GIU permit holder (45-497(B))	5	0	\$0		\$590	***
Transp. of GW Withdrawn in McMullen Valley GW Basin to an AMA (45-552)	5	0	\$0		\$590	***
Transp. of GW Withdrawn in Harquahala INA to an initial AMA (45-554)	5	0	\$0		\$590	***
Transp. of GW Withdrawn in Big Chino Sub-Basin to an initial AMA (45-555)	5	0	\$0		\$590	***
Transp. Of GW away from the Yuma GW Basin (45-547)	5	1	\$0		\$590	***
Application for Emergency Transfer of GW from a GW Basin	5	0	\$0		\$590	***
Type 1 GFR associated w/ irrigation land retired after 6/12/1980 (45-469, 472) (Conveyance of IGFR to Type 1)	10	5	\$100		\$1,180	1080%
Ag Flex Account Transfer		15	\$100	\$250		150%
Conveyance of Notice of Irrigation Authority in an INA		11	\$35	\$500		1328%
Conveyances of GW Withdrawal permits		10	\$35	\$500		1328%
Late Application for Certificate of Grandfathered Right (45-463, 464, 465,		25	\$100	\$100		0%

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
476.01 & 476)*						
Conveyances/Re-Issuance of Certificate of Grandfathered Right		9	\$35	\$500		1328%
Reissuance of a Certificate of Grandfathered Right to reflect change in family circumstances or transfer to or from a trust		10	\$35	\$120		243%
Re-Issuance of a Certificate Grandfathered Right after a partial extinguishment of the Grandfathered Right		10	\$35	\$120		243%
Revised Certificated for new or additional points of withdrawal for T2 or deletion of point of withdrawal		34	\$35	\$250		614%
Approval of Development Plan for Retirement of IGFR (45-469)		6	\$0	\$500		***
Substitution of Flood Damaged Acres (INA 45-437.02 & AMA 45-465.01)	5	0	\$100		\$590	490%
Substitution for Impediments to Efficient Irrigation (INA 45-437.03 & AMA 45-465.02)	5	3	\$50		\$590	1080%
Substitution of Acres to be Irrigated w/ CAP water (45-452)	6	0	\$100		\$708	608%
UNDERGROUND STORAGE & RECOVERY						
Issuance, Renewal or Modification of an Underground Storage Facility Permit	334	13	\$1,250		\$25,000	1900%
Issuance, Renewal or Modification of a Groundwater Savings Facility Permit	94	1	\$850		\$11,092	1205%
Issuance, Renewal or Modification of a Water Storage Permit	25	28	\$350		\$2,950	743%
Recovery Well Application, including Emergency temporary recovery well permit	71	13	\$50 for first 10 wells + \$10 for each add. well		\$8,378	variable
Conveyance of Storage Facility Permit		1	\$300	\$500		67%
Conveyance of a Water Storage Permit		1	\$300	\$500		67%
Assignment of Long-		7	\$0	\$250		***

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
Term Storage Credits						
ASSURED & ADEQUATE WATER SUPPLY						
Physical Availability Determination	211	4	\$5,000		\$10,000	100%
Analysis of Assured or Adequate Water Supply	211	15	\$7,500		\$10,000	33%
Renewal of a Analysis of Assured or Adequate Water Supply	32	1	\$0		\$3,776	***
Issuance of a Certificate of Assured Water Supply	211	22	\$5,000		\$10,000	100%
Issuance or Modification of Designation of Assured Water Supply	300	8	\$10,000		\$35,000	250%
Issuance or Modification of Designation Adequate Water Supply	200	8	\$10,000		\$23,600	136%
Issuance of a Water Report	211	14	\$2,000		\$10,000	400%
Assignment of Type A CAWS	12	16	\$0		\$1,416	***
Assignment of Type B CAWS	18	9	\$1000		\$2,124	112%
Classification of Type A CAWS	10	3	\$1000		\$1,180	18%
Material Plat Change Review	8	1	\$250		\$944	277%
Re-Issuance of CAWS - 704G	24	38	\$0		\$2,832	***
Exemption from requirement to obtain CAWS - 704M	24	9	\$0		\$2,832	***
Extinguishment of GFR (45-576: AAWS Rule)		25	\$0	\$250		***
Conveyance of Extinguishment Credits		10	\$0	\$250		***
SURFACE WATER						
Application to Appropriate Public Water (45-152)	56	25	\$75 - \$125		\$6,608	5186%
Application for Certificate of Water Right (45-152)	32	6	\$50		\$3,776	7452%
Reservoir Permit, Primary or Secondary (45-161)	48	2	\$75 - \$125		\$5,664	4431%
Application for Change in Use of Water (45-156)	36	1	\$0		\$4,248	***
Application for Severance and Transfer – same farm	21	0	\$500		\$2,478	396%

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
unit/parcel						
Application for Severance and Transfer – different farm unit/parcel (45-172)	72	2	\$500		\$8,496	1599%
Exception to Limitation on Time of Completion of Construction (45-160)	8	3	\$0		\$944	***
Reissuance of Surface Water Permit or Certificate		0	\$10 - \$25	\$120		380%
Claim of Water Right for a Stockpond (45-273)*		7	\$10	\$10		0%
Filing Fee for Statement of Claim of Water Right*		0	\$5	\$5		0%
Assignment for application, permit, certificate or statement of claim		615	\$10	\$75		650%
Certification of water right for stockpond		7	\$30	\$120		300%
DAM SAFETY						
Approval of Plans for Construction, Enlargement, Repair, alteration or removal of Dam		12	Graduated fee based on project cost (0.5% to 2.0%)	2.0% of project cost		0% to 200%
Review of Dam Safety Inspection Report		10	\$0	\$750		***
Dam Safety Inspection Fee		100	\$100 + \$2 per foot of dam height	\$1,000 for LHP and VLHP; \$2000 to \$4200 for HHP and SHP, based on dam length		450% to 2000%
OTHER						
Filling a Body of Water w/ Poor Quality Water (45-132.C)	5	3	\$225		\$590	162%
Interim Water Use in a Body of Water (45-133)	5	1	\$80		\$590	638%
Temporary emergency permit to use sw or gw in a body of water (45-134)	5	0	\$50		\$590	1080%
Application for issuance of Water Exchange Permit (45-1041, 1045)	5	0	\$150		\$590	293%

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
Application for renewal/modification of Water Exchange Permit (45-1041, 1045)	5	0	\$100		\$500	400%
Notice of Water Exchange requiring Director Approval - disproportionate volumes	5	0	\$150		\$590	293%
Notice of Water Exchange - non-disproportionate volume – does not require approval pursuant to 45-1052(6)(b)			\$150	\$500		233%
Application to Transport Water Out of State (45-292)	200	1	\$500		\$23,600	4620%
License for Weather Control or Cloud Modification*		0	\$100	\$100		0%
Equipment License for Weather Control or Cloud Modification*		0	\$10	\$10		0%

* These fees were limited by fee caps in the current statutes.

** Variable increase based on number of wells which were not previously tracked

*** Cost did not increase; simply a cost for service is now being assessed

2. An Identification of the Persons who will be Directly Affected by, Bear the Costs of or Directly Benefit from the Rulemaking.

This rulemaking will directly affect persons who submit applications and filings to the Department and who own dams regulated by the Department, including individuals, governmental entities and small and large businesses that drill or use wells, divert surface water, use or transport groundwater, develop subdivisions, operate recharge facilities, conduct water exchanges, own bodies of water, or own or operate dams.

3. Estimated Costs and Benefits to the Arizona Department of Water Resources and other state agencies.

This rulemaking will increase the Department’s water permitting and dam safety inspection service revenues to more closely match the budgeted costs for those services. For the current staffing levels for permitting staff, the Department estimates that approximately 30,195 hours will be associated with billable services for any one year. No additional increases in staffing will be required as a result of this rulemaking.

The Department estimates that the changes to the fees, if implemented for the average number of permit actions issued during calendar years 2008 and 2009, would have recovered approximately \$3,148,003 for permits using the \$118.00 per hour rate and increased fixed fees. The actual estimated annual revenue under the Existing Fee Rules for the average number of applications issued during calendar years 2008 and 2009 was \$1,158,660. If the Department does not adopt the New Fee Rules, there is an estimated annual loss of revenue of approximately \$1,989,343

beginning with fiscal year 2011-2012. It should be noted that the monies collected for well permitting will continue to be deposited in the well administration and enforcement fund established by A.R.S. § 45-606; the monies collected for assured and adequate water supply applications will continue to be deposited in the assured and adequate water supply administration fund established by A.R.S. § 45-580; monies collected from dam safety permits and dam safety inspections will continue to be deposited in the dam repair fund established by A.R.S. § 45-1212.01; and all other permit fees will be deposited in the water resources fund established by A.R.S. § 45-117.

The benefits of this rulemaking to the Department are that the funds listed above will more fully realize their legislative purpose, which is to fund the actual costs of the permitting and dam safety inspection programs previously funded in whole or in part by the state general fund. The estimated additional revenues may be earned if the fee increases in this rulemaking are adopted and the following assumptions are true:

1. The estimated number of applications are received for processing;
2. The estimated number of applications are processed and take the average number of hours to process;
3. The estimated number of dam safety inspections are performed;
4. All positions are staffed for the entire year (no vacancy savings, no turnover); and
5. Fees are paid on time for all billable hours and dam safety inspections performed.

A more probable scenario over the next few years is that the Department will experience some turnover, fewer applications will be received, and some portion of the fees will not be paid. Because of the uncertainty involved with estimating potential impacts, the Department used assumptions that provide the most favorable situation for the regulated community.

The Department derives additional benefits because fixed rate fees will be paid up front and hourly permit applications must pay an up-front cost of \$1,000 or \$2,000. Also, the Department anticipates improved cash flow through monthly billing. Expenses for implementation of monthly billing are minimal, and include increased postage and paper, although the Department is developing computerized improvements to its invoicing program that will reduce costs associated with staff time to develop and process invoices. Based on the improvements, the Department expects no increase in staffing time and therefore will significantly benefit from implementing a monthly billing process.

Other state agencies that are required to obtain permits for which the new fees will apply or that must comply with dam safety requirements include the Arizona Department of Transportation (ADOT), the Arizona State Land Department (AzSLD), the Arizona Department of Environmental Quality (ADEQ) and the Arizona Game and Fish Department (AzG&F). The ADOT obtains well permits, well abandonment authorizations, and groundwater withdrawal permits. The AzSLD obtains groundwater rights, surface water rights, and assured or adequate water supply determinations. The ADEQ obtains groundwater withdrawal permits. The AzG&F obtains surface water rights and is responsible for twenty-nine dams. These agencies will experience increased fees in the same manner as other consumers and businesses. There are no exemptions for other state agencies from obtaining these permits or paying the application or

filing fees. The Department does not believe that there will be significant impacts on public employment in Agencies of this State directly affected by this rulemaking.

The increased fees will allow the Department to process applications and filings and conduct dam safety inspections in a more timely manner, which benefits those state agencies seeking water permits and dam safety approvals and protects public health and safety.

4. Estimated Costs and Benefits to Political Subdivisions.

Table II below provides an overview of categories of permits that apply to the different political subdivisions. Political subdivisions in Arizona will experience increases in the permitting fees (see Table I for specific permits and the associated increased costs). The Department believes that the fees reflect the reasonable and fair cost of providing water permitting and dam safety inspection services and that the fixed rate fees for the less complex permits coupled with the simplified permitting process should reduce the impact to many applicants. The Department does not believe that there will be significant impacts on public employment in political subdivisions of this State directly affected by this rulemaking.

Table II – Permits issued to Political Subdivisions – FY 2010

PERMIT CATEGORY	POLITICAL SUBDIVISIONS
Wells	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts
Groundwater Rights & Permits	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts
Underground Storage & Recovery	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, multi-county water conservation districts, groundwater replenishment districts
Assured & Adequate Water Supply	Cities, towns, domestic water improvement districts, community facilities districts
Surface Water	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, multi-county water conservation districts
Dam Safety	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, county flood control districts, multi-county water conservation districts
Other (Lakes, Water Exchanges, Water Exportation)	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, multi-county water conservation districts

The increased fees will allow the Department to process applications and filings and conduct dam safety inspections in a more timely manner, which benefits those political subdivisions seeking water permits and dam safety approvals and protects public health and safety. Without these increases, the Department will not be able to retain its current staffing levels, which will increase processing times and result in significant delays in issuing permits and certificates.

5. Businesses Directly Affected By the Rulemaking.

Evaluation of the impacts to businesses depends on the category of permitting that is necessary to carry out their activities. Table III below provides a generalized overview of the types of businesses that typically require each category of permit issued by the Department.

Table III – Permits Necessary for Business Activities in Arizona

PERMIT CATEGORY	BUSINESS TYPE
Wells	Private Water Companies, Agricultural, Ranching/Animal Industry, Golf Courses, Power Plants, Rock Product Industries, Mining, Developers, Well Drillers
Groundwater Rights & Permits	Agricultural, Ranching/Animal Industry, Golf Courses, Power Plants, Rock Product Industries, Mining, Developers
Underground Storage & Recovery	Private Water Companies, Developers, Mining, Power Plants
Assured & Adequate Water Supply	Private Water Companies, Developers
Surface Water	Agricultural, Ranching, Golf Courses, Power Plants, Rock Product Industries, Mining, Developers
Dam Safety	Agricultural, Ranching, Mining, Power Plants
Other (Lakes, Water Exchanges, Water Exportation)	Developers, Mining, Power Plants

Businesses in Arizona will experience increases in the permitting and dam safety inspection fees (see Table I for specific permits and the associated increased costs). The Department believes that the fees reflect the reasonable and fair cost of providing water permitting and dam safety inspection services and that the fixed rate fees for the less complex permits coupled with the simplified permitting process should reduce the impact to many applicants. However, the Department does not believe that there will be significant impacts on private employment in businesses of this State directly affected by this rulemaking.

The increased fees will allow the Department to process applications and filings and conduct dam safety inspections in a more timely manner, which benefits those businesses seeking water permits and dam safety approvals and protects public health and safety. Without these increases, the Department will not be able to retain its current staffing levels, which will increase processing times and result in significant delays in issuing permits and certificates.

6. Impacts to Small Businesses.

Small businesses that are subject to this rulemaking include: well drillers and small ranches, farms, and small commercial businesses that are not served water by water utilities and require their own wells. The impacts to these businesses will be negligible in most cases. There are small fee increases for the licensing of well drillers; however, these increases will improve the Department's ability to protect public health and safety by providing for enforcement of properly drilled wells within the State. The small ranches, farms, and small commercial businesses that are not served water by water utilities and require their own wells will not see significant impacts as the well permitting fees are not being increased. There is however, an increase in the fee for transfer of ownership of these wells that may have a small impact on these small businesses.

The Department reviewed each of the proposed methods for reducing the impact on small businesses described in A.R.S. § 41-1055(B)(5)(c), below:

(i) Establish less costly compliance requirements for small businesses.

Individuals and small businesses in rural Arizona are disproportionate owners of low and very low hazard potential dams. The fee increases for low and very low hazard dams are less than those for high and significant hazard dams, thereby reducing their impact on small businesses. Efficiencies enacted in the permitting programs provide the primary means for reducing the impact of those fee increases on small businesses. In conjunction with efficiency improvements and in response to comments received from the small business community, the Department has lowered its initial proposed fees for assignments for surface water applications, certificates, permits and claims. The fee is for \$75 per assignment, which will reduce the impact on small businesses and individual landowners. The Department has also lowered its initial proposed fees for sever and transfer of a surface water right to land that is within the same parcel or farm unit as the current use and that does not include a change in the water source, use or ownership. The new proposal reduces the proposed maximum fee from \$25,000 to \$2,500, thereby lessening the impact to small business farming operations that after flood damage or some other event may need to move the place of beneficial use to another location on the same farm.

While the new fees do increase the costs to individuals and small businesses, without these increases, the Department will not be able to retain its current staffing levels, which will pose possible public health and safety risks. With further reductions in staffing the Department will not have resources to continue annual inspections of high and triennial inspections of significant hazard dams.

(ii) Establish less costly schedules or less stringent deadlines for compliance in the rulemaking for small businesses.

Not applicable

(iii) Exempt small businesses from any or all requirements of the rule.

The Department is not authorized by statute to exempt small businesses from permit and inspection fees. Additionally, exemptions for small businesses could cause a significant hardship on the Department. Because small businesses make up a significant percentage of the facilities

for which the Department provides the services, it would not be feasible for the Department to make exemptions from fees for small businesses and still generate sufficient revenues to cover the reasonable and necessary costs of the programs. For certain water use activities, small businesses pay fewer fees than large businesses because they do not require the same permits that are required for large businesses. For example, a small business in an active management area may be adequately served by an exempt well (a well with a pump capacity of 35 gallons per minute or less), which does not require the business to obtain a grandfathered groundwater right or groundwater withdrawal permit.

7. Estimated Costs and Benefits to Consumers and the Public.

From the consumer's perspective, if permitted entities bear additional costs or realize savings, these entities may pass the costs or savings on to the consumer and the public through products, services or water rates. There is no way to predict whether these costs or benefits will be passed on or what the costs or benefits may be for each permit.

For individual home owners that maintain their own well on their property, little or no impact will be felt as the fees for well permitting for small domestic wells is not changing. Private dam owners will experience increases in dam safety permitting and inspection fees. However, the Department believes that the fees reflect the reasonable and fair cost of providing dam safety permitting and inspection services.

The increased fees will allow the Department to process applications and dam safety inspections in a more timely manner, which benefits those persons seeking water permits and dam safety approvals and protects public health and safety. Without the increased fees these benefits will not be realized.

8. Estimated Costs and Benefits to State Revenues.

This rulemaking will have no impact on state general funding revenues. The estimated revenue generated from these fees will be directed to the four funds previously identified (the well administration and enforcement fund; the assured and adequate water supply administration fund; the dam repair fund; and the water resources fund) for the purpose of funding the Department's permitting programs. With the downturn in the economy, the expected income from these new fees will be far less than the estimated \$3,148,003 that could have been recovered by the Department during prior years, based on the average permitting activity during calendar years 2008 and 2009. However, by making these new fees permanent, the Department will be better positioned to recover permitting program costs in FY 2011-2012 and beyond and be better prepared to staff at appropriate levels when the permitting activity inevitably increases. Without the increase in fees, staffing levels will be lower than what is needed to perform the existing permitting activity and there will be no ability to increase staffing to meet any increases in permitting activities.

9. A Description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

No other less intrusive or less costly methods are available to the Department to achieve the purpose of the rulemaking. The Department's appropriation from the state general fund has been significantly reduced with the understanding that the Department would seek to recoup the cost

of its services directly from the entities that require the permits and dam safety inspections. Making no changes to the Department's fees will have significant affects on the ability to meet the permitting needs of entities in Arizona and may pose additional public health and safety risks, as described above.

TAB D2

**RULE MODIFICATIONS TO REDUCE THE DAM SAFETY INSPECTION
FEES FOR LOW AND VERY LOW HAZARD POTENTIAL DAMS**

A.R.S. § 41-1055(B)

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

The Arizona Department of Water Resources (Department) conducts dam safety inspections of low and very low hazard potential dams in the State of Arizona (State) once every five (5) years. The A.A.C. R12-15-105 amendment will reduce the dam safety inspection fee for each low and very low hazard dam that is inspected by the Department. The rule amendment will also reduce the dam safety inspection report review fee in the event that an owner of a low and very low hazard dam chooses to submit an inspection report in lieu of the Department's inspection.

The Department is amending this rule in response to feedback from owners of low and very low hazard dams that the current \$1,000.00 inspection fee is too high. The Department is also reducing the \$750.00 safety inspection report review fee to \$250.00, so that both the inspection fee and inspection report review fee are the same. Some low and very low hazard dam owners requested that the Department not inspect their dam because they did not want to pay the \$1,000.00 fee. By reducing the inspection fee and safety inspection report review fee for low and very low hazard potential dams, the Department also seeks to increase low and very low hazard potential dam owner compliance with inspection fee and safety inspection report review fee requirements. The lower fee will still recover reasonable costs because the inspections and review of safety inspection reports for low and very low hazard potential dams require less time and resources than higher hazard

dams. The rule modification will have an immediate positive financial impact for the owners of low and very low hazard potential dams. The rule modification does not change the dam safety inspection frequency for either high or significant hazard potential dams or low or very low hazard potential dams.

1. An Identification of the Rulemaking

The Department amends A.A.C. R12-15-105 as follows:

- Subsection (B) is being amended to reduce the dam safety inspection fee for low and very low hazard potential dams from \$1,000.00 per inspection to \$250.00 per inspection.
- Subsection (D) is being amended to make the \$750.00 dam safety inspection report review fee applicable only to high or significant hazard potential dam owners who submit an inspection report in lieu of the Department's inspection. The rule modification does not change this fee or the frequency of inspection for high or significant hazard potential dams. Additionally, subsection (D) is being amended to reduce the dam safety inspection report review fee from \$750.00 to \$250.00 in the event the owner of a low or very low hazard potential dam owner submits an inspection report in lieu of the Department's inspection.

2. Persons Who Will Be Directly Affected by, Bear the Costs of, or Directly Benefit from the Rulemaking

The low and very low hazard potential dams under the jurisdiction of the Department are mostly owned by farmers and ranchers. Many of these dam owners have communicated to the Department that the current \$1,000.00 inspection fee is too high. Low and very low hazard potential dam owners under the jurisdiction of the Department will directly benefit from the fee reduction with either a \$750.00 or \$500.00 savings every five-year inspection period, depending on whether the Department inspects their dam or they choose to submit an inspection report in lieu of a Department inspection.¹ The Department does not believe the fee reductions will have a negative impact on dam owners or the public in general.

3. Cost – Benefit Analysis

a. *Probable Benefits and Costs to Agencies*

- The reduction in dam safety inspection fees for low and very low hazard potential dams will result in reduced revenue for the Department. However, since the revenue to the Department from the inspection of low and very low hazard dams under the current rule is relatively small, the impact of the reduced revenue will be minimal. For example, in 2013, the Department inspected a total of 124 dams. Of these 124 dams 101 were high and significant hazard potential dams, and only 23 were low and very low hazard potential dams. The dam safety inspection fees for 2013 were \$252,726. Of this amount, only \$21,000.00 was collected for the inspection of low and very low hazard potential dams.

Assuming the same collection rate for low and very low hazard potential dams at the next

¹ R12-15-1219 requires that a dam safety inspection be conducted by the Department or a safety inspection report be submitted by the dam owner every five years for low and very low hazard potential dams.

inspection date, a \$250.00 inspection fee would reduce the amount collected by the Department by \$15,250.00. Although the reduction of the dam safety inspection fees and safety inspection report fees for low and very low hazard potential dams will result in decreased revenue for the Department, it is anticipated that the fee reductions will result in greater low and very low hazard potential dam owner compliance with the inspection requirements.

- The Department does not anticipate hiring new employees as a result of this rule change.
- Other agencies in the State that own low and very low hazard potential dams will see an immediate 75 percent reduction in inspection fees and a 67 percent reduction in inspection report review fees depending on whether the agency elects to have the Department conduct the inspection or submits a safety inspection report for the Department to review. The Department does not foresee added costs to other State agencies as a result of the rule modification.

b. *Probable Benefits and Costs to Political Subdivisions*

- Political subdivisions in the State that own low and very low hazard potential dams will see an immediate 75 percent reduction in inspection fees and a 67 percent reduction in inspection report review fees depending on whether the political subdivision elects to have the Department conduct the inspection or submits a safety inspection report for the Department to review. The Department does not foresee added costs to political subdivisions as a result of the rule modification.

c. *Probable Benefits and Costs to Business, Including Small Business*

- Businesses and individuals in the State that own low and very low hazard potential dams will see an immediate 75 percent reduction in inspection fees and a 67 percent reduction in inspection report review fees depending on whether the business or individual elects to have the Department conduct the inspection or submits a safety inspection report for the Department to review. The Department does not foresee added costs to businesses and individuals as a result of the rule modification.

4. Probable Impact on Private and Public Employment in Business, Agencies, and Political Subdivisions

The Department does not anticipate any impact on private or public employment as a result of the rule modification to reduce the inspection fees and safety inspection report review fees for low and very low hazard potential dams.

5. Probable Impact on Small Business

See Part 3(c) above.

6. State Revenues

As discussed in Part 3(a) above, the reduction in revenue resulting from the rule modifications will have minimal adverse impact on the revenue generated by the Department's Dam Safety Program.

7. Less Intrusive or Less Costly Alternative Methods of Achieving the Rulemaking

The Department believes that the rule modification is the most direct way to reduce the financial burden related to dam safety inspection fees and safety inspection report review fees for the owners of low and very low hazard potential dams. The Department recognizes that the same reduction in costs can be achieved over the long-term by reducing the frequency of inspections for low and very low hazard potential dams. However, the reduced frequency may have an adverse impact on the safety of these dams.

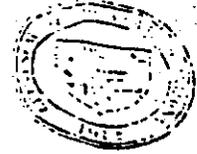
8. Description of Data on Which the Rule Modification is Based

- The data on the 2013 dam inspections and associated fees referred to in Part 3(a) was collected from the dam safety database created and maintained by the Department.

TAB D3

DEPARTMENT OF WATER RESOURCES

99 E. Virginia Avenue, Phoenix, Arizona 85004



BRUCE BABBITT, Governor
WESLEY E. STEINER, Director

MEMORANDUM

TO: Rose Mofford, Secretary of State

FROM: Department of Water Resources *Wesley E. Steiner*

DATE: May 17, 1983

RE: Proposed rules covering quasi-judicial hearing procedures

1. Summary of Proposed Action

The Department of Water Resources proposes new rules A.C.R.R. R12-15-161 through R12-15-180, establishing procedures for quasi-judicial or "contested case" administrative hearings required by statute to be held by the Department of Water Resources. The rules set forth how a case is commenced, who may be a party to a case, what types of documents may be filed, filing location and deadlines, how the prehearing conference and hearing may be conducted, and the process for requesting a rehearing or other review.

The purpose of the proposed rules is to set forth in a simple and straightforward manner all procedures necessary to present a case before the Department of Water Resources.

2. Statement of Impact on Small Business

These rules apply only when the Department holds a quasi-judicial hearing. The rules do not require ongoing reporting of any business activity and do not set performance or design standards for construction, maintenance or operation of any physical thing. The Department's purpose in writing a complete set of procedures for administrative hearings is to demystify the hearing process and make it understandable both to the law firm that does not have inside knowledge of Department practices and to the lay person who must know the general requirements in order to meaningfully participate in a Department hearing. In drafting these proposed rules, the Department assumed that most of the parties participating in Department hearings and their attorneys' law firms would fall into the statutory definition of small businesses. The thrust of these rules is to simplify the hearing process and make formal requirements less stringent.

Think Conservation!

Office of Director 255-1554

Administration 255-1550, Water Resources and Flood Control Planning 255-1566, Dam Safety 255-1541,

Flood Warning Office 255-1548, Water Rights Administration 255-1581, Hydrology 255-1586.

Since the administrative hearing functions as a substitute for the fact-finding duties of a Superior Court, the basic notions of due process and fundamental fairness are applicable to the Department's hearings. These concepts serve as a "bottom-line" regarding the extent to which procedural requirements may be reduced or eliminated. Hence, there are no particular exemptions for small businesses, other than R12-15-163(C) which allows corporations to be represented by a duly authorized officer or director instead of an attorney.

These regulations do require typewritten documents, and if there is more than one party, that copies of any documents filed by one party be mailed or delivered to any other parties. However, there are only two documents that a person is required to file: a request for review of a decision made without a hearing; and a request for rehearing or review of a decision after a hearing. There is also a general waiver provision that permits the director to waive these rules when "such waiver is not in conflict with law and in the interests of justice." The Department anticipates that this rule will be used to relax any rule if the requirements of the rule are burdensome to the parties in a particular case.

In summary, these rules are designed to make the hearing process reasonably simple for the benefit of any parties or firms appearing before the Department who may fall within the statutory definition of a small business. No particular exemptions have been created for small businesses because almost all non-governmental entities or law firms who appear before the Department are small businesses.

DEPARTMENT OF WATER RESOURCES

99 E. Virginia Avenue, Phoenix, Arizona 85004



BRUCE BABBITT, Governor
WESLEY E. STEINER, Director

May 17, 1983

Mr. William Jamieson, Jr.
Department of Administration
1700 West Washington
State Capitol, West Wing, Room 804
Phoenix, Arizona 85007

Dear Mr. Jamieson:

As required by the attachments to your memo dated August 11, 1982, I am forwarding with my approval six copies of the Department of Water Resources' proposed rules R12-15-161 through R12-15-180. To establish a time for appearance before the Council or if there are any questions on these rules, please contact Scott Larmore at 255-1507. The remainder of this letter is devoted to providing the information required by the guidelines dated August 10, 1982.

I. Purpose of the Proposed Rules

a. The purpose of the proposed rules is to set procedures for the quasi-judicial or "contested case" administrative hearings that are required or permitted by statute to be held by the Department of Water Resources. A list of the specific statutes providing for such hearings is attached as Exhibit A. The rules set forth how a case is commenced, who may be a party to a case, what types of documents may be filed, filing location and deadlines, how a hearing shall be conducted, and the process for requesting a rehearing or other review.

The rules are proposed pursuant to the statutory requirement found in the Groundwater Code. A.R.S. § 45-405 states: "The director shall, by regulation, provide an opportunity for rehearing or review of any decision of the director." Additionally, A.R.S. § 45-105(B)(1) states: "The director shall ... adopt and issue rules and regulations necessary to carry out the purposes of [Title 45]."

Think Conservation!

Office of Director 255-1554

Administration 255-1550, Water Resources and Flood Control Planning 255-1566, Dam Safety 255-1541,

Flood Warning Office 255-1548, Water Rights Administration 255-1581, Hydrology 255-1586.

The Department currently is handling each hearing on an ad hoc basis. Some hearings have been conducted in accordance with the procedural rules of the State Land Department, the Department's predecessor in responsibility for water matters. Other simple hearings have been conducted in accord with minimal procedures announced at the start of the hearing.

b. The rules set forth an orderly process for presenting, hearing and deciding a case before the Department of Water Resources. The Department, as an administrative agency whose decisions may be appealed to Superior Court pursuant to the Administrative Review Act, A.R.S. §§ 12-901 et seq., is charged with determining the facts in a case. In this regard, the Department functions as a substitute for a trial court. It is therefore important that Department hearings are conducted in such a manner as to give the parties due process of law.

In drafting these rules, the Department considered and rejected two alternatives: (1) promulgating no general procedural rules, and instead creating tailor-made rules for each separate type of hearing; or (2) promulgating a very rigorous, detailed set of procedural rules, akin to the Rules of Civil Procedure used for civil trials in Superior Court. The first alternative is similar to the Department's current practice of announcing procedures at the start of hearings. The State Land Department's procedural rules, which have been followed by the Department of Water Resources in other hearings, are representative of the second approach.

Regarding the first option, there are both costs and benefits vis-a-vis the adoption of tailor-made rules for each type of hearing. To be sure, with unlimited time and personnel, rules which are handcrafted to fit particular parties, issues and evidence may be more suitable in a given case than generalized rules. However, the drawbacks are many. Apart from the time and expense of such a procedure, the adoption of a myriad of special rules for each type of proceeding could have the effect of making practice before the Department an arcane art known only to a select few attorneys who could then charge for their "expert" knowledge.

The second alternative, that of adopting a facsimile of the Rules of Civil Procedure, would have the benefit of making the Department's hearing process familiar to practicing attorneys. However, many of the people involved in Department hearings do not have attorneys. Furthermore, although a Department hearing is analogous to a trial, under the Administrative Procedure Act, A.R.S. § 41-1010(A), the rules of evidence applicable to a court trial are not required for an administrative hearing. A Department hearing officer may conduct the proceedings in an informal manner.

An administrative hearing is designed to be a cheaper, speedier and hopefully an easier way to determine the facts of a case. Procedural rules for administrative hearings should be rigorous enough to guarantee a party due process, but not so inflexible as to require the same legal time and energy as a court trial. For example, in a recent complex Departmental hearing (conducted pursuant to rules which largely incorporated the Arizona Rules of Civil Procedure) 56 separate pleadings and motions were filed, 25 of which are permitted by the Rules of Civil Procedure but would not have been permitted by these proposed rules. Consequently, in order to preserve the flexibility that should characterize the administrative hearing process, the Department rejected the alternative of adopting rules similar to the Rules of Civil Procedure.

In summary, the purpose of the proposed rules is to set forth in a simple and straightforward manner all procedures necessary to present a case at a hearing before the Department of Water Resources.

II. Cost/Benefit Analysis

As these rules govern the procedural aspects of Department hearings, it is appropriate to delineate the relative costs and benefits in terms of (1) the Department itself, and (2) the parties or intervenors to the hearing. Other governmental agencies, for example, will be affected to the extent they participate as a party or intervenor in the hearing process. A chart showing the relative monetary costs and benefits is attached as Exhibit B.

III. Indirect Consequences

The indirect consequences of these rules can be simply stated. Departmental hearings will be simpler, shorter and more streamlined, without sacrificing the due process rights of the participants. Attorneys are not required. Cases may be consolidated. Prehearing conferences may be held to simplify and clarify contested issues, and certain interests may be allowed to participate on a limited basis only.

The impact on the Department will be a savings in money and staff resources. It may not be necessary to have Department attorneys present at every hearing, as is now the general practice. The movement away from the formal, stylized process engendered by the Rules of Civil Procedure is also in keeping with the Department's practice of using non-attorneys as hearing officers.

The proposed rules will also result in a savings in time and money for the participants in a hearing other than the Department. It is, however, possible that these less formal procedures will reduce the number of people intimidated by the hearing process and thereby result in more requests for hearings. To be sure, more hearings would mean higher costs for the Department. However, the benefit of greater public access to the administrative process offsets this cost. Additionally, each hearing will likely be shorter and less expensive for all concerned than a hearing conducted under more formal rules.

The legal sector (lawyers, support staff and court reporters) figure to be the biggest "losers" from the promulgation of these rules. Lawyers will not be required, hearings will not be overburdened with endless legal maneuvers and pleadings will be limited to those essential to ensure due process. The proposed rules, we believe, strike a well-reasoned balance between fairness and formality in the administrative hearing context.

IV. Impact on Small Business

a. In drafting these proposed rules, the Department assumed that most of the parties participating in Department hearing through their attorneys' law firms would fall into the statutory definition of a small business. In fact, as previously discussed, the entire thrust of these rules is to simplify the hearing process and make formal requirements less stringent. These rules apply only when the Department holds a quasi-judicial hearing. They do not require ongoing reporting of any business activity and do not set performance or design standards for construction, maintenance or operation of any physical thing. The Department's purpose in writing a complete set of procedures for administrative hearings is to demystify the hearing process and make it understandable both to the law firm that does not have inside knowledge of Department practices and to the lay person who must know the general requirements in order to meaningfully participate in a Department hearing.

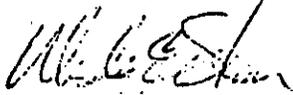
However, since the administrative hearing functions as a substitute for the fact-finding duties of a Superior Court, the basic notions of due process and fundamental fairness are applicable to the Department's hearings. These concepts serve as a "bottom-line" regarding the extent to which procedural requirements may be reduced or eliminated. Hence, there are no particular exemptions for small businesses, other than R12-15-163(C) which allows corporations to be represented by a duly authorized officer or director instead of an attorney.

William Jamieson, .
May 17, 1983
Page Five

These regulations do require typewritten documents, and if there is more than one party, that copies of any documents filed by one party be mailed or delivered to any other parties. However, there are only two documents that a person is required to file: a request for review of a decision made without a hearing; and a request for rehearing or review of a decision after a hearing. There is also a general waiver provision that permits the director to waive these rules when "such waiver is not in conflict with law and in the interests of justice." The Department anticipates that this rule may be used to relax any rule if the requirements of the rule are burdensome in a particular case.

In summary, these rules are designed to make the hearing process reasonably simple for the benefit of any parties or law firms appearing before the Department who may fall within the statutory definition of a small business. No particular exemptions have been created for small businesses because almost all non-governmental entities or law firms who appear before the Department are small businesses.

Sincerely,


Wesley E. Steiner
Director

Statutes Permitting or Requiring Quasi-Judicial
Hearings Before the Director of the
Department of Water Resources

<u>Statute</u>	<u>Topic</u>
<u>Groundwater</u>	
A.R.S. § 45-452(C)	Substitution of acres to receive CAP water
A.R.S. § 45-480(D)	Denial or diminution of Irrigation, Type I or Type II grandfathered right application
A.R.S. § 45-528	Revocation of groundwater withdrawal permit
A.R.S. § 45-574	Variance from irrigation water duty or conservation requirements
A.R.S. § 45-575	Administrative review of water duty and conservation requirements
A.R.S. § 45-578	Assured water supply applications
A.R.S. § 45-599	Application for well permit
A.R.S. § 45-634	Enforcement
A.R.S. § 41-1013	Denial of any license or permit where no statutory requirement for pre-denial hearing; covers revocation of well driller's license
<u>Surface Water</u>	
A.R.S. § 45-172(7)	Transfer and severance of appropriative rights
A.R.S. § 45-190	Issuance of order to show cause on reversion of appropriated waters to state for reappropriation
A.R.S. § 45-274	Protest to stockpond registration

DESCRIPTION OF DIRECT CONSEQUENCES

Dollar Impact
on Department*

Dollar Impact
on Party*

- | | | |
|---|---|---|
| 1. Party to pay cost of transcript on appeal to Superior Court (as per the Administrative Procedure Act). | - | \$1.50/page |
| 2. Party to furnish duplicate copies of oversized exhibits. | - | (\$5-\$100) |
| 3. "Natural" persons may represent themselves. | + | (\$500-\$5,000) |
| 4. Cases involving similar issues of law and fact may be consolidated. | + | (\$1,000-10,000) |
| 5. Prehearing conference may be used to simplify and reduce issues and evidence. | + | (\$500-\$5,000) |
| 6. Copies of pleadings must be served on parties. | - | Cost of postage and duplicating |
| 7. Department must serve certain documents by certified mail. | - | \$5.25/party |
| 8. Unless otherwise directed, pleadings must be filed in Phoenix office (mailing is permissible). | - | Cost of postage v. cost of hand delivery in 3 DWR offices outside Phoenix |
| 9. Pleadings must be typewritten. | - | \$1.50/page |

* "-" means increased cost/decreased revenue
 "+" means decreased cost/increased revenue

TAB D4



September 16, 1986

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Bruce Babbitt, Governor
Kathleen Ferris, Director

99 East Virginia Avenue
Phoenix, Arizona 85004

Ms. Betsy Bayless, Chairperson
Governor's Regulatory Review Council
Office of the Director
DEPARTMENT OF ADMINISTRATION
1700 W. Washington, Room 809
Phoenix, AZ 85007

Re: Proposed Amendment to A.C.R.R. R12-15-301 and Proposed Adoption of A.C.R.R. R12-15-310

Dear Ms. Bayless:

The Director of Water Resources proposes to amend A.C.R.R. R12-15-301 and to adopt A.C.R.R. R12-15-310. An original and six copies of the proposed rules are attached. This letter provides the information required in the Governor's Regulatory Review Council Guidelines dated August 10, 1982.

I. Purpose of the Proposed Rules

A. The Problem.

1. Rule R12-15-301.

The proposed amendments to Rule R12-15-301 are needed primarily to give notice that the Director of Water Resources will issue certificates of stockpond water right in the name of lessees, permittees or allottees on public lands in certain cases where the stockponds themselves are authorized improvements, while making it clear that the permanent water rights remain with the governmental entity owning the land. The existing rule does not allow issuance of the certificates to lessees on state trust land even when the stockpond is an authorized improvement and the lease provides that the water right can be issued to the lessee, by and for the State of Arizona. The existing rule also allows issuance of certificates to permittees or lessees on land administered by the Bureau of Land Management, thus severing ownership of the water right from ownership of the land. This severance of the water right from the land is contrary to Arizona water law.

Ms. Betsy Bayless, Chairperson
Governor's Regulatory Review Council
September 16, 1986
Page Two

Furthermore, the land would be virtually valueless if the water right were severed from it.

The amendment is needed secondarily to clarify the rule and to eliminate unnecessary language which repeats statutory provisions.

2. Rule R12-15-310.

Proposed Rule R12-15-310 is needed because in some cases multiple applications have been made by or for the same applicant for rights to the same water. Issuing multiple certificates of water rights for these multiple applications would lead to duplication and confusion.

B. The Solution.

1. Rule R12-15-301.

Proposed Rule R12-15-301 will give notice that the Director will issue a certificate of water right in the name of a permittee, lessee or allottee where the stockpond itself is an authorized improvement, while leaving ownership of the permanent water right with the public entity owning the land. The amendment will also clarify Rule R12-15-301 and eliminate unnecessary language.

The alternative solution considered was leaving the rule as it was originally adopted and obtaining clarification of the rule through litigation rather than rule amendment. Amendment was selected over litigation because amendment is less expensive to the Director and to the regulated community. Amendment would also give broader notice of the meaning of the rule than would a court decision after litigation.

2. Rule R12-15-310.

Proposed Rule R12-15-310 will give notice that the Director will issue only one certificate of water right when multiple applications are made by or for the same applicant for rights to the same water. Issuing only one certificate will avoid the duplication and confusion which would result if the same applicant or his agent received multiple certificates of water right, each bearing a different priority date.

An alternative solution considered was issuing multiple certificates which would reference each other. The proposed rule was chosen as a solution because it would be less confusing to

the public and less expensive to administer.

II. Costs and Benefits of Direct Consequences

A. Rule R12-15-301.

The proposed rule would impact only the Department, the public agencies administering land, and present or future permittees, lessees or allottees. The direct costs and benefits are shown in Schedule A, attached.

B. Rule R12-15-310.

The proposed rule would impact only the Department and those parties, whether private or public, who are entitled to water rights. The costs and benefits are shown in Schedule B, attached.

III. Costs and Benefits of Indirect Consequences.

A. Rule R12-15-301.

The proposed rule would decrease costs for the Department because no certificates would be issued directly to permittees or lessees of the Bureau of Land Management. Therefore, if a permittee or lessee in whose name the certificate was issued lost his or her lease with the BLM but refused to relinquish the water right on BLM land, the Department would not have to go through forfeiture or abandonment proceedings pursuant to A.R.S. §§ 45-189 and 45-190 in order to establish that the former lessee or permittee no longer held the water right. The proposed rule would also reduce costs to the Department, the BLM or its new permittee or lessee because the BLM or its new permittee or lessee would not have to reapply for a water right with a new date of priority. Instead, under the proposed rule the Department could reissue the certificate to the new lessee or permittee as designated by the BLM.

Under the proposed rule certificates of stockpond water right may be issued to certain lessees on state trust lands as agents for the State of Arizona. Leases for these lands have provided for decades that lessees will acquire any water rights by and for the State of Arizona, so the lessees' rights will not be affected by this change except to acknowledge lessees' status as agents acquiring the water rights for the State of Arizona. Because the lessees will be named on the certificates, however, the certificates must be reissued if a lessee loses his or her

lease. The cost to the Department for reissuing a certificate in these circumstances will be approximately \$15. The State Land Department or its new lessee will pay \$5 pursuant to A.C.R.R. R12-15-151.1 for reissuance of a certificate.

The Department, the public agencies administering land and their present and future permittees, lessees or allottees will save money which might otherwise be expended in litigation to clarify the meaning of Rule 12-15-301. For example, a lessee of state trust lands whose lease states that the lessee may obtain a certificate in the lessee's name by and for the State of Arizona might challenge the Department if the Department refused to issue the certificate in any name except the State of Arizona, as provided by the existing Rule R12-15-301.A.2.

2. Rule R12-15-310

The Director is required to administer surface water law so that no applications to appropriate water are issued which will conflict with vested rights and no applications to sever and transfer water rights are approved which will affect vested rights. If two or more certificates of water right or stockpond water right are issued to or for the same applicant and for the same water, proper administration of the surface water law would be complicated, and the danger of errors would increase. A person seeking to appropriate water or to sever and transfer a water right might have his request denied because multiple certificates of water right or certificates of stockpond water right existed for the same water, making it appear that more water was appropriated than was actually the case.

Assignments of water right would also be more expensive and complicated if multiple certificates were issued for the right to the same water. With multiple certificates, assignments would cost the rightholder more in filing fees and the Department more in administrative expenses. In addition, the existence of multiple certificates for the right to the same water would make errors possible upon assignment, increasing the likelihood that some certificates would not be properly reissued.

IV. Small Business Impact

A. Rules R12-15-301 and R12-15-310.

The present and future permittees, lessees or allottees impacted by the proposed rules are predominantly small businesses. These present and future permittees, lessees or allottees

Ms. Betsy Bayless, Chairperson
Governor's Regulatory Review Council
September 16, 1986
Page Five

are individuals, partnerships or corporations in the farming or ranching industry who lease public lands for all or part of their operations.

The proposed rules do not require ongoing reporting or book-keeping by permittees, lessees or allottees. The public agencies administering the land would notify the Department when there is a change in permittees, lessees or allottees.

B. Methods to Reduce Impact

None of the methods listed in the guidelines are feasible in meeting the statutory objectives which are the basis of the proposed rules. Since the proposed rules will require little or no action by the permittees, lessees or allottees, it is not feasible to reduce the action required.

V. Filing of Rules

The original and six copies of the proposed rules are attached hereto. A Statement of Approval is also attached.

Please feel free to call Deputy Counsel Barbara A. Markham at 255-1529 if you have any questions concerning this matter or to establish a time for appearance before the Council.

Kathleen Ferris
Director of Water Resources

By: Richard M. Wells
Richard M. Wells
Chief Deputy Director

Description of Direct Consequences Rule R12-15-301	Dollar Impact on Department	Dollar Impact on Present & Future Permittees, Lessees or Allottees	Dollar Impact on Public Agencies Administering Lar
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1. Wording typed on certificates
would change.

\$0

\$0

\$0

Description of Direct Consequences*
 Rule R12-15-310

Dollar Impact on
 Department
 (+ = Savings;
 - = Cost)

Dollar Impact on Public
 Water Right Holder
 (+ = Savings;
 - = Cost)

Dollar Impact on
 State Water Right
 Holder (+ = Savin
 - = Cost)

One certificate of stockpond water right would not need to be issued if consolidated certificate of water right were issued	+ \$15/certificate, 7000 certificates	\$0	\$0
One certificate of water right would not need to be issued if consolidated certificate of stockpond water right were issued.	+ \$100/certificate, 40 certificates	+ \$25/certificate, 34 certificates	+ \$25/certificate, 6 certificates
Registry need show one certificate instead of two or more.	+ \$20/entry	\$0	\$0
Department must verify with applicant that multiple applications are for the same applicant and the same water.	- \$5/application, 7040 applications	- \$5/application, 7034 applications	- \$2/applications, 6 applications

Virtually all multiple applications which will be affected have already been filed with the Department.

ECONOMIC IMPACT STATEMENT
AND
STATEMENT OF EFFECT ON SMALL BUSINESSES

The proposed amendments to A.A.C. R12-15-301 would correct the numbering of statutes referred to in the rule which have been renumbered since adoption of this rule.

The proposed amendments to A.A.C. R12-15-302 would substitute reference to the "Department of Water Resources" with "Director of the Department of Water Resources" to achieve consistency with other rules.

The proposed amendments to A.A.C. R12-15-310, which is also being renumbered R12-15-303 to eliminate a gap in the numbering, would correct the numbering of statutes referred to in the rule which have been renumbered since adoption of this rule.

All of these proposed amendments are non-substantive and would have no impact on the economy or on small businesses.

TAB D5

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT WATER RESOURCES

ARTICLE OF 4. LICENSING TIME FRAMES

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

SUMMARY

The major impact of the rule will be on the Department itself. There will be no major changes in the way a license is processed within the Department. However, a tracking system utilizing commercial software will be implemented to assure that the time-frames identified for each license are met. Staff time will be allocated for training and to make minor changes in the licensing process. The budgetary impact on the Department is anticipated to be substantial in the first year and much less in the following years. In the long term, costs should be offset by increased efficiency and enhanced management oversight.

The Department expects that most license applicants will experience only small changes in the way they interact with the Department. Application review will not be changed significantly. More types of applications will be reviewed using a "team" approach for central management of tasks and coordination of communications to the applicant. Certain new statutory provisions may have unexpected impacts. Time limits will increase pressure to issue licensing decisions. A.R.S. §41-1075 provides that the agency may make only a single, comprehensive, written request for more information on an application during the substantive review time-frame. On occasion, these restrictions may preclude the Department from finding a solution through an iterative process with the applicant, as has

often worked in the past. It will be more important for applicants to submit thoroughly prepared applications. In general, applicants will be the recipients of increased efficiency and oversight.

The overall economic impact of the licensing time-frames rule on Department license applicants is difficult to identify monetarily. Costs of implementation will be offset by increases in efficiency and management oversight. Application fees will not change. Some applicants will realize an economic benefit in knowing when a licensing decision must be made.

A. Identification of persons who will be directly affected by, bear the costs of, or directly benefit from the time-frames rule

A description of persons who may be affected by the time-frame rule follows.

1. Surface Water Users: These persons include individuals, irrigation districts and other political subdivisions of the state who divert surface water for use or storage. All surface waters in the state are subject to prior appropriation. Persons seeking a water right and any request to change the use or change the point of diversion must be approved by the Department.

Surface water applicants are likely to benefit from increased efficiency and ease of tracking progress. Some will incur costs of more thorough preparation of applications.

2. Groundwater Users: These persons include individuals, irrigation districts, water companies, developers and other political subdivisions of the state who utilize groundwater as a source of supply, drill wells, or otherwise impact groundwater in storage. For example, individuals and entities seeking assured water supply certificates and designations, recharge permits, groundwater conveyance permits and water adequacy reports seek licenses through the groundwater program. About 76% of the Department's total rule package address groundwater issues.

While many applicants will benefit from certainty and timeliness of licensing decisions, some who require assistance with the process will have less flexibility and control.

3. Safety of Dams: These persons include individuals, irrigation and flood control districts, political subdivisions of the state, mining companies and other corporations and federal agencies who own or operate dams in Arizona.

Owners and operators will see positive and negative impacts. Timely decisions on dam construction and modification licenses will reward those applicants who have devoted time and resources to submit complete and fully documented material with their applications. Since the process requires extensive review of engineering drawings and complex mathematical calculations, errors require time-consuming revisions. It is possible that the Department may have to reject applications to meet the time-frame schedule. Dam owners and operators may incur greater up-front costs to avoid rejection of their applications in the future.

4. Other: These persons include individuals or entities that wish to apply for a license to fill a water impoundment with poor quality water or to utilize a body of water for a short period of time, request approval of construction extensions, weather modification, and other rarely used permits that are covered by statute. Applicants will benefit from knowing a date certain when the licensing decision will be made.

B. Cost-Benefit Analysis

This cost-benefit analysis addresses the identifiable costs associated with the implementation of the time-frame rules and the benefits that may be realized.

In general, individuals and entities outside of the implementing agency will realize the benefits of smoother and more consistent review of applications, more central oversight of the review process,

better tracking of progress, and in some cases, more timely licensing decisions. In some cases the benefit of knowing when a licensing decision must be made will be substantial.

For some applicants, the team management will result in delays of receiving notice of deficiencies. A.R.S. §41-1075, which provides that the agency must make all of its requests for additional information on an application in a comprehensive, written request during the administrative time-frame, and a single comprehensive request during the substantive review time-frame, will result in some cases in less flexibility and assistance to the applicant and more pressure to issue licensing decisions. It is likely that more applications will be denied. Successful applicants will bear the costs of more pre-application meetings and submitting more thorough, higher quality applications.

1. Implementing Agency

The costs to the Department include the time and staff needed to implement and maintain a tracking system to insure that the time-frames for each license application will be adhered to and met. The estimated costs of this program are as follows:

TABLE 1

Total Estimated Costs of the Tracking System

	ITEM	TOTAL COST
SOFTWARE ¹	50 @ \$450 EACH	\$ 22,500
TRAINING		
ITD Staff	1 @ \$1495	\$ 1,495
Department Staff	50 @ \$800 for 10 vs 50 @ \$1,390 for 12	\$ 4,000 to 5,792
IMPLEMENTATION		
ITD Staff	1/4 FTE	\$ 10,000
Department Staff ²	(768 HOURS X \$25/HR)	\$ 19,200
TOTAL		\$ 57,185 to 58,977

¹ MICROSOFT PROJECT MANAGEMENT 98

² 12 FTE's WORKING 2 HOURS PER WEEK FOR 8 MONTHS

TABLE 2

Annual Operation and Maintenance Costs

	ITEM	TOTAL COST
SOFTWARE UPGRADE ¹	50 X \$100	\$ 5,000
ITD SUPPORT	1/4 fte	\$ 10,000
TRAINING	5 X \$1495	\$ 7,475
TOTAL		\$ 22,475

¹ Software upgraded every 2 years at a cost of \$300 per license. Annual costs of \$100 per license.

2. Other Agencies Directly Impacted: The Department is involved in cooperative programs with other state, county, local and federal agencies. Rule implementation may affect some of these cooperative efforts and the agencies may incur additional costs. For example, the Department of Environmental Quality participates in the assured and adequate water supply programs, recharge permitting, underground storage facility permits, and any other license application that affects water quality. A request for approval of a water service area right requires coordination with the Arizona Corporation Commission. Close coordination will be required with all agencies that cooperate with the Department when the time-frames are implemented.

3. Political Subdivisions: Political subdivisions that operate water systems or otherwise control and divert water are not anticipated to incur any substantial cost increases when the time-frames statute is implemented. They will most likely benefit from the increases in efficiency that the Department expects to derive from this effort.

As applicants, political subdivisions will bear the costs of submitting higher quality applications or incurring a greater risk of denial.

4. Businesses: Private water companies, engineering and hydrologic consulting firms and land development companies are examples of small businesses that will likely incur increased costs and benefits associated with the time-frames implementation. Successful applicants will require additional pre-application conferences, better planning documents, site identification maps, more complete engineering plans and associated documentation prior to application submittal. In some cases, the higher quality applications that may be required will represent higher costs in time, money, and expertise.

In some cases, the requirement on the Department to coordinate communication to prevent multiple requests to the applicant for information may cause delays in advising applicants of deficiencies. In addition, statutory limits on the agency's requests for information will restrict the agency's customary iterative process on complex applications.

Applicants may receive license approval faster and more efficiently. Some will benefit from the certainty of knowing when the licensing decision must be made.

5. Private Persons and Consumers: Because individuals hold a large number of water rights and many of the dams constructed in the state are privately owned, individuals may be impacted by the time-frames implementation. The agency's inability to make additional requests for information may hinder some applicants by restricting the agency's flexibility to resolve issues through an iterative review process. Some applicants may bear the cost of consultants to assist in preparing the application.

Individuals would receive the benefits of certainty and more centralized management of the process.

C. Probable Impact On Private and Public Employment

1. Businesses: There is very little impact on private employment at businesses directly affected by time-frames implementation. The Department expects that any changes occurring in the application process will be minor and will not require monetary outlays for additional employees.

2. Agencies: The Department anticipates no impact on public employment in agencies impacted by the time-frames statute. Any changes in cooperative efforts with the Department will be procedural and will be handled administratively.

3. Political Subdivisions: There will be very little impact on political subdivisions affected by the time-frames statute. Political subdivisions delivering water or operating dams may have to be more diligent in thoroughly preparing applications. Additional staffing is expected to be minimal.

D. Probable Impact On Small Business

1. Identification of Small Businesses Subject To The Time-Frames Implementation:

Small businesses, such as private water companies, consulting firms, development companies, well drillers that are directly impacted by the time-frames statute implementation will not experience significant change in their interactions with the Department. Most will benefit from greater certainty of obtaining a licensing decision by a set date.

2. Administrative and Other Costs: Other than the costs associated with thorough preparation of applications, the Department anticipates no significant costs associated with the time-frames implementation.

3. Description of Methods The Agency May Use to Reduce The Impact On Small Businesses: The Department expects that time-frame rule implementation process will have no effect on small businesses in most cases.

E. Probable Effect On State Revenues: There will be no increase to the general fund from the implementation of the time-frame rule. Any penalties for not meeting time-frames will be paid out of the Department's budget.

F. Description Of Any Less Intrusive Or Less Costly Alternative Methods Of Achieving The Purpose of The Time-Frame Statute: The Department expects the implementation of the time-frame rule to have a minor cost to applicants. Most of the cost will be borne by the Department, primarily

associated with the development and maintenance of the tracking system. Most applicants will not experience negative or intrusive impacts.

The Department intends to continue to assist applicants with the licensing process. The Department works with applicants who need help preparing an application and applicants submitting complex applications that require help to resolve interrelated issues. The focus will continue to be to address the needs of the applicant while meeting the requirements of the statute and fulfilling the responsibilities of the agency.

TAB D6

ASSURED AND ADEQUATE WATER SUPPLY RULES

A.R.S. § 41-1055(B) and A.R.S. § 41-1035 ECONOMIC, CONSUMER, AND SMALL BUSINESS IMPACT STATEMENT

A. An Identification of the Proposed Rule Making

The Department of Water Resources ("Department") is modifying certain rules, repealing other rules, and adopting new rules under A.A.C. Title 12, Chapter 15, Article 7, all relating to the Assured and Adequate Water Supply (AAWS) program.

During the 2005 legislative session, HB 2174 was enacted by the Legislature and signed into law by the Governor. In consultation and collaboration with the public advisory committee prescribed in HB 2174, the Department has undertaken a comprehensive review of its AAWS rules and is proposing modified rules that are designed to streamline and make more efficient the AAWS program and combine and simplify certain types of fees for service, all designed to quicken, shorten, and simplify the application and review process, add clarity to and reduce confusion about AAWS program requirements and procedures, and thereby facilitate more timely completion of real estate development schedules and faster satisfaction of public demand for real estate.

Taken together, the Department estimates that the modified rules will result in economic benefits to consumers, political subdivisions, agencies and small and large business as follows:

- Repetitive processes will be eliminated, fewer items will be required to qualify, and fewer steps will be involved in the approval process, saving time and effort.
- Elapsed calendar days to complete some AAWS services will shorten, significant time will be saved.
- Added convenience factors will make it easier and less confusing for political subdivisions, businesses, and agencies to complete the application and review process.
- Certainty, clarity, and transparency in the rendering of AAWS services will improve.

During the 2001-05 period, the Department estimates that AAWS fees collected have covered less than 10% of actual AAWS program costs. Stakeholders agreed with the Department that higher fees were necessary to support an AAWS program that needed to be more efficient and effective in order to keep up with the tremendous growth occurring in Arizona. Following A.R.S. § 45-580, the Department proposes in this rulemaking to increase the fees it charges for the AAWS services it provides to the development, home builder and water provider communities, and through them, the general public, to more fully cover the costs and expenses of the Department in administering the AAWS program and to provide a means to add FTEs to a program struggling to keep pace. Specifically, the Department proposes to repeal the fee structure for the Adequate Water Supply Program that is set out in current rule R12-15-725 and also to repeal the fee structure for the Assured Water Supply Program that is set out in current

rule R12-15-714. Those fee structures will be replaced with the new and streamlined fee structure in proposed rule R12-15-730. By doing so, the Department expects that the total fees it collects from those affected by the AAWS Program will increase approximately nine-fold. The fees are a product of negotiations with stakeholders. The fee structure is based on the number of the estimated number of future applications that will be received by type and the estimate future costs of administering a streamlined and more efficient AAWS Program. The new fees will be used by the Department for the costs and expenses of administering the Program. Those AAWS services - certificates of assured water supply and water adequacy reports - that will most benefit from the streamlining are also apportioned most of the increased fee collections. The table below shows an abbreviated summary of the repealed fees and the entirety of the proposed new streamlined fees:

Fee Proposal

Service	Repealed	Proposed – R12-15-730
	(Abbreviated)	
Certificates	\$1000 cap. \$250 for the first 20 lots. \$0.50 for each lot thereafter.	\$3000 for the first 20 lots. \$3.00 for each lot thereafter. \$5000 cap.
Assignment	\$1000 cap. \$250 for the first 20 lots. \$0.50 for each lot thereafter.	For certificates issued after the effective date, none – combined into certificates fees. For certificates issued prior to the effective date, \$1000 cap. \$250 for first 20 lots. \$0.50 for each lot thereafter.
Reissuance of a certificate (issued before effective date of rules) pursuant to R12-15-704(G)		For certificates issued after the effective date, none – combined into certificates fees. For certificates issued prior to the effective date, \$1000 cap. \$250 for first 20 lots. \$0.50 for each lot thereafter.
DAWS	\$10,000 cap. \$500.00 for the first 500AF. \$0.50/AF for next 500 AF. \$0.25AF thereafter.	\$1000.00 for the first 1000AF. \$0.50/AF thereafter. \$10,000 cap.
DAWS (Modification)	\$500.00	\$500.00 for a “minor modification.” ¹ Otherwise, same as DAWS: \$1000.00 for the first 1000AF, \$0.50/AF thereafter. \$10,000 cap. Applied only to the incremental volume above the original designated volume.
DADE	\$8000.00 cap. \$400 for the first 1000AF. \$0.25/AF thereafter.	Same as DAWS.

DADE (Modification)		Same as DAWS modification.
Water Report	\$800.00 cap. \$200.00 for the first 20 lots. \$0.50 per lot thereafter.	\$900.00 for the first 20 lots. \$2.00 per lot thereafter. \$2000.00 cap.
Analysis of Assured Water Supply; Analysis of Water Adequacy	\$1000.00	\$7500.00
PAD	\$1000.00	\$5000.00
Type A reclassification ²		\$250 for first 20 lots. \$0.40 for each lot thereafter. \$1000.00 cap.
Material plat change review		\$250.00

1. A minor designation modification does not involve re-evaluation of physical, legal, or continuous availability or consistency with goal. The higher fee is applied to a designation modification – DAWS or DADE – that requires re-evaluation of physical, legal, or continuous availability, or goal consistency (goal consistency does not apply to adequacy designations).
2. Classification as a Type A Certificate issued before the effective date of the rules and not included in an assignment application.

A reissuance of a certificate pursuant to R12-15-704(G), a Type A certificate reclassification (for a certificate issued before the rules are effective and not included in an assignment application), or for a material plat change review are optional services offered to certificate holders and the Department anticipates that few applications will be submitted. In most cases, applicants would seek an assignment rather than a reissuance, so the economic impact will be *de minimis*. The reclassification and material plat change review are included in other application reviews at no additional cost and applicants will not often request these services separately. The fees for these services are relatively low and the economic impact will be *de minimis*.

B. A Brief Summary of the Information Included in the Economic, Consumer, and Small Business Impact Statement

Using a projected level of AAWS Program services, the Department estimates that the state will collect a grand annual total of approximately \$1.475 million using the fee structure proposed in R12-15-730. Using the fees set forth in current rules R12-15-714 and R12-15-725, the Department estimates that it would have collected approximately \$165,000 annually while rendering the same projected level of services. Persons applying for AAWS services will pay increased costs of approximately \$1.31 million annually.

The same persons will reap benefits from an AAWS Program that is streamlined, more efficient, quicker, shorter, clearer, simpler, and one that facilitates more timely completion of real estate development schedules and faster satisfaction of public demand for real estate. These benefits are not quantified, but their value is apparent to the development, home builder and water provider communities, who have agreed to pay these increased costs to streamline an AAWS program that needs to be more efficient and effective to keep up with the tremendous growth occurring in Arizona.

The following are public services currently provided by the AAWS program:

CAWS	Certificates of Assured Water Supply, <i>including new certificates, assignment of ownership, and conformance letters</i>
DADE	Designations of Water Adequacy, <i>including new and modifications</i>
DAWS	Designations of Assured Water Supply, <i>including new and modifications</i>
WAR	Water Adequacy Reports
AnAs	Analyses of Assured Water Supply
PAD	Physical Availability Determinations
AnAd	Analyses of Water Adequacy

B.1. Persons Directly Benefiting from the Proposed Rulemaking

The More efficient and effective AAWS program will benefit real estate developers, individual partnerships, corporations, large and small businesses involved in home building and community development, and water suppliers including political subdivisions, private water companies, and irrigation districts serving municipal water. AAWS rule streamlining is especially designed to shorten the time and administrative burden of real estate developers and home builders who apply for certificates of assured water supply. Certificates constituted about 70% of AAWS program services during the 2003-05 period. Revenue accumulated from the proposed fees will allow the Department to increase its staffing for the AAWS program so that it can better manage the tremendous growth Arizona is experiencing. The Department and other state agencies affected by the AAWS program, such as the Arizona Corporation Commission, the Arizona Department of Real Estate and the ADEQ also will benefit from a shortened, simplified, streamlined, and more efficient application and review process, involving fewer steps, less repetition, reduced numbers of applications, and less waiting time. The general public will benefit from swifter and more certain satisfaction of its demand for real estate, while enjoying the certainty that an assured or adequate water supply for 100 years has been identified, and in AMAs, that groundwater resources are being properly managed.

B.2. Persons Directly Bearing the Costs of the Proposed Rulemaking

Persons applying for AAWS services will pay increased costs. The table below shows numbers of AAWS services rendered over the 2001-05 period, and a projection for 2005-06.

Looking at the table, if each service rendered represented one real estate development, approximately 513 municipal water providers, private water companies, real estate developers, corporations, sub-dividers, and other similar persons statewide paid AAWS fees in 2004-05.

Table. Numbers of AAWS Services Rendered

AAWS SERVICE	FISCAL YEAR				
	2001-02	2002-03	2003-04	2004-05	2005-06 ¹
CAWS	112	149	302	355	251 ³
DADE	2	1	0	4	13 ²
DAWS	9	6	10	3	
WAR	91	67	73	114	125
AnAs	6	10	20	20	22
PAD	8	4	6	0	7
AnAd	1	2	4	17	19
TOTAL	229	239	415	513	437

1. Projected. The projections are further detailed, below.
2. All Designations taken together, e.g. DADE + DAWS.
3. Presently, Certificate changes of ownership are assessed fees and counted separately from new certificate applications. Under the proposed streamlining, these services are combined, resulting in a smaller number of projected certificate services.

B.3. Cost-Benefit Analysis

The streamlined AAWS rules will facilitate the completion of real estate development schedules in a more timely manner and reduce per-service processing times spent by multiple agencies. The AAWS rule streamlining is especially designed to shorten the time and administrative burden of applicants for certificates and water reports, typically real estate developers and homebuilders. The general public and those employed in the housing industry will benefit from swifter satisfaction of real estate demand. Following the directive in A.R.S. § 45-580, the Department proposes to increase its fee collections to a level roughly equal to about two-thirds of its actual costs to administer the AAWS program. Stakeholders have agreed to allow the Department the opportunity to identify its AAWS program costs over the next few years and review at some future time the adequacy of the fee levels proposed in this rulemaking. Persons using AAWS program services will pay increased fees per service. Total AAWS fees paid to the Department during a given year will also increase.

B.3.1. Agencies

The Department estimates its full-time equivalent staff (FTE) and associated costs to administer the AAWS program as follows:

AAWS PROGRAM FTEs AND COSTS				
	All ADWR 2004-05	All ADWR Projected	WMD & Hy Projected	WMD Only Projected
FTE's – Number	14.4	17	14	10
Program Cost	\$1,998,800	\$2,212,200	\$1,739,400	\$1,189,900

The 2004-05 figures represent actual Department costs associated with administering the AAWS program. The projections represent the Department's outlook for 2005-06 and beyond as of this writing.

Total fees collected for AAWS program services are expected to greatly increase under the new fee structure proposed in R-12-15-730. The Department estimates that the average amount of annual fees collected over the 2001-05 period would have increased by about eight times, from an average of \$106,575 to an average of \$830,033, an average annual increase of about \$723,500. With the new fees and the Department's projected demand for AAWS services, future fees collected would increase from about \$165,000 to about \$1,474,800 annually, an increase of about \$1,309,800 or ninefold. These increased revenues will allow the Department to manage more effectively the AAWS program, reduce the administrative burden to applicants and therefore keep pace with the growth of development. The AAWS program streamlined procedures will reduce both calendar and staff days required per service, thereby reducing the Department's administrative burden. The streamlined procedures are expected to reduce the number of staff and calendar-days typically required to render services at other state agencies, in some cases significantly.

B.3.2. Political Subdivisions

Cities, towns, private water companies, community water systems, and in some cases water districts and home owner associations typically secure their water supplies via Designations of Water Adequacy ("DADE" – outside of Active Management Areas) and Designations of Assured Water Supply ("DAWS" – inside of Active Management Areas). These water providers are located statewide throughout Arizona. In recent years, DADE and DAWS together have represented about two to five percent of annual AAWS services rendered and accounted for about four to seven percent of total annual AAWS fees collected.

The fees assessed to political subdivisions for both DADE and DAWS would have increased during recent years and are projected to increase with the proposed new fee structure. For example, during 2004-05, the Department actually collected \$6,200 from seven DADE/DAWS services, but would have collected \$16,680 under the proposed increased fees. The seven services in 2004-05 represent a recent low in DADE/DAWS activity. Based on knowledge it presently has, the Department estimates that it would collect \$66,300 from 13 DADE/DAWS services during 2005-06 with present fees, and that this total would increase to \$76,600 with the proposed fees.

On a per acre-foot basis, over the 2001-05 period, 35 designations totaled about 410,000 acre-feet, at an average total cost of about \$0.06 per acre-foot. If the proposed new fee structure had been in place during 2001-05, the average cost would have been about \$0.24 per acre-foot. Total fees collected from the 35 designations were about \$24,300, and would have risen to about \$97,000, a four-fold increase.

Designated providers will pay these costs as AAWS program services are rendered. However, since most of these providers are cities, towns, and similar municipal water providers, the general public will be the ultimate cost-bearer as the providers adjust rate structures and pass the higher costs through to the public via approved rate hikes.

For example, seven 2004/05 designations involved approximately 22,000 acre-feet of municipal water. Using the rule of thumb that one acre-foot is enough water to supply one to two average homes, about 22,000 to 44,000 households would have ultimately paid increased fees totaling about \$10,480 or an increase of about \$0.50 to \$1.00 per household for the water designated in 2004/05, if the proposed new fee structure had been in place.

Persons applying for new designations or to modify existing designations will benefit from the AAWS streamlining through shortened processing times, reduced backlog, and more focused attention of AAWS program staff. The streamlined rules are clearer and more transparent. Application, annual report, and special exemption reviews are all expected to speed up. Designation services are relatively few compared to certificates, and designations are often more complicated. In some past cases, this has resulted in relatively more attention to the large backlog of certificate applications. This unfortunate situation is expected to abate under the proposed rules. Faster designation processing is expected to benefit those political subdivisions who rely on real estate development fees to support other public services, as those political subdivisions will be able to more quickly satisfy the demand for real estate.

B.3.3. Business, Including Small Business

Outside of designated service areas, real estate developers, including general partnerships, limited liability corporations, general corporations, trusts, other large and small businesses, private individuals and any other persons who sell subdivision lots to home buyers or record plats statewide typically secure their water supplies via certificates inside an AMA and water reports outside an AMA. These same real estate developers or any Arizona landowner with a master plan might apply for an Analysis of Assured Water Supply ("AnAs," inside an AMA) or an Analysis of Water Adequacy (AnAd, outside an AMA).

In recent years, certificates and water reports together have represented almost 90% of AAWS services rendered and accounted for about 75% of total AAWS fees collected. Under both current and proposed rules, a small certificate or water report involves 20 lots or less.

In recent years, AnAs and AnAd together have represented about three to five percent of AAWS services rendered and accounted for about seven to fourteen percent of total AAWS fees collected.

B.3.3.1. Probable Costs to Business, Including Small Business

B.3.3.1.1. Certificates – CAWS

There were 32 new small and 219 new large certificate applications from businesses in 2004-05. If one lot equals one house, about 44,000 new houses will eventually be available for sale to housing consumers under certificates applied for in 2004-05.

The ability of the real estate developer to pass increased costs through to ultimate buyers depends on the parameters of the underlying demand for housing. The most likely scenario is that both housing buyers and real estate developers will share payment of certificate fees that would have increased during recent years and are projected to increase with the proposed new fee structure. For example, during 2004-05, the Department actually collected

\$105,000 from 355 certificate services, but would have collected about \$843,300 under the proposed increased fees. The 355 services in 2004-05 represent an all-time high in certificate activity. Under the proposed new fees, the Department estimates that it will collect about \$927,600 from 251 new certificate services during 2005-06, whereas, with present fees, this total would be just \$115,000.

During the 2001-05 period, small certificates have averaged 12 lots in size. This translates into a small certificate per-lot cost of $\$250/12 = \20.83 under the present fee structure vs. a small certificate per-lot cost of $\$3,000/12 = \250 under the new proposed fees. Over the same period, total small certificate fees paid would have increased by six to twelve times under the new fee structure as compared to the present fees.

Presently, large certificates are subject to both minimum fees and lot charges and also repetitively pay fees as ownership changes during processing. Recently, large certificates have averaged about 200 lots in size. Using that figure, the average per lot cost under the new rules would be $\$3,000/200 + \$3.00 = \$18.00$ per lot after the first 20 lots, as compared to $\$250/200 + \$0.50 = \$1.75$ per lot under the present rules. Total large certificate fees paid from 318 applications during 2004-05, for example, would have increased about eightfold, from a total of \$95,750 to a total of \$747,285. Only 219 new certificate services would have paid fees. Ninety-nine large certificate applications experienced a change of ownership during the processing and repetitive fees on them would have been eliminated under the proposed new fees.

B.3.3.1.2 Water Adequacy Reports

There were 34 small and 80 large water reports prepared for businesses in 2004-05. Supposing again that one lot equals one house, about 11,000 new houses will eventually be available for sale to housing consumers under water reports applied for in 2004-05.

Under the proposed new fee structure, water report fees would have increased during recent years and are projected to increase in the future. For example, during 2004-05, the Department actually collected \$27,100 from 114 water report services, but would have collected about \$120,275 under the proposed increased fees. The 114 services in 2004-05 represent an all-time high for water reports, and are projected to continue to increase. Under the proposed new fees, the Department estimates that it will collect about \$132,000 from 125 new water reports during 2005-06, whereas, with present fees, that total would be about \$29,800.

During the 2001-05 period, small water reports (those 20 lots or less in size) have averaged about 13 lots in size. This translates into a small water report per lot cost of $\$200/13 = \15.38 under the present fee structure vs. a small water report per lot cost of $\$900/13 = \69.23 under the new proposed fees. Over the same period, total small water report fees paid would have increased by about 4.5 times under the new fee structure as compared to the present fees.

The average size of large water reports varied between 93 and 130 lots over the 2001-05 period. For a 100-lot water report, the average per lot cost after the first 20 lots under the new rules would be $\$900/100 + \$2.00 = \$11.00$ per lot, as compared to $\$200/100 + \$0.50 = \$2.50$ per lot under the present rules. With the proposed new fees, total large water report fees paid during 2004-05, for example, would have increased about 4.4 times, from a total of \$20,300 to a total of \$89,674.

B.3.3.1.3 Analyses of Assured Water Supply and Water Adequacy

Under the proposed new fee structure, the cost for AnAs and AnAd would increase from \$1,000 to \$7,500 per analysis. The numbers of analyses have been steadily increasing in recent years, reaching a combined 37 in 2004. A 10% increase, to 41 analyses is projected by the Department. In 2004-05, the Department collected \$39,000 from the 37 analyses. With the new fee structure, it would have collected \$277,500, about a sevenfold increase.

B.3.3.2. Probable Benefits to Business, Including Small Business

The Department expects certificate services to continue to increase in coming years and is presently experiencing an historically large certificate backlog. Under the old rules, new applications, changes of certificate ownership, and partial certificate assignments were treated separately, with separate application and qualification processes and separately assessed fees. Each time one of these events occurred, that application moved back to the end of the service queue. Under the streamlined rules, fees for new, changed, and assigned certificate services will be combined into a single new application fee.

If there is a plat change during the time a water report is being processed, the streamlined procedures will shorten processing times by eliminating repetitive plat change reviews. The Department expects that the streamlined rules will shorten some certificate and water report processing times by four to twelve weeks while at the same time adding convenience and transparency and reducing public confusion.

Draft rules R12-15-703 and R12-15-712, pertaining to analyses of assured water supply and water adequacy allow the State Land Department to apply for an analysis of assured water supply.

The draft rules clarify the application procedure by identifying what information the applicant is required to provide in the application submitted to the Department, what the applicant must demonstrate in the application, and how the Director will evaluate those items in making her or his determination. They also clarify what the applicant must submit to prove land ownership and set forth who qualifies as an authorized signatory on the application.

The draft rules codify the long-standing Department policies on time limits for analyses and renewals. They set forth factors for consideration in the renewal. The Director is given added flexibility. The inclusion of specific renewal terms will assist developers in planning. In addition, the inclusion of a time limit and renewal terms will terminate those analyses that do not move forward with development, and free up additional water for other development. These measures provide greater certainty to the applicant, the Department and the public that the applicant who is "locking up" water is doing so with a viable plan for water delivery to the applicant's proposed subdivision.

B.3.4. Physical Availability Demonstrations – Probable Costs and Benefits

A water company regulated by the Arizona Corporation Commission or any member of the general public might apply for a Physical Availability Demonstration ("PAD"), which is an analytical report prepared by Department staff. The probable costs and benefits associated with these analytical reports apply equally to agencies, political subdivisions, and businesses, including small businesses.

During normal recent years, the Department has prepared six or seven PAD reports per year, representing some two to three percent of AAWS service numbers. Over the 2001-05 period, the Department collected a total of about \$18,000 in PAD fees. That total would have

increased by a factor of five under the proposed new fees, to about \$90,000. Persons requesting a PAD will benefit from the AAWS streamlining through shortened report preparation times, reduced backlog, and more focused attention of AAWS program hydrologists.

B.3.5. Employment

The Department thinks it highly unlikely that the proposed fee increases will have any appreciable impact on real estate development activity or consumer demand for real estate, and so will not appreciably impact employment in businesses or political subdivisions. The Department anticipates adding a small number of additional FTEs to the AAWS Program so that staffing levels will be more appropriate to the level of work.

B.3.6 State Revenues

If the proposed new fee structure had been in place during 2001-05, the state would have collected an annual average of about \$830,000. During 2001-05, the state did collect an annual average of about \$106,600, or about one-eighth of what it would have collected. The Department projects annual fee collections of about \$1.475 million under the proposed structure, about \$1.31 million more annually than the \$165,220 it would collect annually with present fees. The projections are based on application experience over the 2001-05 period, which is a realistic picture moving into the future, subject to the natural fluctuations in the real estate market. The stakeholders and the Department have agreed that the Department will reassess the fees during the next three years to ensure that the fees are appropriate.

B.3.7. Alternative Methods of Achieving the Proposed Rulemaking

The Department engaged in a long public dialogue with the regulated community as it rewrote the AAWS rules. Many comments were received and many alternatives were considered, some less intrusive or costly, some more. The present proposed rules emerged from the public participation process, in preference to other alternatives.

TAB D7

**PINAL AMA ASSURED WATER SUPPLY RULE MODIFICATIONS
TO DELAY REDUCTION OF EXTINGUISHMENT CREDIT ALLOCATION
FACTOR**

**A.R.S. § 41-1055(B)
ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

The Department of Water Resources (Department) received a request from a number of landowners in the Pinal Active Management Area (AMA) to modify the extinguishment credit calculation in the Assured Water Supply (AWS) rules for the Pinal AMA by temporarily delaying the first reduction in the allocation factors used to calculate extinguishment credits. The Department expects the rulemaking to have short-term economic benefits with minimal long-term impacts on groundwater supplies.

The 1980 Groundwater Management Act created four AMAs (the Phoenix, Pinal, Prescott and Tucson AMAs) where groundwater use is actively managed. In 1994, a fifth AMA (the Santa Cruz AMA), was created out of a portion of the Tucson AMA. Each AMA has a management goal and the Department is required by statute to adopt AWS rules to assist in the attainment of that goal. The Department manages the AWS program within the five AMAs pursuant to A.R.S. § 45-576. The AWS program requires new subdivisions¹ to demonstrate a 100-year water supply. One of the requirements of that demonstration is that the groundwater supply must be consistent with the management goal of the AMA. The management goal of the Pinal AMA is to preserve the existing agricultural economy as long as feasible, consistent with preserving long-term water supplies for future non-irrigation uses (i.e., primarily new subdivision development).
A.R.S. § 45-562(B).

¹ The AWS requirement applies to each new “subdivision” as defined by A.R.S. § 32-2101(55).

One method that may be used to demonstrate consistency with the management goal of the AMA is through the use of extinguishment credits. Extinguishment credits are issued by the Department to the owner of a grandfathered groundwater right (GFR)² when the owner voluntarily extinguishes the right. Extinguishment credits represent an annual volume of groundwater that can be withdrawn within the AMA consistent with the AMA's management goal.

Under A.A.C. R12-15-725(B), the volume of extinguishment credits issued for the extinguishment of a GFR is calculated by determining an annual volume of groundwater for the GFR,³ and then multiplying that volume by an allocation factor established for the year in which the right is extinguished. Currently, R12-15-725(B)(3) provides for an allocation factor of 100 for each year until calendar year 2014, when the allocation factor is reduced to 94. From 2015 through 2017, the allocation factor is reduced by six each year. From 2017 on, the allocation factor is reduced by two each year until it reaches zero in calendar year 2055. The purpose of the reduction in the allocation factor is to gradually reduce the amount of allowable groundwater pumping as development increases within the AMA to ensure that groundwater supplies in the AMA are not over-allocated. Any portion of a new development's water demand that cannot be met with

² The 1980 Groundwater Management Act created three types of grandfathered groundwater rights in AMAs based on groundwater uses in existence from 1975 to 1980: (1) Irrigation Grandfathered Rights (IGFRs) associated with lands irrigated for agricultural use; (2) type 1 non-irrigation grandfathered rights associated with irrigated lands retired for a non-irrigation use; and (3) type 2 non-irrigation grandfathered rights that are not associated with irrigated lands. A.R.S. § 45-462(D).

³ For Type 2 non-irrigation grandfathered rights, the volume is the number of acre-feet indicated on the certificate of right. A.A.C. R12-15-725(B)(1). For IGFRs and type 1 non-irrigation grandfathered rights, the volume is 1.5 acre-feet multiplied by the number of acres to which the right is appurtenant. A.A.C. R12-15-725(B)(2).

renewable supplies or allowable groundwater pumping must be replenished by the Central Arizona Groundwater Replenishment District (CAGRDR).

Prior to 2007, the amount of credits issued for the extinguishment of grandfathered groundwater rights in the Pinal AMA remained the same each year, with no reduction over time. In 2007, the Pinal AMA community felt that unless the allocation factor was reduced beginning in 2010, groundwater supplies within the AMA would become over-allocated due to rapidly increasing residential development. The community recognized at that time that this would ultimately negatively impact the available water supplies needed to support long-term sustainable growth.

In response to these concerns, in 2007 the Department amended the rule governing the calculation of extinguishment credits in the Pinal AMA, R12-15-725, to provide for a gradual reduction in the amount of credits given for the extinguishment of grandfathered groundwater rights, depending on when the extinguishment occurs. Under the rule as amended in 2007, the first reduction in the allocation factor for calculating extinguishment credits was to take effect on January 1, 2010, with gradual increases in the reduction each year thereafter until 2055, when no credits would be given for the extinguishment of a grandfathered right.

Shortly after the 2007 rule amendment, the Arizona real estate market began experiencing a significant downturn, and residential development in the Pinal AMA slowed dramatically. In 2009, Irrigation districts and landowners in the AMA expressed

concerns to the Department that some landowners within the districts may prematurely extinguish their IGFRs without developing their lands in a timely manner in order to maximize their extinguishment credits. Once those rights are extinguished, the lands can no longer be used for agricultural purposes,⁴ as the extinguishment process causes the Irrigation Grandfathered Right (IGFR) to cease to exist.

The irrigation districts were concerned that such actions would result in an economic hardship for the remaining landowners who hold IGFRs (IGFR holders) within their districts because they would be required to pay a higher proportion of the fixed costs of the districts, as those costs would be divided among fewer remaining IGFR holders.

Although not the primary reason for the modification, the irrigation districts could also have seen an immediate increase to unit power costs for pumping groundwater as their electric providers may not be able to offset the loss in revenue that results from extinguished lands not using power for well pumps that were formerly used to supply irrigation water until those lands are developed sometime in the future. Additionally, there were concerns that the premature extinguishment of IGFRs would result in increased dust and weeds associated with the vacant lands and the loss of sales revenues for local businesses that supply agricultural services and products to the lands.

Consistent with the Pinal AMA management goal of preserving the agricultural economy for as long as feasible while ensuring water supply availability for future municipal and

⁴ The extinguishment removes the right to use groundwater on the appurtenant acres. In some locations irrigation districts may be able to deliver surface water to the farm. However, pursuant to federal contract requirements, most irrigation districts in the Pinal AMA are prevented from supplying Central Arizona Project water to lands without an IGFR.

industrial water uses, in 2009 the Department amended rule R12-15-725 to delay the effective date of the first reduction of the allocation factor for calculating extinguishment credits in the Pinal AMA until 2014. It was felt that by 2014, economic conditions in the AMA would improve sufficiently so that implementation of the reduction in extinguishment credits at that time would not have a significant negative impact on the local economy. Through the 2009 amendment, the allocation factors for calendar years 2010 through 2013 were increased to 100, and the allocation factors for calendar years 2014 through 2016 were increased to 94, 88 and 82, respectively. No changes were made to the allocation factors for calendar years 2017 and thereafter.

Earlier this year, a number of landowners in the Pinal AMA requested the Department to again delay the reduction in the allocation factors used to calculate extinguishment credits in the AMA because economic conditions in the area have not improved as much as expected when rule R12-15-725 was amended in 2009. After considering this request, the Department has determined that it is appropriate to adopt a rule temporarily delaying by five years each annual reduction in the allocation factor. The new rule will automatically repeal effective September 15, 2014, at which time the current reduction schedule will become effective again. This temporary delay in the reduction schedule will allow water users and other interested parties in the Pinal AMA to work together to examine conditions within the AMA and offer alternatives for meeting the Pinal AMA's management goal, which could include making the 5-year delay permanent through another rulemaking proceeding or another alternative solution.

The rule modification is expected to contribute to the realization of some short-term economic benefits. The Department expects that the modification will result in reduced costs to some persons, political subdivisions, and businesses over the short term, but will also result in slightly less replenishment under the AWS Rules in the long term. Due to the current slow pace of development and the short duration of the delay in the reduction in extinguishment credits, the Department expects the impact of the use of this unreplenished groundwater to be relatively minimal when compared to the total estimated volume in storage for AWS purposes. The Department expects this modification to assist the local community with the prolonged economic downturn.

The Department believes the proposed modification strikes an appropriate balance between preserving both the existing agricultural economy in the short term and the long-term sustainability of water supplies for future development. By temporarily delaying the extinguishment credit value decrease, the agricultural economy will be preserved and agricultural lands will not immediately be removed from production. This delay will allow water users in the AMA to explore the possibility of alternative long-term solutions to achieving the AMA's management goal.

1. An Identification of the Rulemaking

This rulemaking affects the Pinal AMA only. The Department is amending A.A.C. R12-15-725 by deleting subsection (B), which contains the methodology for calculating extinguishment credits in the Pinal AMA. The Department is adopting two new rules

governing the calculation of extinguishment credits in the Pinal AMA, A.A.C. R12-15-725.01 and R12-15-725.02. Subsection (A) of R12-15-725.01 contains the same language that is now in R12-15-725(B), except that the table of allocation factors has been changed to delay each annual reduction in the allocation factor by five years. Consequently, the first year in which there is a reduction in the allocation factor is 2019, rather than in 2014, and the last year in which there is an allocation factor is 2059, rather than 2054. Subsection (B) of R12-15-725.01 provides that the section automatically expires effective September 15, 2014.

R12-15-725.02 contains the methodology for calculating extinguishment credits in the Pinal AMA beginning on September 15, 2014. The language in this rule is the same as the language that is now in rule R12-15-725(B), except that the table of allocation factors has been changed by delaying the first reduction in the allocation factor until September 15, 2014. Beginning September 15, 2014, the allocation factors are identical to the allocation factors currently in rule R12-15-725(B). This means that the first reduction in the allocation factor will become effective on September 15, 2014.

The Department is making this rule modification to temporarily avoid negative economic impacts that may occur due to the prolonged economic downturn under the current schedule beginning January 1, 2014 when the first reduction in the allocation factor is scheduled to take place. Additionally, this temporary delay in the reduction schedule allows water users and other interested parties in the Pinal AMA to explore alternative long-term solutions before the existing reduction schedule resumes September 15, 2014.

As explained previously, under the current allocation factor reduction schedule, some owners of agricultural lands within irrigation districts in the AMA will likely prematurely extinguish their IGFRs and retire their lands from agricultural production in order to maximize their extinguishment credits. This will have a short-term negative economic impact on IGFR holders within the irrigation districts that continue farming because they will be required to pay a higher portion of their district's costs. Other persons within the AMA may also experience a negative economic impact as a result of the lands prematurely going out of agricultural production. The Department believes that temporarily delaying the first reduction in the allocation factor until September 15, 2014 is consistent with the portion of the Pinal AMA management goal that provides for the preservation of the agricultural economy in the AMA for as long as feasible. Resuming the current reduction schedule September 15, 2014 is consistent with the remaining portion of the goal, which is to preserve long-term water supplies for future urbanization (non-irrigation uses).

2. Persons Who Will Be Directly Affected by, Bear the Costs of, or Directly Benefit from the Rulemaking

Persons who will be directly affected by, bear the costs of, or directly benefit from this AWS rule modification for the Pinal AMA include: (1) state agencies such as the Department and the Arizona State Land Department (ASLD); (2) political subdivisions, including counties, cities, and towns that seek economic development or provide

municipal water, as well as the CAGR⁵; (3) GFR holders within the Pinal AMA, both public (e.g., the City of Mesa) and private (farmers, irrigation districts and real estate developers); and (4) residents of the Pinal AMA. The temporary delay in extinguishment credit reductions for GFRs extinguished from January 1, 2014 through September 15, 2014 will decrease the replenishment obligation for the CAGR⁵ for subdivisions to which those additional extinguishment credits are eventually pledged. Consumers purchasing houses in those subdivisions would therefore pay a lower CAGR⁵ assessment than they would pay under the existing rule. In some cases, the same group of persons may experience an increase in water costs resulting from groundwater pumping at increased depths due to reduced replenishment of groundwater supplies. The right to pump groundwater pursuant to GFRs will not be affected by this rulemaking. This rulemaking would only affect the amount of extinguishment credits the right holder would receive upon voluntary extinguishment of the GFR between January 1, 2014 and September 15, 2014.

a. *Persons Directly Benefiting from the Rulemaking*

- Subdivision developers. Those who develop and build subdivisions that are newly created will spend less to obtain an assured water supply determination since those with GFRs can more easily avoid the up-front costs associated with CAGR⁵ membership.
- New Homeowners. Persons who purchase new homes in subdivisions with AWS determinations based on extinguishment credits created between January 1, 2014 and September 15, 2014. Those persons who purchase homes in these subdivisions may see

⁵ The CAGR⁵ is a division of the Central Arizona Water Conservation District, which is a multi-county water conservation district and a political subdivision. See Arizona Constitution, Art. 13, § 7; A.R.S. § 48-3702.

a reduction in the initial purchase price as well as lower property tax assessments if the developers are able to avoid enrolling those lands in the CAGRDR by utilizing extinguishment credits. Even if the developer enrolls the lands in the CAGRDR, the purchasers of the homes likely will see lower property tax assessments because the replenishment obligation will be reduced.

- Agribusiness and suppliers of associated goods and services such as seed, fertilizer and equipment. Persons directly and indirectly associated with agribusiness are less likely to experience a reduction in business due to premature removal of lands from agricultural production.
- CAGRDR. The CAGRDR may see a reduction in new members during the next year, possibly lowering administrative costs and providing for additional capacity under their current Plan of Operations.
- IGFR holders. IGFR holders who would prematurely extinguish their IGFRs under the current rule, but who will retain their IGFRs and continue farming under the rule amendment, will benefit by maintaining the lower tax rates applicable to agricultural land uses. Additionally, IGFR holders will benefit from an increased volume of extinguishment credits if they decide to extinguish prior to September 15, 2014.

b. *Persons Directly Bearing the Costs of the Rulemaking*

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- Groundwater users, including GFR holders, municipal providers and residential customers. Although the total amount of additional unreplenished groundwater withdrawn as a result of the rule modification is expected to be minimal, the decrease in groundwater replenishment within the AMA may lead to slightly lower depth-to-water levels. Therefore, groundwater users may experience slightly higher costs in the long

term associated with pumping from greater depths. Such cost increases may include higher costs for deepening wells, increased pump maintenance, higher electricity costs and additional water quality issues. This increased cost would most likely be passed on to commercial and residential customers in the form of higher water rates. Some of this cost may be slightly offset by the use of a larger number of extinguishment credits, reducing the need for those water users or water providers to pay for replenishment. The Department believes that any increases in costs will be minimal because of the short duration of the delay in the reduction in the allocation factor used to calculate extinguishment credits.

3. Cost – Benefit Analysis

The statutory management goal of the Pinal AMA is twofold: to preserve the existing agricultural economy as long as feasible, while preserving long-term water supplies for future non-irrigation uses. Premature retirement of agricultural lands, as opposed to the natural progression of lands ceasing production as they develop, is contrary to this goal, and has the potential to cause short-term economic hardship to the remaining agricultural right holders. The Department has constructed this rule modification to encourage continued agricultural activity and allow interested parties in the Pinal AMA time to explore alternative solutions to the allocation reduction schedule by temporarily delaying the first reduction in the allocation factor used to calculate extinguishment credits. At the same time, by resuming the allocation factor reduction schedule beginning on September

15, 2014, long-term sustainability of non-irrigation water supplies will be preserved for use when housing development increases in the AMA.

There will be a positive impact to some homebuyers who purchase houses within subdivisions to which extinguishment credits have been pledged. Since those subdivisions will likely avoid enrollment in the CAGR, no fees or assessments of the CAGR will be levied. At the time of CAGR enrollment, the CAGR charges an enrollment and activation fee to developers. This cost is usually passed on to homebuyers. The 2013/2014 enrollment fee is \$198.00 per housing unit, and the activation fee is \$196.00 per housing unit, for a total cost expected to be passed to the homebuyer of \$394.00. This one-time cost is usually rolled into the purchase price of the home. A homeowner with a home enrolled in the CAGR will also experience an annual charge for replenishment activities based upon the reported water usage of the home. This fee is charged by the CAGR and is included in the annual county property tax assessment. While it is impossible to predict the exact annual usage for each household, we can estimate potential costs using county-wide averages. Using the Department's single-family water usage demand model for the Pinal AMA and the average persons per household (pphu) for Pinal County, the average single-family home would use approximately 0.34 acre-feet per year. Again, using the CAGR 2013/2014 rate schedule, a replenishment fee rate of \$495.00 per acre-foot is to be charged. This equates to an additional charge of \$168.30 per year for each lot for the CAGR's groundwater replenishment activity. Note that this cost will likely increase in the future, not because of this reduction, but because competition for renewable water supplies will increase as

development in the AMA increases. It is not possible to accurately predict what this increase may ultimately be, but the unofficial,⁶ anticipated rate for the Pinal AMA for 2014/2015 is \$562.00 per acre-foot, which equates to a per-house charge of \$191.08 per year using the same parameters outlined above. Therefore, a homebuyer may save \$394.00 in one-time costs, plus an estimated \$191.08 per year, due to the increased extinguishment credits and associated decreased replenishment obligation.

While the rule modification may allow some increase in unreplenished groundwater use in the short-term, the Department expects this volume to be relatively low compared to the estimated groundwater in storage above regulatory depth limits.⁷ Over the last three years since the effective date of the current rule zero new extinguishment credits have been created in the AMA. Although it is impossible to predict how many extinguishment credits will be created if the new temporarily delayed reduction schedule in R12-15-725.01 and R12-15-725.02 is implemented, the Department expects that little to no extinguishment credits will be created in the nine and a half month period from January 1, 2014 to September 15, 2014. Therefore, the Department expects that R12-15-725.01 and R12-15-725.02 will have a minimal impact to the aquifer in the AMA.

While the Department expects the extinguishment activity to increase eventually, it does not expect such activity to reach the historic peaks of 2006-2007. However, if

⁶ The projected unofficial CAGRDR replenishment fee published by the CAGRDR is advisory only until the CAGRDR governing board officially adopts the replenishment, enrollment, and activation fees.

⁷ The rules limit the depth to water for groundwater supplies that may be used to support AWS determinations in the Pinal AMA to 1,100 feet below land surface. A.A.C. R12-15-716(B)(2).

extinguishment activity were to increase or a reduction in credit calculation is not initiated under the currently proposed schedule, groundwater overdraft conditions could be encountered as originally projected in the original Pinal AMA rule modification in 2007 during the peak of the housing boom.

a. *Probable Benefits and Costs to Agencies*

- The Department believes the rule proposal will assist its ability to serve the people of Arizona by supporting the Pinal AMA's water management goal of preserving the existing agricultural economy, and by limiting the delay to only nine and a half months, the Department is still able to preserve future water supplies for non-irrigation uses.
- The ASLD may experience a short-term benefit through September 15, 2014 as the volume of potential extinguishment credits associated with its approximately 24,000 acres of Pinal AMA lands that have appurtenant IGFRs⁸ will not decrease during that time under the modification. However, the value of extinguishment credits is tied to their relative scarcity and potential need to meet consistency with management goal requirements under the AWS rules. This value may increase in the future as the rate for extinguishment credit creation decreases.

b. *Probable Benefits and Costs to Political Subdivisions*

- CAGR D will likely collect less fees and assessments from housing units within new subdivisions in the AMA that receive AWS determinations using extinguishment credits issued from January 1, 2014 to September 15, 2014, but will likely assume less replenishment obligation for those subdivisions. CAGR D's administrative costs may be lower in the short-term if applications, enrollments, and water deliveries decrease.

⁸ The IGFRs appurtenant to ASLD land are owned by ASLD.

CAGR D may have more capacity to enroll subdivisions in the remainder of their three-county service area as a result of reduced replenishment obligations for new subdivisions in the Pinal AMA.

- Although the Department believes the incremental volume of unreplenished groundwater consumed as a result of the rule modification to be minimal, any county, city, or town seeking sustained, long-term development may face slightly increased costs associated with demonstrating a physically available groundwater supply as the depth-to-water declines due to reduced replenishment of AMA aquifers with renewable supplies.
- Political subdivisions may avoid a reduction in sales tax revenue if agribusiness and associated support industries remain active without premature retirement of agricultural lands, but will conversely forgo the incremental property tax revenue associated with the higher assessment rates for non-agricultural lands.
- Although the Department believes the incremental volume of unreplenished groundwater consumed as a result of the rule amendment to be minimal, municipal water providers that pump groundwater may experience slightly increased long-term costs associated with water level declines, including higher costs for deepening wells, increased pump maintenance, higher energy costs and additional water quality issues due to reduced replenishment under the AWS Rules.

c. *Probable Benefits and Costs to Business, Including Small Business*

- Businesses, including small businesses, that directly develop or are linked to the development of subdivisions will benefit over the short-term from greater certainty that development can proceed with reduced costs for meeting the consistency with management goal requirement of the Pinal AMA AWS Rules.

- Owners of approximately 1,900 active IGFRs encompassing approximately 260,000 active irrigation acres will benefit over the short-term as they will not experience the impact of premature extinguishment of IGFRs and the likely increase in irrigation district assessments.
- Although the Department believes the incremental volume of unreplenished groundwater consumed as a result of the rule amendment to be minimal, owners of land in the Pinal AMA that seek to develop in the future may face slightly increased costs associated with difficulty in later years in demonstrating a physically available groundwater supply as the depth-to-water declines due to reduced replenishment with renewable supplies.
- Although the Department believes the incremental volume of unreplenished groundwater consumed as a result of the rule amendment to be minimal, groundwater pumpers, including exempt well owners, municipal providers, irrigation districts, farmers, and industrial water users, including dairies and power generation facilities, may experience slightly increased costs associated with deeper pumping as the depth-to-water declines due to reduced replenishment under the AWS rules.
- The Department believes that none of the methods listed in A.R.S. § 41-1035 are feasible or have the potential to reduce the impact of the rule modification on small businesses in Arizona.

d. *Probable Benefits and Costs to Households*

Homeowners, lessees, and renters will see short-term and long-term costs and benefits. In the short term, housing prices may be slightly lower in subdivisions that obtain AWS determinations using extinguishment credits issued during the nine and a half month

period affected by the rule modification, as these homes may not be subject to costs associated with enrollment in the CAGR. In the long term, homeowners, lessees, and renters may see an increase in water costs associated with increased costs of withdrawing groundwater from lower depths as the depth-to-water declines due to reduced replenishment. However, the Department believes the incremental volume of unreplenished groundwater consumed as a result of the rule modification will be minimal. Homeowners in subdivisions that receive AWS determinations using extinguishment credits issued during the nine and a half month delay may see a decrease or elimination of CAGR annual assessments because developers will have a greater ability to rely upon extinguishment credits instead of CAGR membership.

4. Probable Impact on Private and Public Employment in Business, Agencies, and Political Subdivisions

The Department does not anticipate a measurable impact on employment as a result of an increase in the allocation factor at the scale being proposed. Short-term impacts may be positive for Agribusiness, including suppliers of associated goods and services such as seed, fertilizer and equipment, as the modification delays the retirement of agricultural lands.

5. Probable Impact on Small Business

See Part 3(c) above.

6. State Revenues

Absent this rulemaking, the State would likely see increased property tax revenues due to the higher rate for non-agricultural uses and decreased income and sales tax revenues related to discontinuing agricultural production when IGFRs are prematurely extinguished prior to January 1, 2014. As a result of this rulemaking, some landowners will likely continue current agricultural uses, so that State income, property and sales tax revenues will not change. No new fees or charges are proposed. The Department does not presently anticipate a need to increase staff as a consequence of adopting the rulemaking.

7. Less Intrusive or Less Costly Alternative Methods of Achieving the Rulemaking

Because of the uncertainties associated with the housing market and the economic factors that IGFR holders must consider when deciding whether to extinguish their IGFRs, it is not possible to obtain adequate data regarding the specific monetary impacts of each alternative discussed below. For that reason, the Department provides qualitative descriptions of each alternative's impacts.

Permanent Five-Year Delay

One potential alternative to achieve the purposes of this rulemaking is to make the allocation factor schedule changes contained in R12-15-725.01 permanent, which would

mean that the allocation factor would remain at 100 through 2018, with its first decrease (to 94) in calendar year 2019. Under that alternative, the allocation factor would reach zero in calendar year 2059, rather than calendar year 2055, as in the current rule and R12-15-725.02. While this permanent five-year delay of the allocation factor reduction schedule might result in a greater delay in the extinguishment of some IGFRs, such a delay would also increase the volume of unreplenished groundwater use and the resulting decline in depth-to-water, which would eventually increase the costs to IGFR holders, homeowners, developers, water users, and water providers. Therefore, while such an alternative may be less costly for one group in the short-term, the overall costs to other groups may be much greater.

Eliminate Allocation Factor Reductions

Some persons have suggested that the Department eliminate the allocation factor reductions entirely so that the amount of credits issued for the extinguishment of grandfathered groundwater rights in the AMA remained at 100% each year regardless of when the extinguishment occurred. This alternative might result in a greater delay in the extinguishment of some IGFRs and might create higher values for those lands once IGFRs are eventually extinguished. However, this alternative would certainly increase the volume of unreplenished groundwater use and result in declines in depth-to-water as development in the area increases. Such declines in groundwater levels will increase groundwater pumping costs for all water users in the AMA, including IGFR holders. This alternative also has the potential to eliminate the value of certain IGFR lands as

developers may find that the volume of unreplenished groundwater exceeded available supplies under the assured water supply requirements. In such a situation, developers may not be able to demonstrate physical availability of groundwater regardless of the amount of extinguishment credits that may be available. Further, this alternative is inconsistent with the statutory management goal of the AMA; to allow development of non-irrigation uses and to preserve existing agricultural economies in the AMA for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses.

Maintain the Existing Allocation Factor Reduction Schedule

Maintaining the existing allocation factor reduction schedule may reduce costs to water users in the Pinal AMA in the long-term, if extinguishments occur during the period from January 1, 2014 to September 15, 2014; resulting in less unreplenished groundwater use in the AMA. However, this alternative would not provide a temporary delay to allow IGFR holders in the AMA time to explore alternatives for meeting the AMA's management goal and provide recommendations to the Department before the first reduction in the extinguishment credit allocation factor.

Providing a Longer Temporary Delay

Some IGFR holders in the AMA have suggested that the Department make the temporary delay granted by R12-15-725.01 and R12-15-725.02 longer to allow IGFR holders in the

AMA more time to explore alternative solutions and provide recommendations to the Department. An extended temporary delay might result in a greater delay in the extinguishment of some IGFRs. However, this could also increase the volume of unreplenished groundwater use and resulting depth-to-water decline. Such a decline has the potential to increase the costs of groundwater pumping for all water users in the AMA. The temporary delay, until September 15, 2014, provides concerned IGFR holders in the AMA sufficient time to explore and propose alternatives to the Department while also ensuring that the agricultural economy is preserved in the AMA for as long as feasible consistent with the necessity to preserve future water supplies for non-irrigation uses.

8. Description of Data on Which the Rule Modification is Based

- CAGR D Fee Schedule
- ADWR Census Data
- Department data regarding the number of extinguishment credits that have been created in the Pinal AMA from 2011-2013

TAB D8

**PINAL AMA ASSURED WATER SUPPLY RULE MODIFICATION
EXTINGUISHMENT CREDIT**

A.R.S. § 41-1055(B)

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

I. Introduction

The 1980 Groundwater Management Act created four Active Management Areas (AMAs), the Phoenix, Pinal, Prescott and Tucson AMAs, where groundwater use is actively managed. In 1994, a fifth AMA (the Santa Cruz AMA), was created from a portion of the Tucson AMA. Each AMA has a management goal and the Department is required by statute to adopt Assured Water Supply (AWS) rules to assist in the attainment of that goal. The management goal of the Pinal AMA, where a predominately agricultural economy exists, is to allow development of non-irrigation uses and to preserve existing agricultural economies for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation users. A.R.S. § 45-562(B).

The Department manages the AWS program within the five AMAs pursuant to A.R.S. § 45-576. Developers of new subdivisions¹ within an AMA must either obtain a certificate of AWS from the Department or obtain a commitment of water service from a municipal water provider designated by the Department as having an AWS prior to the sale of any lots. A.R.S. § 45-576(A). One of several requirements to obtain a certificate or designation of AWS is to demonstrate that any groundwater use is consistent with the management goal of the AMA.

One of the methods for demonstrating consistency with the management goal for groundwater use in the Pinal AMA is through the use of extinguishment credits. Under the

¹ The AWS requirement applies to each new “subdivision” as defined by A.R.S. § 32-2101(56).

Department's AWS Rules, when a grandfathered groundwater right (GFR) is extinguished, the Department issues extinguishment credits that can be used to demonstrate that a specified volume of groundwater use by the development or water provider will be consistent with the management goal of the AMA. Extinguishment credits are initially issued to the holder of the grandfathered right that is extinguished. Extinguishment credits can be transferred to another entity and/or pledged to an AWS determination. Extinguishment of a grandfathered right is a permanent action that results in loss of the right to withdraw groundwater for use and/or loss of the right to irrigate land² if an Irrigation Grandfathered Right (IGFR) is extinguished.

Another method of demonstrating that groundwater use is consistent with the management goal of the AMA is through the use of a groundwater allowance established in the Department's AWS Rules. Under the current rules, an applicant for a certificate of AWS receives a certain volume of groundwater allowance. Like extinguishment credits, a groundwater allowance represents a volume of groundwater that can be withdrawn and used to serve a subdivision consistent with the management goal.

Prior to 2007, the amount of extinguishment credits issued for the extinguishment of GFRs in the Pinal AMA was an annual volume that remained the same each year, regardless of when the right was extinguished. In 2007, the Department amended the rule governing the calculation of extinguishment credits in the Pinal AMA, R12-15-725, to provide for a gradual reduction in the amount of credits given for the extinguishment of GFRs, depending on the year the extinguishment occurred. Under the rule as amended, the first reduction in the allocation factor for calculating

² The extinguishment removes the right to use groundwater on the appurtenant acres. In some locations, irrigation districts may be able to deliver surface water to the farm. However, pursuant to federal contract requirements, most irrigation districts in the Pinal AMA are prevented from supplying Central Arizona Project water to lands without an IGFR.

extinguishment credits was to take effect on January 1, 2010, with additional reductions each year thereafter until 2054, when no credits would be given for the extinguishment of a GFR.

One of the major reasons for the 2007 amendment was that residential development in the Pinal AMA was increasing rapidly, and the rate of development was projected to continue. Some of the residential development was anticipated to result in the extinguishment of IGFRs for extinguishment credits. There was a concern that extinguishment of IGFRs under the rule in effect at that time, in combination with rapid development, could have resulted in an increase in the volume of groundwater withdrawn that was not replenished. The 2007 amendment was designed to address this concern.

Shortly after the 2007 rule amendment, the Arizona real estate market experienced a significant downturn and residential development in the Pinal AMA slowed dramatically. In 2009, the perspective changed and landowners and irrigation districts in the Pinal AMA expressed concerns to the Department that implementation of the reduction in extinguishment credits as scheduled could result in owners of farm land in the AMA prematurely extinguishing their IGFRs before the first reduction in credits was to take effect on January 1, 2010. It was feared that this would exacerbate the effects of the economic recession in the area by prematurely taking lands out of agricultural production resulting in increased water and power costs for those lands that continued to be farmed.

Consistent with the Pinal AMA management goal, the Department amended rule R12-15-725 in 2009 to delay the effective date of the first reduction of the allocation factor for calculating extinguishment credits in the Pinal AMA until 2014. It was felt that by 2014, economic conditions

in the AMA would have improved sufficiently so that implementation of the reduction in extinguishment credits would not have a significant negative impact on the local economy.

In 2013, a group of stakeholders in the Pinal AMA again requested that the Department delay the reduction in the allocation factor used to calculate extinguishment credits in the Pinal AMA because economic conditions in the area had not improved as anticipated when rule R12-15-725 was amended in 2009. In response, the Department again amended the Pinal AMA AWS rules to temporarily delay the first reduction in the allocation factor until September 15, 2014. This was accomplished through the adoption of two new rules, R12-15-725.01 and R12-15-725.02.

The combined effect of the adoption of R12-15-725.01 and R12-15-725.02 was that the first reduction in the allocation factor was delayed until September 15, 2014, when the reduction schedule adopted in 2009 was to become effective again. The temporary delay in the reduction schedule was designed to allow water users and other interested parties in the Pinal AMA time to work together to examine conditions within the AMA and consider alternatives for meeting the Pinal AMA's management goal.

In 2014, a group of stakeholders in the Pinal AMA again requested that the Department delay the first reduction in the Pinal AMA extinguishment credit calculation allocation factor. The stakeholders requested a delay until January 1, 2019 so that they could explore alternative solutions to extinguishment credit reductions in the AMA and make recommendations before the first extinguishment credit reduction would become effective in 2019. In response, the Department again amended the Pinal AMA AWS rules in 2014 to postpone the first allocation factor reduction until January 1, 2019.

Following the Department's amendment of the Pinal AMA AWS rules in 2014, a group of stakeholders in the Pinal AMA held several meetings to consider changes to both the extinguishment credit rule and the rule providing for a groundwater allowance for new certificates of AWS. Earlier this year, Stephen Q. Miller, Chairman of the Pinal AMA stakeholders group, requested that the Department amend the Pinal AMA AWS rules to: (1) modify the method of calculating extinguishment credits in the Pinal AMA, (2) limit the amount of groundwater that may be made consistent with the Pinal AMA management goal with the use of extinguishment credits for new certificates of AWS, and (3) eliminate the groundwater allowance for new certificates of AWS. After considering this request, the Department agreed that the requested rule amendments should be made. These amendments will serve to: (1) eliminate the concerns of IGFR holders that the current rule may result in IGFR holders extinguishing their grandfathered groundwater rights prematurely, and (2) potentially reduce the volume of unreplenished groundwater that will be withdrawn to support future subdivisions.

II. The economic, small business and consumer impact statement

A. An identification of the proposed rule making

This rulemaking affects the Pinal AMA only. Proposed rule changes are identified below chronologically by rule number. They are identified by roman numeral and brief description in Table 1 to facilitate ease of discussion through the rest of this document.

I) The Department is amending rule R12-15-722(C) to limit, for certificates of AWS, the total volume of groundwater use that can be made consistent with the management goal of the AMA through the use of extinguishment credits created after January 1, 2019. Under the proposed amendment, in years six through 10 of the 100 year timeframe of the certificate of AWS, only 75 percent of the total groundwater use may be made consistent with the management goal through

the use of extinguishment credits created after January 1, 2019. The percentage declines over time as follows: 50 percent for years 11 through 15; 25 percent for years 16 through 20; and zero percent for years 21 and after. Therefore, 21 years after the certificate of AWS is issued, extinguishment credits created after January 1, 2019 may not be used to make groundwater use by the subdivision consistent with the AMA's management goal.

II) The Department is amending rule R12-15-722(E)(2) to provide that extinguishment credits created on or after January 1, 2019 and pledged to a designation of AWS may only be included in the designation for those years in which the credits may be used pursuant to amended rule R12-15-725(B). Additionally, this rule is being amended to provide that the limitations in R12-15-722(C)(2) do not apply to extinguishment credits originally pledged to a certificate of AWS and subsequently used to support a municipal provider's designation of AWS.

III) The Department is amending R12-15-723(D)(5) to make a conforming change by deleting the language in subsection (D)(5) that states that GFRs cannot be extinguished in the Pinal AMA in the first calendar year in which the allocation factor for the extinguishment of a GFR is zero. Because the Department is eliminating the current declining allocation factor, under the rule changes, GFRs can be extinguished in perpetuity.

IV) The Department is amending the groundwater allowance calculation for certificates of AWS in R12-15-725 by eliminating the groundwater allowance for certificate applications filed on or after January 1, 2019. Currently, the rule provides for a groundwater allowance for certificate applications until January 1, 2025. New subsection (A)(1)(a) provides that for certificate applications in the Pinal AMA filed before January 1, 2019, the groundwater allowance is

calculated by multiplying the annual estimated water demand of the subdivision by 10 (this is the current formula). New subsection (A)(1)(b) provides that for certificate applications filed on or after January 1, 2019, the groundwater allowance is zero.

V) The Department is adding a new subsection (B) to R12-15-725. With the proposed repeal of R12-15-725.01 below, the result is a single rule that contains both the groundwater allowance calculation and the extinguishment credit calculation. Under the new subsection (B) the initial extinguishment credits issued for all extinguishments, regardless of when they occur, will be calculated in the same manner. Additionally, for extinguishments occurring on or after January 1, 2019, the extinguishment credits must be used according to a schedule included in the new subsection, with automatic reductions made to any unused extinguishment credits remaining in excess of the schedule. If 25 percent of the extinguishment credits issued after January 1, 2019 are not used in each five-year period after extinguishment, the total amount of extinguishment credits will be reduced so that in the fifth year only 75 percent of the original amount of extinguishment credits remain; 50 percent in the 10th year; 25 percent in the 15th year; and zero percent in the 20th year.

VI) The Department proposes to repeal rule R12-15-725.01, which contains the current extinguishment credit calculation for the Pinal AMA.

Table 1. Identification of Proposed Rule Changes and Brief Description

Identifier	Rule Change	Brief Description
I	R12-15-722(C)	For certificates of AWS in the Pinal AMA, limits the total volume of groundwater that can be made consistent with the management goal of the AMA through the use of extinguishment credits created on or after January 1, 2019
II	R12-15-722(E)(2)	<p>Makes the reductions to any unused extinguishment credits created on or after January 1, 2019 in R12-15-725(B) applicable to designations of AWS in the Pinal AMA</p> <p>Clarifies that extinguishment credit use for extinguishment credits created after January 1, 2019 shall not be limited by R12-15-722(C).</p>
III	R12-15-723(D)(5)	Conforming change
IV	R12-15-725 new (A)(1)(a) and (A)(1)(b)	No groundwater allowance for new certificates of AWS
V	R12-15-725 new (B)	<p>V(a) Initial extinguishment credit calculation</p> <p>V(b) Any unused extinguishment credits created on or after January 1, 2019 are reduced over time</p>
VI	R12-15-725.01	Repeal current extinguishment credit calculation

B. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking

Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking include: (1) the Arizona State Land Department (ASLD) as a holder of IGFRs in the Pinal AMA for almost 25,000 irrigation acres with a water allotment of almost 61,000 acre-feet; (2) political subdivisions of the state, including Pinal, Maricopa and Pima counties, cities and

towns in the Pinal AMA and the Central Arizona Groundwater Replenishment District (CAGRDR)³; (3) holders of GFRs within the Pinal AMA; (4) entities that seek to develop new subdivisions within the Pinal AMA; (5) homeowners within the Pinal AMA; and (6) the general citizenry of the Pinal AMA. Due to the nature of the proposed rule changes, the nature of the impact and the entities that may be impacted by each change may differ. See Table 2 for identification of impacted entities by rule change as identified in Table 1.

Table 2. Identification of Entities and Impacts of Proposed Rule Changes

Rule Identifier	Entity Impacted	Nature of Impact
I	Developers of new subdivisions in the Pinal AMA	Affected by rule change May bear costs of rule change
	Homeowners in the Pinal AMA	Affected by rule change May bear costs of rule change
	CAGRDR	Affected by rule change
II	Cities, towns and private water companies in the Pinal AMA that are designated as having an AWS or that will apply for a designation of AWS	May bear costs of rule change
	CAGRDR	Affected by rule change
III	None	
IV	Developers of new subdivisions in the Pinal AMA	Affected by rule change May bear costs of rule change
	Homeowners in Pinal AMA	Affected by rule change May bear costs of rule change

³ The CAGRDR is the general term utilized to describe the replenishment authorities and responsibilities of the Central Arizona Water Conservation District, which is a multi-county water conservation district and a political subdivision of the state of Arizona. See Arizona Constitution, Art. 13, § 7; A.R.S. § 48-3702.

	CAGR	Affected by rule change
	General citizenry in Pinal AMA	Affected by rule change
V(a)	GFR Holders in Pinal AMA	Directly benefit from rule change
	ASLD as a GFR Holder in Pinal AMA	Directly benefit from rule change
	Other Political Subdivisions in Pinal AMA as GFR Holders ^a	Directly benefit from rule change
	Pinal, Maricopa and Pima Counties	Affected by rule change
	General citizenry of Pinal AMA	Affected by rule change
V(b)	Developers of new subdivisions in the Pinal AMA	Affected by rule change May bear costs of rule change
	Homeowners in Pinal AMA	Affected by rule change May bear costs of rule change
	CAGR	Affected by rule change
	General citizenry of Pinal AMA	Affected by rule change
VI	None	

^a There are more than 40 GFRs held by political subdivisions of the state in the Pinal AMA for over 9,700 acres of irrigation and a water allotment of 16,500 acre-feet.

C. Cost benefit analysis

a. *Costs and benefits to the implementing agency and other agencies*

Arizona Department of Water Resources

Based on current staffing levels in programs and the nature of the administrative changes that will occur as a result of the rule amendments, the Department does not anticipate that any new full-time employees will be necessary.

Arizona State Land Department

The Arizona State Land Department (ASLD) is a GFR holder in the Pinal AMA. ASLD holds 100 different IGFRs in the Pinal AMA that represent almost 25,000 irrigation acres with a total annual groundwater allotment of almost 61,000 acre-feet. As an IGFR holder in the Pinal AMA, the ASLD will directly benefit from V(a) (described in Table 1) because it will presumably continue to utilize the IGFRs past 2018, either directly or through lease, until a time that it determines is desirable to extinguish the right without any reduction in the initial amount of extinguishment credits it receives for extinguishing the IGFRs.

There are no other state agencies that will be affected by the rule amendments.

b. Costs and benefits to political subdivisions of this state

CAGR D

A potential effect of I, II, IV and V(b) (described in Table 1) is that there may be an increased need for CAGR D replenishment for new development. If that occurs, the results may be: (1) that the CAGR D may be required to secure additional water supplies for additional replenishment obligations, and (2) the CAGR D will levy additional fees, dues, taxes and assessments. It is difficult to complete a cost benefit analysis related to these affects because of uncertainty regarding the nature and quantity of the supply and the timing of the development that will result in the replenishment need. The below information is provided to illustrate this concept.

In the CAGR D 2017 Annual Operations Report, six water supply acquisition activities were identified as occurring within that year. Four involved the purchase and sale

of Long-Term Storage Credits, one was a proposed agreement for the lease of 4th Priority Colorado River water and one was a proposed agreement for the purchase and sale of real property located in Mohave County. The volumes and costs of those transactions is summarized in Table 3.

Table 3. Cost and Volume of CAGR D Water Supply Acquisition - 2017

Activity	Cost	Volume
Lease of 4 th Priority Water	\$30,000 plus \$1,700 per acre-foot	Up to 1,070 acre-feet per year for 25 years
Property Purchase	\$34 million	5,508 acre-feet of allocation associated with property
Purchase of LTSC	\$187.00 per credit	250 credits
Purchase of LTSC	\$250.00 per credit	50,000 credits

The CAGR D 2017 Annual Operations Report also includes a discussion regarding the comparison between actual enrollment and the enrollment that was projected for 2017 in the 2015 CAGR D Plan of Operation. Enrollment levels drive the need for additional water supplies and are the basis for assessment of fees. The report notes that economic recovery in the CAGR D service area housing market has not yet occurred to the level projected by the Associations of Governments. The result is that actual enrollment in 2017 was less than one-third of the enrollment that was projected. So, even absent a rule change, the rate of enrollment is difficult to predict.

As previously stated, enrollment is the basis for assessment of fees. Additionally, CAGR D fees are not static and may change each year. The most currently available fee schedule identifies a firm rate for 2018-2019, provisional rate for 2019-2020, and advisory rates through 2023-2024. The rate schedule is approved on an annual basis.

There are four fees that are levied by the CAGR: (1) enrollment fee; (2) activation fee; (3) annual assessment; and (4) annual membership dues. Enrollment and activation fees are one-time fees that are paid upon entry into the CAGR or on subdivisions for which a public report has not been issued. For 2018-2019, the enrollment and activation fees for the Pinal AMA are \$284 and \$820, respectively, and these fees are often included within the price of new homes as they are per unit fees. The assessment and membership dues are annual payments made by homeowners and municipal water providers. The 2018-2019 assessment fee is \$694 per acre-foot of water used within the home. Membership dues differ for member lands and member service areas. For member lands, each lot is assessed \$15.35 per lot and for member service areas, the charge is \$76.53 per acre-foot. All fees show an increase through 2023-2024.

Counties

The counties that are located all, or in part, within the Pinal AMA are Pinal, Maricopa and Pima. These counties may be affected by the proposed rule changes in two ways: (1) the county as a holder of GFRs; and (2) the county as a property taxing entity.

Pinal County and special taxing districts in the county, such as the Pinal County Community College District and the Pinal County Flood Control District, hold GFRs in the Pinal AMA. Collectively, county entities hold 10 different GFRs that represent approximately 436 irrigation acres with a total groundwater allotment of almost 1,850 acre-feet. As GFR holders, these county entities will directly benefit from V(a) (described in Table 1) because they will be able to continue to utilize their GFRs past 2018, either directly or through lease, until a time that they determine is desirable to extinguish the right

without any reduction in the initial amount of extinguishment credits they receive for extinguishing the rights.

As property tax levying entities, counties may be affected by V(a) (described in Table 1) as land may remain in the agricultural classification for a longer period of time. It is difficult to complete a cost benefit analysis of this impact because it is unknown how long IGFR holders will continue to utilize their rights and delay extinguishment. Additionally, it is difficult to assume what land use category land will move into when it is no longer classified as agricultural land. Information is provided below to illustrate the tax differential between agricultural and residential land classifications.

Agricultural real property is defined in A.R.S. § 42-12151 to capture the many agricultural industries across the state, including the following: (1) cropland in the aggregate of at least twenty gross acres; (2) an aggregate ten or more gross acres of permanent crops, and; (3) grazing lands with a minimum carrying capacity of forty animal units. The county assessor determines the qualifying agricultural property within the county, following guidance from the Arizona Department of Revenue. All property tax is calculated by multiplying the assessed value by the property tax rate and dividing by 100. The degree of property tax on real property varies greatly between agricultural real property and non-agricultural real property because the calculation of these two components is different.

The assessed value of non-agricultural land is determined by multiplying either the Full Cash Value or Limited Property Value by the assessment ratio, depending on whether primary or secondary tax is being calculated. The assessed value of agricultural land is

calculated using the income approach to value. *See* A.R.S. § 42-13101. This valuation method calculates an assessed value based on the income of the property instead of the market value, which is then multiplied by the assessment ratio. The market price of agricultural land increases as residential development occurs closer to it. In areas like the Pinal AMA where there is urban or market influence on farm values, the income approach valuation method results in a much lower assessed value than the result of a cash value or market-based valuation.

An example was prepared to illustrate the difference in land value for an area near Arizona City, in Pinal County (see Table 4). In this example, residential land within Arizona City was compared to land in various development stages south and west of the property. The example illustrates that the assessed values of several agricultural properties near the residential developments are significantly lower than non-agricultural properties and will consequently generate less property tax for the counties.

Table 4. Comparison of Property Values for Example Lands in Pinal County

Land Type	Average Full Cash Value	Average Limited Property Value	Average Size (acres)	Average of Full Cash Assessed Value (\$/acre)	Average of Limited Property Assessed Value (\$/acre)
Residential	\$117,621	\$76,081	0.33	\$383,700	\$242,300
Subdivided, not yet built	\$8,542	\$5,788	3.35	\$2,500	\$1,700
Vacant Land, not qualifying agricultural land	\$352,229	\$190,518	214	\$1,600	\$940
Agricultural Land	\$174,862	\$106,606	161	\$1,800	\$1,100
Agricultural Land	\$272,870	\$171,246	322	\$850	\$530
Agricultural Land	\$449,920	\$255,604	645	\$700	\$400

Political subdivisions of the state as grandfathered right holders

Other political subdivisions of the state that hold GFRs in the Pinal AMA will directly benefit from V(a) (described in Table 1) because they will be able to continue to utilize their GFRs past 2018, either directly or through lease, until a time that they determine is desirable to extinguish the right without any reduction in the initial amount of extinguishment credits they receive for extinguishing the rights.

Cities and towns in the Pinal AMA that are currently or may be designated as having an AWS

Cities and towns in the Pinal AMA that are currently designated as having an AWS or that will apply for a future designation of AWS may be affected By II (as described in Table 1) as there may be an increased need for CAGR D replenishment for new development. An applicant for a designation of AWS must show consistency with the AMA management goal for 100 years. If the designation will include post-2018 extinguishment credits, those credits can only be utilized to demonstrate consistency with the AMA management goal for 20 years and not the entire 100 years. Therefore, the provider will be required to utilize pre-2018 extinguishment credits and/or enroll in the CAGR D. See discussion regarding CAGR D impacts above.

c. Costs and benefits to businesses

There is no definition for “businesses” in Chapter 6 of Title 41, so the Department concluded that “businesses” would also include “small businesses” as defined by A.R.S. § 41-1001. There are two categories of businesses that the Department has identified as

possibly affected by these rule amendments. Most, if not all, of these businesses are likely small businesses.

GFR Holders

Holders of GFRs will directly benefit from V(a) (described in Table 1) because they may continue to utilize their GFRs past 2018, either directly or through lease, until a time that they determine is desirable to extinguish the rights, without any reduction in the initial amount of extinguishment credits they receive for extinguishing the rights. Consequently, the Department anticipates that the amended rule will maintain the agricultural economy in the Pinal AMA for a longer period of time than under the existing rule. In addition to this direct benefit to GFR holders, they also receive the benefit of maintaining the agricultural land classification which results in a lower property tax liability as discussed in Section II(C)(b).

An indirect economic benefit to extending the agricultural economy is related to the economies of “off-farm businesses.” “Off-farm businesses” include suppliers of associated goods and services such as seed, fertilizer, hardware and farm equipment and also include warehouses, storage and real estate and others. The Department anticipates that the amended rule will indirectly benefit these businesses by maintaining the agricultural economy in the Pinal AMA for a longer period of time than under the existing rule.

It is difficult to complete a comprehensive cost benefit analysis of maintenance of the agricultural economy in the Pinal AMA. There are economic statistics available that show that in 2012, there were 938 farms in Pinal County and that number had increased 19

percent since 2007. Additionally, the Department identified that the market value for crop sales in Pinal County in 2012 exceeded \$315 million, there were 3,316 farm workers hired and that agricultural employment accounted for 5.6 percent of employees within the county. However, there have been no detailed studies done that project the market value for crop sales into the future or that evaluate the economic value of the off-farm businesses. A fairly comprehensive analysis was completed for agriculture in the Yuma area, but none could be found for Pinal area agriculture. In attempts to obtain quantitative data, the Department contacted numerous entities including: (1) the United States Department of Agriculture, Arizona State Field Office; (2) the Director of Economic Development for Pinal County; (3) the University of Arizona Cooperative Extension; and (4) the Arizona Department of Agriculture.

Developers of New Subdivisions

Developers of new subdivisions in the Pinal AMA are identified in Table 2 as being affected by I, IV and V(b) (as described in Table 1). These rule amendments limit the use of extinguishment credits created on or after January 1, 2019 and eliminate the groundwater allowance for new certificates of AWS. Extinguishment credits and the groundwater allowance represent groundwater that can be legally withdrawn without incurring any replenishment obligation. Limiting the use of new extinguishment credits and eliminating the groundwater allowance may have a negative economic impact on some developers of new subdivisions in the Pinal AMA because they may be required to purchase more extinguishment credits or enroll their subdivisions in the CAGR and incur the CAGR enrollment fees as discussed in Section II(C)(b). However, the developers will likely pass

those costs on to the homeowners that will ultimately purchase the developed lots or parcels.

Again, it is difficult to complete a cost benefit analysis on this as it is unknown how the developers will deal with any additional costs. The end result, either for the developer or the homeowner, is an increase in need for replenishment. For information regarding uncertainty regarding replenishment, see discussion regarding the CAGR in Section II(C)(b).

D. General description of the probable impact on private and public employment in businesses, agencies and political subdivisions

a. *Employment by businesses*

The Department anticipates that the amended rule will maintain the current level of farm employment in the Pinal AMA for a longer period of time than under the existing rule. An in-direct economic benefit to extending the agricultural economy is related to the economies of off-farm businesses. Off-farm businesses include suppliers of associated goods and services such as seed, fertilizer, hardware and farm equipment and also include warehouses, storage, real estate and others. The Department also anticipates that the amended rule will maintain the current level of employment by off-farm businesses in the Pinal AMA for a longer period of time than under the existing rule. As discussed previously, in 2012 there were 3,316 farm workers hired in Pinal County and agricultural employment accounted for 5.6 percent of employees within the county.

b. Employment by state agencies

The Department does not anticipate any impact on employment within state agencies.

c. Employment by political subdivision

The Department does not anticipate any impact on employment within political subdivisions of the state.

E. Statement regarding probable impact on small businesses

The Department has completed an evaluation of the probable impact on small businesses. However, it should be noted that the Department's rule amendments are directly or indirectly related to extinguishment of water rights and demonstration of AWS requirements. Therefore, the rule amendments will affect only a discrete number of small businesses.

a. An identification of the small businesses subject to the proposed rulemaking

It is difficult to specifically identify every small business that may be affected by the rule amendments. There are almost 2,200 GFRs within the Pinal AMA covering more than 250,000 irrigated acres and authorizing the withdrawal of over 670,000 acre-feet of groundwater for irrigation, non-irrigation and mineral extraction. While many of these GFRs are held by private individuals, many are held by entities that meet the definition of small business for this evaluation. *See* A.R.S. § 41-1001. These include small farms, irrigation districts, golf courses, and industrial water users such dairies, feedlots, greenhouses and egg farms, and others. For this economic analysis, these entities have been categorized collectively as GFR Holders in Table 2.

Another component of small business that the Department has identified are those entities that specialize in commercial and residential land development. For this economic

analysis, these entities are categorized collectively as developers of new subdivisions in Table 2.

b. The administrative and other costs required for compliance

The Department does not anticipate that the rule amendments will result in any additional administrative or other costs to the small business identified.

c. A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses; reasons

Table 5. Agency Consideration of Methods to Reduce Impacts

Method	Considered by ADWR	Reason
A.R.S. § 41-1035(1)	No	Rule does not impose new compliance or reporting requirements Existing reporting requirements are contained in A.R.S. § 45-632 and A.A.C. R12-15-715
A.R.S. § 41-1035(2)	No	See above
A.R.S. § 41-1035(3)	No	See above
A.R.S. § 41-1035(4)	No	See above
A.R.S. § 41-1035(5)	No	See above

d. Probable cost and benefit to private persons and consumers directly affected

The Department has identified two groups of private persons and consumers who may be directly affected by the rule amendments. For reasons listed elsewhere in this document, it is difficult to provide a quantitative cost benefit analysis of the impact to these entities, therefore, a qualitative explanation is provided.

Homeowners

Individuals that purchase homes in the Pinal AMA after January 1, 2019 will be affected by I, IV, and V(b) (as described in Table 1). The nature of the impact differs by rule amendment but the general impact involves the costs and benefits associated with replenishment requirements and enrollment in the CAGR. The Department anticipates

that any costs incurred by developers of new subdivision in the Pinal AMA will be passed on to homeowners. The nature and uncertainty of these costs are discussed in Sections II(C)(b) and (c) and Section III. The Department anticipates that I and IV (as described in in Table 1) may result in additional CAGR D fees to homeowners in the Pinal AMA. However, in certain instances, V(b) (as described in Table 1) may actually result in reduced CAGR D fees in cases where future homeowners (after 2050) purchase homes in subdivision with AWS determinations based wholly or in part on extinguishment credits that would have been created in the later years of the current rule allocation factor table. Additionally, I (described in Table 1), is written to avoid abrupt increases in CAGR D replenishment fees.

General Citizenry of the Pinal AMA

The general affect of the rule amendments to non-GFR, non-homebuying citizens of the Pinal AMA is related to the impact on the groundwater within the AMA. The likely effect of IV and V(b) (as described in Table 1) is a positive affect related to the groundwater within the AMA. These two rule amendments may result in a decrease in the volume of groundwater that is pumped and not replenished. As previously noted, it is difficult to quantify the magnitude of the impact because the timing, location and magnitude of future development in the Pinal AMA is not known and is difficult to predict (see discussion regarding CAGR D enrollment). In the short term, new development may occur pursuant to already issued certificates of AWS resulting in no net benefit. Or, new development may occur pursuant to the rule amendments with overall groundwater use increases in other water use sectors, again resulting in no net benefit.

The approximate magnitude of the impact of IV (as described in Table 1) can be established by evaluating the current groundwater allowance volumes included in already issued certificates of AWS. The total volume of groundwater allowance included in certificates of AWS in the Pinal AMA that were issued after 1994 is over 69,500 acre-feet-per year.

Rule amendment V(a) (as described in Table 1) may have a negative effect on groundwater availability because it may encourage longer term continued use of the GFR and may yield a higher number of extinguishment credits when it is ultimately extinguished than under the current rule. This impact may be somewhat offset as the groundwater pumping associated with GFRs prior to extinguishment is subject to A.R.S. §45-611. The groundwater withdrawal fees collected in the Pinal AMA under that statute can be utilized for administration and enforcement of the groundwater code, augmentation of the water supply, conservation assistance to water users, monitoring, assessment, and for purchasing and retiring GFRs.

F. Statement of the probable effect on state revenues

As discussed in Section II(C)(b), the rule amendments could encourage or prolong the agricultural economy in the Pinal AMA for a longer period of time than under the existing rule. Maintenance of the agricultural economy and the associated off-farm business associated with the agricultural water use could provide the state a benefit through the collection of state sales taxes on agricultural and related products and gas taxes associated with operation of farm related machinery. The Department anticipates that this effect will be minimal.

There are no additional or reduced costs to state agencies associated with these rule amendments.

G. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking activity

None

H. Description of data on which rule is based

The Department does not have any data on which these rule amendments are based. As discussed in the Introduction, these rule amendments, and similar rule amendments that have occurred previously, were done at the request of impacted stakeholders within the Pinal AMA. The most recent rule amendments were advocated for by a group of GFR holders within the AMA. GFR information is summarized in Table 6 below.

Table 6. Summary of GFR Type, Number and Volume as of October 19, 2018

GFR Type	Irrigation Acres	Allotment Volume (acre-feet)	Number
Irrigation	259,890	632,084	1,997
Type 1		28,997	92
Type 2 Mineral		1,567	4
Type 2 Non-mineral		9,445	103
TOTAL	259,890	672,091	2,196

GFR holders have asserted to the Department that the rule amendments will allow them to continue utilizing their GFRs and not extinguish prematurely. Table 7 summarizes the pattern of extinguishment in the Pinal AMA.

Table 7. Extinguishment of GFRS in the Pinal AMA

Year	Extinguishments (#)
2007	47
2008	4

2009	0
2010	0
2011	0
2012	0
2013	0
2014	1
2015	0
2016	1
2017	0
2018	5

The data in Table 7 appears to support the assertion that some GFR holders felt compelled to extinguish their rights under the requirements of the current rule, however, the Department does not request information regarding the reason for extinguishment when it occurs. There was a rule amendment in 2007 that may have contributed to the extinguishment of 47 rights. There were no or few extinguishments between 2009 and 2017. However, in 2018 there were five as the 2019 deadline in the current rule was approaching.

III. Explanation of the limitations of the data and methods employed to obtain data; characterization in qualitative terms

There are a number of components that are integral to an analysis of the affect of the rule amendments that cannot be quantified.

GFR Extinguishment

The Department has historic data regarding the number of GFRs and the years in which all or parts of those GFRs were extinguished (see Tables 6 and 7). However, the Department cannot

predict how or whether extinguishments will occur in the future. There are many factors that would influence a GFR holder's decision to extinguish or continue withdrawing groundwater for the authorized use and influence the timing of doing so. These can include, but are not limited to:

- (1) The strength of the agricultural economy, in general, and the demand for Pinal AMA crops;
- (2) The strength of the development economy and/or housing market;
- (3) Weather, drought, availability of water supplies, including Colorado River water delivered through the Central Arizona Project canal;
- (4) The cost of energy to pump or deliver water;
- (5) On-farm or other business infrastructure costs;
- (6) Agricultural pest outbreaks;
- (7) Personal preference for maintaining the farming practice

As the Department is unable to make predictions regarding these influencing factors, the Department is unable to quantitatively predict when GFRs will be extinguished.

CAGR Related Components

The Department has obtained information regarding existing CAGR fees and enrollment levels as discussed in Section II(C)(b) but cannot predict what the quantitative impact of the rule changes on the fees will be. In general, it would be reasonable to assume that an increased need for CAGR enrollment would result in an increase in CAGR revenues through fees but it would also result in a need for additional water supplies to meet the replenishment obligation. The future availability and cost of those supplies cannot be predicted. A review of the 2017 water acquisition activities (see Table 3) shows a highly variable cost on a per acre-foot basis. In the future, as water supplies become more scarce, those per acre-foot costs will likely increase dramatically.

Impact to Pinal AMA Groundwater

The Department is also unable to quantify the impact to the groundwater within the Pinal AMA. It is reasonable to assume that actions that increase the replenishment obligation for pumped groundwater will benefit the aquifer. However, as previously discussed, the magnitude and timing of this is unknown and cannot be predicted. This component is directly related to the factors listed above that influence the extinguishment of GFRs. Additionally, although some GFRs are extinguished, other GFRs may be more fully utilized because of market factors or decreased availability of CAP supplies due to shortages on the Colorado River. The Department does not believe it is possible to realistically quantitatively model the level of these impacts.

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TAB D9

August 16, 1989



Ms. Catherine Eden, Chairperson
Governor's Regulatory Review Council
c/o Executive Budget Office
State Capitol, West Wing, Room 602
1700 West Washington
Phoenix, AZ 85007

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford, Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

Re: Amendment of Department of Water Resources' rules
regulating well construction and licensing of well
drillers, A.A.C. R12-15-801 through R12-15-821, and
adoption of proposed R12-15-822, capping of open wells

Dear Ms. Eden:

The Director of Water Resources ("Director") proposes to amend rules regulating well construction and the licensing of well drillers, and to adopt a rule establishing construction standards for the capping of open wells. Specifically, existing Rules R12-15-801 through R12-15-803 are to be amended. Existing Rule R12-15-804 is to be amended and made a part of R12-15-803. Existing Rule R12-15-805 is to be repealed, and new R12-15-804 and R12-15-805 are to be adopted. Existing Rules R12-15-806 through R12-15-808, R12-15-810 through R12-15-812, and R12-15-814 through R12-15-821 are to be amended. A new Rule R12-15-822, governing the capping of open wells, is to be adopted.

This letter contains the information required to be submitted to the Governor's Regulatory Review Council by statute, rule and the Council's Guidelines dated October, 1988.

I. DESCRIPTION OF PROPOSED RULES; PURPOSE; ACCOMPLISHMENTS.

In 1980, the Legislature enacted a comprehensive Groundwater Code which included a provision requiring the Director to adopt rules establishing construction standards for new wells and replacement wells and the deepening and abandonment of existing wells, A.R.S. § 45-594.A, and a provision requiring the Director to adopt rules establishing qualifications and a reasonable fee for licenses for well drillers and procedures for the evaluation and licensing of applications, A.R.S. § 45-595.C. On March 5, 1984, the Director adopted the existing rules governing well construction and licensing of well drillers, A.A.C. R12-15-801 through R12-15-821, ("existing rules"), in accordance with such statutory directives.

After reviewing the existing rules as part of its five year review of all of its rules, the Department of Water Resources ("Department") determined that many of the existing rules should be amended to improve their clarity and understandability and to increase their effectiveness in achieving their objectives. Also, A.R.S. § 45-594 was amended after the existing rules were adopted to provide that the Director shall adopt rules establishing construction standards for the capping of open wells. The enclosed rules contain such proposed amendments as well as a proposed rule governing the capping of open wells.

During the past 18 months, the Department has held informal workshops on the proposed rule amendments for members of the regulated community, including well drilling contractors and consulting engineers. The Department received a number of comments on the existing rules and the proposed rule amendments from persons attending the workshops, and has taken those comments into consideration in drafting the final version of the proposed amendments.

In addition, the Department has furnished the Arizona Department of Environmental Quality (ADEQ) with drafts of the proposed rule amendments and has been in contact with that agency regarding rules involving groundwater quality. Representatives of the Department met with representatives of ADEQ in April of this year to discuss the Department's jurisdiction over vadose zone wells. As a result of that meeting, the Department is proposing to amend Rule R12-15-802 to exclude vadose zone wells from the application of the Department's rules when such wells are regulated by ADEQ.

The following is a brief description of the purpose of each rule change and what each change is intended to accomplish.

Rule R12-15-801.

I.A. This Rule includes definitions of terms used throughout the existing rules, the amendments thereto and the proposed Rule R12-15-822. The amendment to this Rule adds definitions for the terms "bentonite", "cap", "open well", "perforation", "piezometer", "pitless adaptor", "vadose zone well", "vault" and "well modification". These additions are needed to clarify the meaning of words and terms used in the remainder of the rules, including proposed Rule R12-15-822.

The definition of "mineralized water" in existing R12-15-801.15 (new R12-15-801.17) is to be amended to increase slightly the minimum concentration of fluoride allowed in non-mineralized water from between 1.4 - 2.4 milligrams per liter (depending on air temperature) to 4.0 milligrams (not

dependent on air temperature). This change was made to conform the Rule with Arizona Department of Environmental Quality (ADEQ) standards.

- I.B. The amendments and additions described above will serve to simplify interpretation of the rules for the public.

Rule R12-15-802.

- I.A. This Rule avoids duplicating regulation by the Department of Environmental Quality and improves clarity and understandability.
- I.B. The rules are made inapplicable to vadose zone wells under the jurisdiction of the Department of Environmental Quality.

Rule R12-15-803.

- I.A. Existing R12-15-804 is to be made a part of R12-15-803, and is to be amended to require a person, other than a single well licensee or employee of a well drilling contractor, to secure a well driller's license in order to abandon a well. Further, the Rule is to be amended to require a qualifying party of a well drilling contractor to provide direct supervision of the contractor's employees when abandoning a well. Additionally, minor amendments are made to improve clarity and grammar.
- I.B. The amendments will result in increased protection of aquifers from groundwater contamination.

Rule R12-15-804.

- I.A. As discussed above, existing R12-15-804 is to be incorporated in R12-15-803 by these amendments. Existing R12-15-805 is to be repealed and a new R12-15-804 and R12-15-805 are to be adopted. This will result in a separate rule for the application requirements for well driller's licenses, R12-15-804, and a separate rule for the examination requirements, R12-15-805, for the purpose of clarity and understandability. Further, the new R12-15-804 is to be amended to require the submission of additional information in an application for a well driller's license, including the names of all partners if the applicant is a partnership, the names of all directors and officers if the applicant is a corporation, and the address or location of the applicant's place of business.

The Rule will also be amended to provide that the applicant

may not obtain a well driller's license if the applicant or a qualifying party of the applicant lacks good character and reputation. The Rule will further be amended to increase the years of experience necessary to obtain a well driller's license from 2 years to 3 years.

- I.B. It is necessary to separate the application section from the examination section of the well driller's license requirements to provide a more clear and understandable rule for each set of requirements. It is necessary to require submission of additional information in an application for a well driller's license in order to allow the Department to more effectively screen applicants. The additional information will also aid in enforcement proceedings by providing the Department with identity and location information concerning business entities and individuals that may be responsible for the actions of a licensed driller.

The addition of the requirement that the applicant and qualifying party show good character and reputation is needed to ensure that only responsible individuals are licensed to drill or abandon wells. The amendment increasing necessary years of experience to obtain a license is needed to ensure that only drillers with appropriate experience be allowed to supervise drilling and abandonment of wells. Two years experience has proven to be inadequate for such responsibility.

Rule R12-15-805.

- I.A. This Rule will contain only the portion of existing R12-15-805 dealing with examinations for well driller's licenses. Existing Rule R12-15-805, subsections C through H, are repealed in their entirety and replaced by language that is similar in substance, but changed to specify additional subjects that will be covered in separate sections of the examination and how examinations will be offered and graded.
- I.B. The amendments to the portion of R12-15-805 dealing with examinations are necessary in order to make the Rule more clear and understandable to the public.

Rule R12-15-806.

- I.A. This Rule is to be amended to conform the language with the language of new Rule R12-15-805.
- I.B. The amendments to this Rule are necessary to make the

meaning of the Rule more understandable to the public.

Rule R12-15-807.

- I.A. This Rule is to be amended to allow a person to obtain a single well license for abandoning a well. Single well licenses are currently available only for drilling a well. Further, amendments are proposed to increase clarity and understandability.
- I.B. Because of the proposed amendments requiring a license to abandon a well, this amendment is necessary to allow an individual who is not a well drilling contractor to obtain a single well license to abandon a well.

Rule R12-15-808.

- I.A. This Rule is to be amended only for the purpose of substituting the word "Director" for "Department" as the person or entity that may revoke, suspend or place on probation a well driller license.
- I.B. This amendment is needed to conform the language of this Rule with other rules of the Department.

Rule R12-15-810.

- I.A. This Rule is to be amended to eliminate masculine references and to specify the persons and places to which the Rule applies.
- I.B. The amendment is necessary to make the meaning of the Rule more understandable to the public.

Rule R12-15-811.

- I.A. This Rule is to be amended in the following manner:
 - (1) Subsection A is to be amended to require that only steel or thermoplastic casing may be used in the construction of a well, and that such casing meet certain standard specifications of the American Society for Testing and Materials. Steel casing must be in new or like new condition, free from pits or breaks.
 - (2) Subsection B is to be amended to require hand dug wells to be sealed at the surface with a watertight, tamper-resistant cover to prevent surface contaminants from entering the well, and to require that all wells, except exploration wells and wells in vaults, be constructed with

a concrete slab of at least 6 inches thickness extending at least 2 feet from the surface casing of the well and sloping away from the well.

(3) Subsection C is to be amended to increase the minimum diameter of a required access port from 1/2 inch to 3/4 inch, and to require that all access ports be watertight.

(4) Subsection F is to be amended to require that drilling fluids and cuttings from a well be contained at the drilling site during drilling in excavated or portable pits.

(5) A new subsection H is to be added to allow a monitor well to be screened up to 10 feet above the highest seasonal static fluid for the purpose of monitoring contaminants on the water surface, and to require that monitor wells be identified as such on the vault cover or at the top of the steel casing.

(6) A new subsection I is to be added to permit the construction of wells below grade in a vault, in areas of traffic or rights of way.

(7) Several changes are to be made throughout the Rule to increase clarity and understandability.

I.B. A brief explanation of the need for each amendment to the Rule, by subsection, and what each amendment will likely accomplish is as follows:

(1) The amendments to subsection A are necessary to ensure that casing of sufficient strength and quality to withstand the extreme temperature variations and soil conditions in Arizona are used in the construction of wells. Experience has shown that steel and thermoplastic casing meeting the standard specifications of the American Society for Testing and Materials are normally used by well drillers in Arizona and are known to be acceptable in this state. The amendments to the Rule allow the Director to grant a variance to use other materials upon a showing that they are sufficient for the particular purpose.

(2) The amendments to subsection B are necessary to ensure that hand dug wells are sufficiently sealed to protect the aquifer from surface contamination. The requirement that all wells, except exploration wells or vaulted wells, be constructed with a concrete slab at the surface is necessary to allow drainage of surface water away from the casing of the well, which may act as a vertical conduit to

the aquifer for surface contaminants.

(3) The amendments to subsection C are necessary to allow sufficient access to a well for the purpose of monitoring possible contamination of the aquifer and to ensure that access ports do not allow the introduction of surface contaminants into the well.

(4) The amendments to subsection F are necessary to ensure that contaminants contained in drilling fluids and cuttings from construction of a well are contained in a manner to prevent their introduction into the aquifer through the open borehole.

(5) A new subsection H is necessary to allow proper use of a monitor well to monitor contaminants on the water surface. This amendment relieves monitor wells from the prohibition in subsection A of this Rule against any openings or perforations in a well casing above the water level of the well. Identification of monitor wells on the vault cover of the well is necessary to allow the Department to more effectively identify monitor wells for enforcement purposes.

(6) The addition of a new subsection I expressly creates an exception to the requirement in subsection A of this Rule that a well casing extend one foot above ground level. It is necessary to allow wells to be constructed below grade in a vault in areas of traffic or rights-of-way in order to protect such wells from damage and to eliminate traffic hazards that would otherwise be created.

(7) All other amendments to be made throughout the Rule are necessary to increase the likelihood of compliance with the Rule.

Rule R12-15-812

I.A. This Rule is to be amended to include a 30 day limit to either complete the sealing of a leaking artesian well or to abandon the well. The existing Rule does not include a time limitation. In addition, the Rule is to be amended to increase clarity and understandability.

I.B. The addition of a 30 day time limit for completion of sealing a leaking artesian well is necessary to ensure timely repair or abandonment of a source of unnecessary groundwater waste. All other amendments in this Rule are necessary to increase the likelihood of compliance with the Rule.

Rule R12-15-814

- I.A. This Rule is to be amended to change the time when wells from which water is to be used for human consumption or culinary purposes must be disinfected, from "before first use" to "before removing the drill rig from the well site." Further, the Rule is to be amended to require the driller of the well to perform the disinfection. In addition, the Rule is to be amended to include a table showing minimum concentrations of chlorine per 100 feet of water necessary to properly disinfect a well. Finally, other amendments are made for the purpose of increasing clarity and understandability.
- I.B. These amendments are necessary to ensure that disinfection of potable water supply wells is performed by licensed well drillers with knowledge of the well construction rules, and that the disinfection is done in a timely manner, before the drill rig is removed from the site. Further, it is necessary to include a table showing minimum concentrations of chlorine required to properly disinfect a well in order to ensure that proper disinfection is accomplished by the responsible party. Finally, all other amendments are necessary to increase the likelihood of compliance with the Rule.

Rule R12-15-815

- I.A. This rule is to be amended to require that a drill rig not be removed from a well construction site until the well meets well construction standards and is either capped or equipped with a pump, or is properly abandoned. The existing Rule allows a rig to be removed for up to two weeks prior to meeting these requirements. Other amendments are made to increase clarity and understandability.
- I.B. These amendments are necessary to ensure that the well driller does not leave a well under construction unattended in a condition that may pose a danger to persons coming into contact with the well or that may allow contaminants to enter the aquifer. All other amendments are necessary to increase the likelihood of compliance with the Rule.

R12-15-816

- I.A. This Rule is to be amended to require that wells be abandoned only by licensed well drillers; to require that the owner of a well file a notice of intent to abandon the well, and that the well driller possess an abandonment card

issued by the Director before commencing abandonment of the well, unless the well is abandoned in the course of drilling a new well; and to require the well driller to file a well abandonment completion report with the Director within 30 days after the well is abandoned. Further, the Rule is to be amended to expand the list of materials that may be used as fill for abandoning a well.

- I.B. The rule amendment expanding the list of fill materials for abandoning a well are necessary to allow abandonment of a well with materials the Department has determined to be sufficient to protect the aquifer from surface contamination. The remainder of the amendments to the Rule are necessary to ensure that only persons having knowledge of the well construction rules abandon wells, and to provide the Department with the means to effectively protect the environment by monitoring and regulating well abandonment activities.

Rule R12-15-817

- I.A. The amendments require that the new well capping provisions of R12-15-222 apply also to exploration wells. Rule amendments are also proposed for the purpose of increasing clarity and understandability of the Rule.
- I.B. The rule amendments are necessary to increase the likelihood of compliance with the Rule.

Rule R12-15-818

- I.A. This Rule is to be amended to increase the minimum distance a well may be located from a sewage disposal area, a hazardous waste disposal unit or a hazardous material storage area from 100 feet to 1200 feet, and to list additional potential sources of contamination and minimum distances a well must be located from those potential sources of contamination. Further, the Rule is to be amended to increase clarity and understandability.
- I.B. These rule amendments are necessary to protect the state's groundwater from the potential sources of contamination listed in the amended Rule. Further, all other amendments are necessary to increase the likelihood of compliance with the Rule.

Rule R12-15-819

- I.A. This Rule is amended to substitute "Arizona Department of Environmental Quality" for its predecessor, the Arizona

Department of Health Services.

- I.B. This amendment is necessary to reflect the correct name of the successor agency involved in regulation of groundwater pollution.

Rule R12-15-820

- I.A. This Rule is to be amended to expand the conditions under which the Director may grant requests for variance from the strict application of the rules, and the persons to whom he may grant variances. The current R12-15-820 allows variances "during the drilling of a well", and only "from the minimum well construction standards" provisions of the rules. The amendment would allow a request for variance to be made at any time, and from any provision of the rules. Further, the current Rule allows only a well driller to request a variance. The amendment would also allow a well owner to make the request. The Rule is also to be amended to specify the time when a variance becomes effective.
- I.B. These amendments are necessary to make variances available in more situations in order to achieve more equitable application of these rules.

Rule R12-15-821

- I.A. This amendment will conform wording contained in the Rule to the proposed amendments contained in R12-15-818.
- I.B. This amendment is necessary to increase clarity and understandability of the Rule.

Rule R12-15-822

- I.A. A new R12-15-822 is to be adopted requiring the capping of open wells. The Rule requires that the owner of an open well either install a cap on the well or abandon the well. The Rule provides that the cap must be made tamper-resistant by welding it to the top of the casing of the well. "Cap" is to be defined in R12-15-801 to mean "a tamper-resistant watertight steel plate of at least $\frac{1}{4}$ inch thickness on the top of all inside and outside casings of a well." R12-15-822 will further require the owner of a well to file a Notice of Well Capping with the Director within five days after capping a well.
- I.B. This new Rule has been adopted and certified by the Attorney General as an emergency measure pursuant to A.R.S. § 41-1026. The Rule is necessary to implement and enforce

the provisions of A.R.S. § 45-594.C regarding the capping of open wells. The adoption of this Rule as a permanent measure will result in the capping of additional thousands of open wells in the State of Arizona which pose a significant risk to public health and safety.

II. COSTS AND BENEFITS OF ENFORCEMENT AND IMPLEMENTATION:

In describing costs and benefits of enforcement and implementation of the proposed rule amendments, the rules have been separated into two sub-groups: (a) rules associated with licensing and authority to drill or abandon wells (R12-15-803 through R12-15-808, R12-15-810 and R12-15-816) and (b) rules associated with well construction standards (R12-15-811, R12-15-812, and R12-15-814 through R12-15-822).

In this economic impact statement "minimal" means less than \$1,000; "moderate" means between \$1,000 and \$5,000; and "substantial" means more than \$5,000. The impacts described below are on an individual, rather than cumulative, basis.

II.A. Licensing and Authority to Drill or Abandon Wells:

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
1. Department of Water Resources	The amendments adding licensing and filing requirements for abandonment of wells will aid the Department in monitoring and regulating the abandonment of wells.	Moderate effect due to increased processing, investigating, and enforcement activities.	Minimal effect from collection of licensing and filing fees.
	The amendments adding requirements for well driller applications will assist the Department in administration and enforcement of the Groundwater Code.	Minimal effect, resulting from increased processing.	Minimal effect, resulting from increased availability of information needed for enforcement purposes.

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
2. Other state agencies and political subdivisions -	Other state agencies, counties, cities and irrigation districts that abandon wells will be required to comply with the additional licensing and filing requirements.	Minimal to moderate, resulting from increased processing costs, and possible need to hire licensed well driller to abandon wells if not already doing so. Possible slight cost increase for well abandonment due to increased processing burden for well drillers which may be passed on to well owner.	Moderate, resulting from proper abandonment of wells by responsible parties and additional protection of groundwater marketed by the entity.
3. Private persons -	Licensed well drilling contractors will experience increased demand for abandonment services. Persons abandoning wells will face additional filing requirements. A single well license will be needed by unlicensed persons desiring to abandon their own wells.	Minimal effect on licensed well drilling contractors due to need to respond to increased demand for abandonment of wells. Minimal effect on persons abandoning wells due to filing requirements. Minimal effect on persons desiring to abandon their own wells due to requirement for single well license.	Moderate to substantial effect on licensed well drilling contractors from increased business due to abandonment license requirement. Minimal effect on single well licensees, who will be more likely to properly abandon their wells due to knowledge gained from examination process.
	The additional application re-	Moderate effect on well driller	Minimal effect on well dr...

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
	quirements in the amendments may result in less persons available to serve as qualifying parties for well driller license applicants.	license applicants by requiring more experienced qualifying parties. Moderate effect on persons desiring to serve as qualifying parties who lack three years experience.	resulting from more experienced and responsible qualifying party who will supervise well drilling activities.
4. Consumers or users of any product or service -	The amendments relating to licensing or filing requirements for abandonment of wells will require well owners to either hire a licensed well driller or obtain a single well license. Further, additional filing fees and administrative costs may be passed on to the consumer.	Minimal to moderate effect on well owners, resulting from licensing requirements and additional filing fees and costs passed on by the well driller.	Minimal to moderate effect on well owners, resulting from construction and abandonment of wells being performed by more experienced knowledgeable and responsible well drillers.

II.B. Well Construction Standards

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
1. Department of Water Resources	The amendment expanding the conditions under which a variance may be granted will increase the number of applications for	Minimal effect, resulting from additional variance processing. Further, there may be a reduction in	Minimal effect, resulting from reduction in time spent monitoring and enforcing compliance with

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
	variances to be processed.	fines collected for violations, where variances have been granted.	the rules, where variances have been granted.
	The amendments imposing additional requirements for the construction and capping of wells will result in increased monitoring and enforcement activities.	Moderate effect resulting from additional discovery, monitoring, investigation and enforcement activities.	Minimal effect, resulting from increased collection of fines.
2. Other state agencies and political subdivisions.	Other state agencies, counties, cities and irrigation districts that construct and own wells will be required to comply with more rigorous construction standards and will be required to cap any open wells. Such entities will benefit from amendments relating to monitor well construction and vaulting below grade wells, as well as greater availability of variances.	Minimal to moderate effect, resulting from increased costs of complying with additional construction standards and increased capping of open wells.	Minimal effect, resulting from less restrictive standards monitor well perforations and allowing construction of wells below grade in traffic areas without the need for variances. Minimal effect due to the possibility of more variances from strict application of the rules. Further, minimal effect resulting from increased protection of groundwater

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
3. Private persons	Licensed well drilling contractors and single well licensees will be required to meet more stringent well construction standards. Well owners will be required to cap their open wells. The public will benefit from increased protection of the groundwater supply, and from the capping of dangerous open wells.	Minimal effect on well drillers and single well licensees due to increased costs of complying with more rigorous standards. Minimal effect (approximately \$250 per well) on well owners required to cap their open wells.	marketed by the entity. Minimal to moderate effect on well drillers due to increased demand for capping of open wells by well drillers. Substantial effect on public resulting from increased protection of the groundwater supply and capping of dangerous open wells. Moderate to substantial effect on well owners, resulting from decreased potential for liability to third parties injured by well owners' dangerous open wells.
4. Consumers or users of any product or service	Increased costs to well owners resulting from well drilling contractors passing on costs of complying with more rigorous well construction standards. Greater availabil-	Minimal effect, resulting from increased costs of complying with more stringent standards passed on to consumers by well drillers.	Minimal to moderate effect on well owners due to higher quality wells that will last longer, greater protection of the water supply withdrawn from the

Description of Group Affected	Description of Effect	Increased Costs/Decreased Revenues	Decrease Costs/Increased Revenues
	ity of variances for well owners.		wells and greater availability of variances.

III. ALTERNATIVES

A. Licensing and Authority to Drill or Abandon Wells

In arriving at the proposed rule amendments relating to licensing and authority to drill or abandon wells, the Department considered a number of alternative methods for achieving the purposes of the proposed amendments. Listed below are several of the alternatives and the reasons they were rejected.

An alternative considered by the Department to the requirement that a well be abandoned only by a licensed well driller was to allow an unlicensed person to abandon a well upon notification to the Department of the time when the well would be abandoned so that the Department could monitor the abandonment. Although such an alternative would possibly achieve the same result as the licensing requirement, the cost to the Department of supervising the abandonment of wells by unlicensed persons makes such an alternative unfeasible. The only realistic means of ensuring that wells are properly abandoned in a manner that will protect the aquifer from contamination is to require that they be abandoned only by persons who have been licensed by the Department to perform such work.

The purpose of requiring a well owner to file a notice of intention to abandon a well prior to abandonment is to provide the Department with an opportunity to monitor the abandonment work, and to withhold its authorization for abandonment of the well if the well driller listed to perform the abandonment work is unlicensed. An alternative to this requirement is to allow the well owner to give verbal notice of the proposed abandonment to the Department. However, experience has shown that written notices are more desirable for record keeping purposes and for clarity of communication.

An alternative to the requirement that a well driller possess an authorization card before commencing abandonment of a well which was considered was to allow the driller to commence abandonment upon verbal authorization from the Department. However, such an alternative would hinder the Department's enforcement efforts because it could not readily discover whether a well driller engaged in abandoning a well was licensed and had authority to abandon that particular well. Further, past experience has shown

that written authorization is more desirable for record keeping purposes and for clarity of communication.

An alternative to the requirement that a qualifying party of an applicant for a well driller's license possess good character and reputation, and have three years experience rather than two years, is to require that qualifying parties be bonded. However, well drilling contractors are currently required to be bonded by the Arizona Registrar of Contractors, and bonding tends to allow resolution of a problem after it occurs rather than avoid problems before they happen. Further, the Department believes that the proposed amendment is the most effective means to ensure that wells are constructed and abandoned only by responsible and experienced persons.

B. Well Construction Standards

In arriving at the proposed amendments to the various well construction standards contained in the rules, the Department considered a number of alternatives to achieve the following goals: (1) protection of the aquifer from contamination; (2) prevention of groundwater waste; (3) use of materials in well construction that will withstand the extreme climatic and soil conditions that occur in Arizona; (4) use of materials and methods in well construction that are the least expensive to accomplish the other goals; and (5) allowance for variances from the rules where special conditions exist and the purpose of the rules can still be achieved. Listed below are various alternatives considered by the Department, and the reasons they were rejected.

An alternative to the proposed requirement in R12-15-811 that only steel or thermoplastic casing meeting certain specifications be used in the construction of wells is to allow any casing of a specified thickness to be used. However, experience has shown that in general, only steel and thermoplastic casing meeting the standard specifications referred to in the Rule are of sufficient texture to allow adherence of a cement grout surface seal, and are of sufficient strength to prevent the borehole from caving in and to withstand the extreme temperatures and soil conditions that are present in this state. The Department will consider a variance from this requirement upon a showing that another type of casing will serve those purposes.

An alternative to the requirement that a well drilling rig not be removed from the well site until the well is either fully constructed and sealed with a cap or equipped with a pump, or properly abandoned, is to permit a drilling rig to be removed from the well site for a shorter period of time than the two weeks currently allowed. However, experience has shown that removal of a drilling rig from a well site prior to completion of construction or abandonment of a well for any length of time is undesirable.

There is a potential for leaving the well unattended in a hazardous condition or failing to return to the well site within a reasonable time to complete construction or abandonment of the well because of intervening problems. The Department will consider a variance from the requirement if special circumstances exist.

In developing the standards for the capping of open wells contained in proposed Rule R12-15-822, the Department considered a number of alternatives to the requirement that a cap be made tamper-resistant by welding it to the top of the casing by the electric arc method of welding, including bolting the cap to the top of the casing. However, the Department determined that welding the cap to the casing was the only method to adequately ensure that the cap would be both watertight and tamper-resistant.

All other alternatives considered by the Department to the remainder of the rule amendments were rejected for the reason that they did not meet the above-mentioned goals of the Department as adequately as the proposed amendments. However, the expanded variance provisions contained in the proposed amendment to Rule R12-15-820 will allow the Director to relieve persons from the strict application of the amended rules upon a showing that the method of well construction proposed by the applicant meets the objectives of the amended rules, and that extraordinary conditions exist.

IV. IMPACT OF THE PROPOSED RULE AMENDMENTS ON SMALL BUSINESS:

A. Types of Small Businesses Subject to Proposed Rule Amendments and Procedures Required for Compliance

The Department has identified two types of small businesses which will be subject to the rule amendments: (1) well drilling contractors, and (2) well owners qualifying as small businesses, including farms, sand and gravel companies, dairies, feed lots, and private golf courses.

The proposed rule amendments will impose additional licensing and reporting requirements on well drilling contractors, including those qualifying as small business. The proposed amendments to Rules R12-15-804 and R12-15-816 will require that wells be abandoned only by licensed well drillers. The proposed amendment to Rule R12-15-804 will require an applicant for a well driller's license to submit additional information to the Director, including: (1) the names of all partners if the applicant is a partnership; (2) the names of all directors and officers if the applicant is a corporation; and (3) the address or location of the applicant's place of business. The amendments to Rule R12-15-816 will require a well drilling contractor to possess an abandonment card issued by the Director before commencing abandonment of a well, unless the well is abandoned in the course of drilling a new

well, and to file a Well Abandonment Completion Report within 30 days after a well has been abandoned. The proposed amendment to Rule R12-15-820 will allow a well drilling contractor to request a variance from the strict application of any provision of the rules, and at any time, rather than only from the minimum well construction standards and only during the course of drilling a well.

The proposed rules will also impose additional licensing and reporting requirements on well owners, including those qualifying as small businesses. The proposed amendment to Rule R12-15-816 will require well owners to hire a licensed well driller, or obtain a single well license, in order to abandon a well. The proposed amendments to Rule R12-15-816 will require well owners to file a Notice of Intent to Abandon prior to abandoning a well. Proposed Rule R12-15-822 will require well owners to file a Notice of Well Capping within five days after capping an open well. The proposed amendment to Rule R12-15-820 will permit well owners to request variances from the strict application of the rules. Currently, only well drillers are permitted to request variances.

B. Methods to Reduce Impact

In developing the proposed rule amendments, the Department considered each of the methods listed in A.R.S. § 41-1053.B to reduce the impact of the rules on small businesses, but concluded that none of the methods were feasible in meeting the statutory objectives which are the basis of the proposed amendments. However, the proposed amendment to Rule 12-15-820 expands the conditions upon which a variance from the strict application of the rules may be obtained by a small business. Furthermore, a number of the proposed rule amendments will make the rules more clear and understandable to small businesses, including the repeal of R12-15-805 and the adoption of two separate rules, R12-15-804 and R12-15-805, which separate and clarify the rules relating to application and examination procedures for well driller's licenses.

Sincerely,



N. W. Plummer
Director

DEPARTMENT OF WATER RESOURCES

99 E. Virginia Avenue, Phoenix, Arizona 85004



BRUCE BABBITT, Governor
WESLEY E. STEINER, Director

August 17, 1983

Mr. William Jamieson, Jr.
Department of Administration
1700 West Washington
State Capitol, West Wing, Room 804
Phoenix, Arizona 85007

Dear Mr. Jamieson:

I am forwarding with my approval six copies of the Department of Water Resources' proposed rules R12-15-830, entitled "Well Spacing and Well Impact," and R12-15-840, entitled "Replacement Wells in the Same Location," respectively. If there are any questions on these rules, please contact Scott Larmore or Betsy Rieke at 255-1507. For your convenience, each of these rules will be discussed and analyzed separately.

R12-15-830 "Well Spacing and Well Impact"

I. Purpose of the Proposed Rule

- A. A.R.S. § 45-598 of the Groundwater Management Act of 1980 states that:

"the director shall adopt rules and regulations governing the location of new wells and replacement wells in new locations in active management area to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells."

The purpose of R12-15-830 ("R830") is to implement that statutory provision. A.R.S. § 45-603 requires the Director, in developing this rule, "to consider, among other things, water quality, cones of depression, and land subsidence. Further statutory authorization for R830 is found in A.R.S. § 45-105(B)(1), which states that the "director shall ... adopt and issue rules and regulations necessary to carry out the purposes of [Title 45]."

Think Conservation!

Office of Director 255-1554

Administration 255-1550, Water Resources and Flood Control Planning 255-1566, Dam Safety 255-1541,

The problem to which A.R.S. § 45-598 and R830 are directed, is the potential for land subsidence, migration of poor quality groundwater, and unreasonable lowering of water levels in neighboring wells, which may result from the "cone of depression" caused by the operation of a proposed well in a given location. It is important to note that the statute is phrased in terms of preventing "unreasonably increasing damage." This is in recognition of the hydrological fact that every new well will have some theoretical effect on every existing well drawing from the same aquifer. Thus, to preclude all impacts would be to virtually preclude the drilling of all new wells. For that reason, it is only "unreasonable impacts" which are to be guarded against. Proposed R830 sets forth the procedures and relevant considerations by which the Department will make such a determination.

The statute and proposed rule do not apply to wells which are located outside of active management areas, or which qualify either as replacement wells in the same location pursuant to A.R.S. § 45-597, or "exempt wells" (i.e. pumping capacity of less than 35 g.p.m.) pursuant to A.R.S. § 45-454.

B. As proposed by R830, the process of determining whether a proposed new well would cause unreasonably increasing damage to surrounding land or water users, would begin (for larger wells) with the applicant's submittal of a hydrological study. (Applications for wells having a pumping capacity of under 500 gallons per minute would not have to include a separate study.) After review and analysis of the hydrological characteristics of the area, the Department would determine which existing wells of record, if any, would suffer an additional water-level drawdown (over and above existing rates of decline) in excess of ten feet in the first five years of the proposed well's operation. If no wells were so affected, the impact on surrounding water users would be deemed "reasonable."

However, if one or more existing wells were projected to suffer additional drawdowns in excess of ten feet over five years, the Director would weigh and balance a number of factors in making his determination of "reasonableness." Among these factors are:

- (1) The depth to groundwater at the proposed well location;
- (2) The existing rate of decline in groundwater levels at the proposed well location;
- (3) The number of wells of record so affected;
- (4) The historical and proposed frequency and magnitude of use of any well of record so affected;
- (5) The current cost of pumping of any well of record so affected;

- (6) Any other significant economic impact on any well of record so affected, which is associated with the projected decline in water levels from the operation of the proposed well;
- (7) If the application is for a replacement well in a new location, the degree of impact that the original well imposed on wells of record so affected;
- (8) Any efforts by the applicant to mitigate the projected damage to any well of record so affected;
- (9) The feasibility of the applicant amending the specific location or pumping requirements of his proposed well to lessen the degree of impact on any well of record so affected.

If the Director, after considering the above-enumerated factors, determines that one or more existing wells would indeed be "unreasonably damaged," the application is denied, unless the applicant secures the informed consent of all "unreasonably damaged" well owners. However, if the application is denied because of problems with land subsidence or migration of poor quality water, the simple consent of the neighboring well owners will not cause the application to be approved. This is because these problems create lasting "damage" to the land and to the aquifer in general; thus it would be inappropriate for the then existing local water-users to sanction such a consequence.

By utilizing the procedure outlined above, the Department hopes to strike a balance between the legitimate needs of the person seeking permission to drill the new well, and the legitimate fears and concerns of the neighboring well owners.

An alternative approach which was considered was to have the Department "weigh and balance" all proposed impacts, no matter how minimal, on existing wells. However, since the theoretical impacts of a given well are virtually limitless, the Department would have no way of knowing where to stop its search, in terms of looking at existing wells located at ever increasing distances from the proposed well. Proposed R830 would "stop the search" at such point as the projected impacts fell below the threshold figure of ten feet of additional drawdown over a five-year period. This figure, although purposely set conservatively low, provides a fixed point of reference for both the Department and the regulated community, and saves a great deal of administrative time and effort which might otherwise be spent analyzing and investigating clearly "reasonable" impacts. Another approach considered was to avoid the weighing and balancing process altogether, and simply hold that any projected impact in excess of a given standard would be deemed "unreasonable." Although such an approach would have obviously made the determination very simple to make, it was rejected as making no allowance for the substantial difference in circumstances which one finds from well to well.

The approach taken by R830 regarding the determination of "unreasonable impact" will be both equitable and efficient, as it considers, on a well by well basis, each projected impact which exceeds a clearly stated minimum threshold.

II. Direct Consequences

<u>Designation of Consequences</u>	<u>Increased Cost/Decreased Revenue</u>	<u>Decreased Cost/ Increased Revenue</u>
A.1 Applications for wells of less than 500 g.p.m. need not include a separate hydrological study. Such studies are not as complex as those for large or multiple wells, but will require some staff time.	\$50-\$100	
A.2 DWR required to notify applicant regarding existing wells determined to be unreasonably impacted. Mailing expenses-staff time.	\$5-\$50	
A.3 DWR analysis of various factors regarding impact on a given well. Staff time-possible mailings to well owners.	\$50-\$500	
A.4 The Department has, since 6/12/80, been required by statute to consider well spacing when acting on applications for well permits. This has been on a case-by-case basis, with the approach very similar to that of the proposed rule. Thus, no changes in internal operating procedures will be required.		

B/C.1 Applicant* submittal of hydrological study (on large and multiple wells) will save DWR staff time.

\$300,000

B/C.2 Possible applicant hydrological studies, if needed, regarding land subsidence or poor quality water.

\$1000-\$2500

D. The consumer will suffer no direct consequences from R830/R840.

III. Indirect Consequences

A. Insofar as the Department is required by statute to make a determination of projected unreasonable damage, the indirect consequences of R830 itself are only in the particular approach taken. As discussed earlier, R830 provides a procedure which will be less burdensome than looking at all theoretical impacts, no matter how minimal; however the rule will be more burdensome than an approach which did not, under any circumstances, consider the individual facts attendant to a given situation.

B/C. Cities and private water companies are the entities which do the majority of the new, non-exempt well drilling. Expenses such as hydrological studies, which are incurred by such water providers, are often passed on to the consumer himself in the form of higher utility rates. However, one must bear in mind that it is the consumer himself who has an interest in being protected from land subsidence, the migration of poor quality water, and drastic drawdown effects.

D. The incentives created by A.R.S. § 45-598 and R830 are for the applicant to choose a well location and pumping regime which will not unreasonably impact on the surrounding land and water users. Insofar as the applicant's efforts to mitigate damage are a factor in the Department's decision, and because the consent of the unreasonably damaged well owners may in some circumstances be required for application approval, R830 provides incentives for the applicant and his neighbors to arrive at their own accommodations of each others' respective interests.

*Public and private entities will suffer no consequences from R830/840 other than in their role as an applicant for a permit to drill a new well.

IV. Impact on Small Businesses

Small businesses will be subject to R830/840 as they seek Department approval for the drilling of new wells. The largest number of such small businesses are likely to be small private water companies.

It is not appropriate to allow a small business to cause greater damage to surrounding land and water users than a "large" business; hence the standards in the proposed rules are the same. However, the application process for small businesses, insofar as they are more likely to drill wells of under 500 g.p.m. pumping capacity, is considerably easier, since such applicants are not generally required to submit their own hydrological studies of well impact.

Proposed R12-15-840

"Replacement Wells in the Same Location"

I. Purpose of the Proposed Rule

A.R.S. § 45-597 states:

"The director shall by rule or regulation define what constitutes a replacement well, including the distance from the original well site that is deemed to be the same location for a replacement well."

Under the Groundwater Code, "replacement wells" in the same location are treated less stringently than "new wells," in terms of the application process. The major difference is that the director does not consider well impact (pursuant to A.R.S. §§ 45-598 and R12-15-830) if the applicant wants to merely replace an existing well and existing withdrawals (i.e., if the status quo is maintained there can be no "unreasonably increasing damage.")

B. Proposed Rule R12-15-840 ("Rule 840) defines the "same location" as anywhere within six hundred and sixty feet of the original well. A square of these dimensions defines a 10 acre parcel of land (i.e. a quarter-quarter-quarter section), which is the standard unit of location for Department well application and permit purposes. Because the existing well which is being replaced often has some limited capacity remaining, R840 allows the replacement well to be used in conjunction with the original well if the total withdrawals do not exceed the "original" withdrawals from the original well.

II. R840 is definitional only, and imposes no direct monetary costs or benefits.

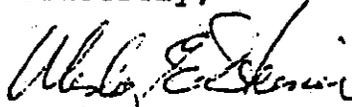
III.

A. The definition of "replacement well in the same location" contained in R840 is consistent with the Department's practice of recent years, and will necessitate no change in internal operation procedures.

B,C,D. See discussion under R830. The indirect consequences of R830 and R840 are the same, insofar as the "consequences" of not falling under the definition of "replacement well in the same location," is for the applicant to be subject to the well spacing considerations of R830.

IV. See discussion under R830.

Sincerely,


Wesley E. Steiner
Director

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

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

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

Not applicable.

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

Not applicable.

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

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

If the Department chooses to conduct well investigations for vertical cross-contamination pursuant to R12-15-852, staff time allocations may increase temporarily to

compile lists of potentially impacted well owners within selected areas of investigation. These costs are already budgeted through A.R.S. § 45-618.

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

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

Well inspections will greatly assist well owners in identifying wells which are conduits for vertical cross-contamination and may provide state-funded remedies to

correct well deficiencies and protect the public and individual well owner's health by mitigating exposure to contaminated groundwater.

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

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

A substantive change was made after consultation with GRRRC staff to amend R12-15-850(B). Language was modified to eliminate Director discretion in establishing requirements for well evaluations that are consistent with R12-15-811, R12-15-812 and R12-15-821 by making this action mandatory. The rules that are referenced are flexible and do not limit the Department's previous ability to evaluate wells or develop specific requirements to prevent vertical cross-contamination. Furthermore, the minimum well construction requirements listed in R12-15-811 are acceptable in many cases without having to invoke additional measures under R12-15-812 and R12-15-821 to prevent vertical cross-contamination. As a result, the Department has adopted a recommended change in language which states that the Department shall establish site-specific requirements that are consistent with R12-15-812 and R12-15-821 in cases where the requirements of R12-15-811 are deemed insufficient to prevent the risk of vertical cross-contamination.

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

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

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

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

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

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

Not applicable.

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

Not applicable.

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

No.

15. The full text of the rule follows:

PROPOSED RULES
ARIZONA ADMINISTRATIVE CODE
TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

<u>Section</u>	<u>Title</u>
R12-15-850.	Evaluation of Notices of Intention to Drill; Notification of Registered Site Locations; Vertical Cross-Contamination Evaluation
R12-15-851.	Notification of Well Drilling Commencement
R12-15-852.	Notice of Well Inspection; Opportunity to Comment

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

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

A. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. §§ 45-597 through 45-599, identify whether the proposed well will be drilled within a groundwater basin or subbasin in which there exists a site listed on the registry established under A.R.S. § 49-287.01(D). If the proposed well is situated within such a groundwater basin or subbasin, the Director shall notify the applicant and the authorized well drilling contractor in writing of the existence of the site and shall enclose a map indicating the boundaries of all listed sites within the groundwater basin or subbasin. The notification letter shall include the name, address, and telephone number of a Department contact person, along with a reference to the provision in R12-15-851 that requires the applicant to notify the Department in advance of the date drilling of the well will commence. The Department shall also specify in the notification letter whether the applicant is subject to the requirements of R12-15-851.

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

are insufficient to prevent the risk of vertical cross-contamination, the Director shall establish site-specific requirements pursuant to R12-15-812 and R12-15-821.

R12-15-851. Notification of Well Drilling Commencement

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

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

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

inspection, and the name, address, and telephone number of a Department contact person.

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

GOVERNOR'S REGULATORY REVIEW COUNCIL
1400 W. Washington - Suite #270
Phoenix, AZ 85007, (602) 542-2058

Meeting Date: NOVEMBER 2, 1999

Agenda Item: E-7

(Return to Office Coordinator by: October 14, 1999)

GRRC ECONOMIST'S ANALYSIS OF ECONOMIC IMPACT STATEMENT FROM:

Agency: DEPARTMENT OF WATER RESOURCES (AR-99-1107)
Title 12, Chapter 15, Article 8, Well Construction and Licensing of Well Drillers
New Sections: R12-15-850 through R12-15-852

1. Does the economic, small business and consumer impact statement contain the information, data and analysis prescribed by A. R. S §§ 41-1035, 1052, and 1055? [A.R.S. 41-1052(C)(1)]

Yes No See attached comments

2. Is the economic, small business and consumer impact statement generally accurate? [A.R.S. 41-1052(C)(2)]

Yes No See attached comments

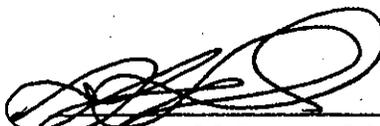
3. Do the probable benefits of the rule outweigh the probable costs of the rule? [A.R.S. 41-1052(C)(3)]

Yes No See attached comments

4. Is the rule likely to be controversial?

Yes No See attached comments

For staff conclusions and suggestions, see "conclusions" section of staff comments attached.


_____, Economist
Allen Malanowski



DEPARTMENT OF ADMINISTRATION
GOVERNOR'S REGULATORY REVIEW COUNCIL

MEMORANDUM

TO: Members of Governor's Regulatory Review Council

FROM: Allen Malanowski, Economist

SUBJECT: Department of Water Resources (AR-99-1107)
Title 12, Chapter 15, Article 8, Well Construction and Licensing of Well Drillers

New Sections: R12-15-850 through R12-15-852
Economic, small business, and consumer impact statement comments.

DATE OF COUNCIL MEETING: November 2, 1999

I reviewed the economic, small business, and consumer impact statement (hereafter referred to as EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

GRRC staff comments:

The department's new rules which are required by A.R.S. §45-605(E) provide review of notices and applications for new or replacement wells to identify whether a well will be located where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination by the well. The rules require that a new or replacement well in this type of location be designed and constructed to prevent vertical cross-contamination within an aquifer. Although the new rules are specific regarding vertical cross-contamination, they do not constitute a regulatory burden greater than that which currently exists.

The economic, small business, and consumer impact statement contains the information necessary for compliance with A.R.S. §§ 41-1035, 1052 and 1055.

1. Increased Revenue / Decreased Costs:

There will be no increased revenues. Land owners and well drillers that benefit from guidance by the department and avoid drilling a bad well will avoid the expense of remediating a well that contaminates an aquifer. There are no other

direct decreased costs.

2. Decreased Revenue / Increased Costs:

There should be no decreased revenues. The incremental cost of implementing the rulemaking will not be substantial because it will be folded into the department's costs for general well inspection and notification (more than \$86,840 in personnel expenses per year). The department's other types of water quality reviews substantially overlap the new rules. The department will be using existing personnel to fulfill the requirements of the new rules. The costs to well drillers and owners may be substantial if the department's review indicates that special measures are necessary to prevent cross-contamination of aquifers. The review may delay issuance of a permit to drill a well in an area subject to intensive scrutiny because of potential pollution to groundwater.

3. Do the probable benefits outweigh the probable costs?:

The benefits from keeping the rules consistent with statutes and protecting uncontaminated groundwater outweigh the cost of the rulemaking.

4. Small business impact reduction analysis:

The rulemaking has no reducible impact on small business or consumers. The rules provide the least intrusive method to achieve a reasonable level of confidence in the safety of aquifers from contamination, while keeping the regulatory burden minimal to the average well driller.

5. General Comments:

The department believes that most of the wells that will be subject to possible modification, increased scrutiny, and inspection will be remediation and monitoring wells that are part of an ongoing groundwater monitoring or remediation project. The department believes that the majority of water production wells will be outside potential contamination areas, and will require little or no additional scrutiny for cross-contamination outside of the regular application process conducted by the department.

6. Conclusion:

After analysis for compliance with A.R.S. §§ 41-1035, 1052(C)(1-3), and 1055, staff recommends that these rules be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
1400 W. Washington - Suite #270
Phoenix, AZ 85007, (602) 542-2058

Meeting Date: November 2, 1999

Agenda Item: E-9

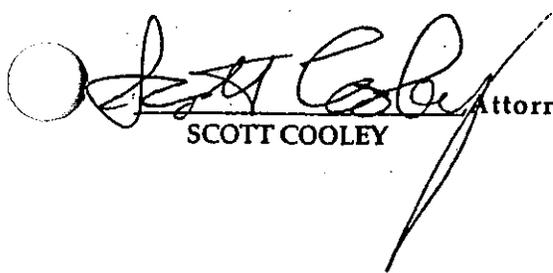
(Return to Office Coordinator By: October 14, 1999)

GRRC ATTORNEY'S ANALYSIS OF RULE PACKAGE FROM:

Agency: DEPARTMENT OF WATER RESOURCES (AR-99-1107)
Title 12, Chapter 15, Article 8, Well Construction and Licensing of Well Drillers
New Sections: R12-15-850 through R12-15-852

1. Is the rule clear, concise and understandable? [A.R.S. 41-1052(C)(4)]
 Yes No See attached comments
2. Is the rule legal, consistent with legislative intent, and within the agency's statutory authority? [A.R.S. 41-1052(C)(5)]
 Yes No See attached comments
3. Has the agency adequately addressed the comments on the proposed rule and any supplemental proposals? [A.R.S. 41-1052(C)(6)]
 Yes No See attached comments
4. Is the adopted rule substantially different from the proposed rule and any supplemental notices when considered as a whole? [A.R.S. 41-1052(C)(7)]
 Yes No See attached comments
5. Is the rule likely to be controversial?
 Yes No See attached comments
6. Does the rule contain a fee increase?
 Yes No See attached comments

For staff conclusions and suggestions, see the "conclusion" section of staff comments attached.


Attorney
SCOTT COOLEY



DEPARTMENT OF ADMINISTRATION
GOVERNOR'S REGULATORY REVIEW COUNCIL

MEMORANDUM

TO: Members of the Governor's Regulatory Review Council

FROM: Scott Cooley

DATE: September 29, 1999

SUBJECT: Rule package for the November 2, 1999 meeting:
Department of Water Resources (AR-99-1107)
Title 12, Chapter 15, Article 8, Well Construction and Licensing of Well Drillers

New Sections: R12-15-850 through R12-15-852

Staff makes the following comments to facilitate the Council's review of the rules submitted for approval:

The Department of Water Resources (Department) has general control and supervision over the appropriation and distribution of surface water and ground water under Title 45. The director of the Department is under a duty to adopt rules requiring the review of notices and applications regarding new or replacement wells to identify whether a well will be located where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination by the well. A.R.S. § 45-605(E)(1994 & Supp. 1998). The rules must require that a new or replacement well in this type of location be designed and constructed in a manner to prevent vertical cross-contamination within an aquifer. *Id.*

Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

The Department cites appropriate statutory authority for the rules reviewed. The Department's director is required to exercise and perform all powers and duties vested in or imposed upon the Department and adopt and issue rules necessary to

carry out the purposes of Title 45. A.R.S. § 45-105(B)(1)(1994 & Supp. 1998). The director is also required to make rules relating to vertical cross-contamination, as discussed above. A.R.S. § 45-605(E)(1994 & Supp. 1998). The new rules fall within this statutory authority.

Are the rules clear, concise, and understandable?

The rules promulgated by the Department are generally clear, concise, and understandable. The rules use words that are commonly understood in a grammatically correct manner.

Did the agency adequately address comments on the proposed rules?

There was 1 comment on the rulemaking. El Paso Natural Gas Company suggested that the well drilling contractor be given the responsibility of notifying the Department prior to the commencement of drilling activity. The Department did not make the requested change, indicating that A.R.S. § 45-605 and A.R.S. § 45-596 pertain to well owners or applicants rather than well drilling contractors.

Are the rules a substantial change, considered as a whole, from the proposed rules?

1. Proposed Rules Understandable?

In section 5 of the preamble to the Notice of Proposed Rulemaking, the Department provides an adequate explanation for the rules. The reasons stated for the rules in the Notice of Proposed Rulemaking are identical to those stated in the Notice of Final Rulemaking. Having reviewed the Notice of Proposed Rulemaking in the Register, persons affected by the rulemaking should have understood that the proposed rules would affect their interests.

2. Subject Matter?

The Department has made minor changes but there is no substantial difference between the text of the proposed rules and the text of the final rules. The subject matter of the rules, vertical cross-contamination, remains the same.

3. Effect?

Section 9 of the Notice of Final Rulemaking provides a summary of the economic, small business, and consumer impact. This summary of effects is identical to the preliminary summary presented in the Notice of Proposed Rulemaking. The effects of the proposed rules are not substantially different from the effects of the final rules. For additional information, please consult the staff economist's analysis of the rules.

Conclusion:

On the basis of the information provided by the Department, this analyst recommends that the rules be approved, subject to any changes the Council requests at the meeting, provided the changes are made before submission to the Secretary of State.

TAB D10

ARIZONA DEPARTMENT OF WATER RESOURCES

500 N. 3rd. Street, Phoenix, Arizona 85004
Telephone (602) 417-2420
Fax (602) 417-2401



FIFE SYMINGTON
Governor

RITA P. PEARSON
Director

October 12, 1994

J. Elliott Hibbs, Director
Department of Administration
1700 West Washington Street
State Capitol, West Wing, Room 801
Phoenix, Arizona 85007

Dear Mr. Hibbs:

The Director of Water Resources ("the Director") proposes to adopt amendments to A.A.C. R12-15-901, et seq., the Water Measurement Rules. This letter contains the economic impact statement, the statement of impact on small business, and the statutory authority for adopting the rules.

A. ECONOMIC IMPACT STATEMENT

1. Description, purpose and need for the proposed rules

Amendments to the existing water measurement rules are needed to reconcile the rules with legislative changes that have been enacted since the original rules were adopted in 1982. The current rules refer only to entities withdrawing groundwater from non-exempt wells. There have been major statutory changes, such the enactment of water storage provisions, that require measuring requirements for other water sources. The municipal and industrial sectors are now regulated by management plans. The measurement rules need to extend to those water use sectors. Finally, the original rules reference the Department's Engineering Bulletin 1. Under the Administrative Procedures Act (A.R.S. 541-1028), rules may not incorporate a document by reference. The standards should be embodied in the rules.

The specific amendments are summarized below:

R12-15-901: The definitional section adds the key terms "approved measuring device" and "approved measuring method". The definitions are tied together: an approved measuring device must be used with an approved measuring method. The connection between the two concepts is meant to demonstrate that regulating both devices and methods is necessary to achieve accurate water measurement. The section also adds the term "responsible party" to describe any water user who is required by statute, rule or permit to use an approved measuring device

and method.

R12-15-902: This rule addresses who must install and use an approved measuring device.

R12-15-903: This rule describes the types of measuring devices that may be used. The rule states that any measuring device that meets accuracy requirements and is installed, maintained and used in accordance with manufacturer's recommendations is an approved measuring device. The rule also describes the five different types of measuring methods that may be used with an approved measuring device.

R12-15-904: This rule requires that responsible parties shall report annually regarding the measuring device, method and water use information required by Title 45. Irrigation districts shall record and retain specified information for three years after the annual report year.

R12-15-905: This rule requires measuring devices to be accurate within 10 percent of the actual flow rate. All measuring devices must be installed or constructed and maintained to allow the director to readily check their accuracy.

R12-15-906: This rule sets requirements for repair and replacement of defective measuring devices. Responsible parties must report meter malfunctions and estimate the water used during the breakdown.

R12-15-907: This rule governs water use reports by individual irrigation grandfathered rights which receive water from a common distribution system. The rule describes two methods for estimating the amount of water used.

R12-15-908: This rule specifies that the responsible party shall be liable for the accuracy of the installation, use or accuracy of measuring even if it was done by an agent.

R12-15-909: This rule allows for alternative water measuring devices, methods, and reporting that have been pre-approved by the Director. The rule also exempts municipal providers from reporting some individual service connections.

2. What the rules likely will accomplish

These proposed rules require a responsible party to measure all types of water delivered or used. It allows any type of metering device to be used, if the device meets a ± 10 percent accuracy requirement and the device is installed and used in

accordance with the manufacturer's recommendations. The rules specify five different methods that may be used with specific measuring device types that will allow accurate calculations of water use. The proposed rules allow a responsible party who receives irrigation water deliveries from a common distribution system to estimate water use on the individual irrigation grandfathered right. In addition, the rules set forth a mechanism for a responsible party to seek approval from the Director to use alternative measuring devices, methods or reporting formats. Finally, the proposed rules provide certain reporting exemptions.

By requiring that all types of water be accurately measured and reported, the Department will be able to better evaluate and manage water supplies. Secondly, by describing the water measurement methods and devices that may be used, the rules simplify the requirements. In addition, by specifying how water use may be estimated, the rules provide guidelines for farmers sharing delivery systems. In accepting alternative measuring methods, devices and reporting formats, the rules accommodate practices that are already being used. The package as a whole increases the accuracy of record keeping, the benefits of water management planning and the effectiveness of enforcement.

3. Classes affected and impacts

Persons who will be affected by the rules, directly or indirectly, and who will bear the costs and receive the benefits of the rules include cities, towns, private water companies, irrigation districts, grandfathered groundwater right holders, permit holders and individual industrial water users.

The proposed rules make water measurement requirements both simpler and more flexible for those working with them. On the one hand, by describing the water measurement devices and methods that may be used instead of referring the reader to Engineering Bulletin I, the rules simplify and clarify the requirements for those directly affected by them. On the other hand, the mechanisms for seeking approval for alternative measuring devices, methods and reporting formats make the rules more flexible for those who are already using reliable devices, methods or reporting. Additional flexibility is provided by an exemption from certain reporting requirements for municipal providers. Finally, the proposed rules clarify requirements by reconciling the water measurement regulations with legislation, management plans and rules that have been enacted since 1982.

These rules enable the Department to obtain better and more comprehensive data on water supplies and uses for future water resource planning. This information will benefit all persons within Active Management Areas and Irrigation Non-expansion Areas and promote the effective management of all water supplies by accurately measuring the amount of groundwater, surface water and effluent used. The proposed rules also benefit the public by applying predictable standards to recently enacted legislation and future legislation. Finally, all persons in Arizona will benefit from the rules indirectly, as the rules will assist the Department in enforcing important

water management programs.

4. Alternatives considered

The Department contemplated modifying the rules by striking references to Engineering Bulletin 1 and adding additional measuring and reporting requirements. Soon it became apparent that it would be more efficient to reconcile the numerous amendments in one revision. The rules incorporate the changes required by legislation enacted in recent years, management plan requirements and rules. They are also intended to apply to future changes to Title 45.

5. Costs and benefits of enforcement and implementation

In accounting for the costs and revenues within this statement, "minimal" means less than \$2,000; "moderate" means between \$2,000 and \$10,000; and "substantial" means more than \$10,000. The impacts described below are on an individual, rather than cumulative, basis.

<u>Designation of Consequence</u>	<u>Increased Cost/ Decreased Revenue</u>	<u>Decreased Cost/ Increased Revenue</u>
a. Department of Water Resources		
Incorporating 1983-93 Legislative water programs	Moderate (cost of staff time in amending rule package)	Minimal
Adding unknown future water programs	Minimal (rules drafted to apply to future water programs)	Moderate (compared to cost of amending rules each Legislative session)
b. Other State Agencies or Political Subdivisions - same as private persons (see below)		
c. Private persons		
Participation in the water measurement rules	Minimal	Minimal
d. Consumers or Users of Any Product or Service		
Requirements for	Minimal (more	Minimal

metering devices
and reporting
requirements are
more comprehensive

products meet
rule requirements)

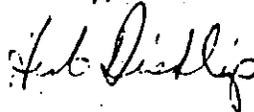
B. IMPACT ON SMALL BUSINESS

Small businesses subject to these proposed rules are likely to be small farms, private water companies and some irrigation districts. Although these rules are more comprehensive than the water measuring rules they replace, in all cases the affected small businesses already are measuring their water uses and reporting the required information on yearly reports pursuant to existing requirements under Title 45, management plans and the annual report rules.

C. The Director has general authority to promulgate rules pursuant to A.R.S. § 45-105.B.1. The Director has authority to adopt rules setting forth requirements and specifications for water measuring devices under A.R.S. § 45-604.D.

If there are any questions on these proposed rule amendments, please contact Martha McConnell Bush at 542-1507.

Sincerely,

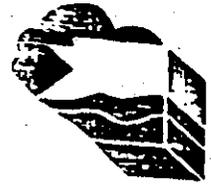


Herb Dishlip
Deputy Director for Water Management

Enclosures - original and 10 copies of:

1. Form R101
2. Text of the rules
3. Statutory authority for the rules

TAB D11



February 14, 1990

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford, Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

Ms. Catherine Eden, Chairperson
Governor's Regulatory Review Council
c/o Executive Budget Office
State Capitol, West Wing, Room 602
1700 West Washington
Phoenix, AZ 85007

Re: Proposed Adoption of A.A.C. R12-15-1001 through
R12-15-1015

Dear Ms. Eden:

The Director of Water Resources ("Director") proposes to adopt A.A.C. R12-15-1001 through R12-15-1015. Existing Rule R12-15-1001 is to be repealed. This letter provides the information required to be submitted to the Governor's Regulatory Review Council ("GRRC") by statute, rule, and the Council's guidelines dated October, 1988.

I. DESCRIPTION OF PROPOSED RULES; ACCOMPLISHMENTS

As part of the effort to reduce the groundwater overdraft in active management areas ("AMA"s), the Groundwater Code requires the accounting and annual reporting of water use information by water deliverers and users. This information is used both to monitor compliance with individual groundwater allocations and to monitor overall water demands of the AMAs. Additionally, A.R.S. § 45-467.B requires the Director to establish rules for the maintenance of an operating flexibility account for each farm in an AMA.

While the statutes provide basic concepts for the monitoring of water use and calculation of flexibility accounts, more specific guidelines are necessary to effectively implement these provisions. The proposed rules primarily enhance and support the requirements of A.R.S. §§ 45-467, 45-468, 45-482, 45-614, 45-632, 45-633 and 45-815. In general, these rules are expected to improve the accuracy of reported water use data and to set forth consistent procedures for

calculating flexibility account balances for irrigation water users within AMAs.

Substantially similar rules were proposed to be adopted by the Director in 1988. Those rules were approved by GRRC on June 7, 1988. Certification of the proposed rules was denied by the Attorney General, however, for the reason that they were not submitted for certification within 120 days after the close of the record on the proposed rule adoption.

The following is a brief description of each proposed rule, its purpose and what it is intended to accomplish. Changes made to the proposed rules since they were approved by GRRC on June 7, 1988 are noted.

R12-15-1001

I. A. This rule includes definitions of terms used throughout proposed rules R12-15-1002 through R12-15-1015. The definitions are needed to clarify concepts presented in these rules. Changes made in the definitions since the rules were approved by GRRC on June 7, 1988 include:

- (1) Incorporation by reference of the definitions contained in A.R.S. §§ 45-101 and 45-402.
- (2) Definitions of "Department", "Director" and "effluent" have been deleted because they are defined in the statutes.
- (3) Definitions of "groundwater delivered directly", "maximum annual surface water available" and "user of an irrigation grandfathered right" have been deleted because those terms are no longer used in the rules.
- (4) The term "normal flow right" has been changed to "normal flow" and the term is now defined as water delivered or used pursuant to a right to appropriate an unstored, natural flow of surface water, rather than the amount of surface water made available for the irrigation of a farm pursuant to a right to appropriate such water.
- (5) The definition of "spill water" has been changed to include all water deliberately released from a water storage facility for dam safety and flood control

purposes, as well as water which is released in uncontrolled spills, rather than only water released to avoid overflow of the facility. Also, the definition has been changed to require that the water must either be released pursuant to written criteria approved by the Director or be specifically determined by the Director to be spill water.

- (6) The definition of "tailwater" has been changed to include water which has been used for the irrigation of a farm and then delivered to an irrigation district in accordance with R12-15-1010, rather than delivered only to another farm.
- (7) The definition of "water deliverer" has been changed to mean a city, town, private water company or irrigation district delivering a combination of groundwater and any other type of water, rather than only groundwater and surface water.

I. B. Defining the various terms used in the text of the rules will simplify interpretation of annual reporting and flexibility accounting requirements.

Rule R12-15-1002

- I. A. R12-15-1002 allows a person who is required to file an annual account or annual report to use an alternate form, if approved by the Director. The rule also allows persons who must file both annual accounts and annual reports to combine the two into a single report.
- I. B. Many water providers are required by statute to file both an annual account and an annual report. Certain items to be reported are common to both submittals. This rule will simplify the report process, especially where these common items are combined.

R12-15-1003

- I. A. This rule sets forth criteria for determining the acceptable level of accuracy of the annual account or annual report. Reported amounts must be within ten percent of actual amounts. The rule as previously approved by GRRC also included a provision which set forth the time when annual accounts and annual reports must be filed. This provision was deleted because the filing deadlines are contained in the Groundwater Code.

- I. B. Many annual reports filed between 1984 and 1989 have contained significant inconsistencies due to inadequate water measurement, incorrect meter readings, map errors and incorrect form usage. This rule is intended to encourage users to file accurate annual accounts and annual reports by specifying the level at which they fail to comply with the reporting requirements.

R12-15-1004

- I. A. This rule specifies that the person required by law to file an annual report is liable for fines, penalties and other sanctions resulting from the filing or contents of the annual report notwithstanding that the report was filed for the person by an irrigation district or by another person. The rule also establishes a rebuttable presumption that an annual report purportedly filed on behalf of a responsible party by an irrigation district or by another person was filed with the responsible party's knowledge, consent and authorization if the responsible party has not filed an annual report for the calendar year.
- I. B. The Groundwater Code identifies the responsible parties required to file annual accounts or annual reports, and indicates that the report may be filed on behalf of the responsible party by irrigation districts or other persons. This rule will simplify administrative proceedings against persons who fail to file annual accounts or annual reports, and against persons for whom the Department has received incomplete or inaccurate information.

Rule R12-15-1005

- I. A. Management plans adopted by the Director pursuant to A.R.S. §§ 45-564 through 569 contain monitoring and reporting requirements for water deliverers and holders of irrigation grandfathered rights. This rule clearly associates those requirements with the annual account and annual reporting requirements.
- I. B. While the management plans already require the submittal of specific information not identified in the Groundwater Code in the annual report, this rule gives notice to persons preparing an annual report or annual account that a management plan may contain reporting requirements applicable to them.

Rule R12-15-1006

- I. A. A.R.S. § 45-815 contains reporting requirements for holders of underground storage and recovery project permits. This rule promotes sound water management and simplifies enforcement by requiring the holders of such permits to account for the amounts and types of recovered water delivered to persons other than customers of cities, towns, private water companies and irrigation districts.
- I. B. The Groundwater Code requires accounting of water by source when it is being stored, but requires the reporting of recovered water only as a total. The reporting of deliveries of recovered water by source is critical in determining the balance of operating flexibility accounts for irrigation customers. In requiring the accounting of recovered water by source, the rule provides a means for recovery project permit holders to choose the type of water to be recovered based on the status of their storage account.

Rule R12-15-1007

- I. A. A.R.S. § 45-468 requires, among other things, the reporting of surface water and groundwater delivered to each "class of user." Because that term is undefined in the Groundwater Code, this rule identifies user classifications, primarily based on management plan user categories. This rule has been amended slightly since it was previously approved by GRC to include dairies as a class of user, and to delete residential users of potable water and non-potable water as classes of users.
- I. B. By specifying user classifications, this rule will provide for the acquisition of data in a consistent format.

Rule R12-15-1008

- I. A. This rule specifies the information necessary to calculate the operating flexibility account established in A.R.S. § 45-467 for persons using water for irrigation purposes. This information must be included in the responsible party's annual account or annual report. Subsection A of the rule has been amended slightly since it was approved by GRC for consistency with statutory language, and to conform the effluent reporting requirements with the Arizona Supreme Court's recent holding that effluent is neither groundwater nor surface water. Subsection A now also requires that a responsible party report the amount of tailwater delivered in accordance with R12-15-1010.A, and the farm or irrigation

district to which the tailwater was delivered. This amendment was necessary because of the amendment to R12-15-1010. Subsection B of this rule has been amended to require water deliverers to also report the quantity of spill water delivered to each farm.

- I. B. Calculation of the operating flexibility account requires the breakdown of surface water and groundwater into numerous sub-categories, and the reporting of other supplemental data. By listing the required information in this rule, consistent handling of flexibility accounts is ensured.

Rule R12-15-1009

- I. A. This rule describes the method for determining credits to a flexibility account. Generally, if the total amount of water used by a farm for irrigation purposes in a calendar year is less than the farm's maximum annual groundwater allotment under the management plan, the difference is registered as a credit to the farm's flexibility account. If the farm is within the service area of a water deliverer, however, the rule provides that the credit shall be reduced to the extent that the farm did not use its full pro-rata share of the total amount of decreed or appropriative surface water, other than normal flow and spill water, available from the water provider. The rule sets forth guidelines to calculate a farm's pro rata share of such water. This rule is similar in substance to rules previously approved by GRRC, except that spill water is no longer included in determining the amount of surface water available to a farm.
- I. B. When a farm with both surface water and groundwater supplies available to it uses less than its maximum annual groundwater allotment, A.R.S. § 45-467.B.2 provides that "the amount of water not used which would have been groundwater shall be registered as a credit to the account." The statute offers no clarification as to how this amount is to be determined. This rule establishes a firm method for determining credits to a flexibility account when available surface water goes unused. The method for determining a farm's pro rata share of available surface water, other than normal flow and spill water, provides a consistent and equitable factor for use in determining credits.

Rule R12-15-1010

- I. A. Tailwater is water which, after having been used to irrigate a farm, accumulates on the lower end of a field on the farm

and is available for irrigation use on another farm. Though tailwater is not referred to in the Groundwater Code, it is a viable source of water to many farms. This rule provides that tailwater which is delivered to and used by another farm or an irrigation district will not be considered as having been used for the irrigation of the originating farm, provided that the tailwater has been measured, recorded and delivered pursuant to a written plan approved by the Director. The person who delivers tailwater in accordance with those requirements, and the person who receives and uses such tailwater, are required to account and report for the tailwater as if it were comprised of the same mixture of water, and in the same proportions, as the waters which comprise the total amount of water for irrigation use on the farm on which the tailwater originated.

The rule as previously approved by GRRC provided only that a person who uses tailwater for irrigation purposes may reduce, by the amount of tailwater used, any debit which would have been registered to the person's operating flexibility account for the year. This provision is retained with regard to tailwater which is not delivered and accounted for in the manner described above.

- B. This rule is necessary to clarify the role of tailwater in the flexibility accounting process. The rule should also encourage the use of tailwater over groundwater.

Rule 12-15-1011

- I. A. The groundwater allocations for irrigation users became effective two years after adoption of the First Management Plans. This rule sets the beginning balance of a person's flexibility account at zero as of the first day of the first year in which the person is required to comply with the groundwater allocations. The rule specifies that the Department shall annually notify irrigation users of their flexibility account balances, and provides for an appeal of the statement of flexibility account.
- I. B. This rule is necessary to establish the starting point for the flexibility accounts, and to assure that users are adequately informed of the status of their accounts. Issuance of the statement of account will aid users in maintaining compliance with their groundwater allotments, and will allow calculations and reporting errors to be more readily identified.

Rule R12-15-1012

- I. A. This rule prevents any use of the flexibility accounting procedures in determining the legality of water used and accounted for under these rules.
- I. B. The process of determining flexibility account balances is heavily dependent upon reported information. As this information cannot be verified by the Department for all users each year, it will be difficult to identify violations associated with the use of certain types of water. This rule is intended to prevent the flexibility accounting provisions from adversely affecting administrative or other actions taken against persons using water illegally.

Rule R12-15-1013.

- I. A. A.R.S. § 45-633.D allows the Department to audit the records of persons required to file annual reports and annual accounts. This rule requires that supporting records be kept for the three previous calendar years.
- I. B. The Department has discovered that a large number of water users have demonstrated a lack of sufficient information to support amounts reported in annual reports and annual accounts. Enforcement of this rule should improve recordkeeping habits of water users and should result in an overall increase in the accuracy of reported data.

Rule R12-15-1014.

- I. A. This rule establishes guidelines for determining when an annual account, annual report, extension request or withdrawal fee is timely filed. The rule also allows a water user thirty days from the filing deadline to resubmit an annual report or annual account which the Department has previously determined is incomplete. Finally, provision is made for the granting of a thirty day extension of the first day of accrual of the penalties associated with the late payment of fees and the late filing of annual reports, and of the civil penalties the Director may recommend that a court impose for such violations.
- I. B. Experience with the reporting process over the past five years has emphasized the need to enhance statutory language associated with deadlines. Also, strict enforcement of the statutorily mandated deadlines has led to potential hardship

situations. This rule will give water users an opportunity to file accurate reports within thirty days of the deadline without penalty. Implementation of this rule should lead to more accurate reports.

Rule R12-15-1015.

- I. A. The Groundwater Code requires both buyers and sellers of groundwater rights to notify the Department when conveyances occur. This rule sets forth a thirty day period following the date of conveyance in which the Department must be notified, and allows the parties to use a single form. The rule also provides that an accounting of water used between January 1 and the date of conveyance must be included with the notice. Waivers may be obtained by buyers in cases where the information is not available. However, persons who fail to submit the water use data, including those obtaining waivers, must either accept the Department's determination of water use in the period, or prove that another amount is correct.
- I. B. Persons who purchase water rights mid-year file annual reports of water withdrawn and used on the property for an entire year. However, by the time the buyer attempts to file the report, records of water used during the seller's term of ownership may be virtually impossible to obtain. By requiring both the buyer and seller to submit a notice of conveyance including water use in the prior calendar year, the information can be documented while the seller is still available.

II. COSTS AND BENEFITS OF ENFORCEMENT AND IMPLEMENTATION

In describing costs and benefits of enforcement and implementation, the rules have been separated into two sub-groups: a) provisions associated with the filing of annual accounts and annual reports (R12-15-1001 through 1006, and R12-15-1013 through 1015), and b) rules pertaining to the operating flexibility account (R12-15-1001, and R12-15-1007 through 1012).

In accounting for costs and revenues within this statement, "minimal" means less than \$2,000; "moderate" means between \$2,000 and \$10,000; and "substantial" means more than \$10,000. The impacts described below are on an individual, rather than cumulative, basis.

The economic impacts described below are unchanged from those contained in the Department's economic impact statement submitted in support of the proposed rules approved by GRRC on June 7, 1988. The Department has determined that the changes made in the

proposed rules since that date will not result in any additional economic impacts.

II.A. Annual Report and Annual Account Rules

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
A. Department of Water Resources	Simplifies administration and enforcement of Ground-water Code provisions.	Minimal to moderate, resulting from data input and processing requirements for individual reports.	Moderate savings in data review and computer entry expenses will result from the elimination of duplicate reports.
B. Other state agency or political subdivision	Some irrigation districts are required by statute to file an annual accounting. In addition, an irrigation district is permitted by statute to file an annual report on behalf of a farmer.	Minimal, resulting from data gathering and filing of annual reports.	Minimal, from elimination of duplicate reports.
C. Private Persons	Delivering entities will need to file only one report. Recovery permit holders will need to account for the types of water recovered. Persons buying and	Minimal. Possible slight cost increase to entities recovering water for accounting modifications. Slight cost to buyers and sellers of water rights and to delivering	Moderate savings to delivering entities who would be allowed to consolidate reporting requirements; possible decrease in withdrawal fees and civil penalties to

II.A. Annual Report and Annual Account Rules

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
D. Consumers or users of any product or services	selling rights must account for pre-conveyance water use.	entity for water measurement and accounting activities.	conveying parties if water is being accounted for correctly. Minimal increased revenues to well measuring services, resulting from mid-year conveyance reporting requirements.
	Non-irrigation water customers of cities and private water companies have no direct responsibilities under these rules.	Very minimal to residential users, resulting from the city or utility passing through added reporting costs.	Minimal savings to farmers, resulting from irrigation district filing on their behalf.

II.B. Operating Flexibility Account Rules

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
A. Department of Water Resources	Simplifies administration and enforcement of Groundwater Code.	Minimal, to moderate, resulting from increased data entry costs.	Minimal, resulting from efficient process for calculating operating flexibility accounts for irrigators.
B. Other state agencies and political subdivisions	Water deliverers must keep records for each farm and for the service area by specific type of water delivered.	Minimal - most irrigation water deliverers serving a number of different types of water already account for the breakdown by farm.	Minimal decreased costs, resulting from efforts to match reporting requirements in rules to existing reporting practices by irrigation districts.
C. Private persons	Encourages use of surface water when supplies are available, thus protecting the groundwater supply. Reporting of water use may be somewhat more complex.	Minimal, since other statutes and rules already require measurement, and most of required information will be available through the irrigation district.	Minimal increased revenues to private services which fill out necessary forms on behalf of the farmer.
D. Consumers or users of any product or service	No direct requirements. Consumers of agricultural	See Description of Effect. Also, to the extent, if any,	Greater precision in calculating flex account

II.B. Operating Flexibility Account Rules

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
	products may see minimal increased costs from farmers' pass-through of added reporting costs.	the added reporting costs result in a decrease in farming activity, makers of farm implements may see decreased revenues.	may give irrigators more flexibility in their farming practices, resulting in lower prices for farm goods.

III. ALTERNATIVES

A. Annual Report and Annual Account Rules

An alternative considered for dealing with duplicate reporting requirements involved the development of a rigorous program of report reviews and record audits to better coordinate the duplicate information. This process would unnecessarily increase administrative workloads, and would yield no substantial advantage over the proposed rules.

In reference to the recovered water delivery requirements, the Department reviewed the option of handling the breakdown of all recovered and delivered water according to the composition of the storage account. While this would eliminate the need for permit holders to account for deliveries by source, it would not allow for any variance if a person wished to recover, for example, more stored surface water than the person's pro-rata share. For this reason, this option was rejected.

Alternatives for listing "classes of users" included a more simplified list of two or three bulk delivery categories. This option would have been somewhat less costly and less intrusive to the delivering entity. However, it was felt that a more detailed breakdown was necessary to aid in the development of future management plan requirements and the overall water management effort.

In considering the handling of late annual reports and fees, a primary alternative would have required all reports and fees to be physically received by the Department no later than March 31. Anything filed after that date, regardless of postmark, would be late, and an extension of the deadline would not be provided for, regardless of an individual's circumstances. To avoid late fees, any report submitted prior to March 31 would need to be complete and accurate. This alternative was rejected as being excessively stringent without providing any additional benefits over the proposed rule.

Numerous alternatives for handling water right conveyance notifications were considered. In reference to the notification period, thirty days from the date of sale was chosen over a previously suggested fifteen days. It was felt that the fifteen day proposal was insufficient to allow for collection of appropriate data to be submitted.

Earlier proposals also named the buyer as the party responsible for determining the amount of water withdrawn or used by the seller prior to the date of sale. This alternative was considered unfair to a buyer who had no knowledge of water use on the property during a period for which he was not a responsible party.

A provision requiring a seller to file an annual report for his portion of the year's water use was considered and rejected. Enforcement problems presented by this option were significant, involving the need to locate and obtain reports and late penalties from non-filers who had sold a water right up to fifteen months prior to the reporting deadline.

Specific measurement and accounting criteria were also considered for inclusion in the conveyance notification rule. The provisions were rejected as unnecessarily complex and largely unenforceable.

B. Operating Flexibility Account Rules

The primary intent of the flexibility accounting provisions is to interpret the language contained A.R.S. § 45-467.D.2 which provides for the registering of credits for the amount of water not used which "would have been groundwater." As the Groundwater Code makes little or no distinction between various types of surface water, a number of alternative interpretations were considered.

Proposed Rule R12-15-1009 provides for the determination of an amount of decreed or appropriative surface water, other than normal flow and spill water, available to persons receiving water from water deliverers based on their surface water right acres and the total amount of such water delivered by the water provider. Credits to the flexibility account do not accrue for the amount of decreed or appropriative surface water, other than normal flow and spill water, that was available to the farm but not used by it.

An alternative method involved a definition of "available" which was based on the amount of surface water actually received by the farm. Under this alternative, water that was not received by the farm would not have been considered "available". This option was rejected because it would have lead to credits for surface water that may have actually been available (e.g. in reservoirs) but not needed by the user. This appeared to be contrary to the intent of A.R.S. § 45-467.D.2.

A second alternative involved the charging of other sources, such as central Arizona project water, that were available but unused. This method was dismissed due to difficulties involved in determining actual volumes available.

The proposed rules approved by GRRC on June 5, 1988 provided that a person using tailwater for irrigation purposes may reduce any debit which would have been registered to the person's operating flexibility account during the calendar year by the amount of tailwater used during the year. The rules did not exempt tailwater from being counted as water used by the originating farm. In response to public comment, and in the interest of fairness to the originating farm, tailwater is no longer to be counted as water used by the originating farm if it is delivered to another farm or an irrigation district in the manner described in R12-15-1010.A, and is accounted for in the manner prescribed in R12-15-1010.B.

R12-15-1011.A establishes a farm's operating flexibility account with a beginning balance of zero on the first day of the first year in which the person entitled to withdraw groundwater pursuant to the irrigation grandfathered right is required to comply with the first irrigation water duty. An alternative to this provision which was considered would have established the account with a balance of zero on the first day of the first year following the adoption of these rules. However, farmers in all active management areas have been taking action to comply with irrigation water duties since the effective date of their water duties, and many have accrued credits pursuant to the formula prescribed in A.R.S. § 45-467. To wipe out those credits would be manifestly unfair, and would be contrary to the legislature's intent.

IV. IMPACT OF THE PROPOSED RULES ON SMALL BUSINESS

A. Types of Small Businesses and Additional Requirements

Small farms are the predominant small businesses affected by the proposed rules. Affected businesses not associated with farming include small private water companies and a wide variety of commercial and industrial users who obtain water from private wells.

The proposed rules will require some additional accounting and reporting not specified by the Groundwater Code. For irrigation water deliverers, this includes the accounting and

reporting of bulk deliveries by source, bulk deliveries to user classes and the number of surface water right acres within their service area. For irrigation water users, this includes accounting for all sources of water supplying the farm. However, water use by farms receiving water from irrigation distribution systems will, in most cases, be accounted for by the provider. Additional accounting and reporting requirements for small businesses not associated with farms are minimal. All users, however, will be required to maintain supporting records for at least three years.

B. Methods to Reduce Impact

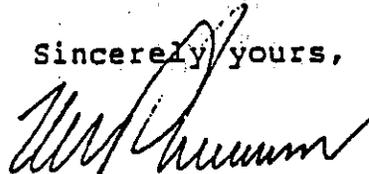
Methods used to reduce the impact on small businesses include the following from the October, 1988 guidelines:

1. Establish less stringent compliance or reporting requirements in the rules for small businesses;
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses; and
3. Consolidate or simplify compliance and reporting requirements for small businesses.

Irrigation water providers required to file both an annual account and an annual report are allowed to file the required information in a single report. This will result in a reduction in paperwork for such providers. The provision contained in R12-15-1014.E which allows a person the opportunity to receive a 30-day extension of the first day of accrual of the late penalties associated with late payment of fees and late filing of annual reports will result in less stringent deadlines for farms and providers of irrigation water.

Other reporting requirements are statutorily mandated and make no allowance for the relative size of the water user or deliverer.

Sincerely yours,



N.W. Plummer
Director

NWP:KCS:rmn
Attachments

TAB D12

ARIZONA DEPARTMENT OF WATER RESOURCES

15 South 15th Avenue, Phoenix, Arizona 85007

Telephone (602) 542-1553

Fax (602) 542-3383

July 8, 1993



FIFE SYMINGTON
Governor

RITA P. PEARSON
Director

Mr. Elliot Hibbs, GRRC Chairman
Department of Administration
c/o Strategic Planning & Budget Office
1700 West Washington, 5th Floor
Phoenix, AZ 85007

JUL 12 1993

DEPARTMENT OF WATER RESOURCES
OFFICE OF THE DIRECTOR

Dear Mr. Hibbs:

I am forwarding with my approval 10 copies of the Department of Water Resources' proposed amendments to R12-15-1101, entitled "Inspections", and R12-15-1102, entitled "Audits." This letter provides the economic impact statement and impact on small business analysis required by A.R.S. § 41-1053.

A. ECONOMIC IMPACT STATEMENT

1. Description, purpose and need for proposed rule and likely accomplishments

These amendments require the Director to follow the procedure already established in the Inspection and Audit Rules, R12-15-1101 and R12-15-1102, when conducting inspections and audits pursuant to the recently adopted statutes governing annual storage and recovery projects, water exchanges and aquifer replenishment projects, as well as any statute that may be adopted which contains language mandating the Director to adopt rules to implement its inspection and audit provisions. The purpose of the rules is to incorporate new programs authorized by the Legislature into the established procedures for inspections and audits.

The specific amendments are summarized below:

R1101.A.5 adds Title 45 facilities and programs that became effective after the adoption of the original Inspection and Audit Rules to the types of facilities which may be subject to inspection.

R1101.F. and G. eliminate the reference to specific chapters of the Water Code.

R1102.B. adds all audits authorized by amendments to Title 45 which became effective after the adoption of the original Inspection and Audit Rules to the types of audits which are subject to the rules.

A.R.S. §§ 45-633 (aquifer replenishment), 45-893 (annual storage and recovery), and 45-1061 (water exchanges), authorize the Director, under certain circumstances, to conduct inspections of property and audits of records related to the operation of annual storage and recovery projects, water exchanges and aquifer replenishment projects. A.R.S. §§ 45-893(B), 45-1061(B) and 45-633(B) mandate that "[t]he director shall adopt rules for conducting inspections, examining records and obtaining warrants pursuant to this section." Further statutory authorization for R12-15-1101.A.5 and R12-15-1102.B is found in A.R.S. § 45-105(B) (1), which states that the "director shall ... adopt and issue rules and regulations necessary to carry out the purposes of [Title 45]."

These proposed rules are needed to implement the statutory mandate and to avoid piecemeal amendment of the rules for newly created water programs. The proposed rules are likely to accomplish the application of procedures by which the Director may fully monitor compliance with Title 45.

2. Classes affected and impacts

Persons who will be affected by the rules, directly or indirectly, and that will bear the costs and receive the benefits of the rules include holders of annual storage and recovery permits and aquifer replenishment permits and their lessees, and participants in water exchanges. If future legislation authorizes water programs which mandate the adoption of rules governing inspections and audits, participants in those water programs will also be affected. In addition, all persons in Arizona will benefit from the rules indirectly, as the rules will assist the Department in enforcing important water management laws.

These rules do not have a large quantitative impact on persons affected because the rules deal with procedures for conducting inspections and audits, rather than the substantive requirement that inspections and audits take place. The rules have a positive qualitative impact on classes of people directly affected by the rules by making the statutorily required inspections and audits as efficient and convenient as possible. Applying established procedures to new programs enhances water management efforts by its predictability and uniformity.

3. Alternatives considered

When it first realized the need to amend the Inspection and Audit Rules, the Department contemplated adding only A.R.S. §§ 45-893 and 45-1091, Annual Storage and Recovery Projects and Water Exchanges, which were adopted in the 1992 Legislative Session. Later, we realized that the Aquifer Replenishment Project program adopted in the 1991 Legislative Session also had inspection and audit provisions that required adoption of rules.

We expect that modifications made in the 1993 Legislative Session to the Aquifer Replenishment program may also result in provisions mandating the adoption of rules to implement additional inspection and audit provisions now found in Title 48. Rather than employ a piecemeal approach, amending the Inspection and Audit Rules on an "as needed" basis, the Department foresaw the need to include all newly created Title 45 water programs in the amendments to the Inspection and Audit Rules. This avoids lag time between the effective date of the new law and the effective date of the amendment to the Inspection and Audit Rules. It also benefits the public by applying predictable standards to new laws.

4. Costs and benefits of enforcement and implementation

In accounting for costs and revenues within this statement, "minimal" means less than \$2,000; "moderate" means between \$2,000 and \$10,000; and "substantial" means more than \$10,000. The impacts described below are on an individual, rather than cumulative, basis.

<u>Designation of Consequence</u>	<u>Increased Cost/ Decreased Revenue</u>	<u>Decreased cost/ Increased Revenue</u>
a. Department of Water Resources		
Adding 1991-93 Legislative water programs	Minimal (cost of notice and inspection)	Moderate (compared to adopting a new set of rules)
Adding unknown future water programs	Minimal (cost of notice and inspection)	Moderate (compared to cost of amending rules each Legislative session)
b. Other State Agencies or Political Subdivisions - same as private persons (see below)		
c. Private Persons		
Participation in inspection	Minimal (cost of time)	Minimal (compared to choosing not to participate)
Participation in audit	Minimal (cost of time)	Minimal (based on suggestions which improve efficiency)
d. Consumers or Users of Any Product or Service		
No direct requirements	Minimal (resulting from pass-through of labor costs)	Minimal (resulting from pass-through of labor costs)

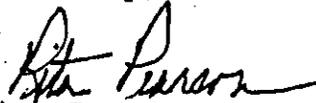
B. IMPACT ON SMALL BUSINESS

Small businesses subject to these proposed rules are likely to be small farms, private water companies and real estate development firms. The only efforts that such parties will need to make to comply with these rules is to have someone present at the time of inspection (if they so choose), and to gather and present documents requested in a notice of audit. While record-keeping is required to prepare for an audit, that requirement is imposed by the statutes regarding audits, and not by these rules.

Rules R1101 and R1102 deal primarily with agency notice requirements. Therefore, there is little impact on small businesses to be "reduced". However, it is likely that the allowances in the rules for inspections by appointment, for changing the site of the scheduled audit, and for authorizing representatives to appear at audit will prove beneficial to those small businesses which are involved in regulated water use. None of the methods identified in A.R.S. § 41-1053.B(3) for reducing further impacts on small businesses is feasible.

If there are any questions on these proposed rule amendments, please contact Cindy L.H. Roos at 542-1507.

Sincerely,



Rita Pearson
Director

Enclosures - original and 10 copies of:

1. Form R101
2. Informative summary
3. Text of the rules
4. Statutory authority for the rules

R1101AL1

ARIZONA DEPARTMENT OF WATER RESOURCES

15 South 15th Avenue, Phoenix, Arizona 85007
Telephone (602) 542-1553
Fax (602) 256-0506



FIFE SYMINGTON
Governor

ELIZABETH ANN RIEKE
Director

September 17, 1991

Gerard W. Tobin, Director
Department of Administration
c/o Strategic Planning and Budgeting Office
1700 West Washington Street, 5th Floor
Phoenix, Arizona 85007

Re: Proposed Inspection and Audit Rules
R12-15-1101 and R12-15-1102

Dear Mr. Tobin:

I am forwarding with my approval 10 copies of the Department of Water Resources' proposed rules R12-15-1101, entitled "Inspections", and R12-15-1102, entitled "Audits". This letter provides the economic impact statement and impact on small business analysis required by A.R.S. § 41-1053.

A. ECONOMIC IMPACT STATEMENT

1. Need for Proposed Rules and Likely Accomplishments

A.R.S. §§ 45-633, 45-816 and 45-865 of the Arizona Revised Statutes authorize the Director, under certain circumstances, to conduct inspections of property and audits of records relating to the use of wells or groundwater and the operation of underground or indirect storage and recovery projects. A.R.S. §§ 45-633(B), 45-816(B) and 45-865(B) mandate that "[t]he director shall adopt rules for conducting inspections, examining records and obtaining warrants pursuant to this section." The Lakes Act contains similar language regarding inspections of bodies of water in A.R.S. § 45-135(B). Further statutory authorization for R12-15-1101 ("R1101") and R12-15-1102 ("R1102") is found in A.R.S. § 45-105(B)(1), which states that the "director shall ... adopt and issue rules and regulations necessary to carry out the purposes of [Title 45]."

These proposed rules are needed to implement the statutory mandate. What the proposed rules are likely to accomplish is the establishment of procedures by which the Director may monitor compliance with the Groundwater Code, Lakes Act and underground and indirect storage and recovery laws.

2. Brief Description of Proposed Rules and Their Purposes

These proposed rules establish procedures to implement this Department's inspection and auditing responsibilities. The statutes referenced earlier, A.R.S. §§ 45-135(B), 45-633, 45-816 and 45-865, set the parameters and goals for such activities. For that reason, the proposed rules are not lengthy and simply flesh out the administrative procedures with respect to the content and mailing of notices, time periods, reports and those circumstances which may require the Department to seek the issuance of a search warrant. As proposed in the rules, 5 days notice of an inspection or 14 days notice of an audit would be required except when consent to a shorter period of notice is given or when the Director believes that such notice would frustrate the enforcement of the water laws. The latter exception is specifically allowed for by statute. The proposed rules give an opportunity to comment on the report of an inspection or audit to a person who is aggrieved.

R1101(A) describes the types of facilities that may be subject to inspection.

R1101(B) provides for five days notice of inspection and a statement of the purpose for the inspection.

R1101(C) expresses the Department's desire to minimize disruptions caused by an inspection.

R1101(D) provides for a second notice when the property is secured before the Department obtains a search warrant.

R1101(E) authorizes the Director to obtain a search warrant when necessary.

R1101(F) exempts certain inspections from the notice requirement when notice would frustrate enforcement of the water laws.

R1101(G) requires a report of inspection be sent to the subject of the inspection and allows an opportunity for comment.

R1101(H) allows certain persons to waive the notice provisions of the Rule.

R1102(A) recognizes that persons subject to an audit may wish to designate a representative to appear at the audit.

R1102(B) applies the audit rules to audits conducted pursuant to the Groundwater Code and to the underground and indirect storage and recovery laws.

R1102(C) requires the Department to give 14 days notice of an audit and requires the notice to state the date, time and place and which documents must be produced. Upon request, the Director may allow the audit to be held away from the Department's offices.

R1102(D) compels attendance at an audit and production of documents.

R1102(E) requires a report of audit be sent to the subject of the audit and allows an opportunity for comment.

R1102(F) allows the subject of an audit to waive the notice provisions of the Rule.

3. Classes Affected and Impacts

Persons who will be affected by the rules, directly or indirectly, and that will bear the costs and receive the benefits of the rules include groundwater rightholders and permittees and their lessees, owners of lakes regulated by the Lakes Act and their lessees, holders of permits for underground and indirect storage and recovery projects and their lessees, public and private water companies, irrigation districts and well owners. In addition, all persons in Arizona will benefit from the rules indirectly, as the rules will assist the Department in enforcing important water management laws.

These rules do not have a large quantitative impact on persons affected, because the rules deal with procedures for conducting inspections and audits, rather than with the substantive requirement that inspections and audits take place. The rules have a positive qualitative impact on classes of people directly affected by the rules by making the statutorily required inspections and audits as efficient and convenient as possible. For example, the rules allow inspections to be rescheduled to accommodate attendance by a representative, and require a second notice before the Department may get a search warrant when the property is locked. The rules also require the Department to minimize disruptions caused by inspections. The audit rules accommodate water users by allowing them to request that the place of audit be changed and by allowing representatives to appear. The only affirmative action required by the water user is to appear at the audit and produce documents.

4. Alternatives Considered

The issue of reasonable notice received the most attention during development of the proposed rules, including consideration of alternatives. Indeed, the Department's first order of business in formulating these rules was to solicit ideas from the

regulated community on the form of notice to be given. This was done in September of 1982. Suggestions received and considered included advertisements in local papers, media announcements, the scheduling of inspections at pre-set periods, letters to owners and phone calls.

In deciding upon the approach which was eventually taken, the Department attempted to balance the factors of cost (postage, public notices), administrative time (arranging appointments, setting up schedules), administrative efficiency (field auditing a given area, rather than a piecemeal approach), and the burden on the public (having to rearrange schedules to meet with the Department personnel). We also considered the experience of the Department to date, and that of its predecessor agencies, the Arizona Water Commission and the State Land Department.

The Department considered between 3 and 15 days as the standard for notice of inspection. We chose a shorter time period of 5 days because time is sometimes a critical factor when enforcement is an issue. We have found that even shorter notice is sufficient to alert the person to an inspection.

In scheduling audits, the staff at the AMAs has found 14 days sufficient notice to gather the documents to be produced at an audit. Previously, the Department had given 30 days notice of audit, but that proved to be too long: the notices were often lost and the date forgotten. A shorter lead time has worked much better.

In some cases, rightholders have sent employees to the audits and this has worked out when the appropriate person appears. The rules therefore allow representatives who are authorized to act on behalf of the subject of the audit to appear at the audit. By allowing the opportunity to follow up with comments, in many cases further compliance action, such as enforcement under A.R.S. § 45-634, may be avoided. Most audits are resolved by filing amended annual reports or by giving instructions for future compliance.

In making accommodations for the particular concerns of the user, the Department believes that these proposed rules represent a reasonable and cooperative approach to an essential component of the overall groundwater management and conservation programs.

Audit and inspection rules were originally proposed February 15, 1984, but the process was terminated March 26, 1987. Those presented now incorporate the Department's experience in conducting inspection and audits in the past ten years.

5. Costs and Benefits of Enforcement and Implementation

In accounting for costs and revenues within this statement, "minimal" means less than \$1,000; "moderate" means between \$1,000 and \$10,000; and "substantial" means more than \$10,000. The impacts described below are on an individual, rather than cumulative, basis.

a. Department of Water Resources

<u>Designation of Consequence</u>	<u>Increased Cost/ Decreased Revenue</u>	<u>Decreased Cost/ Increased Revenue</u>
Notice of inspection given by first class letter	Minimal (compared to giving notice by publication in newspaper)	Minimal (compared to giving notice by certified mail)
Owner may request an escorted inspection.	Minimal	Minimal
Re-notice required if facilities secured against entry	Minimal	Moderate (if re-notice eliminates need for search warrant)
Inspectee may file written comments to inspection and audit report	Minimal-resulting from cost to review and file	Minimal (if comments eliminate need to re-inspect)
Audits may be held at location other than Department offices	Minimal (if request is granted)	Minimal

b. Other State Agencies or Political Subdivisions - same as private persons (see below)

c. Private Persons

Owner may request an escorted inspection.	Minimal-resulting from labor time	Minimal (depending on inconvenience of a general notice period only)
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Inspectee and auditee have only 30 days in which to file written comments to inspection and audit reports

Minimal-resulting from labor time

Minimal (if comments eliminate need to re-audit)

Auditee may request that audit be held outside of Department offices

Minimal

Minimal to moderate (if request is granted)

d. Consumers or Users of Any Product of Service

No direct requirements

Minimal-resulting from pass-through of labor costs

Minimal-resulting from improved efficiency

B. IMPACT ON SMALL BUSINESS

Small businesses subject to these proposed rules are likely to be small private water companies and small farms. The only efforts that such parties will need to make to comply with these rules is to have someone present at the time of inspection (if they so choose), and to gather and present documents requested in a notice of audit. While record keeping is required to prepare for an audit, that requirement is imposed by the statutes regarding audits, and not by these rules.

As proposed, rules R1101 and R1102 deal primarily with agency notice requirements. Therefore, there is little impact on small businesses to be "reduced". However, it is likely that the allowances in the rules for inspections by appointment, for changing the site of the scheduled audit, and for authorizing representatives to appear at audit will prove beneficial to those small businesses which are involved in regulated water use. None of the methods identified in A.R.S. § 41-1053.B(3) for further reducing the impacts on small businesses is feasible.

If there are any questions on these rules, please contact
Cindy Roos at 542-1529.

Sincerely,



Elizabeth Ann Rieke
Director

CLHR/EAR/sm

Enclosures-Original and 10 copies of:

1. Form R101
2. Informative summary
3. Text of the rule
4. Statutory authority for the rule.

CONTEMPORARY ECONOMIC IMPACT REVIEW

After reviewing the Department's original economic impact statement, and examining the impact that the rules have actually had on the public, the Department has concluded that the actual effect of the rules has been approximately the same as predicted in the original economic impact statement.

TAB D13

TITLE 12. NATURAL RESOURCES
CHAPTER 15, DEPARTMENT OF WATER RESOURCES
ARTICLE 12. DAM SAFETY PROCEDURES
ECONOMIC, SMALL BUSINESS, AND CONSUMER
IMPACT STATEMENT

The Arizona Revised Statutes A.R.S. §§ 45 – 105(B) and 45 – 1202(C) require the Director of Water Resources to adopt rules and issue general orders to effectuate A.R.S. Title 45, Chapter 6, Article 1. The major purpose of the rules for dam safety procedures is to clearly define the requirements of the law and functions of the Dam Safety Section of the Department. There will be no major changes in the Department's administration of the dam safety program. However, the rules will improve communication by making detailed information easily available and clarifying requirements and procedures. The enhanced availability of information will benefit the public, the regulated community, and the Department.

A. Identification of persons who will be directly affected by, bear the costs of, or directly benefit from the proposed dam safety rules

A description of persons who may be affected by the proposed dam safety rules follows.

1. The General Public: The rules for dam safety procedures will potentially affect the approximately 500,000 members of the general public who now live or will live in the future within the area that would be inundated by the failure of a dam regulated by the Department. These people rely on safe dams for flood protection, water supply, electricity production, wastewater treatment, recreation, and water for crops and livestock. Most give little or no thought to the safety of the dam located upstream. They rely on appropriate care being taken by

the dam owner to avoid failures, and by the regulatory agencies who oversee dams. The rules provide enhanced protection to the general public by specifying the legal requirements and means of enforcement.

2. Dam owners: Dam owners are the persons who own, operate, maintain, and construct dams. There are approximately 125 dam owners of 217 dams regulated by the rules. Dams subject to State jurisdiction are listed below by owner type, number of dams, and percent of total number of dams:

<u>Owner</u>	<u>Number of dams</u>	<u>Percent of total</u>
State Government	30	13.8%
County Government	29	13.4%
City Government	37	17.1%
Sub-total (Government)	96	44.3%
Private Individuals	14	6.4%
Irrigation or local Flood Control District	36	16.6%
Private Corporations	71	32.7%
Total	217	100%

This is the group of persons directly responsible for the operation and maintenance of existing dams under the jurisdiction of the Department. However, the rules do not require that changes be made to existing dams unless they are unsafe or a planned major repair will make a retrofit cost-effective.

Owners of new dams may incur increased costs due to design requirements that apply to dams proposed for construction. However, the Department anticipates the impact of the rules will be minor because the rules do not reflect a significant change in policy.

3. Dam designers: Dam designers are persons who perform a portion of their work in the field of dam design. They are employed by dam owners to prepare designs for new dams and repairs in conformance with the applicable rules governing dam safety. Dam designers will benefit from the rules from the easy availability of detailed information relating to a variety of design issues and the references found in the rules to additional available resources. Their work will be more efficient and will more closely comply with the requirements of the Department.

4. Dam contractors: Dam contractors are employed by dam owners to complete construction of dams in compliance with the approved plans and specifications, and consistent with applicable rules governing dam safety. There are approximately 10 contracting firms in Arizona that construct or repair dams. The rules will have little effect on this group except that they may be able to work more efficiently because the improved process of application review may result in clearer plans and specifications. In addition, improved communication throughout the application process will speed the Department's approval process prior to the start of construction and make construction schedules easier to plan.

5. State and Federal natural resource management and protection agencies: Natural resource management and protection agencies, such as the Arizona Game and Fish Department and the United States Fish and Wildlife Service, have responsibilities for protection of the natural

resources within the state. The definition of intangible losses specifies that the Department will rely on these agencies to "identify and evaluate" intangible losses that could result from a dam failure or the uncontrolled release of the liquid stored in a reservoir. The evaluation prepared by natural resource management and protection agencies will be used by the Department to determine downstream hazard potential classifications. Despite the key role the natural resource management and protection agencies play in assisting the Department in determining the downstream hazard potential classification, the Department expects that these agencies will experience small impact in their workload. The Department receives few proposals to build new dams per year. The site chosen for a new dam is rarely in a location that would potentially cause intangible property losses. In addition, natural resource management and protection agencies are currently notified of all applications for dam construction and frequently advise the Department of issues within their jurisdiction. The major change made by the rules is that the Department will now consult the agencies to ask for their evaluations of any potential intangible losses as the Department determines the hazard potential classification.

B. Cost-Benefit Analysis

1. Identify the probable costs to the Department and/or other agencies directly affected by the rules.

The Department: The Department expects the rules will have the following minimal impacts on the Department itself because the rules codify requirements currently in place.

a. Clearly delineated requirements. The rules will make the Department's task of oversight easier by more clearly delineating requirements. At present, the Department's professional staff spends significant time and effort describing the requirements, renewing

requests for required information, and responding to questions.

b. Pre-application meetings. The rules require owners of a proposed dam to meet with Department staff in a pre-application meeting. The Department's experience teaches that owners and designers who meet with Department staff in the early stages of design later submit better, more complete applications and designs. The Department expects to save 3 FTE weeks per new application, which is the equivalent of approximately \$ 18,000 per year in staff time on application reviews. The Department intends to devote the savings in staff resources to the increased inspections required by the rules.

c. Inspection frequency. The rules require each dam to be inspected according to a frequency standard equivalent to national recommendations. The new standard will require the Department to increase inspections made annually from 80 in 1999 to 120 in the year 2001. This increase will cost the department about \$44,000. The rules also provide that owners with qualified engineers may, but will not be required to, inspect their own dams. The Department plans to exercise quality control by inspecting 10 to 20 % of the dams inspected by privately retained engineers. The Department estimates that a maximum of about 10 dams will be inspected by the owner's own engineer under the new provision. The Department would realize a savings of \$10,000 of the anticipated increased costs of additional inspections, leaving a net increase of \$34,000. Fees for the inspections conducted by privately retained engineers would be lost from the dam repair fund in the amount of \$1,600 a year.

d. Enforcement. The rules clarify the process for enforcement and how it fits with the regulatory reform requirements of Title 41. The rules also provide that a notice of a safety deficiency becomes final and incorporated into the dam's license if it is not appealed.

Enforceable requirements will be clearer, enabling the Department to spend less time on administrative matters that are not directly related to dam safety.

e. Mailing and printing. The Department expects the remaining costs of implementing the rules to be limited to printing and mailing costs.

2. Identify the probable costs to political subdivisions (cities, counties) of the state directly affected by the rules.

a. Dam owners. Some dam owners are political subdivisions. The impacts on dam owners will be both positive and negative. The Department expects the overall impact will be positive.

Pre-application meetings. The requirement of pre-application meetings will be an additional expense to some dam owners. However, the Department expects these costs will be offset by the savings in a more efficient design and application process. Owners who already take advantage of the opportunity to meet with Department staff prior to the design process are already realizing these savings, and will see less of an impact.

Very Low Hazard Potential Classification. The rules create a new classification of dams with streamlined application requirements and short deadlines for approval. The new classification benefits owners of these dams by lowering costs. The savings to dam owners could range from \$10,000 to \$100,000, depending on the size and complexity of the proposed dam. Large mining corporations are likely to benefit most from this classification. The savings could be as much as \$100,000 due to simplified application requirements and savings of time in application review. The Department expects to receive applications for about one or two small, very low hazard potential dams annually. The Department estimates that large very low hazard,

potential dams will be constructed once every three to five years.

Inspection of existing dams. An increase in the frequency of inspections will result in receipt of additional inspection fees. Some 50 dams that are currently inspected every three years will be inspected annually. Fees average \$160 per inspection, but do not cover the staff resources needed to conduct the inspection. The Department expects that few owners will choose to hire their own engineers to make inspections. Those who conduct their own inspections will not pay an inspection fee to the Department. More frequent inspections will benefit dam owners, since inspections will find deficiencies sooner, when they are less expensive to repair and less likely to result in an expensive failure.

Maintenance. The rules define ordinary maintenance and allow the owner to submit a letter for approval by the Department of standard dam safety maintenance work. This change will be a savings to owners, who will be able to accomplish this type of maintenance in a more timely manner without incurring the costs of filing an application for the Department's approval.

Proof of financial capability. The rules provide examples of how an applicant may show financial capability to construct and maintain a proposed dam. The Department does not anticipate that this requirement will present an additional cost for most dam owners.

b. Political subdivisions as zoning entities. The rules place limits on development that may potentially be damaged by failure of a dam. The inflow design flood standard will have the effect of preventing construction of homes within a reservoir. As developers seek other sites to build, they may cross political boundaries, with a corresponding change in tax revenues and potential population. It is impossible to predict the economic impacts on a particular political entity. However, there are two major benefits flowing from the clearer

limitations on construction. The most important is heightened protection of the public from flooding. The second is political. Political subdivisions may not have the technical expertise to implement a flood protection strategy in the arena of development pressure and competition with other political subdivisions. The rules set out a clear standard in State law, which allows the political subdivision to rely on the Department, rather than making hard and perhaps uninformed decisions.

C. **Identify the probable costs to businesses directly affected by the rules.**

1. **Owners-** The probable costs of the rules to owners of dams that are large businesses are the same as those for political subdivisions, discussed at (B)(2)(a) above. The impacts to small business are discussed below, at (E).
2. **Designers and Contractors.** Businesses that design or construct dams will benefit from the specificity of the rules. Designers will be able to identify the Department's requirements more readily. This will allow them to more accurately estimate the cost of designing a dam, which will benefit their business and the owners who hire them.
3. **Business located downstream.** Businesses located downstream from dams will enjoy increased protection from failure or malfunction of the upstream dam due to enhanced compliance with the Department's requirements and increased enforceability stemming from clearer rules and enforcement procedures.
4. **Probable Impact on Private and Public Development.** The rules require owners to demonstrate that new dam construction will not increase flooding compared to pre-construction conditions. The required demonstration focuses on two areas, the downstream channel and the area within the reservoir. This safety requirement may place limits on development in some

areas that have not received similar oversight in the past. The owner will be required to mitigate any potential increase in flooding by easement, restrictions, flood warning or other means. The costs of mitigation or loss of potential development is speculative.

D. Probable Impact on Private and Public Employment

The Department anticipates a slight increase in private employment as a result of the rules. Dam owners intending to modify or enlarge a dam may retain an engineer to conduct an inspection that conforms to the rule for safety inspection reports. Annually, the Department receives approximately six applications to modify or enlarge a dam. The Department expects the employment increase to be slight because a dam owner planning to modify or enlarge a dam will require the services of an engineer to perform an assessment and prepare the design. If the dam owner also requests that a safety inspection report be prepared, it would be a small part of the engineering work underway for the modification or enlargement.

E. Probable Impact on Small Businesses

1. An identification of small businesses subject to the rules. Fifty-four dams, or 25% of the dams currently within the jurisdiction of the Department, are small businesses. These include 14 dams owned by private individuals, 23 dams owned by irrigation districts, 13 dams owned by local flood control districts, and 4 dams owned by small business corporations. Of the 75% not owned by small businesses, 44.3% are owned by government and 30.7% by large corporations.

Small business owners of dams

<u>Type of owner</u>	<u>Number of dams owned</u>
Private individuals	14

Irrigation districts	23
Local flood control districts	13
Small corporations	<u>4</u>
	54 (25% of total)

2. Costs to comply.

a. Financial capability. The rules require all applicants to provide evidence of financial capability to construct, operate, and maintain a dam. For a small business owner who has to prepare the documentation for this purpose, the requirement will slightly increase the initial costs of constructing a dam. The rules assist in the process by providing examples of how the financial showing may be made. The benefit of the rule is to provide additional protection against the risk that an owner with insufficient funds would leave a dam partially completed or inadequately maintained. By requiring a showing of financial capability of all applicants, the rule also protects the Department from the problems of inconsistent enforcement of the statutory provision.

b. Inspections. The rules allow owners to hire their own engineers to perform inspections. While this may provide a savings to those owners who already employ qualified engineers, it is unlikely that most small businesses would have qualified engineers on staff or that they could hire an engineer who would inspect a dam for less than the fee charged by the Department. A.A.C. R12-15-151 provides that inspection fees are calculated at \$100.00 plus \$2 per foot of height of the dam. An owner of a 25-foot dam would be charged an inspection fee of \$150.00. Inspections by qualified private-sector engineers would cost at least \$2,000.00.

c. Flood protection. Owners of new dams will be required to provide

some protection from flooding of homes or other property within the reservoir and in the spillway channel. This potential cost would be small for most small business dam owners, but could be substantial for dams located in the path of development.

d. Very low hazard potential dams. The rules add a new classification of dams, the very low hazard potential dams. An owner who can demonstrate that the flood resulting from a potential failure of the dam would not extend beyond property controlled by the owner plus the floodplain is eligible for streamlined application requirements, an abbreviated approval process, and little additional oversight by the Department. This classification of dams will greatly reduce costs to the owner, while still providing appropriate protection to the general public. This classification will benefit small business owners, especially in remote areas.

e. Clearer delineation of requirements. The small business owner will benefit by the detailed information on application, design, and safety requirements published in the rules. There will be a savings of costs attributable to a lack of knowledge about the requirements.

3. A description of ways to reduce the impact of the Rules on small businesses.

a. The rules make few major changes in the dam safety program. The Department does not anticipate major impacts on small businesses from the rules because most aspects of the dam safety program have not changed.

b. Standards for existing dams. Small businesses owners of existing dams will benefit from the fact that the rules do not require existing dams to retrofit to comply with the new design standards. As long as a dam remains safe, the Department will not require it to undertake structural changes. If major repairs or alterations are planned by the owner and it

would be cost-effective to upgrade the dam's safety at that time, it may be required.

c. Assistance from Department staff. The Department's practice of assisting applicants in complying with dam safety requirements will continue. The staff makes time for multiple meetings and site visits in the pre-design stages of planning a dam, and makes a priority of maintaining close contact with the owner, engineer, and contractor of a dam during construction activities. The availability of Department staff will be of particular help to small businesses.

4. The probable cost and benefit to private persons and consumers who are directly affected by the rules. The impacts of the rules will be minimal because the dam safety program is not changing in major ways. The impacts of the few major changes will be highly variable because of the differences in dam sites, designs, and downstream conditions. Most of the content of the rules is already addressed by current practice of the dam safety program, but was not codified before development of the rules. The issues addressed in the rules, such as classification of dams, oversight of maintenance, enforcement, flood protection, and inspections will continue to be important areas of work for dam owners, designers, contractors, and agencies.

F. Probable Effect on State Revenues

The increase in the number of dam inspections will result in more dam inspection fees deposited into the dam repair fund, which is used for loans and grants to dam owners for the repair of unsafe dams.

G. Less Intrusive or Costly Alternatives

The Department has a responsibility to the public to provide oversight in the least

intrusive and least costly manner possible. The rules improve the Department's ability to do that by minimizing the regulatory focus on dams that present little risk of danger to human life and property. The rules will allow the Department to devote more of its resources to dams presenting the highest risk.

Throughout the rulemaking process, the Department has provided draft copies of the rules to the regulated community and requested their comments. The Department has made changes to the rules throughout the process. The Department developed some of the sections of the rules in response to comments submitted on early drafts. Sections that were added at the request of dam owners include provisions regarding pre-application conferences, the very low hazard potential classification of dams, and the process allowing a request for approval of a routine repair of a dam to be submitted by letter. In many cases, the less intrusive and less costly alternatives were developed by working with dam owners during the rulemaking process.

These rules define the requirements of law and functions of the Safety of Dams Section of the Department. There will be no major changes in the Department's administration of the dam safety program. However, the rules will improve communication by making detailed information easily available and clarifying requirements and procedures. The enhanced availability of information will benefit the public, the regulated community, and the Department.

TAB D14

WELL SPACING RULES

A.R.S. § 41-1055(B) and A.R.S. § 41-1035 ECONOMIC, CONSUMER, AND SMALL BUSINESS IMPACT STATEMENT (EIS)

1. An Identification of the Proposed Rule Making

In this rulemaking proceeding, the Arizona Department of Water Resources ("ADWR") is replacing two temporary rules, R12-15-830 and R12-15-840, in effect since 1983, with permanent rules R12-15-1301 through R12-15-1308. Both the temporary rules and the permanent rules address statutory mandates requiring the Director to adopt rules to prevent unreasonably increasing damage to surrounding land or other water users from a concentration of wells and a rule defining what constitutes a replacement well in approximately the same location. The permanent rules can be categorized under five subheadings: definitions of terms used in the rules (R12-15-1301); a rule containing well spacing criteria for proposed new wells and replacement wells in new locations within AMAs for which a well permit is required under A.R.S. § 45-599 (R12-15-1302); rules containing well spacing criteria for certain proposed recovery wells (R12-15-1303); rules containing well spacing criteria for certain wells used for groundwater transportation and water exchanges (R12-15-1304 through R12-15-1307); and a rule containing criteria that must be met for a proposed well to qualify as a replacement well in approximately the same location (R12-15-1308).

The chart below will help to illustrate how the permanent rules compare to the temporary rules, and is organized under the five subheadings identified above.

Rule definitions

<u>Temporary Rule</u>	<u>Permanent Rule</u>
R12-15-830(J) Defines just two terms: <ul style="list-style-type: none">- "Well of record"- "Additional drawdown"	R12-15-1301 Defines "well of record" and "additional drawdown," as well as 14 additional terms; links several definitions to statute.

The definition of 'Well of record' is changed to exclude wells that would not be unreasonably damaged by withdrawals from a proposed well, such as wells used for dewatering, drainage and hydrologic testing. Taken together, the definitions will add clarity for regulated persons who seek to construct new or replacement wells, transport groundwater, recover stored water, or engage in water exchanges.

Rule containing well spacing criteria for proposed new wells and replacement wells in new locations in AMAs for which a well permit is required under A.R. S. § 45-599

<u>Temporary Rule</u> R12-15-830(A) to (I)	<u>Permanent Rule</u> R12-15-1302
<p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Drawdown: Approve if $\leq 10'$ in 5 years. May deny if $> 10'$ but $\leq 25'$ in 5 years. Shall deny if $> 25'$ in 5 years. - Hydrologic impact study: Required if $> 500\text{gpm}$ or multiple wells. Applicant pays. - Water quality/land subsidence: Shall reject if "unreasonable and adverse impact." Director may require study - Replacement wells in new locations: Approve if impact on neighboring wells \leq historical impact from original well - Other factors (830E): If between 10 to 25 feet of additional drawdown at well of record, Director may consider list of 9 factors in determining if impact is unreasonable - Waivers: If drawdown $> 10'$ in 5 years, drill if impacted well owners consent. No waiver allowed for migration of contaminated water. - Owner of impacted well cannot be located: Proposed well may not be drilled 	<p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Drawdown: Approve if $\leq 10'$ in 5 yrs. Shall deny if $> 10'$ in 5 yrs. - Hydrologic impact study: Director may require or applicant may submit. Applicant pays. - Water quality/land subsidence: Clarifies circumstances under which Director "shall not approve." Director may require study <i>or</i> applicant may submit study - Replacement wells in new locations: Approve if impacts from proposed well are offset by reduced pumping from original well(s) - Other factors: None. - Waivers: Identical waiver provision for drawdown $> 10'$ in 5 years. Waiver also allowed for migration of contaminated water. - Owner of impacted well cannot be located: Proposed well may be drilled.

Other minor provisions of the temporary rules carry over essentially unchanged into the permanent rules.

Rule containing well spacing criteria for certain proposed recovery wells

<p><u>Temporary Rule</u> R12-15-830(A) to (I)</p> <p><i>Principal provisions</i> - None.</p>	<p><u>Permanent Rule</u> R12-15-1303</p> <p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Drawdown: Same as 1302. - Hydrologic impact study: Required in all cases, applicant pays. - Water quality/land subsidence: Same as 1302. - Replacement wells in new locations: Same as 1302. - Recharge facility provision: If well is located in area of impact of stored water, can offset impact with on-site recharge. - Waivers: Same as 1302 - Owner of impacted well cannot be located: Same as 1302
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Rules containing well spacing criteria for certain wells used for groundwater transportation and water exchanges

<p><u>Temporary Rule</u> R12-15-830(A) to (I)</p> <p><i>Principal provisions</i> - None.</p>	<p><u>Permanent Rule</u> R12-15-1304 through -1307, inclusive</p> <p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Drawdown: Same as 1302. - Hydrologic impact study: Same as 1302. - Water quality/land subsidence: Same as 1302. - Replacement wells in new locations: Same as 1302 - Waivers: Same as 1302 - Owner of impacted well cannot be located: Same as 1302
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After the temporary rules were adopted in 1983, statutory provisions were enacted requiring certain recovery wells, certain wells used for water exchanges and certain wells used for groundwater transportation to comply with well spacing criteria. These statutes are now addressed in rules R12-15-1303 through 1307.

Rule containing criteria for replacement wells in approximately the same location

<u>Temporary Rule</u>	<u>Permanent Rule</u>
<p>R12-15-840</p> <p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Location Within 660' of original well. - Drawdown, subsidence and water quality impacts Not addressed. - Hydrologic impact study Not required. - Maximum annual withdrawal volumes Not more than largest historical withdrawals from original well in any year 	<p>R12-15-1308</p> <p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Location Within 660' of original well. - Drawdown, subsidence and water quality impacts Not addressed. - Hydrologic impact study Not required. - Maximum annual withdrawal volumes Maximum annual capacity of original well(s) Determine by 100% duty cycle; <i>or</i> the maximum permitted volume of the original well (if a permit was issued).

Other provisions in R12-15-1308(A) require a Notice of Intent to be filed within 90 days if the original well is abandoned and contain criteria for replacement wells in the same location in the Little Colorado river plateau groundwater basin. Temporary rule 840(2) – ‘conjunctive use of wells’ – and 840(3) – ‘Director may impose conditions’ – carry over essentially unchanged into the permanent rule as R12-15-1308(B) and 1308(D), respectively. R12-15-1308(C) provides additional flexibility to owners seeking to replace wells in approximately the same location, by allowing one well to be drilled when replacing two or more original wells, subject to allowed maximum annual volumes.

Overall, ADWR believes the permanent rules are very similar to the temporary rules they replace. The new rules add clarity and certainty, remove sources of confusion and uncertain interpretation, codify some existing ADWR policies and slightly modify certain provisions in the temporary rules. The director will continue to deny authority to construct a well if the director determines it will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells.

The temporary rules and the permanent rules recognize three categories of unreasonably increasing damage: additional drawdown of water levels at neighboring wells of record; additional regional land subsidence; and migration of contaminated groundwater. The provision in the permanent rules regarding additional regional land subsidence is nearly identical to the provision in the temporary rule. The provision in the permanent rules regarding migration of contaminated groundwater is similar to the provision in the temporary rule, but provides greater clarity on when an application will be denied on this basis. The language is consistent with current ADWR policy. The provision in the

permanent rules regarding additional drawdown of water levels at neighboring wells of record is also similar to the provision in the temporary rules, with one exception. Under the temporary rules, if the probable additional drawdown is between 10 and 25 feet during the first five years of operation of the proposed well, ADWR will consider nine specified factors in determining whether to grant the application. The permanent rules eliminate the nine factors and simply require ADWR to deny the application unless an exception applies.

The temporary rules provide that the director shall issue a well permit to an applicant even though the probable impact of the withdrawals from the proposed well on one or more wells of record will exceed the maximum allowable additional drawdown if the applicant submits a signed consent form from the owner of each impacted well of record consenting to the withdrawals from the proposed well. The permanent rules retain this provision and extend its application to cases where withdrawals from the proposed well will likely cause unreasonably increasing damage to a well of record from the migration of contaminated groundwater. The permanent rules also allow an applicant to obtain a well permit despite unreasonable impacts on a well of record if the applicant submits sufficient evidence that the address of the owner of the well of record as shown in ADWR's well records is inaccurate, and that the applicant made a reasonable attempt to locate the owner of the well of record, but was unable to do so.

The provision in the temporary rule requiring an applicant for a well permit to submit a hydrological study if the proposed pumping capacity exceeds 500 gpm or if the application is for multiple wells has been removed for most applicants, thereby relieving them from the economic burden of submitting such a study unless required by the Director. Only applicants for recovery well permits are required by the rules to submit a hydrological study with the application. For replacement wells in new locations, allowance is newly given in the permanent rules for the Director to consider the collective effects of the reduction of pumping from the original well and the new withdrawals from proposed well if the applicant demonstrates those effects.

Regarding replacement wells in approximately the same location, both the temporary rule and the permanent rule limit the location of such wells to an area within 660 feet of the original well. The primary difference between the rules is that the permanent rule allows a replacement well in approximately the same location to annually withdraw up to the maximum annual capacity of the original well or, if a well permit or recovery well permit was issued for the original well, up to the permitted annual volume of the original well, while the temporary rule limits annual withdrawals to the largest historical withdrawals from the original well in any year. This change will allow more water to be withdrawn from a replacement well in approximately the same location in most cases, yet will prevent such a well from withdrawing more water than could have been withdrawn from the original well.

2. Persons Who Will Be Directly Affected By, Bear the Costs of or Directly Benefit from the Proposed Rule Making

Rules R 12-15-1301 through 1308 will directly affect most persons seeking to drill non-exempt wells in AMAs. The rules will also affect persons applying for recovery well permits statewide; persons using certain wells in the Little Colorado river plateau groundwater basin to withdraw groundwater for transportation out of the basin; persons using certain wells to withdraw groundwater for transportation into an AMA; and persons, other than cities, towns, private water companies and irrigation districts, using wells to withdraw groundwater in AMAs for water exchanges. The rules do not apply to persons drilling wells outside of AMAs (except for recovery wells and certain wells used to withdraw groundwater for transportation out of the groundwater basin); persons drilling exempt wells (generally, non-irrigation wells with a maximum pumping capacity of 35 gpm or less) within AMAs; persons drilling wells pursuant to groundwater withdrawal permits within AMAs, except general industrial user permits; and cities, towns, private water companies and irrigation districts applying for recovery well permits for wells drilled before June 12, 1980 within their service areas. The rules also do not apply to wells that will withdraw only surface water.

Examples of persons who will be subject to the rules, depending on the type of well to be constructed or used by the person, include private individuals, groups of individuals, partnerships, or associations; industries, including manufacturing, power plants, mines, golf courses, cattle feedlots, dairies, sand and gravel operations, and other industrial water users; businesses large and small, including farms, resorts, private water companies and homebuilders; political subdivisions including the state, cities, municipalities, towns, and irrigation districts; and Federal and state agencies.

Between 1983 and 2005, inclusive, ADWR estimates that approximately 1,156 wells were drilled under temporary rule R12-15-830, including both new wells and replacement wells in new locations. Between 1983 and 2005, inclusive, ADWR estimates that approximately 286 replacement wells in approximately the same location were drilled under temporary rule R12-15-840. Between 1983 and 2005, inclusive, ADWR estimates that approximately 212 recovery wells were drilled. A recovery well may also be permitted to withdraw groundwater, so that there is an overlap between the number of recovery wells, new wells, and replacement wells.

Persons directly benefiting from the proposed rule making

Persons directly benefiting from the permanent rules include land owners and owners and users of existing wells, who, without permanent well spacing rules, would not be protected from unreasonably increasing damage from the concentration of wells. Owners of existing wells include cities, towns, private water companies, irrigation districts, industries, farmers and owners of exempt wells.

Rules R12-15-1301, 1302 and 1308 will directly benefit persons within AMAs applying for well permits under A.R.S. § 45-599, primarily cities, towns, private water companies,

irrigation districts, farmers and certain industries, because it will eliminate sources of confusion in the temporary rules and thereby add more certainty. Rules R12-15-1301 and R12-15-1303 through 1308 will benefit persons applying for recovery well permits statewide, persons transporting groundwater away from the Little Colorado river plateau groundwater basin, persons transporting groundwater into AMAs and persons, other than cities, towns, private water companies and irrigation districts, withdrawing water from wells within AMAs for water exchanges. Statutes enacted after the temporary rules were adopted require such persons to comply with well spacing criteria in certain cases. Adoption of the rules will provide certainty and eliminate confusion for these persons regarding the criteria that must be met.

Persons subject to well spacing rules will benefit from the following changes made to the well spacing criteria in the temporary rules:

- The new maximum annual volume limits for replacement wells in approximately the same location allow persons replacing wells to annually withdraw up to the volume of water the original well could have withdrawn during a year, rather than the largest historical withdrawals from the original well in any year. This will allow well owners to better use their investments in their wells.
- For replacement wells in new locations, the Director is required to take into account the collective effects of reducing or terminating withdrawals from the well being replaced together with the proposed well, if the applicant demonstrates those effects.
- When owners of impacted wells cannot be located, the Director shall not find "unreasonably increasing damage" with respect to those wells.

Persons directly bearing the costs of the proposed rule making

There are no new fees or costs associated with the permanent rules. The current fee structure carries over unchanged. Except for certain recovery wells, applicants will no longer be required to submit a hydrologic impact study unless the Director determines that such a study will assist the Director in making a determination as to whether the proposed well meets the criteria in the rules. Therefore, most applicants will no longer have to pay for such a study. These studies, in most cases, cost between \$2,000 and \$5,000.

In AMAs, persons desiring to drill new wells or to replace existing wells in new locations will bear the same permitting costs as under the temporary rules. Persons withdrawing water under statutory authorities not existing in 1983 are newly subject to rules R12-15-1303 through 1307. However, the Department has been applying the criteria in the temporary rules in these cases for some time. In this sense, new costs are not expected.

3. Cost - Benefit Analysis

Throughout this analysis, the Department treats the temporary rules as existing rules and bases economic impact from the new rules on changes from the existing rules. The Department estimates that economic impacts are minimal, and that any small direct

incremental benefits – associated, for example, with added clarity, new maximum annual volume limits for replacement wells in approximately the same location, the ability of applicants for replacement wells in new locations to demonstrate the collective effects of the reduction of pumping from the well to be replaced and the new withdrawals from the proposed well, and the ability to drill a well when the record owners of impacted wells cannot be located – will generally outweigh even smaller incremental costs, if any.

a. The Probable costs and benefits to the implementing agency and other agencies

Agencies drilling wells, e.g. ADOT, will benefit from clearer and more uniform and consistent definitions and rules. Clearer detail is provided as to when the Director “shall not approve” if a well of record is unreasonably impacted from contaminated groundwater. For new wells or replacement wells in new locations, confusion is reduced by eliminating a list of nine seldom used factors to be considered when determining whether an additional drawdown of between 10 and 25 feet is an unreasonable impact. Additionally, in most cases, agencies applying to construct new wells or replacement wells in new locations will no longer be required to submit a hydrological study for wells with a pumping capacity of 500 gmp or greater or for multiple wells. Under the new rules, a hydrological study is required only for applications to drill certain recovery wells, although the director may require any applicant to submit such a study if the director determines that the study will assist the director in determining the impacts of the withdrawals from the proposed well. An agency drilling a replacement well in approximately the same location will benefit from the new maximum annual withdrawal limits, which allow the well owner to annually withdraw the amount that could have been withdrawn from the original well, not the largest amount that was actually withdrawn from the original well in any year.

The Department estimates that it will incur no new appreciable direct costs or realize any benefits from the transition from temporary to permanent rules. Agencies that drill wells will incur the same costs and benefits as other well owners.

b. The probable costs and benefits to political subdivisions

Political subdivisions that own wells or land will benefit from the new rules in the same manner as other well owners and landowners: their wells and land will be protected from unreasonably increasing damage resulting from additional drawdown of groundwater levels, land subsidence and migration of contaminated groundwater. These potential negative impacts can lead to physical damage to structures, lowered property values and water treatment costs.

Political subdivisions drilling wells will benefit from clearer and more uniform and consistent definitions and rules. Additionally, in most cases, political subdivisions applying to construct new wells or replacement wells in new

locations will no longer be required to submit a hydrological study for wells with a pumping capacity of 500 gmp or greater or for multiple wells. Under the new rules, a hydrological study is required only for applications to drill certain recovery wells, although the director may require any applicant to submit such a study if the director determines that the study will assist the director in determining the impacts of the proposed withdrawals from the well. Political subdivisions drilling replacement wells in approximately the same location will benefit from the new maximum annual withdrawal limits.

Political subdivisions that drill wells will likely incur costs to comply with rules R12-15-1302 through 1307, but the costs are predicted to be reasonable and no different than costs under temporary rule R12-15-830. The fee to file an application for a well permit is \$150.00, and the fee for the permit is \$50.00. The fee to file an application for a recovery well permit is \$50.00 per well for the first 10 wells and \$10.00 per well for any additional wells. The fee for a recovery well permit is \$50.00 per well for the first 10 wells, and \$10.00 per well for any additional wells. For recovery well permits, the applicant must also pay the cost of publishing notice of the application in a newspaper. Applicants who are required to conduct a hydrological study, or who voluntarily submit such a study, usually pay costs ranging between \$2,000 and \$5,000, in most cases. Such studies are performed by hydrological consultants or, depending upon the applicant's capabilities, the applicant's in-house staff.

Rule R12-15-1308 defines a replacement well in approximately the same location as a well drilled no greater than 660 feet from an original well being replaced and that will not annually withdraw an amount of water in excess of the amount that could have been withdrawn from the original well. Under both the temporary rule and the permanent rule, a political subdivision with a proposed well qualifying as a replacement well in approximately the same location avoids the costs associated with filing an application for a well permit, but does pay a \$150 notice-of-intent fee. A hydrological study is not required.

c. The probable costs and benefits to businesses, including small businesses Businesses, large or small, that own wells or land will benefit from the new rules in the same way as other well owners or landowners: their wells and land will be protected from unreasonably increasing damage caused by the concentration of wells. Without the rules, businesses that own wells or land could be unreasonably damaged as a result of additional drawdown of groundwater levels, land subsidence or migration of contaminated groundwater to their wells. These potential negative impacts can lead to physical damage to structures, lowered property values and water treatment costs.

Business drilling wells will benefit from clearer and more uniform and consistent definitions and rules. Businesses applying to construct new wells or replacement wells in new locations are no longer required to prepare a hydrological study for

wells with a maximum capacity of 500 gpm or greater or for multiple wells, unless the proposed well is a recovery well. However, the director may require any applicant to submit a hydrological study. Businesses drilling replacement wells in approximately the same location will benefit from the new maximum annual withdrawal limits.

Businesses that drill wells will likely incur costs to comply with rule R12-15-1302 through 1307, but the costs are predicted to be reasonable and no different than costs under temporary rule R12-15-830. The fee to file an application for a well permit is \$150.00, and the fee for the permit is \$50.00. The fee to file an application for a recovery well permit is \$50.00 per well for the first 10 wells and \$10.00 per well for any additional wells. The fee for a recovery well permit is \$50.00 per well for the first 10 wells, and \$10.00 per well for any additional wells. For recovery well permits, the applicant must also pay the cost of publishing notice of the application in a newspaper. Applicants who are required to conduct a hydrological study, or who voluntarily submit such a study, usually pay costs ranging between \$2,000 and \$5,000, in most cases. Such studies are performed by hydrological consultants or, depending upon the applicant's capabilities, the applicant's in-house staff.

A business with a proposed well qualifying as a replacement well at approximately the same location under R12-15-1308 avoids most costs associated with filing permit applications. Applicants for replacement wells in approximately the same location are required only to file a notice of intent and pay a \$150 fee. A hydrological study is not required.

Small Business - A.R.S. § 41-1055(B)(5) and A.R.S. § 41-1035

A.R.S. § 41-1055(B)(5)(a). *Small Business Subject to the Proposed Rule Making*

AND

A.R.S. § 41-1055(B)(5)(b). *The Administrative and Other Costs Required for Compliance with the Proposed Rule Making*

AND

A.R.S. § 41-1055(B)(5)(c) and A.R.S. § 41-1035(3) and -1035(4). *Methods the Department May Use To Reduce the Impact on Small Business*

Concerning these three statutory requirements: small businesses are impacted by the permanent rules to the same extent as large business, political subdivisions and other water users. Small businesses, whether owning or seeking to drill wells, need to be protected from, and need to be prevented from causing, unreasonably increasing damage to the same extent as other entities. The drawdown criteria in rules R12-15-1302 through 1307 are applicable to businesses of all sizes. It would not be legally permissible or fair to exempt small business applicants from these requirements because unreasonably increasing damage can be caused by wells owned by anyone, including small businesses.

4. The probable impact on private and public employment in business, agencies, and political subdivisions

Under the temporary rules, private hydrologic consultants prepare many of the hydrologic studies that will no longer be required for new wells or replacement wells in new locations under the permanent rules. For most such wells, the Department will now prepare these studies; however, the applicant still may choose to have his or her own study prepared by a consultant. The change may have a small effect on the employment of private hydrologic consultants. Otherwise, as a result of the adoption of the permanent rules, the Department anticipates no discernable new employment effects, whether private or public.

5. The probable impact on small business

This subsection of the EIS is covered above, as a part of the discussion under A.R.S. § 41-1055(B)(3)(c).

6. The probable effect on state revenues

No difference between the existing temporary rules and the permanent rules.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking

The Department engaged in a long public dialogue with the regulated community while preparing the permanent rules. Many alternatives were considered, some less intrusive or costly, some more. The present rules emerged from the public participation process, in preference to other alternatives.

TAB D15

TECHNICAL AMENDMENTS TO ADWR RULES

A.R.S. § 41-1055(B) and A.R.S. § 41-1035

ECONOMIC, CONSUMER, AND SMALL BUSINESS IMPACT STATEMENT

The Department of Water Resources ("Department") proposes to make technical amendments to a number of its rules under A.A.C. Title 12, Chapter 15.

1. An Identification of the Proposed Rule Making

Technical amendments are being proposed to rules within the following Articles:

Article 1 – R12-15-151, "Fee Schedule"

Article 2 – R12-15-207, "Correction of Clerical Mistakes"

Article 2 – R12-15-224, "Ex Parte Communications"

Article 8 – R12-15-805, "Examination for a Well Drilling License"

Article 8 – R12-15-810, "Authorization to Drill"

Article 8 – R12-15-816, "Abandonment"

Article 8 – R12-15-822, "Capping of Open Wells"

Article 12 – R12-15-1210, "Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam"

The proposed technical rule changes conform older rules to newer statutes, alter outdated rules already superseded in statute, correct organizational names mentioned in rule but which now have changed, and provide for greater clarity, consistency, and specificity while reducing confusion among the regulated public.

ARS 45-152 requires persons intending to acquire the right to the beneficial use of water to apply to the Director, ADWR, for a permit to make an appropriation of the water. The proposed change to R12-15-1210 corrects an earlier oversight. The proposed change requires persons applying to construct or to register low hazard potential dams to show proof of a right to impound and appropriate surface water. There are four classes of hazard potential dams. In accordance with § ARS 45-152, persons applying to construct the other three classes of dams are currently required to show such proof. A proposed change to R12-15-1210(A) will add the same requirement to low hazard potential dam applications.

2. Persons Who Will Be Directly Affected By, Bear the Costs of or Directly Benefit from the Proposed Rule Making

The Department anticipates very small or no costs from the proposed changes. Added clarity and reduced confusion generally benefits the public.

3. Cost – Benefit Analysis

ARTICLE 1 – FEES

<p><u>Description of Change:</u> 1. R12-15-151. Fee Schedule. Delete R12-15-151(B)(4)(a) and (b)</p>	<p><u>Why the Change?</u> These older rules set fees now prescribed in statute. As the statute supersedes the rules and the Department has been charging the fees set in the newer statute for some time the rules can be deleted.</p> <p><u>Who is impacted?</u> This change is not expected to impact any person.</p> <p><u>Nature and Magnitude of the Expected Impact</u> None.</p>
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ARTICLE 2 – PROCEDURAL RULES

<p><u>Description of Changes:</u> 1. R12-15-207 and R12-15-224. Correction of Clerical Mistakes and Ex Parte Communications. Both changes eliminate reference in rule to a "Hearing Officer." Non-substantive grammatical changes are also made, and typographical errors are corrected.</p>	<p><u>Why the Changes?</u> The Department is no longer allowed to use a hearing officer to conduct administrative hearings, A.R.S. § 41-1092.01(E) and (F). Deleting references to a hearing officer from these two older rules conforms them to more recent statute.</p> <p><u>Who is impacted?</u> These proposed changes are not expected to impact any person.</p> <p><u>Nature and Magnitude of the Expected Impact</u> None.</p>
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ARTICLE 8 – WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

<p><u>Description of Changes:</u> 1. R12-15-805. Examination for a Well Drilling License. Changes an organizational name mentioned in rule, from "National Water Well Association" to "National Ground Water Association."</p>	<p><u>Why the Change?</u> After Rule R12-15-805 was adopted, the subject organization changed its name.</p> <p><u>Who is impacted?</u> The name change is not expected to impact any person.</p> <p><u>Nature and Magnitude of the Expected Impact</u> – None.</p>
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<p>2. R12-15-810. Authorization to Drill. Delete R12-15-810(A), governing notification processes to well drilling contractors and licensees.</p>	<p><u>Why the Change?</u> R12-15-810(A) is outdated. It governs the process by which drill cards and notices of drill card issuance are mailed to well drillers or single well licensees. That process is now covered by A.R.S. § 41- 596.</p> <p><u>Who is impacted?</u> No impacts are expected, as the Department has been following the process prescribed in A.R.S. § 41- 596 since 2002.</p> <p><u>Nature and Magnitude of the Expected Impact</u> – None.</p>
<p>3. R12-15-816(H). Well Abandonment. The proposed change requires that a surface seal be installed in the top 20 feet of an abandoned well, whether or not the well casing has been removed.</p>	<p><u>Why the Change?</u> The proposed change corrects an oversight that occurred when R12-15-816(H) was drafted, by requiring the same specifications for surface seals whether the casing from the top 20 feet of an abandoned well is or is not removed.</p> <p><u>Who is impacted?</u> Persons installing surface seals on abandoned wells. Well contractors.</p> <p><u>Nature and Magnitude of the Expected Impact</u> – The Department expects minimal or no impacts from correcting this oversight. The proposed change requires cement grout plugs to be installed on the top 20, not the top 10, feet of abandoned still-cased wells. Doing so requires little additional cost or effort on the part of the contractor, many of whom may already be plugging the top 20 feet, whether or not the abandoned well remains cased.</p>
<p>4. R12-15-822. Capping of Open Wells. Re-label 822(D) to 822(C).</p>	<p><u>Why the Change?</u> Correct a typographical error. The third section of R12-15-833 should be labeled (C), not (D).</p> <p><u>Who is impacted?</u> This change is not expected to impact any person.</p> <p><u>Nature and Magnitude of the Expected Impact</u> None.</p>

ARTICLE 12 – DAM SAFETY PROCEDURES

<p><u>Description of Changes:</u> 1. R12-15-1210(A). Application to Construct a Low Hazard Potential Dam. The proposed rule change adds applications for low hazard potential dams to the classes of dams that must show proof of a right to impound and appropriate surface water. The change applies to new applications as well as unregistered low hazard potential dams.</p>	<p><u>Why the Changes?</u> This proposed change corrects an earlier oversight: Persons applying to construct High, Significant, and Very Low Hazard Potential Dams are already required to show proof of a right to impound and appropriate surface water. A proposed change to R12-15-1210(A) will add the same requirement to low hazard potential dam applications.</p> <p><u>Who is impacted?</u> In effect, anyone statewide applying for a license to construct a low hazard potential dam that retains appropriable water. Recent examples include ranchers, and those who construct or operate power, water purification, or waste water treatment plants. Also, persons who operate and apply to register currently unregistered low hazard potential dams.</p> <p><u>Nature and Magnitude of the Expected Impact</u> Very minimal or no economic impact is expected. ARS § 45-532 already requires a permit. Since 2000, as a part of the licensing process, the Department has routinely required proof of a right to impound and appropriate surface water for all newly constructed and newly registered dams.</p>
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Low Hazard Potential Dams – Between 2000 and 2006, on average, the Department licensed less than one application annually to construct a new low hazard potential dam. During the same period, on average, the Department issued licenses to operate four unregistered low hazard potential dams per year. At this writing, there are twenty-one unregistered low hazard potential dams going through the registration and licensing process. Eleven of these have already demonstrated the required proof and six of the dams do not impound appropriable water. Most of the unregistered dams are between ten and eighty years old.

Examples of persons with registration applications in-process include the Town of Gila Bend, Rancho Allegre Cattle Co., Cities of Sierra Vista and Mesa, Pima County Wastewater Management, Equatorial Mining Ltd., and JJJ Corporation – Oro Ranch.

a. The probable costs and benefits to the implementing agency and other agencies
The Department will better serve the people of Arizona. The Department expects no cost impacts from the proposed technical changes, and expects that it and the public will benefit through greater clarity, consistency, and specificity and reduced confusion.

b. The probable costs and benefits to political subdivisions

The Department expects greater clarity and reduced confusion to benefit political subdivisions.

c. The probable costs and benefits to businesses, including small businesses

As above. Concerning **Small Business** (A.R.S. § 41-1055(B)(5) and A.R.S. § 41-1035), no impacts are expected. Requirements to show proof of a right to impound and appropriate surface water are the same regardless of the size of the business.

d. The probable costs and benefits to private persons and consumers who are directly affected by the proposed rule making

None are expected from these technical amendments.

4. The probable impact on private and public employment in business, agencies, and political subdivisions

No employment impact is expected from these technical amendments.

5. The probable impact on small business

See the discussion under Section 3.c, "the probable costs and benefits to businesses, including small businesses," above.

6. The probable effect on state revenues

None is expected.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking

The Department expects no cost impacts from the proposed technical changes. It expects the proposed rule modifications to benefit the public through greater clarity, consistency, and specificity and reduced confusion.

State of Arizona

DEPARTMENT OF
WATER RESOURCES



REVISED
Five-Year Rule Review
Report and Appendix
Title 12, Chapter 15
2021

TABLE OF CONTENTS FOR BINDER

	TAB
Five-Year Rule Review Report	A
Department Rules	B
General and Specific Statutes Authorizing the Rule	
Authority for Article 1	C1
Authority for Article 2	C2
Authority for Article 3	C3
Authority for Article 4	C4
Authority for Article 7	C5
Authority for Article 8	C6
Authority for Article 9	C7
Authority for Article 10	C8
Authority for Article 11	C9
Authority for Article 12	C10
Authority for Article 13	C11
Economic, Small Business and Consumer Impact Statements	
EIS for Article 1 – Fee Rule Amendments	D1
EIS for Article 1 – Dam Safety Inspection Fees	D2
EIS for Article 2	D3
EIS for Article 3	D4
EIS for Article 4	D5
EIS for Article 7 – AAWS Amendments	D6
EIS for Article 7 – 2014 Pinal AMA Extinguishment Credits	D7
EIS for Article 7 – 2018 Pinal AMA Extinguishment Credits	D8
EIS for Article 8	D9
EIS for Article 9	D10
EIS for Article 10	D11
EIS for Article 11	D12
EIS for Article 12	D13
EIS for Article 13	D14
EIS for Technical Amendments	D15

TABLE OF CONTENTS FOR 5 YEAR REVIEW REPORT

	Page
Introduction	1
Article 1. Fees R12-15-101 through R12-15-106	1
Article 2. Procedural Rules R12-15-207 and R12-15-224	4
Article 3. Stockpond and Other Surface Water Rules R12-15-303	6
Article 4. Licensing Time-Frames R12-15-401 and Table A	8
Article 5. Reserved	11
Article 6. Reserved	11
Article 7. Assured and Adequate Water Supply R12-15-701 through R12-15-729	11
Article 8. Well Construction and Licensing of Well Drillers R12-15-801 through R12-15-852	17
Article 9. Water Measurement R12-15-901 through R12-15-909	23
Article 10. Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights R12-15-1001 through R12-15-1017	25
Article 11. Inspections and Audits R12-15-1101 through R12-15-1102	28
Article 12. Dam Safety Procedures R12-15-1201 through R12-15-1226	30
Article 13. Well Spacing Requirements; Replacement Wells in Approximately the Same Location R12-15-1301 through R12-15-1308	34

**ARIZONA DEPARTMENT OF
WATER RESOURCES
5 YEAR REVIEW REPORT
Title 12, Chapter 15
2021**

Introduction

In this report, each rule of the Department of Water Resources (“Department”) is examined according to those factors listed in the Governor’s Regulatory Review Council’s (“GRRC”) Rule R1-6-301(A). The rules are grouped by Article so that, in accordance with R1-6-301(B), identical information regarding the rules will only be discussed once.

ARTICLE 1. FEE RULES – R12-15-101 THROUGH R12-15-107

1. Authorization of the rule by existing statutes:

R12-15-101 through R12-15-106 are authorized by A.R.S. § 45-113(A), which broadly allows the director to collect fees “to cover the costs of administrative services and expenses.” A.R.S. § 45-113(B) further authorizes the director to collect fees for “applications, certificates, licenses and permits relating to surface water, groundwater, water exchanges, wells, grandfathered rights, substitution of acres, adequate and assured water supply, groundwater oversupply and lakes and for inspections relating to dam safety.” There is also specific fee authority in the following sections in Title 45, Arizona Revised Statutes:

Authorizing Section	Description
45-133(C)	Application fee for permit for interim water use; bodies of water
45-183(C)	Filing fee for statement of claim
45-273(E)	Fee to file claim of water right in stockpond
45-292(B)	Application fee to transport water out of state
45-467(Q)	Fee for conveyance of flexibility account credit balance
45-476.01(B)	Fee for late applications for certificates of grandfathered rights
45-595(C)	Fee for licenses for well drillers
45-596(L)	Fee for filing of notice of intention to drill
45-599(J)	Fee for application for permit to drill a new well or replacement well in a new location
45-871.01(A)	Permit fees for underground storage facilities, groundwater savings facilities, water storage permits and recovery well permits
45-1041(E)	Fee for water exchange permit
45-1204(B)	Application fee for the construction or enlargement of a dam
45-1603(A)	Weather control and cloud modification license
45-1605(A)	License to sell, lease, offering to sell, licensing, or offering to license equipment and supplies for weather control and cloud modification

Copies of the statutes listed above are located at tab C1 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-101	This rule defines terms that are used in Article 1 to make the rules understandable to the reader, achieve clarity in the rules without needless repetition, and afford consistent interpretation.
R12-15-102	This rule provides that an application filed on or after the effective date of the rule is subject to the applicable fees in R12-15-103 and R12-15-104 and applications pending prior to the effective date of the rule are subject to the fees and costs in effect when the application was filed.
R12-15-103	This rule identifies those types of applications subject to an hourly fee, establishes an initial and maximum fee for applications subject to an hourly fee and establishes billing and payment procedures.
R12-15-104	This rule identifies those types of applications subject to a fixed fee, establishes the fixed fees for those types of applications and requires the applicant to pay any mileage expenses and mailing or publishing costs.
R12-15-105	This rule establishes the fees for dam safety inspections and for the filing of dam safety inspection reports.
R12-15-106	This rule establishes the fee for the capping of an open well by the Department.

3. Are the rules effective in achieving their objectives? Yes X No

The Department believes the fee rules are generally effective in achieving the objective of enabling the Department to cover the Department’s expenses in performing the services for which the fees are charged, while allowing individuals, businesses, political subdivisions and other governmental entities to obtain permits, licenses and inspections from the Department at a reasonable cost.

In accordance with Executive Order 2015-01, paragraph 5, the Department evaluated its rules in 2015 to determine whether any of the rules could be amended or repealed to reduce the regulatory burden, administrative delay and legal uncertainty associated with government regulation, while continuing to allow the Department to meet its mission of securing long-term dependable water supplies for Arizona citizens. In the report submitted to the Governor’s Office with the results of the evaluation (2015 Report to the Governor’s Office), the Department recommended the following amendments to its fee rules:

- Lowering the fees charged to the owners of low and very low potential hazard dams for dam safety inspections and for submitting dam safety inspection reports to increase compliance with the dam safety inspection and reporting requirements. It was recommended that the rule establishing those fees, R12-15-105, be amended to lower the fee for a dam safety inspection conducted by the Department from \$1,000.000 to \$250.00 and to lower the fee for submitting a dam safety inspection report from \$750.00 to \$250.00. Rule R12-15-105 was amended to effectuate those fee reductions by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3).
- Repealing R12-15-107, the municipality fee rule, because the statute authorizing the fee, A.R.S. § 45-118, was repealed in 2012. This rule expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3475, effective November 5, 2016 (Supp. 16-4).
- Changing the fees for four applications from an hourly billable rate of \$118 per hour to a fixed fee of \$500. The Department subsequently determined that the fees for those applications should remain an hourly billable rate of \$118 per hour. For that reason, the Department did not change those fees.

4. **Are the rules consistent with other rules and statutes?** Yes No
- R12-15-101 through R12-15-106 are consistent with statutes or other rules made by the Department and current Department enforcement policy. No comparable federal law applies. As explained in section 3(b) above, R12-15-107 expired in 2016 because the statute authorizing the fee was repealed in 2012.
5. **Are the rules enforced as written?** Yes No
- R12-15-101 through R12-15-106 are being enforced without issue by the Department.
6. **Are the rules clear, concise, and understandable?** Yes No
- R12-15-101 through R12-15-106 are clear, concise and understandable. The rules provide detailed definitions of terms and all citations and cross-references are correct.
7. **Has the agency received written criticisms of the rules within the last five years?** Yes No
- The Department has not received written criticisms of R12-15-101 through R12-15-106 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.
8. **Economic, small business, and consumer impact comparison:**
- Please refer to tab D1 of the Appendix for the economic, small business and consumer impact statements (“EIS”) submitted with R12-15-101 through R12-15-106 in 2011 when the rules were adopted. After reviewing each EIS and examining the impact that R12-15-101 through R12-15-106 actually has had on the public, the Department has concluded that the actual effect has been approximately the same as predicted in the EIS. Please refer to tab D2 of the Appendix for the EIS submitted with the 2017 rule package lowering the fees charged to the owners of low and very low potential hazard dams for dam safety inspections and for submitting dam safety inspection reports. The Department has concluded that the actual effect has been approximately the same as predicted in the EIS.
9. **Has the agency received any business competitiveness analyses of the rules?** Yes No
- The Department has not received any analysis from another party that compares the impact of R12-15-101 through R12-15-106 on this state’s business competitiveness to the competitiveness of businesses in other states.
10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**
- In its previous Five-Year Rule Review Report submitted in 2016, the Department described the amendments to its fee rules that it recommended making in its 2015 Report to the Governor’s Office (see section 3 above). The Department stated that it would not make the amendments unless it received permission from the Governor’s Office to do so. The Department received permission from the Governor’s Office to make the rule amendments on February 20, 2017, and the Department then proceeded to make the rule amendments by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3). However, the Department did not change the fees for four applications from an hourly billable rate of \$118 per hour to a fixed fee of \$500 as it had recommended in its 2015 Report to the Governor’s Office because the Department subsequently determined that the fees for those applications should remain an hourly billable rate of \$118 per hour.
11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork**

and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that the probable benefits of the fee rules outweigh within this state the probable costs of the rules and that the rules impose the least burden and costs on regulated persons, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no corresponding federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

All of the Department’s fee rules were adopted by final rulemaking after July 29, 2010, and amendments were made in 2017. However, the rules do not require the issuance of a regulatory permit, license or agency authorization. For that reason, none of the rules are subject to A.R.S. § 41-1037.

14. **Proposed course of action:**

None.

ARTICLE 2. PROCEDURAL RULES

1. **Authorization of the rule by existing statutes:**

R12-15-207 and R12-15-224 are authorized by A.R.S. § 45-105(B)(1). A copy of this statute is attached at tab C2 of the Appendix.

2. **The objective of each rule:**

Rule	Objective
R12-15-207	This rule allows the director, upon motion or upon the initiative of the director, to correct clerical mistakes in declarations, orders, rulings, and other parts of the Department’s record, as well as errors in the record resulting from oversight or omission.
R12-15-224	This rule prohibits most <i>ex parte</i> communications between parties and the director, other Department employees or consultants, and authorizes the director to impose sanctions on a party who violates the prohibition.

3. **Are the rules effective in achieving their objectives?** Yes X No ___

The Department believes that R12-15-207 and R12-15-224 are effective and meet their intended objective of establishing administrative procedures for hearings in two areas not covered by statute or Office of Administrative Hearings (“OAH”) rules.

4. **Are the rules consistent with other rules and statutes?** Yes X No ___

R12-15-207 and R12-15-224 are consistent with statutes or other rules made by the Department and current Department enforcement policy. No comparable federal law applies. R12-15-207 and R12-15-224 do not conflict

with the statutes related to hearings before the OAH or with the rules adopted by OAH because those statutes and rules do not govern corrections of clerical mistakes by the agency, or *ex parte* communications between parties and agency personnel.

Both rules were amended through a rulemaking in 2007 that made technical corrections to a number of the Department's rules (13 A.A.R. 3022). R12-15-207 and R12-15-224 were amended to remove the references to hearing officers and to make several other non-substantive changes, including updating language, improving grammar and correcting a typographical error. No additional changes have been made to date.

5. **Are the rules enforced as written?** Yes X No

R12-15-207 and R12-15-2224 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes X No

R12-15-207 and R12-15-224 are clear, concise and understandable. R12-15-224 provides detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

The Department has not received written criticisms of R12-15-207 and R12-15-224 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D3 of the Appendix for the EIS submitted with R12-15-207 and R12-15-224 and tab D15 of the Appendix for the EIS submitted with the technical amendments in 2007. After reviewing the EIS and examining the impact that R12-15-207 and R12-15-224 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No X

The Department has not received any analysis from another party that compares the impact of R12-15-207 and R12-15-224 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review did not recommend any changes to R12-15-207 and R12-15-224.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-207 and R12-15-224 within the state outweigh the probable costs of the rules and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes No X

There is no federal corresponding law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

A.R.S. § 41-1037 does not apply to these rules because the rules were not adopted or amended after July 29, 2010.

14. Proposed course of action:

None.

ARTICLE 3. STOCKPOND AND OTHER SURFACE WATER RULES

1. Authorization of the rule by existing statutes:

R12-15-303 is authorized by A.R.S. § 45-105(B)(1). A copy of this statute is attached at tab C3 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-303	R12-15-303 clarifies the manner in which the Department handles multiple applications filed by the same applicant for water rights to the same water.

3. Are the rules effective in achieving their objectives? Yes X No ___

The Department believes that R12-15-303 is effective and meets its intended objective of avoiding duplicative water rights.

4. Are the rules consistent with other rules and statutes? Yes X No ___

R12-15-303 is consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. Are the rules enforced as written? Yes X No ___

R12-15-303 is being enforced without issue by the Department.

6. Are the rules clear, concise, and understandable? Yes X No ___

R12-15-303 is clear, concise and understandable. The rule provides detailed definitions of technical terms and all citations and cross-references are correct.

7. Has the agency received written criticisms of the rules within the last five years? Yes ___ No X

The Department has not received written criticisms of R12-15-303 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. Economic, small business, and consumer impact comparison:

Please refer to tab D4 of the Appendix for the EIS submitted with R12-15-303. After reviewing the EIS and examining the impact that R12-15-303 has actually had on the public, the Department has concluded that the actual

effect has been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

The Department has not received any analysis from another party that compares the impact of R12-15-303 on this state’s business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

The Department’s previous five-year review did not recommend any changes to R12-15-303.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-303 outweigh within this state the probable costs of the rule and that the rule imposes the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to R12-15-303 because the rule was not adopted or amended after July 29, 2010.

14. **Proposed course of action**

None.

ARTICLE 4. LICENSING TIME-FRAMES

1. **Authorization of the rule by existing statutes:**

R12-15-401, including Table A, are required by A.R.S. § 41-1073. A copy of this statute is attached at tab C4 of the Appendix.

2. **The objective of each rule:**

Rule	Objective
R12-15-401 and Table A	R12-15-401 establishes timeframes during which the agency will either grant or deny each type of license that it issues. Various types of licenses and their timeframes are listed in an accompanying Table A.

3. **Are the rules effective in achieving their objectives?** Yes X No ___

The Department believes that R12-15-401 is generally effective in achieving the intended objective of providing the public with a defined time within which the Department will complete licensing tasks.

In its 2015 Report to the Governor’s Office, the Department identified eight licensing timeframes (LTF) that it believed could be reduced without substantially impacting the mission and goals of the Department’s water resources management. The Department recommended amending Table A of R12-15-401 to reduce those LTFs, to correct citations to the statutory authorities for the permits and licenses described in several LTFs and to remove two LTFs from the table. The Department made those amendments by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3). However, the Department has discovered that a statutory authority cited for the license described in R12-15-401, Table A, No. 5 (Permit to appropriate water for an instream flow) and the statutory authority cited for the license described in Table A, No. 20 (Reversal of substitution of acres irrigated with Central Arizona Project water) remain incorrect. The incorrect statutory citations do not affect the implementation of the LTFs for the two licenses as intended.

Although the Department believes that R12-15-401 is generally effective in achieving its intended objective, Table A of R12-15-401 does not include LTFs for 15 applications for which the Department issues a license. See section 14 below for a list of those applications. Also, the Department recently determined that the administrative review timeframe and substantive review timeframe for two licenses listed in Table A of R12-15-401 are out of balance because not enough time is allowed for the administrative review timeframe, while too much time is allowed for the substantive review timeframe. Those licenses are the following: water report (Table A, No. 73) and analysis of adequate water supply (Table A, No. 75).

4. **Are the rules consistent with other rules and statutes?** Yes X No ___

R12-15-401 is consistent with existing statutes or other rules made by the Department and current Department enforcement policy. However, as stated in the Department’s previous Five-Year Rules Report submitted in 2016, Table A of R12-15-401 does not include LTFs for several applications and filings for which the Department issues a license. See section 10 below for a list of those applications and filings.

5. **Are the rules enforced as written?** Yes X No ___

R12-15-401 is being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes X No ___

R12-15-401 is clear, concise and understandable. The rule provides a definition of “license,” and explains how the licensing timeframes will be applied.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

The Department has not received written criticisms of R12-15-401 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D5 of the Appendix for the EIS submitted with R12-15-401. No refunds were issued in fiscal years 2016, 2017 and 2018 for non-compliance with licensing timeframes. The Department issued refunds of \$3,000 and \$10,020 in fiscal years 2019 and 2020, respectively. After reviewing the EIS and examining the impact that R12-15-401 has actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes _____ No X

The Department has not received any analysis from another party that compares the impact of R12-15-401 on this state’s business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

In its previous Five-Year Rule Review Report submitted in 2016, the Department stated that it would proceed with making the amendments to Table A of R12-15-401 that it recommended in its 2015 Report to the Governor’s Office (see section 3 above) only if it received permission from the Governor’s Office to do so. The Department received permission from the Governor’s Office to make the rule amendments on February 20, 2017, and the Department proceeded to make the rule amendments by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3).

In its 2016 Five-Year Rule Review Report, the Department stated that Table A of R12-15-401 does not include LTFs for 17 applications for which the Department issues a license, either because the LTFs were inadvertently excluded from the table when R12-15-401 was adopted or because the licenses did not exist when the rule was adopted. The Department stated that because the rulemaking moratorium remained in effect, it did not intend to amend Table A of R12-15-401 to add LTFs for the 17 applications unless it received permission from the Governor’s Office to do so. In October 2016, the Department met with the Governor’s office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including adding LTFs for the 17 applications. The Department received permission to proceed with the rule amendments recommended in the Department’s 2015 Report to the Governor’s Office, but it did not receive permission to make the other rule amendments recommended in its 2016 Five-Year Rule Review Report, including adding LTFs for the 17 applications. For that reason, the Department did not amend Table A of R12-15-401 to add LTFs for the 17 applications.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-401 outweigh within this state the probable costs of the rule, and that the rule imposes the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes _____ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Although amendments were made to R12-15-401 in 2017, the rules do not require the issuance of a regulatory permit, license or agency authorization. For that reason, A.R.S. § 41-1037 does not apply to R12-15-401.

14. **Proposed course of action:**

As explained in section 10 above, the Department’s 2016 Five-Year Rule Review Report listed 17 applications

for which the Department issues a license, but for which Table A of R12-15-401 does not include an LTF. In preparing this report, the Department re-examined the list of 17 applications and determined that four of the applications should not have been included in the list because they are not applications for which the Department issues a license. The Department also determined that two additional applications should be added to the list. The following is a corrected list of the applications for which the Department issues a license, but for which Table A of R12-15-401 does not include an LTF:

1. Final petition to establish new service area right by a city, town or private water company.
2. Application for permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547.
3. Application for substitution of acres to allow irrigation with Central Arizona Project water in an active management area.
4. Application for approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right.
5. Application for re-issuance of drill card.
6. Application for assignment of Type A certificate of assured water supply.
7. Application for assignment of Type B certificate of assured water supply.
8. Application for classification of Type A certificate of assured water supply pursuant to R12-15-707.
9. Application for new certificate of assured water supply pursuant to R12-15-704(G).
10. Application for letter stating that owner is not required to obtain a certificate of assured water supply pursuant to R12-15-704(M).
11. Application for extinguishment of grandfathered right for extinguishment credits.
12. Application for conveyance of extinguishment credits.
13. Application for exemption from adequate water supply requirements pursuant to A.R.S. § 45-108.02.
14. Application for exemption from adequate water supply requirements pursuant to A.R.S. § 45-108.03.
15. Application for equipment license for weather control or cloud modification.

As mentioned in Section 3 above, the Department has discovered that the statutory authorities cited for the following two licenses in Table A of R12-15-401 are incorrect: (1) permit to appropriate water for an instream flow (Table A, No. 5); and (2) reversal of substitution of acres irrigated with Central Arizona Project water (Table A, No. 20). Also, the Department has determined that the administrative review timeframe and substantive review timeframe for the following licenses listed in Table A of R12-15-401 are out of balance because not enough time is allowed for the administrative review timeframe, while too much time is allowed for the substantive review timeframe: (1) water report (Table A, No. 73); and (2) analysis of adequate water supply (Table A, No. 75).

On May 20, 2021, the Department received permission from the Governor’s Office to conduct a rulemaking to address the issues described above. Specifically, the Department received permission to conduct an expedited rulemaking pursuant to A.R.S. § 41-1027 to amend Table A as follows:

1. Add LTFs for the 15 applications and filings listed above that do not currently have an LTF.
2. Correct the statutory authorities cited for a permit to appropriate water for an instream flow and reversal of a substitution of acres irrigated with Central Arizona Project water.
3. Increase the administrative review timeframe and reduce the substantive review timeframe for a water

report (Table A, No. 73) and an analysis of adequate water supply (Table A, No. 75). This would not include any change to the overall timeframe for those licenses.

The Department proposes to conduct a rulemaking to amend Table A of Rule 12-15-401 to make the changes listed above. Because the rulemaking would not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated, the Department proposes to conduct the rulemaking as an expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7). The Department proposes to file a notice of proposed expedited rulemaking with the Secretary of State within 180 days after approval of this report by the Council and submit a notice of final expedited rulemaking to the Council by February 15, 2022.

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

1. Authorization of the rule by existing statutes:

R12-15-701 through R12-15-729 are authorized by A.R.S. §§ 45-105(B)(1) and 45-576(H). Copies of these statutes are attached at tab C5 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-701	This rule defines terms used in Article 7.
R12-15-702	This rule sets forth the process for filing an application for a physical availability determination with the Department and establishes the criteria under which the director will issue a physical availability determination to an applicant.
R12-15-703	This rule sets forth the requirements needed to apply for and receive an analysis of assured water supply.
R12-15-704	This rule sets forth the requirements for applying and for receiving a certificate of assured water supply (“certificate”). Among these requirements, the rule sets forth the information the applicant must submit to prove ownership of the land. The rule also identifies conditions under which a new owner is not required to obtain a new certificate.
R12-15-705	This rule provides for the assignment of a Type A certificate of assured water supply to a new owner of a subdivision.
R12-15-706	This rule provides for the assignment of a Type B certificate of assured water supply to a new owner of a subdivision. This rule also allows the applicants for an assignment of a Type B certificate to request that the certificate be re-classified as a Type A certificate, provided that the certificate meets the requirements of R12-15-704(H)(1).
R12-15-707	This rule provides a process allowing for the holder of a Type B certificate or a certificate that was issued prior to September 12, 2006, to reclassify that certificate as a Type A certificate of assured water supply.
R12-15-708	This rule provides that if material changes are made to the plat originally submitted with a certificate or water report application, the Department’s determination of an assured or adequate water supply will not apply to the revised plat. The rule establishes criteria for determining whether changes to a plat are material and whether the owner must seek a new determination of

	assured or adequate water supply.
R12-15-709	This rule establishes the procedure by which the director may revoke a certificate if an assured water supply does not exist.
R12-15-710	This rule sets forth the requirements for applying for and receiving a designation of assured water supply.
R12-15-711	This rule sets forth the annual reporting requirements for providers designated as having an assured water supply; requires the director to review a designation at least every 15 years; allows the director to modify a designation for good cause; and establishes the procedures by which the director may revoke a designation of assured water supply.
R12-15-712	This rule sets forth the requirements for applying for and receiving an analysis of adequate water supply. This rule is substantially similar to R12-15-703, but does not include requirements related to consistency with the management plan and consistency with the management goal, which are specific to AMAs and do not apply to determinations of adequate water supply.
R12-15-713	This rule sets forth the requirements for applying for and receiving a water report.
R12-15-714	This rule sets forth the requirements for applying for and receiving a designation of adequate water supply. This rule is substantially similar to R12-15-710, but does not include requirements related to consistency with the management plan and consistency with the management goal, which are specific to AMAs and do not apply to determinations of adequate water supply.
R12-15-715	This rule sets forth annual reporting requirements for providers designated as having an adequate water supply; requires the director to review a designation every 15 years; allows the director to modify a designation for good cause; and establishes the procedures by which the director may revoke a designation of adequate water supply.
R12-15-716	This rule sets forth the criteria for demonstrating that a water supply is physically available for at least 100 years.
R12-15-717	This rule sets forth the criteria for demonstrating that a water supply is continuously available for at least 100 years.
R12-15-718	This rule sets forth the criteria for demonstrating that a water supply is legally available for at least 100 years.
R12-15-719	This rule sets forth the criteria for demonstrating that the water supply will be of adequate quality.
R12-15-720	This rule sets forth the criteria for demonstrating that the applicant has the financial capability to construct adequate delivery, storage and treatment works.
R12-15-721	This rule sets forth the criteria for demonstrating that groundwater use associated with a certificate or designation of assured water supply is consistent with the management plan of the AMA in which the development or service area is located.
R12-15-722	This rule sets forth the criteria for demonstrating that groundwater use associated with a certificate or designation of assured water supply is consistent with the management goal of the AMA in which the development or service area is located. This rule was amended by a formal rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4) to limit, for certificates, the volume of groundwater use that can be made consistent with the management goal with the use of extinguishment credits created on or after January 1, 2019. This rule was published incorrectly in the Administrative Register after the rule amendment became effective and was subsequently corrected in 13 A.A.R. 1394 (Supp. 19-2).
R12-15-723	This rule sets forth the procedure by which the owner of a grandfathered right may extinguish that right in exchange for extinguishment credits that can be used by an applicant for a certificate or designation of assured water supply to make a volume of groundwater pumping consistent with the management goal. The rule also sets forth the procedure by which the credits may be pledged to a certificate or designation of assured water supply or conveyed to another person. In 2011, the rule was amended to add a provision allowing an irrigation grandfathered right (“IGFR”) that was

	extinguished in 2005, 2006 or 2007 to be restored if certain conditions were met, including that an application to restore the IGFR was filed by December 31, 2015. Because the deadline for filing an application to restore an extinguished IGFR has expired, this provision is no longer being enforced. This rule was amended to allow extinguishment credits to be created in the Pinal AMA in any subsequent year. by a final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).
R12-15-724	This rule sets forth the method for calculating the groundwater allowance for a certificate or designation of assured water supply in the Phoenix AMA and for calculating extinguishment credits in that AMA.
R12-15-725	This rule sets forth the method for calculating the groundwater allowance for a certificate or designation of assured water supply in the Pinal AMA. Prior December 3, 2013, this rule also contained criteria for calculating the amount of extinguishment credits a person would receive for extinguishing a grandfathered right in the Pinal AMA, including a table of annual allocation factors to be used to calculate the amount of the extinguishment credits. Under this rule, the first reduction in the allocation factor was to occur in 2010. Through a rulemaking that became effective on December 3, 2013, the rule was amended to remove the criteria for calculating extinguishment credits and two new rules were adopted containing the criteria – R12-15-725.01, which would be effective until September 15, 2014, and R12-15-725.02, which would be effective beginning September 15, 2014 (19 A.A.R. 4174). Under R12-15-725.01, the first reduction in the allocation factor for calculating extinguishment credits was delayed until 2019, while under R12-15-725.02, the first reduction would occur on September 15, 2014. In a rulemaking that became effective on September 12, 2014, R12-15-725.01 became permanent and R12-15-725.02 was repealed (20 A.A.R. 2673). This rule was amended in 2019 to eliminate the groundwater allowance for certificate applications filed in the Pinal AMA on or after January 1, 2019 and to create a new method for calculating groundwater allowance for designation applications filed on or after January 1, 2019. by a final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4)
R12-15-726	This rule sets forth the method for calculating extinguishment credits and groundwater allowance for a certificate or designation of assured water supply in the Prescott AMA.
R12-15-727	This rule sets forth the method for calculating extinguishment credits and groundwater allowance for a certificate or designation of assured water supply in the Tucson AMA.
R12-15-728	Reserved
R12-15-729	This rule codifies Ariz. Sess. Laws 1997, Ch. 287 § 52, as amended by Laws 1999, Ch. 295, § 50. Specifically, this rule provides that the use of remedial groundwater by a municipal provider in an AMA before January 1, 2025 is consistent with the AMA’s management goal if certain conditions are met.

3. Are the rules effective in achieving their objectives? Yes X No

The Department believes that R12-15-701 through R12-15-729 are generally effective and meet their objectives of establishing the rules by which the Department’s Assured and Adequate Water Supply (“AAWS”) program operates. The objectives of the rules are to provide detailed regulations to implement the assured water supply program established by A.R.S. § 45-576 for active management areas (“AMA”) and the adequate water supply program established by A.R.S. § 45-108 for areas outside of AMAs. A.R.S. § 45-576 is designed to help ensure that new subdivisions in AMAs have a 100-year stable water supply consistent with the AMA’s management plan and management goal. A.R.S. § 45-108 is designed to ensure that in areas outside of AMAs, new subdivisions have a 100-year stable water supply within jurisdictions that have adopted a mandatory water adequacy requirement and that the Department determine and report the adequacy of the water supplies for new subdivisions in all other areas.

Additionally, the rulemaking that became effective on January 1, 2019 modified the method for calculating the extinguishment credits in the Pinal Active Management Area (AMA), limited the amount of groundwater that may be made consistent with the Pinal AMA management goal with the use of extinguishment credits for new certificates of assured water supply in the AMA, and eliminated the groundwater allowance for new certificates of AWS in the AMA.

4. **Are the rules consistent with other rules and statutes?** Yes X No

Significant efforts were made in drafting these rules to ensure that the rules are consistent with rules and policies administered by the Arizona Corporation Commission, the Arizona Department of Environmental Quality, the Arizona Department of Real Estate, the State Land Department, and the various platting entities in the state (*see references in these rules to A.R.S. §§ 9-463.01(C)(8), 11-823(B), 32-2101 and 40-281; Title 48, Chapters 22, 27 and 28; and Title 49, Chapter 2*). The rules are also consistent with federal statutes and rules, to the extent such provisions are applicable (*see reference in these rules to 42 U.S.C. § 9601 et seq.*). In addition, the rules are generally consistent with the state statutes or other rules made by the Department governing the AAWS program and current Department enforcement policy.

The only areas where the Department has not adopted rules contemplated by state statutes are the following:

- The definition of “assured water supply” in A.R.S. § 45-576(J) requires, among other things, that groundwater proposed to be used by an applicant is physically available for at least 100 years and consistent with the management goal of the AMA. The Santa Cruz AMA was established as an AMA in 1994. The AAWS rules currently do not include criteria for demonstrating that groundwater proposed to be used in the Santa Cruz AMA is physically available and consistent with the AMA’s management goal. Although the Department worked with stakeholders on drafting rules to establish the criteria in 2007, the Department put that rule package on hold to comply with the rulemaking moratorium that became effective in January 2009.
- In 2006, A.R.S. § 45-576(H) was amended to provide that on or before January 1, 2008, the AAWS rules shall provide for a reduction in water demand for an application for a designation of assured water supply or a certificate of assured water supply if a gray water reuse system is to be installed. In 2007, the Department began working on a rule package that included an amendment of the AAWS rules to provide for a reduction in water demand if a gray water system will be used in a subdivision. The Department put that rule package on hold to comply with the rulemaking moratorium that became effective.
- In 2007 the Arizona Legislature enacted SB 1575 (Laws 2007, Ch. 240) in response to recommendations from the Statewide Water Advisory Group (“SWAG”). SB 1575 authorizes cities, towns and counties outside of AMAs to adopt regulations requiring developers of new subdivisions within their jurisdiction to demonstrate a 100-year adequate water supply in order to receive plat approval and a public report. Section 10(B) of SB 1575 provides that the director shall amend the AAWS rules to include criteria for making determinations pursuant to A.R.S. § 45-108.03, which allows the director to grant an exemption from the adequate water supply requirements under certain circumstances, and criteria for demonstrating a physically available 100-year supply of groundwater in specific aquifer systems and basins outside of AMAs. The Department published a Notice of Proposed Rulemaking for those amendments on December 19, 2008 and held an oral proceeding. However, prior to submitting the rules to GRRC, the Department put the rule package on hold to comply with the rulemaking moratorium.

In October 2016, the Department met with the Governor’s office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including the amendments to its AAWS rules that are contemplated by state statutes as described above. Although the Department received permission to proceed with some of the rule amendments recommended in its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with the amendments to its AAWS rules.

During the 2021 regular legislative session, the Arizona Legislature passed two bills related to the AAWS program – SB 1274 and SB 1366. Each bill is described below.

SB 1274 makes the following changes:

- **Adds a new section 45-576.08 to title 45, Arizona Revised Statutes. This section: (1) provides that the Director shall not review the physical availability of groundwater and stored water to be recovered outside of the area of impact of storage for an application to modify a designation of assured water supply in the Pinal Active Management Area if certain criteria are met; (2) specifies that stored water recovered under certain conditions is deemed to be physically available for purposes of an assured water supply designation; and (3) defines “area of impact of storage,” “long-term storage credit” and “stored water.”**
- **Adds a new section 45-576.09 to title 45, Arizona Revised Statutes, which provides that the Director may revise the Assured Water Supply rules to apply section 45-576.08 to other active management areas.**
- **Amends A.R.S. § 45-579(A)(2) to provide that for purposes of an assignment of a certificate of assured water supply, a change in the total number of housing units or lots does not constitute a material change in a subdivision plat, plan or map if there is a reduction in the total water demand for the subdivision.**
- **Adds a new section 45-579.01 to title 45, Arizona Revised Statutes, which provides that for the purpose of determining whether changes to a plat for which a certificate of assured water supply has been issued are material under the Assured Water Supply Rules, the Director shall not consider any change in the number of housing units or lots if there is a reduction in the total water demand for the subdivision.**

SB 1366 amends Laws 1997, Chapter 287, § 52 to extend the time-period in which a specified volume of remediated groundwater withdrawn within the active management areas is deemed to be consistent with the management goal of the active management area. The bill extends the end date of the time-period from 2025 to 2050.

When SB 1274 and SB 1366 become effective later in 2021, the AAWS rules will be inconsistent with A.R.S. §§ 45-576.08, 45-579(A)(2) and 45-579.01 and Laws 1997, Chapter 287, § 52.

5. Are the rules enforced as written? Yes X No

R12-15-701 through R12-15-729 are being enforced without issue by the Department.

6. Are the rules clear, concise, and understandable? Yes X No

R12-15-701 through R12-15-729 are among the Department’s most technical regulations and are therefore longer and more complex than most of its other rules. The AAWS program requires an applicant to demonstrate the physical, continuous and legal availability of water for 100 years. These requirements involve potentially complex legal

elements for each type of water right as well as technical hydrological elements. Furthermore, the assured water supply requirement that groundwater use be consistent with the management goal of the AMA involves separate requirements for each AMA, depending on the management goal and the water resources in each AMA. Thus, the rules for the AAWS programs are inevitably detailed, long and complex. Despite this complexity, the Department believes that the rules are clear, concise, and understandable given their subject matter.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

The Department has not received written criticisms of the rules within the last five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D6 of the Appendix for the EIS submitted in 2006 when the AAWS rules were substantially amended. After reviewing the EIS and examining the impact that R12-15-701 through R12-15-729 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

Also refer to tab D7 of the Appendix for the EIS submitted with the 2014 rulemaking that made R12-15-725.01 permanent and repealed R12-15-725.02. As explained in section 2 above, this rulemaking delayed the first reduction in the allocation factor used to calculate extinguishment credits in the Pinal AMA from 2014 to 2019. The Department has concluded that the actual effects of this rulemaking have been approximately the same as predicated in the EIS.

Also refer to tab D8 of the Appendix for the EIS submitted with the rulemaking that became effective on January 1, 2019. The Department has concluded that the actual effects of this rulemaking have been approximately the same as predicated in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

The Department has not received any analysis from another party that compares the impact of R12-15-701 through R12-15-729 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's 2016 Five-Year Rule Review Report identified the three areas where the Department has not adopted rules contemplated by state statutes. Those three areas are the following: (1) rules establishing criteria for demonstrating that groundwater proposed to be used by an applicant for an assured water supply determination in the Santa Cruz AMA is physically available and consistent with the AMA's management goal; (2) rules providing for a reduction in demand for an application for a certificate or designation of assured water supply if a gray water reuse system will be installed; and (3) rules establishing criteria for determining whether to grant an exemption from the adequate water supply requirements under A.R.S. § 45-108.03 and criteria for demonstrating a physically available supply of groundwater in specific aquifer systems and basins outside of AMAs.

In its 2016 Five-Year Rule Review Report, the Department stated that because of the rulemaking moratorium, it would not proceed with amending its AAWS rules as contemplated by the state statutes unless it received permission from the Governor's Office to do so. In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including the amendments to its AAWS rules that are contemplated by state

statutes. Although the Department received permission to proceed with some of the rule amendments recommended in its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with the amendments to its AAWS rules. For that reason, the Department did not proceed with the amendments.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that, with the changes proposed in this report, the probable benefits of R12-15-701 through R12-15-729 outweigh within this state the probable costs of the rules, and that the rules will impose the least burden and costs on regulated persons.

12. Are the rules more stringent than corresponding federal laws? Yes _____ No X _____

There is no federal corresponding law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

In 2011 the Department amended R12-15-723 to add a provision allowing certain extinguished irrigation grandfathered rights to be restored. The deadline for applying for the restoration has expired and therefore the provision does not currently require the issuance of a regulatory permit, license, or agency authorization.

Also in 2011, the Department made amendments to conform several of the rules in article 7 to the Department's new fee rules. These amendments do not require the issuance of a regulatory permit, license, or agency authorization.

In 2019, the Department made amendments to R12-15-722, R12-15-723, and R12-15-725. R12-15-722 was amended to limit the volume of groundwater that can be made consistent with the management goal using extinguishment credits created after January 1, 2019 in the Pinal Active Management Area. R12-15-725 was amended to include a new methodology for calculating extinguishment credits in the Pinal Active Management Area. R12-15-723 was amended to make a conforming change to be consistent with the new extinguishment credit calculation contained in R12-15-725. None of the amendments requires the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action:

As mentioned in section 4 above, the Department has not adopted AAWS rules contemplated by state statutes in the following three areas: (1) rules establishing criteria for demonstrating that groundwater proposed to be used by an applicant for an assured water supply determination in the Santa Cruz AMA is physically available for at least 100 years and consistent with the AMA's management goal; (2) rules providing for a reduction in demand for an application for a certificate or designation of assured water supply if a gray water reuse system will be installed; and (3) rules establishing criteria for determining whether to grant an exemption from the adequate water supply requirements under A.R.S. § 45-108.03 and criteria for demonstrating a physically available supply of groundwater in specific aquifer systems and basins outside of AMAs. **Also, as described in section 4 above, the AAWS rules will be inconsistent with several new and amended state statutes and a 1997 state session law when SB 1274 and SB 1366 become effective later in 2021.**

On May 20, 2021, the Department received permission from the Governor's Office to conduct an expedited rulemaking to address a number of the issues described above. Specifically, the Department received

permission to conduct an expedited rulemaking pursuant to A.R.S. § 41-1027 to amend the AAWS as follows:

1. Amend the AAWS rules to provide for a reduction in demand for an application for a certificate or designation of assured water supply if a gray water reuse system will be installed, as required by A.R.S. § 45-576(H).
2. Amend the AAWS rules to include criteria for determining whether to grant an exemption from the adequate water supply requirements pursuant to A.R.S. § 45-108.03, as required by Laws 2007, Chapter 240, § 10(b)(1).
3. Amend the AAWS rules to make the rules consistent with the following statutes added or amended by SB 1274:
 - a. A.R.S. § 45-576.08, which: (1) provides that the Director shall not review the physical availability of groundwater and stored water to be recovered outside of the area of impact of storage for an application to modify a designation of assured water supply in the Pinal Active Management Area if certain criteria are met; (2) specifies that stored water recovered under certain conditions is deemed to be physically available for purposes of an assured water supply designation; and (3) defines “area of impact of storage,” “long-term storage credit” and “stored water.”
 - b. A.R.S. § 579(A)(2), which provides that for purposes of an assignment of a certificate of assured water supply, a change in the total number of housing units or lots does not constitute a material change in a subdivision plat, plan or map if there is a reduction in the total water demand for the subdivision.
 - c. A.R.S. § 45-579.01, which provides that for the purpose of determining whether changes to a plat for which a certificate of assured water supply has been issued are material, the Director shall not consider any change in the number of housing units or lots if there is a reduction in the total water demand for the subdivision.
4. Amend the AAWS rules to apply the provisions of A.R.S. § 45-576.08 to the Phoenix, Prescott, Tucson and Santa Cruz active management areas, as authorized by A.R.S. § 45-576.09 added by SB 1274.
5. Amend R12-15-729 to extend the time period in which a specified volume of remediated groundwater withdrawn within the active management areas is deemed to be consistent with the management goal of the active management area in which the groundwater is withdrawn. The end date of the time period will be extended from January 1, 2025 to January 1, 2050, consistent with Laws 1997, Chapter 287, § 52 as amended by SB 1366.

The Department proposes to conduct a rulemaking to amend the AAWS rules to make the changes listed above. Because the rulemaking would not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated, the Department proposes to conduct the rulemaking as an expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7). The Department proposes to file a notice of proposed expedited rulemaking with the Secretary of State within 180 days after approval of this report by the Council and submit a notice of final expedited rulemaking to the Council by February 15, 2022.

Based on conversations between the Department and the Governor’s Office in May 2021, the Department does not anticipate that it would receive permission from the Governor’s Office to conduct a rulemaking to make the following amendments to the AAWS rules as contemplated by state statutes: (1) establish criteria for demonstrating that groundwater proposed to be used by an applicant for an assured water supply determination in the Santa Cruz AMA is physically available for at least 100 years and consistent with the AMA’s management goal; and (2) establish criteria for demonstrating a physically available supply of

groundwater in specific aquifer systems and basins outside of AMAs, as required by Laws 2007, Chapter 240, § 10(b)(2). For that reason, the Department does not propose to conduct a rulemaking to make those rule amendments.

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS – R12-15-801 THROUGH R12-15-852

1. Authorization of the rule by existing statutes:

R12-15-801 through R12-15-852 are authorized generally by A.R.S. § 45-105(B)(1), which authorizes the director to adopt rules as necessary to carry out the purposes of title 45, Arizona Revised Statutes. In addition, A.R.S. § 45-594(A) provides the director “shall adopt rules establishing construction standards for new wells and replacement wells, the deepening and abandonment of existing wells and the capping of open wells.” A.R.S. § 45-591.01 provides the director may by rule or regulation “exempt exploration wells from any requirement of this article that the director determines is not necessary for the protection of groundwater.”

A.R.S § 45-605(E) requires the director to adopt rules requiring review of notices and applications regarding new or replacement wells to identify whether a well will be located where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination by the well. The rules must require that a new or replacement well in such a location be designed and constructed in a manner to prevent vertical cross-contamination within an aquifer.

Finally, A.R.S. § 45-595(C) requires the director to establish by rule qualifications and a reasonable fee of not more than fifty dollars for licenses for well drillers and to establish procedures for the evaluation and licensing of all applicants. Copies of these statutes are attached at tab C6 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-801	This rule defines terms used in Article 8.
R12-15-802	This rule defines the scope of Article 8 by describing the man-made openings in the earth that are subject to this Article.
R12-15-803	This rule requires persons other than single well licensees or well drilling contractor employees to obtain a drilling license from the Department before engaging in well drilling or abandonment and requires that persons comply with the well drilling standards in Article 8 when drilling or abandoning a well.
R12-15-804	This rule prescribes the contents of well drilling license applications and prescribes character, reputation and experience requirements for a license.
R12-15-805	This rule requires the director to offer an examination for a well drilling license at least six times per year to test applicant’s general and specific knowledge of well drilling, and sets forth examination standards.
R12-15-806	This rule prescribes the fee for a well driller’s license, and the expiration date, renewal conditions, display conditions, and license attributes of a well driller’s license.
R12-15-807	This rule sets forth the information to be submitted by a single well license applicant; requires the director to offer an examination for single well licenses at least six times yearly; and sets forth the examination standards and license attributes.
R12-15-808	This rule allows the director to revoke or suspend any well driller’s license, or place on probationary status any well drilling or single well drilling license holder, for good cause, including violation of any applicable well construction statute or rule.

R12-15-809	This rule requires that a notice of intention to drill a well be signed by the owner or lessee of the property upon which the well will be drilled.
R12-15-810	This rule requires as a pre-condition of drilling a well that a well drilling contractor or licensee have possession of a drilling card issued by the director or follow the emergency authorization procedures defined in the rule.
R12-15-811	This rule sets forth minimum construction standards for wells, including requirements for installing a well casing, surface seal and access port in most wells. The rule also sets forth requirements for gravel packed wells; requirements for vents; a requirement to protect the aquifer from contamination by drilling materials; requirements for monitor wells; and requirements for wells constructed below the land surface.
R12-15-812	This rule prescribes additional construction standards for artesian wells and wells located in areas with mineralized or polluted water
R12-15-813	This rule requires that wells left unattended during drilling be covered to prevent contamination.
R12-15-814	This rule requires that wells to be used for human consumption or culinary purposes be disinfected according to Arizona Department of Health Services standards before the drill rig is removed.
R12-15-815	This rule prohibits removal of a drill rig from the well site unless the well is properly abandoned or constructed in conformance with Article 8 and either sealed with a cap or equipped with a pump.
R12-15-816	This rule requires that the Department receive notice before and after a well is abandoned, prohibits a well drilling contractor or single well license from abandoning a well without an abandonment authorization card from the director, except for the abandonment of a well in the course of drilling the well, and prescribes abandonment construction standards.
R12-15-817	This rule requires notification to the Department prior to exploration well drilling, prescribes construction and abandonment standards for exploration wells, and requires a completion report for exploration wells.
R12-15-818	This rule is designed to prevent contamination of wells by prohibiting the drilling of wells, except monitor wells and piezometer wells, within 100 feet of any septic tank system, sewage disposal area, landfill, hazardous waste facility, hazardous materials storage area or petroleum storage area unless authorized in writing by the director.
R12-15-819	This rule prohibits, except as authorized by the Arizona Department of Environmental Quality, the use of wells for storage or disposal of sewage, toxic industrial waste, or other materials that may pollute groundwater.
R12-15-820	This rule allows the director to grant variances from Article 8 provisions and sets forth the conditions for granting a variance.
R12-15-821	This rule allows the director to set more stringent well construction requirements than those set forth in Article 8 if it is determined that the standards in Article 8 would not adequately protect the aquifer or other water users.
R12-15-822	This rule requires that the owner of an open well either install a cap on the well or abandon the well and prescribes the standards and reporting requirements for well capping.
R12-15-823	Reserved
R12-15-824	Reserved
R12-15-825	Reserved
R12-15-826	Reserved

R12-15-827	Reserved
R12-15-828	Reserved
R12-15-829	Reserved
R12-15-830	Reserved
R12-15-831	Reserved
R12-15-832	Reserved
R12-15-833	Reserved
R12-15-834	Reserved
R12-15-835	Reserved
R12-15-836	Reserved
R12-15-837	Reserved
R12-15-838	Reserved
R12-15-839	Reserved
R12-15-840	Reserved
R12-15-841	Reserved
R12-15-842	Reserved
R12-15-843	Reserved
R12-15-844	Reserved
R12-15-845	Reserved
R12-15-846	Reserved
R12-15-847	Reserved
R12-15-848	Reserved
R12-15-849	Reserved
R12-15-850	This rule: (1) requires the Department to determine whether a proposed well will be located in a groundwater basin or sub-basin in which there is a Water Quality Assurance Revolving Fund (“WQARF”) site, and if so, requires the Department to notify the person proposing to drill the well of the location of the site and of the requirement to notify the Department in advance of the date the well will be drilled; and (2) requires the Department to determine whether a proposed well will be located in an area where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination of groundwater and, if so, authorizes the director to establish site-specific construction requirements.
R12-15-851	This rule requires a well owner to give the Department notice when drilling will commence if the well will be drilled in a groundwater basin or sub-basin in which there is a WQARF site.
R12-15-852	This rule requires the director to give well owners within community involvement areas or other areas selected for inspection at least 30 days’ notice and an opportunity to comment before an inspection for vertical cross-contamination of groundwater.

3. **Are the rules effective in achieving their objectives?** Yes X No

The Department believes that R12-15-801 through R12-15-852 are effective and meet the objectives for which they are designed. The well construction and licensing rules in R12-15-801 through R12-15-822 have allowed the Department to monitor and control the construction, deepening, modification and abandonment of wells so as to preserve more and better-quality groundwater than otherwise might have been preserved. The well capping requirement has protected groundwater from contamination and protected the public from the dangers of open wells. The vertical cross contamination rules, R12-15-850 through R12-15-852, have been effective in the determination of potential vertical cross-contamination of wells, and in the notification of applicants and well owners.

R12-15-801 through R12-15-852 allow the Department to monitor and control the construction and abandonment of wells in Arizona, and to do so in a manner that protects the public’s interests, including health and safety. The rules create standards for the location, construction and abandonment of wells and standards for the licensing of well drillers. These rules require the capping or abandonment of open wells and provide standards for well capping. The rules also establish a procedure so that the Department can determine whether a proposed well will be drilled within a groundwater basin or sub-basin where a Water Quality Assurance Revolving Fund (“WQARF”) site is located and if so, notify the applicant of that fact.

4. **Are the rules consistent with other rules and statutes?** Yes X No

R12-15-801 through R12-15-852 are consistent with existing statutes or other rules made by the Department and the current Department enforcement policy.

5. **Are the rules enforced as written?** Yes X No

R12-15-801 through R12-15-852 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes X No

R12-15-801 through R12-15-852 are generally clear, concise and understandable. The rules provide detailed definitions of technical terms and most citations and cross-references are correct. However, the Department recognizes that these rules are older (originally adopted in 1984), and several rules require stylistic changes to update the rule language. Those changes will be incorporated on a rule by rule basis as substantive changes to each rule are made.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

The Department has not received written criticisms of R12-15-801 through R12-15-852 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D9 of the Appendix for the EIS submitted with R12-15-801 through R12-15-822 and the EIS for R12-15-850, R12-15-851 and R12-15-852 and tab D15 for the EIS submitted with technical amendments adopted in 2007.

In fiscal year 2016, the Department received 3 applications for well drilling licenses, 195 applications for reissuance or renewal of well drilling licenses and 1 application for single well licenses. In fiscal year 2017, the Department received 4 applications for well drilling licenses, 249 applications for reissuance or renewal of well

drilling licenses and 0 applications for single well licenses. In fiscal year 2018, the Department received 2 applications for well drilling licenses, 206 applications for reissuance or renewal of well drilling licenses and 0 applications for single well licenses. In fiscal year 2019, the Department received 3 applications for well drilling licenses, 250 applications for reissuance or renewal of well drilling licenses and 0 applications for single well licenses. After reviewing each EIS and examining the impact that R12-15-801 through R12-15-852 have actually had on the public, the Department has concluded that the actual effect has been approximately the same as predicted in each EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes _____ No X

The Department has not received any analysis from another party that compares the impact of R12-15-801 through R12-15-852 on this state’s business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

In its 2016 Five-Year Rule Review Report, the Department stated that if it were to receive permission from the Governor’s Office to proceed with a rule package of technical rule amendments, it would include in the rule package the following technical amendments to two of the Department’s well construction rules: (1) revisions to R12-15-811(A)(3) and (4) to update the references to the American Society for Testing and Materials standard specifications; and (2) revisions to R12-15-814 to update the references to Arizona Department of Health Services engineering bulletins. In October 2016, the Department met with the Governor’s office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including a rule package of technical rule amendments. Although the Department received permission to proceed with some of the rule amendments recommended its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with a rule package of technical rule amendments. For that reason, the Department did not conduct a rulemaking to make the technical amendments to the two well construction rules described above. **As explained in section 14 below, the Department recently received permission from the Governor’s office to conduct an expedited rulemaking to make these amendments, and it is proposing to conduct an expedited rulemaking pursuant to A.R.S. § 41-1027.**

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-801 through R12-15-852 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes _____ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Except for amendments in 2011 to conform R12-15-806 to the 2011 Fee Rules, none of the rules were adopted or amended after July 29, 2010. Therefore, A.R.S. § 41-1037 does not apply to these rules.

14. Proposed course of action:

On May 20, 2021, the Department received permission from the Governor’s Office to conduct an expedited rulemaking pursuant to A.R.S. § 41-1027 to make the following amendments to the Department’s well construction rules: (1) amend R12-15-811(A) to update the references to the American Society for Testing and Materials standard specifications; and (2) amend R12-15-814 to update the references to the Arizona Department of Health Services’ engineering bulletins. Because the rulemaking would not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated, the Department proposes to conduct the rulemaking as an expedited rulemaking pursuant to A.R.S. § 41-1027(A)(6) and (7). The Department proposes to file a notice of proposed expedited rulemaking with the Secretary of State within 180 days after approval of this report by the Council and submit a notice of final expedited rulemaking to the Council by February 15, 2022.

ARTICLE 9. WATER MEASUREMENT – R12-15-901 THROUGH R12-15-909

1. Authorization of the rule by existing statutes:

R12-15-901 through R-12-15-909 are authorized by A.R.S. § 45-105(B)(1) and 45-604(E). Copies of these statutes are attached at tab C7 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-901	This rule defines terms used in Article 9.
R12-15-902	This rule requires persons responsible for using water measuring devices to use only those devices that are approved by the director. This rule also sets forth standards for the number of measuring devices that must be used and the locations where the devices must be installed.
R12-15-903	This rule sets forth the standards for an approved measuring device, requires that approved measuring devices be used with measuring methods approved by the director, and lists those measuring methods that are approved.
R12-15-904	This rule requires persons responsible for using water measuring devices to file an annual report with the director and lists information that must be included in that report to allow the Department to verify whether the requirements of Article 9 have been met.
R12-15-905	This rule requires that a measuring device be installed, maintained and used in a manner that: (1) ensures that its measurement error is not greater than 10% of the actual flow rate; and (2) allows the Department to readily check the accuracy of the device.
R12-15-906	This rule requires that a person responsible for using a water measuring device take the following action if the device fails to perform its designated function for more than 72 hours: (1) notify the director within seven days after discovery of the failure; (2) correct the malfunction; and (3) estimate the flow during the period of malfunction.
R12-15-907	This rule requires irrigation grandfathered rightholders to estimate and report to the Department the amount of water used from a common distribution system if water is measured at the point of delivery to the common distribution system, but not at a point of delivery to each rightholder. This rule lists two methods for estimating the amount of water

	used by each rightholder.
R12-15-908	This rule provides that the person responsible for using a water measuring device is liable for any fines, penalties or other sanctions resulting from the installation, monitoring, use or accuracy of the measuring device, method or recordkeeping even though the installation, monitoring, use or recordkeeping was done by an agent of the person.
R12-15-909	This rule: (1) allows the use of alternative water measuring devices or methods if approved in advance by the director; (2) allows persons to substitute equivalent information for the information required to be included in an annual report if approved in advance by the director; (3) exempts municipal providers from the reporting and notification requirements with respect to metered service connections; and (4) allows municipal providers and irrigation districts to notify the director of measuring device malfunctions at the time of filing their annual report if they have a schedule for regularly maintaining measuring devices and obtain approval from the director.

3. **Are the rules effective in achieving their objectives?** Yes No

The Department believes that R12-15-901 through R12-15-909 are effective and meet their objective of standardizing approved water measuring devices and methods. These rules prescribe the criteria for approved water measuring devices and methods, and outline the reporting requirements for persons using measuring devices.

4. **Are the rules consistent with other rules and statutes?** Yes No

R12-15-901 through R12-15-909 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. **Are the rules enforced as written?** Yes No

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-901 through R12-15-909 are clear, concise and understandable. The rules provide detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-901 through R12-15-909 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D10 of the Appendix for the EIS submitted with R12-15-901 through R12-15-909. After reviewing the EIS and examining the impact that R12-15-901 through R12-15-909 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-901 through R12-15-909 on this state’s business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

The Department’s previous five-year review did not recommend any changes to R12-15-901 through R12-15-909.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-901 through R12-15-909 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. **Proposed course of action:**

None.

ARTICLE 10. REPORTING REQUIREMENTS FOR ANNUAL REPORTS, ANNUAL ACCOUNTS, OPERATING FLEXIBILITY ACCOUNTS, AND CONVEYANCES OF GROUNDWATER RIGHTS – R12-15-1001 THROUGH R12-15-1017

1. **Authorization of the rule by existing statutes:**

R12-15-1001 through R12-15-1017 are authorized by A.R.S. §§ 45-105(B)(1), 45-467(B), and 45-632(M). Copies of these statutes are attached to this report at tab C8 of the Appendix.

2. **The objective of each rule:**

Rule	Objective
R12-15-1001	This rule defines terms used in Article 10.
R12-15-1002	This rule requires that annual reports and annual accounts be submitted on forms approved by the director and allows annual reports and annual accounts to be filed in the same report.
R12-15-1003	This rule establishes accuracy requirements for annual reports.
R12-15-1004	This rule provides that a person responsible for filing an annual report is liable for any fines, penalties, or other sanctions resulting from the filing or contents of the annual report, even if the report is filed by another person. The rule also creates a rebuttable presumption that a report filed on behalf of a responsible party was filed with the responsible party’s knowledge, consent, and authorization if the responsible party did not file an annual report for the year.
R12-15-1005	This rule requires responsible parties to include in their annual reports any monitoring and reporting information required by a management plan.
R12-15-1006	This rule requires a person recovering water pursuant to a recovery well permit to provide

	additional information with his or her annual report regarding the persons to whom the recovered water was delivered, the quantity of recovered water delivered to each person, the uses to which the recovered water was put, and the quantity of each type of water delivered to each person.
R12-15-1007	This rule requires persons filing annual accounts to report the quantity of water provided to specific classes of users.
R12-15-1008	This rule sets forth the information that must be included in an annual report filed by a person who withdraws, receives or uses groundwater pursuant to an irrigation grandfathered right so that the Department has the information necessary to maintain the person’s flexibility account under A.R.S. § 45-467. The rule also sets forth the information that must be included in an annual account filed by a water deliverer.
R12-15-1009	This rule implements A.R.S. § 45-467(D)(2) by establishing a formula for calculating credits to a farm’s flexibility account in a manner that will allow the farm to receive a credit only for the amount of water not used which would have been groundwater.
R12-15-1010	This rule encourages the use of tailwater on farms by: (1) excluding from a farm’s operating flexibility account calculation the amount of measured and recorded tailwater deliveries to another farm or an irrigation district; and (2) excluding tailwater use from the recipient farm’s operating flexibility account calculation to the extent that it would cause a debit to be registered to the account if the tailwater was not measured and recorded by the originating farm pursuant to a plan approved by the director. The rule also provides how tailwater must be accounted for by persons delivering or receiving tailwater.
R12-15-1011	This rule requires the Department to annually provide and amend, if necessary, a statement of the status of an operating flexibility account to the owner or user of the irrigation grandfathered right.
R12-15-1012	This rule notifies the public that the accounting provisions of Article 10 shall not be construed to determine the legality of any water use.
R12-15-1013	This rule requires that the person responsible for filing an annual report or annual account maintain all records necessary to verify those documents for three years.
R12-15-1014	This rule sets forth the dates when the Department shall consider reports filed and fees paid; allows persons filing incomplete annual accounts and annual reports 30 days after receiving notice of the inadequacy to provide the missing information; and provides for extensions of time to file annual reports and pay fees.
R12-15-1015	This rule establishes reporting and accounting requirements for conveyances of grandfathered rights and sets forth information that must be included in a request to convey a groundwater withdrawal permit.
R12-15-1016	This rule requires water providers that deliver spillwater to include in their annual report for the year: (1) the quantity of spillwater delivered for non-irrigation use; (2) the quantity of spillwater delivered for irrigation use; and (3) such other information as the director may reasonably require to determine whether the water qualifies as spillwater.
R12-15-1017	This rule provides that a community water system required to file an annual report under A.R.S. § 45-343 must maintain the report on a calendar year basis and file the report with the Department no later than June 1 of each year for the preceding calendar year.

3. **Are the rules effective in achieving their objectives?** Yes No

The Department believes that R12-15-1001 through R12-15-1017 are effective and meet their objective of allowing the Department to receive an accurate report of water use by persons required to file an annual report or annual account.

These rules implement the statutes in Title 45 of the Arizona Revised Statutes that require certain water users and

water providers to submit annual reports of their water use or service. This information is critical to manage the State’s water supplies. The rules inform water users and water providers of the information to be recorded and reported; specify who is liable for any fines and penalties resulting from the filing of an annual report when the report is filed on behalf of the responsible party by another person; set forth criteria for registering credits to a farm’s flexibility account; specify the length of time that records for an annual account or annual report must be retained; and provide requirements for filing annual reports and accounts and community water system reports.

4. **Are the rules consistent with other rules and statutes?** Yes No

R12-15-1001 through R12-15-1017 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy. In addition to the authorizing statutes, the rules are consistent with A.R.S. §§ 45-467, 45-468, 45-482, 45-614 and 45-632.

5. **Are the rules enforced as written?** Yes No

R12-15-1001 through R12-15-1017 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-1001 through R12-15-1017 are clear, concise and understandable. The rules provided detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-1001 through R12-15-1017 within the past five years.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D11 of the Appendix for the EIS submitted with R12-15-1001 through R12-15-1017. In fiscal year 2015-2016, the Department anticipates receiving 6,030 annual reports from groundwater users in the five AMAs, including water providers, type 1 non-irrigation right-holders, type 2 non-irrigation right-holders, irrigation grandfathered right-holders, and persons holding groundwater withdrawal permits, recharge permits and assured and adequate water supply designations as well as from groundwater users in the three Irrigation Non-Expansion Areas and community water systems. After reviewing the EIS and examining the impact that R12-15-1001 through R12-15-1017 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-1001 through R12-15-1017 on this state’s business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

The Department’s previous five-year review did not recommend any changes to R12-15-1001 through R12-15-1017.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-1001 through R12-15-1017 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. **Proposed course of action:**

None.

ARTICLE 11. INSPECTIONS AND AUDITS – R12-15-1101 AND R12-15-1102

1. **Authorization of the rule by existing statutes:**

Authority for R12-15-1101 and R12-15-1102 is located in A.R.S. §§ 45-105(B)(1), 45-135(B), 45-633(B), 45-880.01(B) and 45-1061(B). Copies of these statutes are attached to this report at tab C9 of the Appendix.

2. **The objective of each rule:**

Rule	Objective
R12-15-1101	This rule: (1) sets forth procedures that must be followed by the Department in conducting authorized inspections on private or public property to ensure that adequate notice is given prior to the inspection, except in cases where notice would frustrate the enforcement of Title 45 or when entry is sought solely for the purpose of inspecting a water measuring device; and (2) requires the Department to provide a post-inspection report to a person whose records or property are inspected.
R12-15-1102	This rule sets forth procedures that the Department must follow in conducting authorized audits of records and other information to ensure that adequate notice of an audit is given to the person subject to the audit. This rule also requires the Department to provide a post-audit report to the person subject to the audit.

3. **Are the rules effective in achieving their objectives?** Yes X No ___

These rules set forth the procedures for conducting inspections and audits authorized or required by Title 45. The Department believes that R12-15-1101 and R12-15-1102 are effective and meet their intended objective of establishing the procedures necessary for inspections and audits.

4. **Are the rules consistent with other rules and statutes?** Yes X No ___

R12-15-1101 and R12-15-1102 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. **Are the rules enforced as written?** Yes X No ___

R12-15-1101 and R12-15-1102 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-1101 and R12-15-1102 are clear, concise and understandable. The rules provide detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received any criticisms of R12-15-1101 and R12-15-1102 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D12 of the Appendix for the EIS submitted with R12-15-1101 and R12-15-1102. After reviewing the EIS and examining the impact that R12-15-1101 and R12-15-1102 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-1101 and R12-15-1102 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review report did not recommend any changes to R12-15-1101 and R12-15-1102.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the benefits of R12-15-1101 and R12-15-1102 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. **Proposed course of action**

None.

ARTICLE 12. DAM SAFETY PROCEDURES – R12-15-1201 THROUGH R12-15-1226

1. Authorization of the rule by existing statutes:

R12-15-1201 through R12-15-1226 are authorized by A.R.S. §§ 45-105(B)(1) and 45-1202(C). Copies of these statutes are attached to this report as tab C10 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-1201	This rule sets forth the scope of Article 12.
R12-15-1202	This rule defines terms used in Article 12.
R12-15-1203	This rule exempts certain structures based on size and storage capacity; exempts dams owned or operated by agencies or instrumentalities of the federal government regardless of size if covered by a dam safety program at least as stringent as the program described in Article 12; and exempts other structures not typically considered to be dams.
R12-15-1204	This rule requires dam owners to obtain, in advance, the director’s approval of dam design criteria; recommends that dam owners and engineers consult design guidelines published by federal agencies for the design of certain types of dams; and provides that the director may require that other criteria be used or revise any of the specific criteria for the purpose of dam safety.
R12-15-1205	This rule provides that a dam owner is responsible for the safe design, operation, maintenance, and inspection of the dam; requires dam owners to develop and maintain emergency action plans for dams; requires dam owners to operate, maintain, repair, inspect and monitor their dams; and requires notification to the Department if ownership of a dam changes.
R12-15-1206	This rule establishes size and hazard potential classifications of dams; requires applicants to demonstrate the hazard potential of a dam before filing an application to construct; and authorizes the Department to revise the hazard potential classification of a dam in accordance with current conditions.
R12-15-1207	This rule requires prior written approval from the director to construct, reconstruct, repair, enlarge, remove, alter or breach a dam; provides that such approval is valid for one year unless extended by the director; waives application requirements in emergency situations for routine maintenance or ordinary repairs and for breach, removal, or reduction of very low hazard dams; authorizes the director to relieve a dam owner from a requirement in Article 12 if the requirement is unduly burdensome or expensive and is not necessary to protect human life or property; requires pre-application meetings with the Department; and defines Department application review procedures.
R12-15-1208	This rule sets forth application requirements for an application to construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam.
R12-15-1209	This rule sets further application requirements for an application to breach or remove a high or significant hazard potential dam; prescribes the procedures that must be followed in breaching a high or significant hazard potential dam; and allows the director to approve by letter the reduction of a high or significant downstream hazard potential dam to non-jurisdictional size under certain circumstances.
R12-15-1210	This rule sets forth application requirements for an application to construct, reconstruct, repair, enlarge, alter, breach or remove a low hazard potential dam; requires written notice to the director prior to reducing a low hazard potential dam to non-jurisdictional size; establishes the time in which the Department must take action on an application for

	construction, reconstruction, repair, enlargement, alteration, breach or removal of a dam; requires post-construction information to be submitted to the Department; and requires the owner of a low hazard potential dam to immediately commence any repairs necessary to safeguard human life and property and prevent failure and improper operation of the dam.
R12-15-1211	This rule sets forth application requirements for an application to construct, reconstruct, repair, enlarge, or alter a very low hazard potential dam; establishes the time in which the Department must take action on such an application; requires written notice to the director prior to breaching, removing or reducing to non-jurisdictional size a very low hazard potential dam; requires post construction information to be submitted to the Department; allows inspections by the Department after construction; and requires the owner of a very low hazard potential dam to immediately commence repairs necessary to safeguard human life and property and prevent failure and improper operation of the dam.
R12-15-1212	This rule prescribes procedures for the construction of a high, significant or low hazard potential dam, including a pre-construction conference and periodic inspections and supervision by an engineer; requires approval of any construction changes; and requires post-inspection by the Department.
R12-15-1213	This rule requires the owner of a significant or high hazard potential dam to file completion documents after construction or removal of the dam, including construction drawings and records and, if applicable, a schedule for filling the reservoir and an operating manual for the dam.
R12-15-1214	This rule prohibits the owner of a significant or high hazard dam from using the dam or reservoir until the director issues a license for the dam, requires the director to issue a license for the dam if the dam is safe and was completed in accordance with approved plans and specifications, and lists circumstances requiring the issuance of a new license.
R12-15-1215	This rule imposes upon the owner and engineer of a dam the responsibility for completion and adequate design of a dam, including providing in the application all aspects of the design relating to the safety of the dam. The rule also sets forth the requirements for construction drawings, construction specifications and engineering design reports for high, significant and low hazard potential dams.
R12-15-1216	This rule sets forth general design requirements for high, significant and low hazard dams, including emergency spillway requirements, inflow design flood requirements, outlet works requirements, dam site and reservoir area requirements, geotechnical requirements, seismic requirements and embankment dam requirements. This rule also sets forth miscellaneous design requirements.
R12-15-1217	This rule requires dam owners to perform general maintenance and ordinary repairs that do not impair the safety of the dam; requires prior approval of the director before performing repairs or maintenance that may impair or adversely affect safety or before taking emergency actions impairing the safety of the dam; requires notice to the director of any emergency situation; and requires emergency actions during emergency situations.
R12-15-1218	This rule allows the director to determine the safe storage level of the reservoir created by a dam and prohibits the dam owner from storing water in excess of that level.
R12-15-1219	This rule establishes safety inspection schedules, requirements and procedures; provides a process for the Department to follow when it receives a complaint that a dam is endangering people or property; and authorizes the director to enter private or public property to inspect dams and determine compliance with dam safety statutes and rules.
R12-15-1220	This rule requires owners of existing dams to comply with the requirements of Article 12, except that: (1) a dam owner is not required to comply with the design requirements in R12-

	15-1216 if the director has determined that the dam is in a safe condition, unless the director determines that it is cost effective to upgrade the dam to comply with the requirements at the time a major alteration or major repair of the dam is planned; and (2) a dam owner is not required to comply with a requirement if the director finds that the requirement is unduly burdensome or expensive and is not necessary to protect human life or property.
R12-15-1221	This rule requires the owner of a high or significant hazard potential dam to prepare, maintain, review, update and exercise a written emergency action plan.
R12-15-1222	This rule makes the director’s decisions under Article 12 appealable agency actions pursuant to the Administrative Procedure Act, except for emergency measures and actions exempted from review by law. The rule also allows an applicant or owner to seek review of an engineering decision by a board of review.
R12-15-1223	This rule allows the Department to exercise discretion in taking actions necessary to prevent danger to human life or property and sets forth enforcement procedures the Department may take when the director has cause to believe that a dam is unsafe or a person is in violation or has violated a provision of Article 12 or a statute governing dam safety.
R12-15-1224	This rule requires a dam owner to notify the Department, emergency authorities and downstream communities of conditions that may threaten the safety of the dam; requires an owner in these situations to take listed emergency actions to protect human life and property; and requires the director to issue an emergency approval for repairs, alterations and removal of an existing dam to alleviate an immediate threat to human life or property.
R12-15-1225	This rule allows the director to use dam repair funds to employ remedial measures necessary to protect human life and property when the dam owner is unable or unwilling to take action and there is not sufficient time to issue and enforce an order. The rule also provides that the director shall hold a lien against all property of the owner for money expended under this rule, as provided in A.R.S. § 45-1212.
R12-15-1226	This rule authorizes the director to use the dam repair fund to defray the costs of repairs for a dam that represents a threat to human life or property, but is not in an emergency condition; authorizes the director to grant or loan monies in the dam repair fund only to dams classified as unsafe by the director; and establishes the procedures for granting and loaning dam repair funds.

3. Are the rules effective in achieving their objectives? Yes X No

The Department believes that R12-15-1201 through R12-15-1226 are effective and meet the objectives for which they are designed. The dam safety procedure rules effectively outline the duties of both the Department and dam owners to improve dam safety.

These rules enable the Department to monitor jurisdictional dams and require improvements consistent with accepted engineering practices to ensure the safety of life and property.

4. Are the rules consistent with other rules and statutes? Yes X No

R12-15-1201 through R12-15-1226 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. Are the rules enforced as written? Yes X No

R12-15-1201 through R12-15-1226 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes X No

R12-15-1201 through R12-15-1226 are clear, concise and understandable. The rules provide detailed definitions of technical terms, and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

The Department has not received written criticisms of R12-15-1201 through R12-15-1226 within the past five years, including written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D13 of the Appendix for the EIS submitted with R12-15-1201 through R12-15-1226 and tab D13 of the Appendix for the EIS submitted with a 2007 technical amendments rule package that made technical amendments to R12-15-1210.

In fiscal year 2016, the Department performed 88 dam safety inspections for all hazard potential dams. In fiscal year 2017, the Department performed 127 dam safety inspections for all hazard potential dams. In fiscal year 2018, the Department performed 136 safety inspections for all hazard potential dams. Lastly, in fiscal year 2019, the Department performed 134 dam safety inspections for all hazard potential dams. After reviewing the EIS and examining the impact that R12-15-1201 through R12-15-1226 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No X

The Department has not received any analysis from another party that compares the impact of R12-15-1201 through R12-15-1226 on this state’s business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

In its 2016 Five-Year Rule Review Report, the Department stated that if it were to receive permission from the Governor’s Office to proceed with a rule package of technical rule amendments, it would include in the rule package an amendment to R12-15-1224(A)(2) to remove specific references to the Arizona Department of Public Safety’s emergency phone numbers. In October 2016, the Department met with the Governor’s office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including a rule package of technical rule amendments. Although the Department received permission to proceed with some of the rule amendments recommended its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with a rule package of technical rule amendments. For that reason, the Department did not proceed with the amendment to R12-15-1224(A)(2) described above. **As explained in section 14 below, the Department recently received permission from the Governor’s office to conduct an expedited rulemaking to make the amendment, and it is proposing to conduct an expedited rulemaking pursuant to A.R.S. § 41-1027.**

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-1201 through R12-15-1226 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Except for amendments in 2011 to conform several of the rules in Article 12 to amendments made to the Department’s fee rules in 2011, these rules were not adopted or amended after July 29, 2010. Therefore, A.R.S. § 41-1037 does not apply to these rules.

14. **Proposed course of action:**

On May 20, 2021, the Department received permission from the Governor’s Office to conduct an expedited rulemaking pursuant to A.R.S. § 41-1027 to amend R12-15-1224(A)(2) to remove specific references to the Arizona Department of Public Safety’s emergency phone numbers. Because the rulemaking would not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated, the Department proposes to conduct the rulemaking as an expedited rulemaking pursuant to A.R.S. § 41-1027(A)(6) and (7). The Department proposes to file a notice of proposed expedited rulemaking with the Secretary of State within 180 days after approval of this report by the Council and submit a notice of final expedited rulemaking to the Council by February 15, 2022.

ARTICLE 13. WELL SPACING REQUIREMENTS; REPLACEMENT WELLS IN APPROXIMATELY THE SAME LOCATION – R12-15-1301 THROUGH R12-15-1308

1. **Authorization of the rule by existing statutes:**

R12-15-1301 through R12-15-1307 are authorized by A.R.S. §§ 45-105(B)(1), 45-598(A) and 45-834.01(B)(1).

R12-15-1308 is authorized by A.R.S. §§ 45-105(B)(1) and 45-597(A).

Copies of these statutes are attached to this report as tab C11 of the Appendix.

2. **The objective of each rule:**

Rule	Objective
R12-15-1301	This rule defines terms used in Article 13.
R12-15-1302	This rule contains well spacing criteria for applications for well permits when construction of a new well or a replacement well in a new location will occur within an AMA pursuant to a grandfathered groundwater right, a service area right or a general industrial use permit. The rule prescribes that the director shall deny an application for a well permit if the director determines that the proposed well will cause unreasonably increasing damage to surrounding land and other water users due to one of the following factors: (1) ten feet of additional drawdown of water levels at a well of record after the first five years of operation of the proposed well; (2) additional regional land subsidence; or (3) the migration of contaminated groundwater to a well of record. The director may not consider the impacts on a well of record if the owner of the well of record consents to the impact.

R12-15-1303	This rule contains well spacing criteria for applications for recovery well permits throughout the state. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302 with certain exceptions, including: (1) R12-15-1303(B)(1) requires that an applicant for a recovery well permit must submit a hydrological study delineating those areas surrounding the proposed well in which the projected impacts on water levels from recovery of the stored water will exceed 10 feet of additional drawdown after the first five years; and (2) R12-15-1303(C)(2) provides that if the proposed recovery well will be located within the area of impact of an underground storage facility and the applicant will account for all of the water recovered from the well as water stored at the facility, the director shall take into account the effects of water storage at the facility on the proposed recovery of stored water from the recovery well if the applicant submits a hydrologic study demonstrating those effects to the satisfaction of the director.
R12-15-1304	This rule contains well spacing criteria for wells drilled in the Little Colorado River plateau groundwater basin after January 1, 1991 for the purpose of withdrawing groundwater for transportation out of the basin. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302. Note that this rule does not apply to a replacement well in approximately the same location or a well drilled after January 1, 1991 if a notice of intent to drill had been filed on or before that date.
R12-15-1305	This rule contains well spacing criteria for applications to use a well-constructed after September 21, 1991 for the withdrawal of groundwater for transportation to an AMA. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302.
R12-15-1306	This rule contains well spacing criteria for applications for water exchange permits if there will be any new or increased pumping in an AMA by the applicant. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302. Note that this rule does not apply if the applicant for the water exchange permit is a city, town, private water company or irrigation district.
R12-15-1307	This rule contains well spacing criteria for notices of water exchange if there will be new or increased pumping in the AMA by a participant to the water exchange. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302.
R12-15-1308	This rule sets forth the criteria that a proposed well must meet in order to qualify as a replacement well in approximately the same location. These criteria fall into three basic categories: (1) the maximum distance the proposed replacement well may be from the original well; (2) the maximum annual volume of water the proposed replacement well may withdraw; and (3) the date by which a notice of intent to drill the replacement well must be filed if the well to be replaced has been abandoned.

3. **Are the rules effective in achieving their objectives?** Yes No

The Department believes that R12-15-1301 through R12-15-1308 are effective and meet their objective of preventing unreasonably increasing damage from new wells and replacement wells in new locations in certain areas of the state.

4. **Are the rules consistent with other rules and statutes?** Yes No

R12-15-1301 through R12-15-1308 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. **Are the rules enforced as written?** Yes No

R12-15-1301 through R12-15-1308 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-1301 through R12-15-1308 are clear, concise and understandable. The rules provide detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-1301 through R12-15-1308 within the past five years, including written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

8. **Economic, small business, and consumer impact comparison:**

Please refer to tab D14 of the Appendix for the EIS submitted with R12-15-1301 through R12-15-1308. After reviewing the EIS and examining the impact that R12-15-1301 through R12-15-1308 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-1301 through R12-15-1308 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review did not recommend any changes to R12-15-1301 through R12-15-1308.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-1301 through R12-15-1308 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. **Proposed course of action:**

None.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 15, Department of Health Services - Loan Repayment Program



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 13, 2021

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F21-0603)
Title 9, Chapter 15, Department of Health Services - Loan Repayment Program

Summary:

This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 15, regarding the Department of Health Services - Loan Repayment Program.

As the Department indicates, "A.R.S. §§ 36-2172 and 36-2174 provide authorization to the Department to establish a Loan Repayment Program (LRP) to pay portions of qualifying educational loans taken out by physicians, dentists, pharmacists, advance practice providers, and behavioral health providers who agree to provide primary care services to patients in Health Professional Shortage Areas (HPSAs) or Arizona Medically Underserved Areas (AzMUAs)."

In the previous 5YRR for these rules, which the Council approved in August 2011, the Department stated that it would amend the entirety of Chapter 15, which it did through a Notice of Exempt Rulemaking in 2016 in response to Laws 2016, Ch. 3. As a result, the Department requested that the Council reschedule the 5YRR for Chapter 15, which the Council granted, making the report due on or before March 31, 2021.

Proposed Action

In this 5YRR, the Department states that it plans to amend the rules as described in Item 14 by November 2021.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites both general and specific statutory authority for the rules under review.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

Pursuant to A.R.S. §§ 36-2172 and 36-2174, the Department is authorized to establish a Loan Repayment Program (LRP) to pay portions of qualifying educational loans taken out by physicians, dentists, pharmacists, advance practice providers, and behavioral health providers who agree to provide primary care services to patients in Health Professional Shortage Areas (HPSAs) or Arizona Medically Underserved Areas (AzMUAs). During fiscal year 2020, the Department received 120 initial applicants requesting to participate in the Loan Repayment Program. Out of the initial applicants received, 64 initial applications were approved for participation, 16 initial applications withdrawn by applicants, and 40 initial applications were either declined or rejected. The Department identifies the stakeholders as: the Department, primary care providers, service sites, and individuals who reside in a HPSA or AZMUA and receive primary care services provided by a primary care provider who takes part in the Loan Repayment Program. The 2016 Notice of Exempt Rulemaking did not require an economic, small business, and consumer impact statement. The Department expects that the Department incurred moderate costs to amend the rules and to update applicable administrative procedures.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department states that the probable benefits to regulated persons outweigh the probable costs of the rulemaking and the rules impose the least burden and cost to regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department did not receive any written criticisms of the rules within the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Department indicates that the rules are clear, concise, and understandable. However, it notes that R9-15-101 (Definitions) could be clarified for the reasons specified in the report.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Department indicates that the rules are consistent with other rules and statutes. However, it notes that recently signed legislation (HB 2126) made a change to statutes applicable to these rules. The rules have not yet been updated to reflect this change.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department states that the rules are effective in achieving their objectives. However, it notes that the rules' effectiveness could be improved as described in other sections of the report. It also identifies two rules, R9-15-207 (Primary Care Provider Health Service Priority) and R9-15-208 (Rural Private Primary Care Provider Health Service Priority) whose effectiveness could be improved.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department states that the rules are not more stringent than corresponding federal laws.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department states that the rules under review do not require the issuance of a regulatory permit, license, or agency authorization.

11. **Conclusion**

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff further notes that the Department identifies certain issues with the rules and proposes to amend them by November 2021, approximately five months from the date the Council will consider the report. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

March 26, 2021

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 15 Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Department of Health Services for A.A.C. Title 9, Chapter 15, which is due on March 31, 2021.

The Department of Health Services reviewed the following rules in A.A.C. Title 9, Chapter 15, with the intention that the rules, except for R9-15-205.01 do not expire pursuant to A.R.S. § 41-1056(J). The Department intends to allow R9-15-205.01 to expire since the rules is not longer necessary.

The Department of Health Services hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Teresa Koehler at 602-364-0813 or Teresa.Koehler@azdhs.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "RL", written over a blue horizontal line.

Robert Lane
Director's Designate

RL:tk

Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT
OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 15. Department of Health Services – Loan Repayment Program

March 2021

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-104, 36-132(A), and 36-136(G)

Implementing statutes: A.R.S. §§ 36-2172 and 36-2174

2. The objective of each rule:

Rule	Objective
R9-15-101	The objective of the Article 1, Definitions, rule is to provide definitions to assist readers' understanding of the requirements and content provided in the Article 2, Primary Care Provider Loan Repayment Program (LRP) rules.
R9-15-201	The objective of the rule, Primary Care Provider and Service Site Requirements, is to clarification of the qualifying educational loans that the Department accepts for receiving loan repayment funds; clarification of the obligations and debts not eligible for loan repayment funds; and requirements for lenders and loans including what loans are accepted and responsible of a primary care provider to communicate with each lender receiving loan repayment funds.
R9-15-202	The objective of the rule, Primary Care Provider and Service Site Requirements is to provide requirements for primary care providers who wish to participate in the LRP, including requirements for primary care service sites. The rule also lists circumstances that will prevent a primary care provider from being eligible for participation.
R9-15-203	The objective of the rule, Initial Application, is to provide requirements for primary care providers who wish to complete an initial application to participate in the LRP or reapply if an initial application was submitted previously, however, was not approved. The initial application request primary care provider information related to all areas applicable to the LRP such as education, loans, professional experience, and experience providing primary care services to the medically underserved population, including information related to service sites where the primary care provider plans to provide primary care services.
R9-15-204	The objective of the rule, Supplemental Initial Application, is to provide requirements for a primary care provider who submitted an initial application, was not approved, and wishes to resubmit a supplemental initial application. The rule requires a primary care provider to re-attest to certain requirements in the initial application restated in the supplemental initial application and either verify or update the primary care provider's lender information and employer/service site provider agreement.

R9-15-205	The objective of the rule, Renewal Application, is to specify how a primary care provider who may apply to continue or resume participation in the LRP and to provide requirements for updating and verifying the primary care providers' qualifying education, lender information, primary care services provided, and employer/service site provider agreements.
R9-15-206	The objective of the rule, Time-frames, is to specify Department approvals identified in Article 2. The approvals include: the initial application, supplemental initial application, renewal application, request for change, request to suspend a loan repayment contract, request to waive liquidated damages, and request to cancel a loan repayment contract.
Table 2.1	The objective of the table, Time-frames Table 2.1, is to establish durations for completing an administrative completeness review, a substantive review, and the overall time-frame for all types of approvals identified in R9-15-206.
R9-15-207	The objective of the rule, Primary Care Provider Health Service Priority, is to establish the factors and scoring points used to determine an application's health service priority score and whether a primary care provider will be allocated loan repayment funds.
R9-15-208	The objective of the rule, Rural Private Primary Care Provider Health Service Priority, is to establish the factors and points used to determine an application's health service priority score and whether rural private primary care provider will be allocated loan repayment funds.
R9-15-209	The objective of the Allocation of Loan Repayment Funds rule is to establish the order in which loan repayment funds are allocated and the amount of the loan repayment fund a primary care provider or rural private provider care provider may receive.
R9-15-210	The objective of the rule, Verification of Primary Care Services and Disbursement of Loan Repayment Funds, is to provide requirements for a primary care provider who reports to the Department the types of primary care services and primary care services hours worked. Additionally, the rule specifies the Department verification of primary care services provided and disbursement of loan repayment funds to the primary care provider.
R9-15-211	The objective of the rule, Request for Change, is to clarify information that a primary care provider shall provide to the Department if a change occurs regarding primary care provider's personnel contact, service sites, educational loans or lenders, primary care service hours worked, and employer. The rule also provides requirements for when a request to change shall be submitted to the Department.
R9-15-212	The objective of the rule, Loan Repayment Contract Suspension, is to provide requirements for a primary care provider who wishes to request a loan repayment contract suspension and for the administrative review process used by the Department when determining to approve or deny a request for a loan repayment contract suspension.
R9-15-213	The objective of the rule, Liquidated Damages for Failure to Complete a Loan Repayment Contract, is to clarify the actions taken by a primary care provider and the Department when a primary care provider is unable or does not intend to complete the terms of a loan repayment contract.

R9-15-214	The objective of the rule, Waiver of Liquidated Damages, is to clarify how a primary care provider, who is unable to complete the terms of a loan repayment contract may request a waiver to liquidated damages and the circumstances by which the Department may waive liquidated damages owed.
R9-15-215	The objective of the rule, Loan Repayment Contract Cancellation, is to clarify how a primary care provider may request to cancel a loan repayment contract prior to the start date of a loan repayment contract and the actions that the department may/shall take.

3. **Are the rules effective in achieving their objectives?** Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
	The rules are effective in achieving their objectives; however, as identified in paragraph 6, a rule could be improved to make clearer and more concise by amending antiquated definitions. In addition to matters identified in paragraph 6, the rules would be more effective, if in R9-15-207 and R9-15-208, the Department specified a scoring factor for qualified primary care providers who provide medical-assisted treatment (MAT) to individuals having an opioid addiction. Since the rules became effective in 2016, the Department has determined opioid addictions in all health professional shortage areas remain significant and to encourage qualified primary care providers to participate in the loan repayment programs, the Department proposes to add additional points for qualified primary care providers who provide MAT.

4. **Are the rules consistent with other rules and statutes?** Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
	The rules are consistent with other state statutes and rules, such as 9 A.A.C. 1, Article 5 Sliding-fee Schedules, A.R.S. Title 36, Chapter 21, Medically Underserved Areas, and A.R.S. Title 32, Professionals and Occupations. The Department notes that although the rules are consistent with current state statutes and rules, the Arizona State Legislature, 2021 First Regular Session, House Bill (HB) 2126 amends A.R.S. §§ 36-2172 and 36-2174 to add a requirement for “applicants [primary care providers] who work at an indian health service facility or tribal or urban indian health facility [ITUs] <u>is not required</u> to provide a sliding fee scale to be eligible for the program.” Current rule does require a primary care provider who provides primary care services at an ITU have a sliding-fee schedule to be eligible for the program.

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.

Rule	Explanation
	The rules are enforced as written without difficulty.

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-15-101	The rule would be clearer if in R9-15-101(39), the term “Physician” clarified “means a medical doctor licensed pursuant to A.R.S. Title 32, Chapter 13 or Chapter 17.” rather than requiring a user to reference A.R.S. § 36-2351 (currently cited) only to then be redirected to A.R.S. Title 32, Chapter 13 or Chapter 17. Additionally, in R9-15-101(41), the term “Population” is antiquated, since Arizona Medically Underserved Areas Health Services rule at A.A.C. R9-24-201 recently revised definition (19). Definition (19) revised “Population” to mean the number of residents of a place or an area, according to the most recent American Community Survey prepared by the U.S. Census Bureau.” If R9-15-101 (41) were amended to be consistent with A.A.C. R9-24-201(19) definition, the rule would be clearer and more concise. The rulemaking for 9 A.A.C. 24 became effective on September 25, 2020 at 26 A.A.R. 1991.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency’s Response

8. **Economic, small business, and consumer impact comparison (summary):**

Arizona Revised Statutes (A.R.S.) §§ 36-2172 and 36-2174 provide authorization to the Department to establish a Loan Repayment Program (LRP) to pay portions of qualifying educational loans taken out by physicians, dentists, pharmacists, advance practice providers, and behavioral health providers who agree to provide primary care services to patients in Health Professional Shortage Areas (HPSAs) or Arizona Medically Underserved Areas (AzMUAs). The rules for the Primary Care Provider Loan Repayment Program and the Rural Private Primary Care Provider Loan Repayment Program were made new in 2001 final rulemaking at 7 A.A.R. 2823, effective August 9, 2001. The final rulemaking established three new Articles and 39 new rules to replace rules being repealed from 9 A.A.C. 24, Article 4 in a separate rulemaking. In 2016, the Department again substantially amended the LRP rules in an exempt rulemaking to address changes specified in Laws 2015, Ch. 3 at 22 A.A.R. 851 and effective April 1, 2016. Laws 2015, Ch. 3 added physicians in the discipline of geriatrics and psychiatry, pharmacists, advance practice providers, and behavioral health providers to the list of providers; increased the amount of loan repayment funds primary care providers may receive; added telemedicine and part-time primary care providers; and provided a prioritization be given to state residents and primary care providers providing primary care services in high HPSAs.

Laws 2015, Ch. 3 also specified that the Department is exempt for the rulemaking requirements in Title 41, Chapter 6, and according, the Department did not submit an economic, small business, and consumer impact statement upon filing with the notice of expedited rulemaking. In this 2021 summary, the Department identifies regulated persons as the Department, primary care providers, service sites, and individuals who reside in a HPSA or AzMUA and receive primary care services provided by a primary care provider who takes part in the Loan Repayment Program. The Department uses the term ‘significant’ for some costs or benefits when meaningful or important, but not readily subject to quantification.

During fiscal year 2020, the Department received 120 initial applications requesting to participate in the Loan Repayment Program. Of the initial applications received, 64 initial applications were approved for participation, 16 initial applications were withdrawn by applicants, and 40 initial applications were either declined or rejected. The Department awarded loan repayment funds to 58 applicants of the approved 64 with the remaining six approved not awarded due to lack of funds. In 2020, the total monies awarded to new participates in the Loan Repayment Program was \$2,765,413.16. The Department also reports that COVID-19 did not affect loan repayment contracts directly in terms of numbers and did not impact receiving application during the application acceptance time periods. The Department did see some COVID-19 impacts in respect to primary care providers’ reduced hours worked, changes in service site locations, lay offs, and changes in employers.

The new Chapter 15 rules restructured and streamlined Article 1, 2, and 3 to eliminate redundant requirements. The Article 2 and Article 3 definitions were combined with Article 1, Definitions. Additionally, in Article 3, all 18 rules were repealed and one rule specific to AzMUAs prioritization of eligible service sites was added to Article 2. The Department updated and streamlined Article 2 rules and of the 18 existing Article 2 rules, added one rule from Article 3 and repealed three rules in R9-15-216, R9-15-217, and R9-15-218. In total the Department repealed 21 rules the 2016 rulemaking. The changes made to Article 1, Definitions, includes moving and updating applicable definitions from Article 2, R9-15-201, and Article 3, R9-15-301; deleting antiquated terms in Article 1, adding other-new definitions applicable to amended Article 2, and in Article 1 clarifies that definitions specified in A.R.S. §§ 36-401 and 36-2171 apply to the Chapter.

In addition to moving AzMUAs prioritization of eligible service sites (R9-15-308) from Article 3 to Article 2, the more significant changes in Article 2 are the new requirements specified in Law 2015, Ch. 3. The new Article 2 rules increase the types of primary care providers who may request to participate in the Loan Repayment Program and add clarification for types of direct patient care offered. New Article 2 adds primary care providers practicing pharmaceuticals, geriatrics, psychiatry including psychologist, clinical social worker, marriage and family therapist, and professional counselors. Women’s health and behavioral health were added to the types of direct patient care offered and telemedicine for general medical, dental, and behavioral health. The Department increased the amount of loan repayment funds a primary care provider working full-time may receive and added a second allocation of loan repayment funds for primary care providers who work part-time. The Department also, to comply with Laws 2015, Ch. 3, removed term “mid-level provider” previous in A.R.S. 36-2171 and added term “advance practice provider” in its place. Note: Although term “mid-level provider” was removed, Laws 2015, Ch. 3 did not reduce or

remove the types of health professionals who may participate in the Loan Repayment Program, and rather clarified and added additional health and behavioral health professionals who are eligible to participate.

The remaining changes made by Laws 2015, Ch. 3 requires applicants who are state residents to have a priority over non-resident applicants and requires the Department to include an applicant's service site's highest HPSA score established by U.S. Secretary of Health and Human Services and A.R.S. Title 36, Chapter 21, Arizona Medically Underserved Areas. For example, an applicant who is a state resident will receive four additional points added to the applicants' prima care provider health service priority (score) used to determine whether an applicant is approved to participate in the Loan Repayment Program. Additionally, in Article 2, the Department updated the prioritization requirements to be consistent with the federal loan repayment program requirements and added approval time-frames to provide clarification for applicants and potential applications. The Department, in both Articles 1 and 2, also amended antiquated terms and citations, removed terms and requirements no longer used, and drafted the new rules to conform to statutory authority and current rulemaking format and style requirements.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In 2016, the Department substantially revised Title 9, Chapter 15, Loan Repayment Program rules in response to Laws 2016, Ch. 3. The Notice of Exempt Rulemaking was filed with the Office of the Secretary of State on March 31, 2016 and the rules became effective April 1, 2016. On April 14, 2016, the Department requested that the Governor's Regulatory Review Council (Council) approve the Department's request to reschedule the 2016 five-year-review report for Title 9, Chapter 15 due June 30, 2016. The Council granted the Department's request for reschedule and made the five-year-review report due March 31, 2021. The Department, in the 2011 five-year-review report, indicated that it planned to amend the entirety of Chapter 15 as described in the five-year-review report. The Department in the 2016 Notice of Exempt Rulemaking addressed matters identified in the 2011 five-year-review report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

As stated in Item 8, the Chapter 15 rules provide repayment of eligible educational loans for primary care providers in exchange for providing primary care services to individuals in a HPSA or a private primary care provider in exchange for primary care services to individuals in a rural AzMUA. The Department identifies regulated persons as the Department, primary care providers, services sites, and individuals who reside in a HPSA or AzMUA and receive primary care services provided by a primary care provider participating in the Loan Repayment Program. In addition, since an economic, small business, and consumer impact statement was not required with the 2016 rulemaking, the Department designates in this determination costs and benefits as "moderate" if between \$1,000 to \$5,000 and "significant" for some costs or benefits when meaningful or important, but not readily subject to quantification.

In this 2021 five-year-review report, the Department expects that the Department incurred moderate costs to amend the rules and to update applicable administrative procedures. The Department does not expect other regulated persons to have incurred additional costs or increased burdens, and rather have received significant benefits and decreased burdens. The Department determines that the rules impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance cost. The new rules streamline the loan repayment process by consolidating Article 2 and Article 3 and repealing redundant requirements in the Article 3 rules. Three rules in Article 2 and 18 rules in Article 3 were repealed. The Article 2 changes simplify the application process, clarify educational loans and restrictions, and clarify renewal application requirements. These changes provide increased benefits for the Department, primary care providers, and service sites by providing rules that allow applicants and service sites to determine whether an applicant or a service site are eligible to participate in the loan repayment program. Additionally, consolidating the applications and eliminating the service site application reduced burdens and costs for primary care provider, service sites, and the Department by having rules that are clearer, more descriptive.

Additional benefit also occurs by having new rules that removes confusion created by having separate Article 2 and Article 3 for one loan repayment program that provides loan repayment funds to primary care providers and private primary care providers. Further, the Department receives an increase benefit for having fewer rules to review during a five-year-review report. The Department anticipates that other significant benefits occurred for having rules that clarify current prioritization criteria for determining primary care providers and private primary care providers who may participate in the Loan Repayment Program; that allow primary care providers who provided primary care services part-time; and that includes advance practice providers and behavioral health providers. The Department expects that service sites will benefit from the new rule that allow primary care providers to provide primary care services at multiple service sites rather than limit the number of service sites a primary care provider may provide primary care services. Additionally, increasing the number of service sites a primary care provider may list most likely attracts some primary care providers who would not have considered participating in the Loan Repayment Program.

Primary care providers and service sites providing and individuals receiving primary care services have most likely received a significant benefit for new Article 2 rules that add other types of primary care providers who may request to participant in the Loan Repayment Program, such as practicing pharmaceuticals, geriatrics, and psychiatry including psychologist, clinical social worker, marriage and family therapist, and professional counselors. Having a more diverse medical and behavioral health professionals provides a significant benefit to service sites and individuals receiving primary care services in an underserved areas. Lastly, the amended Article 2 rule, R9-15-209, provide primary care providers a significant monetary benefit by increasing the amount of loan repayment funds a primary care provider may receive for participating in the Loan Repayment Program. For physicians and dentists having a HPSA score between 18-26, the maximum annual amount for full-time service during the first two years of service increased from \$40,000 to \$65,000, a 38% increase. Similar adjustments were made for loan repayment funds during the third year of service increase from \$22,000 to \$35,000 an increase of 37%. Physicians and dentists having a HPSA score between 14-17 and 0-13 also received increased loan repayment funds.

In consideration of the summary provided, the Department has determined that the probable benefits to regulated persons outweigh the probable cost of the rulemaking and the rules impose the least burden and costs to regulated persons and the probable benefits to regulated persons outweigh the probable cost of the rulemaking.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No ✓

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

No, the rules are not more stringent than federal laws. The rules are consistent with the U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Workforce, 2015 National Health Services Corps Loan Repayment Program and Affordable Care Act - State Loan Repayment Program.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules were last amended by final exempt rulemaking at 22 A.A.R. 851 and effective April 1, 2016. The rules provide for the allocation of loan repayment funds to qualified primary care providers and do not require the issuance of a regulatory permit, license, or agency authorization. The Department believes that under A.R.S. § 41-1037(A)(3)¹ that a general permit is not applicable.

14. **Proposed course of action:**

The Department in its review of the Chapter 15 rules has determined that the rules are effective, clear, and understandable. In this five-year-review report, the Department identifies no substantive issues or health and safety concerns with the rules and determines there is no need to amend Chapter 15 rules. The Chapter 15 rules are enforced as written and provide necessary requirements to ensure the Loan Repayment Program complies with A.R.S. §§ 36-2172 and 36-2174. In Item 4, the Department commented about a possible statutory change to A.R.S. §§ 36-2172 and 36-2174 should HB 2126 pass. Even though the passage of HB 2126 is unknown at this time, the Department clarifies in this five-year-review report a proposed course of action to amend 9 A.A.C. 15 to exempt a primary care provider from the sliding-fee schedule requirement when providing primary care services at an ITU, as well as address other matters identified. The Department believes amending requirement for primary care providers to not provide a sliding fee schedule when providing primary care services at an ITU will decrease burden for primary care providers and increase benefits for ITUs. In this proposed course of action, the Department plans to act with regard to 9 A.A.C. 15 as described above and expects to amend the rules by November 2021.

¹ A.R.S. § 41-1037(A)(3) “The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.”

ARTICLE 1. GENERAL

R9-15-101. Definitions

In addition to the definitions in A.R.S. §§ 36-401 and 36-2171, the following definitions apply in this Chapter unless otherwise stated:

1. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
2. "Application" means the information and documents submitted to the Department by a primary care provider requesting to participate in the Loan Repayment Program.
3. "Arizona Health Care Cost Containment System" or "AHCCCS" means the Arizona state agency established by A.R.S. Title 36, Chapter 29 to administer 42 U.S.C. 1396-1, Title XIX health care programs.
4. "Arizona medically underserved area" or "AzMUA" means a primary care area where access to primary care service is limited as designated according to A.R.S. § 36-2352.
5. "Calendar day" means each day, not excluding the day of the act, event, or default from which a designated period of time begins to run and including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. "Calendar year" means the period of 365 days starting from the first day of January.
7. "Cancellation" means the discharge of a primary care provider's loan repayment contract based on one of the following:
 - a. A primary care provider requests a discharge of the primary care provider's loan repayment contract as allowed by this Chapter; or
 - b. The Department determines:
 - i. There are no loan repayment funds available;
 - ii. A primary care provider is not complying with the requirements in A.R.S. Title 36, Chapter 21 or this Chapter;
 - iii. A primary care provider's service site is not complying with the requirements in A.R.S. Title 36, Chapter 21 or this Chapter; or
 - iv. A primary care provider fails to meet the terms of the primary care provider's loan repayment contract with the Department.

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

8. "Certified nurse midwife" means a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period.
9. "Clinical social worker" means an individual licensed under A.R.S. § 32-3293.
10. "Critical access hospital" means a facility certified by the Centers for Medicare & Medicaid Services under Section 1820 of the Social Security Act.
11. "Denial" means the Department's determination that a primary care provider is not approved to:
 - a. Participate in the LRP,
 - b. Renew a loan repayment contract,
 - c. Suspend or cancel a loan repayment contract, or
 - d. Waive liquidated damages owed by the primary care provider for failure to comply with A.R.S. Title 36, Chapter 21 and this Chapter.
12. "Dental services" means the same as "dentistry" in A.R.S. § 32-1201.
13. "Dentist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.
14. "Direct patient care" means medical services, dental services, pharmaceutical services, or behavioral health services provided to a specific individual by a primary care provider and for services provided by the primary care provider to or for the specific individual including:
 - a. Documenting the services in the specific individual's medical records,
 - b. Consulting with other health care professionals about the specific individual's need for services, and
 - c. Researching information specific to the individual's need for services.
15. "Educational expenses" has the same meaning as in 42 C.F.R. § 62.22.
16. "Encounter" means a face-to-face visit, which may include a visit using telemedicine, between a patient and a primary care provider during which primary care services are provided.
17. "Family unit" means a group of individuals residing together who are related by birth, marriage, or adoption or an individual who does not reside with another individual to whom the individual is related by birth, marriage, or adoption.
18. "Federal prison" means a secure facility managed and run by the Federal Bureau of Prisons that confines an individual convicted of a crime.
19. "Full-time" means working at least 40 hours per week for at least 45 weeks per service year.

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

20. "Free-clinic" means a facility that provides primary care services, on an outpatient basis, to individuals at no charge.
21. "Government student loan" means an advance of money made by a federal, state, county, or city agency that is authorized by law to make the advance of money.
22. "Half-time" means working at least 20 hours per week, but not more than 39 hours per week, for at least 45 weeks per service year.
23. "Health professional school" has the same meaning as "school" in 42 C.F.R. § 62.2.
24. "Health professional service obligation" means a legal commitment in which a primary care provider agrees to provide primary care services for a specified period of time in a designated area or through a designated service site.
25. "Health professional shortage area" or "HPSA" means a geographic region, population group, or public or non-profit private medical facility or other public facility determined by the U.S. Department of Health and Human Services to have an inadequate number of primary care providers under 42 U.S.C. § 254e.
26. "Health service experience to a medically underserved population" means at least 500 clock hours of medical services, dental services, pharmaceutical services, or behavioral health services provided by a primary care provider, including clock hours completed during the primary care provider's residency or graduate education:
 - a. Under the direction of a governmental agency, an accredited educational institution, or a non-profit organization; and
 - b. At a service site located in:
 - i. A medically underserved area designated by a federal or state agency, or
 - ii. A HPSA designated by a federal agency.
27. "Health service priority" means the number assigned by the Department to an initial application or renewal application and used to determine whether loan repayment funds are allocated to a primary care provider requesting approval to participate in the LRP.
28. "Immediate family" means an individual in any of the following relationships to a primary care provider:
 - a. Spouse;
 - b. Natural, adopted, foster, or stepchild;
 - c. Natural, adoptive, or stepparent;
 - d. Brother or sister;
 - e. Stepbrother or stepsister;
 - f. Grandparent or spouse of grandparent;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- g. Grandchild or spouse of grandchild;
 - h. Father-in-law or mother-in-law;
 - i. Brother-in-law or sister-in-law; or
 - j. Son-in-law or daughter-in-law.
29. "Licensee" means:
- a. An owner approved by the Department to operate a health care institution, or
 - b. An individual licensed under A.R.S. Title 32.
30. "Living expenses" has the same meaning as in 42 C.F.R. § 62.22.
31. "Loan repayment funds" means:
- a. State loan repayment funds,
 - b. State-appropriated funds, or
 - c. Monies donated to the Department and designated for use by the LRP.
32. "Loan Repayment Program" or "LRP" means the unit in the Department that implements the Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2172, and the Rural Private Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2174.
33. "Marriage and family therapist" means an individual licensed under A.R.S. § 32-3311.
34. "Newly employed" means when a primary care provider's first-time employee start date with a service site or employer identified in an initial application occurred within 12 months before the primary care provider's initial application submission date.
35. "Non-government student loan" means an advance of money made by a bank, credit union, savings and loan association, insurance company, school, or other financial or credit institution that is subject to examination and supervision in its capacity as a lender by an agency of the federal government or of the state in which the lender has its principle place of business.
36. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
37. "Pharmaceutical services" means the same as "practice of pharmacy" in A.R.S. § 32-1901.
38. "Pharmacist" has the same meaning as in A.R.S. § 32-1901.
39. "Physician" has the same meaning as in A.R.S. § 36-2351.
40. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
41. "Population" means the total number of permanent residents according to the most recent decennial census published by the U.S. Census Bureau or according to the most recent

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

Population Estimates for Arizona's Counties and Incorporated Places published by the Arizona Department of Economic Security.

42. "Poverty level" means a measure of income, issued annually by the U.S. Department of Health and Human Services and published in the Federal Register.
43. "Primary care area" has the same meaning as in A.A.C. R9-24-201.
44. "Primary care loan" means a long-term, low-interest-rate financial contract between the U.S. Department of Health and Human Services, Health Resources and Services Administration and a full-time student pursuing a degree in allopathic or osteopathic medicine.
45. "Primary care provider" means one of the following providing direct patient care:
 - a. A physician practicing:
 - i. Family medicine,
 - ii. Internal medicine,
 - iii. Pediatrics,
 - iv. Geriatrics,
 - v. Obstetrics-gynecology, or
 - vi. Psychiatry;
 - b. A physician assistant practicing:
 - i. Adult medicine,
 - ii. Family medicine,
 - iii. Pediatrics,
 - iv. Geriatrics,
 - v. Women's health, or
 - vi. Behavioral health;
 - c. A registered nurse practitioner practicing:
 - i. Adult medicine,
 - ii. Family medicine,
 - iii. Pediatrics,
 - iv. Geriatrics,
 - v. Women's health, or
 - vi. Behavioral health;
 - d. A certified nurse midwife;
 - e. A dentist practicing:
 - i. General dentistry,

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- ii. Geriatric dentistry, or
 - iii. Pediatric dentistry;
 - f. A pharmacist; or
 - g. A behavioral health provider practicing as:
 - i. A psychologist,
 - ii. A clinical social worker,
 - iii. A marriage and family therapist, or
 - iv. A professional counselor.
- 46. "Primary care service" means medical services, dental services, pharmaceutical services, or behavioral health services provided on an outpatient basis by a primary care provider.
- 47. "Private practice" means an individual or entity in which:
 - a. One or more primary care providers provide primary care services; and
 - b. Each primary care provider is an owner who can be held personally responsible for the primary care services provided by any of the primary care providers.
- 48. "Professional counselor" means an individual licensed under A.R.S. § 32-3301.
- 49. "Psychiatrist" means a physician who is board certified or board eligible to provide behavioral health services.
- 50. "Psychologist" has the same meaning as in A.R.S. § 32-2061.
- 51. "Public" means any:
 - a. State or local government; or
 - b. Department, agency, special purpose district, or other unit of a state or local government, including the legislature.
- 52. "Qualifying educational loan" means a government or a non-government student loan:
 - a. Used for the actual costs paid for educational expenses and living expenses that occurred during the undergraduate or graduate education of a primary care provider, and
 - b. Obtained before the submission of an initial application.
- 53. "Qualifying health plan" means health insurance coverage provided to a consumer through the Arizona State Health Insurance Marketplace established by 42 U.S.C.A. § 18001 (2010).
- 54. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
- 55. "Service site" means a health care institution that provides primary care services at a specific location.

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

56. "Service verification form" means a document confirming a primary care provider's full-time or half-time continuous employment at the primary care provider's approved service site.
57. "Sliding-fee schedule" has the same meaning as in A.A.C. R9-1-501.
58. "State-appropriated funds" means monies provided to the Department for the Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2172, and the Rural Private Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2174.
59. "State loan repayment funds" means monies provided to the Department from the U.S. Department of Health and Human Services, Health Resources and Services Administration.
60. "State prison" means a secure facility managed and run by a state in which an individual convicted of a crime is confined.
61. "Student" means an individual pursuing a course of study at a health professional school.
62. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.
63. "Suspend" means to temporarily interrupt a primary care provider's loan repayment contract for a specified period of time, based on a request submitted by the primary care provider.
64. "Telemedicine" has the same meaning as:
 - a. "Telemedicine" as defined in A.R.S. § 36-3601,
 - b. "Teledentistry" as defined in A.R.S. § 36-3611, or
 - c. "Telepractice" as defined in A.R.S. §32-3251.
65. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a federal and state holiday or a statewide furlough day.

ARTICLE 2. PRIMARY CARE PROVIDER LOAN REPAYMENT PROGRAM

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

Section

- R9-15-201. Qualifying Educational Loans and Restrictions
- R9-15-202. Primary Care Provider and Service Site Requirements
- R9-15-203. Initial Application
- R9-15-204. Supplemental Initial Application
- R9-15-205. Renewal Application
- R9-15-205.01. Renewal Application Requirements
- R9-15-206. Time-frames
 - Table 2.1. Time-frames (in calendar days)
- R9-15-207. Primary Care Provider Health Service Priority
- R9-15-208. Rural Private Primary Care Provider Health Service Priority
- R9-15-209. Allocation of Loan Repayment Funds
- R9-15-210. Verification of Primary Care Services and Disbursement of Loan Repayment Funds
- R9-15-211. Request for Change
- R9-15-212. Loan Repayment Contract Suspension
- R9-15-213. Liquidated Damages for Failure to Complete a Loan Repayment Contract
- R9-15-214. Waiver of Liquidated Damages
- R9-15-215. Loan Repayment Contract Cancellation
- R9-15-216. Repealed
- R9-15-217. Repealed
- R9-15-218. Repealed

ARTICLE 2. PRIMARY CARE PROVIDER LOAN REPAYMENT PROGRAM

R9-15-201. Qualifying Educational Loans and Restrictions

- A.** The Department shall use loan repayment funds to pay for principal, interest, and related expenses of:
1. A qualifying educational loan taken out by a primary care provider while obtaining a degree leading to eligibility for a health professional license; or
 2. A qualifying educational loan resulting from the refinancing or consolidation of loans described in subsection (A)(1).
- B.** Obligations or debts incurred under the following are ineligible for loan repayment funds:
1. A loan for which a primary care provider incurred a health professional service obligation that will not be completed before the start of the primary care provider's loan repayment program contract,
 2. A loan for which the associated documentation does not identify that the loan was solely applicable to the undergraduate or graduate education of a primary care provider,
 3. A primary care loan,
 4. A loan subject to cancellation, or
 5. A residency loan.
- C.** The following apply to a primary care provider's lenders and loans:
1. The Department shall accept loan repayment assignment to a maximum of three lenders.
 2. If more than one loan is eligible for loan repayment funds, the primary care provider shall advise the Department of the percentage of the loan repayment funds that each lender identified by the primary care provider is to receive.
 3. A primary care provider is responsible for the timely loan repayment of a loan.
 4. A primary care provider shall arrange with each lender to make necessary changes in the payment schedule for a loan so that quarterly loan repayments will not result in default.
 5. A primary care provider is responsible for paying taxes that may result from receiving loan repayment funds to reduce a qualifying educational loan amount owed to a primary care provider's lender.

R9-15-202. Primary Care Provider and Service Site Requirements

- A.** A primary care provider may request to participate in the LRP:
1. If the primary care provider:
 - a. Is a U.S. citizen or U.S. National according to U.S.C. Title 8, Chapter 12;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- b. Has completed the final year of a course of study or program approved by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation for higher education in a health profession licensed under A.R.S. Title 32;
- c. Holds a current Arizona license or certificate in a health profession licensed under A.R.S. Title 32;
- d. If a physician, has completed a professional residency program and is board certified or board eligible in:
 - i. Family medicine,
 - ii. Internal medicine,
 - iii. Pediatrics,
 - iv. Geriatrics,
 - v. Obstetrics-gynecology, or
 - vi. Psychiatry;
- e. Except for a pharmacist or a behavioral health provider providing primary care services at a free-clinic or a federal or state prison, agrees to comply with the requirements for a sliding-fee schedule according to 9 A.A.C. 1, Article 5;
- f. Except for a primary care provider providing primary care services at a free-clinic or a federal or state prison, agrees to charge for primary care services at the usual and customary fees prevailing in the primary care area, except that:
 - i. A patient unable to pay the usual and customary fees is charged a reduced fee according to the service site's or employer's sliding-fee schedule required in subsection (A)(2)(d), or a fee less than the sliding-fee schedule, or not charged; and
 - ii. A medically uninsured individual from a family unit with an annual income at or below 200% of the poverty level is charged according to a sliding-fee schedule required in subsection (A)(2)(d) or not charged;
- g. Provides services at a critical access hospital with a separate qualifying service site, agrees to provide:
 - i. At least 16 hours of service per week at the critical access hospital, and
 - ii. At least 24 hours of primary care services per week at the qualifying service site;
- h. Agrees not to discriminate on the basis of a patient's ability to pay or a payment source, including Medicare, AHCCCS, or a qualifying health plan;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- i. Agrees to accept assignment for payment under Medicare if providing primary care services to adults, AHCCCS, and a qualifying health plan; and
 - j. Has satisfied any other health professional service obligation owed under a contract with a federal, state, or local government before beginning a period of service under the LRP; and
2. If the primary care provider's service site:
- a. Provides primary care services in a:
 - i. Public or non-profit service site as allowed in A.R.S. § 36-2172, or
 - ii. Private practice service site as allowed in A.R.S. § 36-2174;
 - b. Except for a free-clinic, accepts assignment for payment under Medicare if providing primary care services to adults, AHCCCS, and a qualifying health plan;
 - c. Except for a free-clinic, is an AHCCCS provider;
 - d. Except for a free-clinic or a federal or state prison:
 - i. Submits a sliding-fee schedule according to 9 A.A.C. 1, Article 5 to the Department for approval;
 - ii. Develops and implements a policy for the service site's sliding-fee schedule; and
 - iii. Ensures that signage, informing individuals that the service site has a sliding-fee schedule, is conspicuously posted in the service site's reception area;
 - e. Except for a free-clinic or a federal or state prison, charges for primary care services at the usual and customary fees prevailing in the primary care area, shall have a policy providing that:
 - i. A patient who is unable to pay the usual and customary fee is:
 - (1) Charged a reduced fee according to the service site's sliding-fee schedule in subsection (A)(2)(d),
 - (2) Charged a fee less than the sliding-fee schedule, or
 - (3) Not charged; and
 - ii. A medically uninsured individual from a family unit with an annual income at or below 200% of the poverty level is charged according to the service site's sliding-fee schedule in subsection (A)(2)(d) or not charged;
 - f. Is a free-clinic, develop and implement a policy that the free-clinic provides primary care services to individuals at no charge;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- i. Name, home address, telephone number, and e-mail address;
- ii. Social Security number; and
- iii. Date of birth;
- b. The name, street address, e-mail address, and telephone number of the prospective employer or employer where the primary care provider provides or will provide primary care services while participating in the LRP, including the dates that the primary care provider is expected to start and end providing primary care services;
- c. The name, street address, and telephone number for each place of employment with a health professional or a health care institution, including a name, title, e-mail address and telephone number of a contact individual for the place of employment;
- d. Type of license and, if applicable, certification held by the primary care provider;
- e. Type of medical, dental or behavioral health specialty or subspecialty, if applicable;
- f. If an advanced practice provider, a behavioral health provider, or a pharmacist, whether the primary care provider holds national certification;
- g. Whether the primary care provider will provide primary care services full-time or half-time;
- h. Whether the primary care provider is an Arizona resident;
- i. Whether the primary care provider has any health professional service obligation;
- j. Whether the primary care provider has defaulted in a health professional service obligation and, if so, a description of the circumstances of the default;
- k. Whether the primary care provider is subject to a judgment lien for a debt to a federal agency and, if so, a description of the circumstances of the default;
- l. If applying to participate in the Primary Care Provider LRP, whether the primary care provider:
 - i. Has defaulted on:
 - (1) A Federal income tax liability,
 - (2) Any federally-guaranteed or insured student loan or home mortgage loan,
 - (3) A Federal Health Education Assistance Loan,
 - (4) A Federal Nursing Student Loan, or
 - (5) A Federal Housing Authority Loan; or

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- ii. Is delinquent on:
 - (1) A payment for court-ordered child support, or
 - (2) A payment for state taxes; or
 - m. If applying to participate in the Rural Private Primary Care Provider LRP, whether the primary care provider is delinquent on payment for:
 - i. State taxes, or
 - ii. Court-ordered child support;
 - n. Whether the primary care provider has experience providing primary care services to a medically underserved population;
 - o. Whether the primary care provider is providing services at a critical access hospital and primary care services at a service site according to R9-15-202(A)(1)(g);
 - p. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-206;
 - q. An attestation that:
 - i. The Department is authorized to verify all information provided in the initial application;
 - ii. The primary care provider is applying to participate in the LRP for two years with the State of Arizona for loan repayment of all or part of qualifying educational loans identified in the initial application;
 - iii. The qualifying educational loans identified in the initial application were for the costs of health professional education, including reasonable educational expenses and reasonable living expenses, and do not reflect a loan for other purposes;
 - iv. The primary care provider will charge fees for primary care services according to the sliding-fee schedule in R9-15-202(A)(1)(f); and
 - v. The information submitted as part of the initial application is true and accurate; and
 - r. The primary care provider's signature and date of signature.
2. One of the following as proof of U.S. citizenship:
- a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation as a U.S. National;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

3. A copy of the primary care provider's Social Security card;
4. A copy of the primary care provider's current driver's license;
5. Documentation showing Arizona residency according to A.R.S. § 15-1802;
6. Documentation showing completion of graduate studies issued by an accredited educational agency;
7. A copy of the primary care provider's current Arizona licenses or if applicable certificates in a health profession licensed under A.R.S. Title 32;
8. If a physician, documentation showing the physician:
 - a. Has completed:
 - i. A professional residency program in family medicine, pediatrics, obstetrics-gynecology, internal medicine, or psychiatry; or
 - ii. A fellowship, residency, or certification program in geriatrics; and
 - b. Is either board certified or board eligible in:
 - i. Family medicine,
 - ii. Internal medicine,
 - iii. Pediatrics,
 - iv. Geriatrics,
 - v. Obstetrics-gynecology, or
 - vi. Psychiatry;
9. If the primary care provider is a physician assistant practicing as a behavioral health provider, a copy of the primary care provider's national certificate issued by the National Commission on Certification of Physician Assistants in Psychiatry;
10. For a primary care provider who has completed health service experience to a medically underserved population, a written statement for each service site where the primary care provider provided primary care services that includes:
 - a. The service site's name, street address, e-mail address, and telephone number;
 - b. The number of clock hours completed;
 - c. A description of the primary care services provided;
 - d. The primary care service start and end dates;
 - e. The service site's federal or state designation as medically underserved or as a HPSA designated by a federal agency; and
 - f. The name and signature of an individual authorized by the government agency, the accredited educational institution, or the non-profit organization and the date signed;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

11. If applicable, documentation showing that the primary care provider's health professional service obligation owed under contract with a federal, state, or local government or another entity will be completed before beginning a period of primary care services under the LRP;
12. For each qualifying educational loan:
 - a. The following information provided in a Department-provided format:
 - i. The lender's name, street address, e-mail address, and telephone number;
 - ii. The street address where the loan repayment funds are sent;
 - iii. The loan identification number;
 - iv. The original date of the loan;
 - v. The primary care provider's name as it appears on the loan contract;
 - vi. The original loan amount;
 - vii. The current balance of the loan, including the date provided;
 - viii. The interest rate on the loan;
 - ix. The purpose for the loan;
 - x. The month and year of the start and the end of the academic period covered by the loan; and
 - xi. The percentage of the loan repayment funds the primary care provider establishes for a lender if more than one lender is receiving loan repayment funds;
 - b. A copy of the most recent billing statement from the lender; and
 - c. Documentation from the lender or the National Student Loan Data System established by the U.S. Department of Education verifying that the loan is a qualifying educational loan;
13. For each service site where a primary care provider will provide primary care services, a copy of a contract, a letter verifying employment, or a letter of intent to hire signed by the primary care provider and the licensee, licensee's designee, or a tribal authority from the service site where the primary care provider will provide primary care services including:
 - a. The name, street address, e-mail address, and telephone number of the service site;
 - b. The name of a contact individual for the service site;
 - c. Whether the primary care provider is providing primary care services full-time or half-time; and
 - d. If currently employed, the employment start date;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

14. If more than one service site licensee or tribal authority is identified in subsection (C)(13), the signature and date of signature of each service site licensee, licensee's designee, or tribal authority;
15. For each service site where the primary care provider will provide primary care services, documentation, in a Department-provided format, that includes:
 - a. Name, street address, telephone number, e-mail address, and fax number of the service site;
 - b. Whether the primary care provider is providing primary care services full-time or half-time;
 - c. The number of primary care service hours per week the primary care provider is expected to provide;
 - d. The dates that the primary care provider is expected to start and end providing primary care services;
 - e. If a primary care provider will provide telemedicine, the number of telemedicine hours the primary care provider is expected to provide;
 - f. Service site practice type;
 - g. Whether the service site is:
 - i. Public or non-profit service site according to A.R.S. § 36-2172, or
 - ii. Private practice service site according to A.R.S. § 36-2174;
 - h. Except for a free-clinic, whether the service site accepts Medicare, AHCCCS, and a qualifying health plan;
 - i. Except for a free-clinic, if the service site accepts:
 - i. Medicare, the service site's Medicare identification number;
 - ii. AHCCCS, the service site's AHCCCS provider number; and
 - iii. Qualifying health plan, the service site's qualifying health plan provider number;
 - j. Distance from the nearest sliding-fee schedule clinic having the same practice type;
 - k. Documentation of a service site's HPSA designation and HPSA score, dated within 30 calendar days before the initial application submission date;
 - l. Documentation of the primary care services provided by the service site during the past 24 months including the:
 - i. Number of encounters,
 - ii. Number of AHCCCS encounters,

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- iii. Number of Medicare encounters,
 - iv. Number of self-pay encounters on sliding-fee schedule, and
 - v. Number of encounters free-of-charge; and
 - m. The name, title, e-mail address, and telephone number of a contact individual for the service site;
16. An attestation, including the service site licensee, licensee's designee, or tribal authority's signature and date of signature, that the service site shall comply with the requirements in R9-15-202, including agreeing to notify the Department when the employment status of the primary care provider changes;
17. If the primary care provider will provide services at a critical access hospital according to R9-15-202(A)(1)(g), documentation in a Department-provided format that includes the:
- a. Name, street address, telephone number, e-mail address, and fax number of the critical access hospital;
 - b. Number of service hours per week that the primary care provider is expected to provide at the critical access hospital;
 - c. Name, title, e-mail address, and telephone number of a contact individual for the critical access hospital;
18. Except for a free-clinic or federal or state prison, a copy of the service site's:
- a. Sliding-fee schedule in R9-15-202(A)(2)(d)(i),
 - b. Sliding-fee schedule policy in R9-15-202(A)(2)(d)(ii),
 - c. Sliding-fee schedule signage in R9-15-202(A)(2)(d)(iii) posted on the premises;
19. If the service site is a free-clinic, a copy of the policy in R9-15-202(A)(2)(f) that the free-clinic provides primary care services to individuals at no charge; and
20. If the primary care provider's employer is not the licensee or tribal authority of the service site identified in subsection (C)(13), documentation in a Department-provided format that includes:
- a. An attestation that the employer will comply with the requirements required in R9-15-202, including agreeing to notify the Department when the employment status of the primary care provider changes;
 - b. The name, title, e-mail address, and telephone number of a contact individual for the employer;
 - c. Whether the employer is a:
 - i. Public or non-profit service site in A.R.S. § 36-2172, or
 - ii. Private practice service site in A.R.S. § 36-2174;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- d. Whether the primary care provider is or will be providing primary care services full-time or half-time;
 - e. The dates that the primary care provider is expected to start and end providing primary care services; and
 - f. The employer's signature and date of signature;
21. If more than one service site licensee, tribal authority, or employer is identified in subsection (C)(20), the signature and date of signature of each service site licensee, tribal authority, or employer.
- D.** If documentation of an existing health professional service obligation owed under contract, required in subsection (C)(11) was included in the initial application, after completing the obligation, a primary care provider shall submit before the start of the primary care provider's loan repayment contract with the Department documentation demonstrating that the obligation was completed.
- E.** A primary care provider shall execute any document necessary for the Department to access records and acquire information necessary to verify information provided by the primary care provider.
- F.** The Department shall accept an initial application no more than 45 calendar days before initial application submission date required in subsection (A) and (B).
- G.** If the Department receives an initial application from a primary care provider at a time other than the time stated in subsection (A) and (B), the Department shall return the initial application to the primary care provider.
- H.** The Department shall not approve a primary care provider's initial application during a June allocation process if:
- 1. The primary care provider's service site employs two other primary care providers approved to participate in the LRP during the June allocation process, or
 - 2. The primary care provider's employer employs four other primary care providers approved to participate in the LRP during the June allocation process.
- I.** The Department shall review a primary care provider's initial application according to R9-15-206.

R9-15-204. Supplemental Initial Application

- A.** If a primary care provider submits an initial application to the Department according to R9-15-203 and is not approved to participate in the LRP during the initial application allocation process, the primary care provider may reapply for participation during the October allocation process of the same calendar year by submitting a supplemental initial application by October 1.

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- B.** A primary care provider reapplying for an October allocation process according to R9-15-203(B) shall submit a supplemental initial application in a Department-provided format to the Department that contains:
1. The primary care provider's name, home address, telephone number, and e-mail address;
 2. The primary care provider's attestation that:
 - a. The Department is authorized to verify all information provided in the supplemental initial application;
 - b. The primary care provider is applying to participate in the LRP for two years for loan repayment of all or part of qualifying educational loans identified in the initial application;
 - c. The initial application submitted prior to the October allocation process of the same calendar year is still accurate, except for loan or lender information;
 - d. The primary care provider will charge fees for primary care services according to R9-15-202;
 - e. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-206;
 - f. The information submitted as part of the supplemental initial application is true and accurate; and
 - g. The primary care provider's signature and date of signature;
 3. For each primary care provider lender, the following:
 - a. The lender's name, street address, e-mail address, and telephone number;
 - b. The loan identification number; and
 - c. The loan balance including principal and interest;
 4. An attestation from the service site's licensee, licensee's designee, or tribal authority that includes:
 - a. Name, street address, telephone number, e-mail address, and fax number of the service site;
 - b. Whether the service site is:
 - i. Public or non-profit service site in A.R.S. § 36-2172, or
 - ii. Private practice service site in A.R.S. § 36-2174;
 - c. The service site provider agrees to comply with the requirements in R9-15-202, including agreeing to notify the Department when the employment status of the primary care provider changes;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- d. Whether the primary care provider is providing primary care services full-time or half-time;
 - e. The dates that the primary care provider is expected to start and end providing primary care services;
 - f. The name, title, e-mail address, and telephone number of a contact individual for the service site;
 - g. The information submitted as part of the supplemental initial application is true and accurate; and
 - h. The service site's licensee, licensee's designee, or tribal authority signature and date of signature; and
5. If the primary care provider's employer is not the licensee or tribal authority of the service site identified in subsection (B)(4), an attestation from the employer that includes:
- a. The name, title, e-mail address, and telephone number of a contact individual for the employer;
 - b. Whether the employer is:
 - i. Public or non-profit service site according to A.R.S. § 36-2172, or
 - ii. Private practice service site according to A.R.S. § 36-2174;
 - c. Whether the primary care provider is providing primary care services full-time or half-time;
 - d. The dates that the primary care provider is expected to start and end providing primary care services;
 - e. An attestation that the employer will comply with the requirements in R9-15-202, including agreeing to notify the Department when the employment status of the primary care provider changes;
 - f. The information submitted as part of the supplemental initial application is true and accurate; and
 - g. The employer's signature and date of signature.
6. A copy of the most recent billing statement for the loans listed on the initial application;
7. Documentation of a service site's HPSA designation and HPSA score dated within 30 calendar days before the supplemental initial application submission date.
- C.** If more than one service site licensee, tribal authority, or employer is identified in subsection (B)(4) or (5), the signature and date of signature of each service site licensee, tribal authority, or employer.

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- D. The Department shall accept a supplemental initial application no more than 30 calendar days before the renewal application submission date required in subsection (A) or (B).
- E. The Department shall review a primary care provider's supplemental initial application according to R9-15-206.

R9-15-205. Renewal Application

- A. A primary care provider who is expected to complete the initial two years of participation in the LRP in the 12 months after April 1, and whose service site has a HPSA score of 14 or more may request to continue participation by submitting a renewal application to the Department by April 1 of each year.
- B. To continue or resume participation in the LRP, the following primary care providers may submit to the Department by October 1 of each year:
 - 1. A renewal application:
 - a. A primary care provider who has a HPSA score of less than 14 and has completed the initial two years of participation in the LRP before the end of the calendar year; or
 - b. A primary care provider who participated in the LRP during the current calendar year and who has completed three or more years of participation in the LRP before the end of the calendar year; or
 - 2. The initial application in R9-15-203(C):
 - a. A primary care provider who previously participated in the LRP, completed the first two years of participation in the LRP, and is applying to resume participation; or
 - b. A primary care provider who was previously denied approval to renew participation in the LRP because loan repayment funds were not available.
- C. A primary care provider applying to continue participation in the LRP for an additional year shall submit a renewal application in a Department-provided format to the Department containing:
 - 1. The primary care provider's:
 - a. Name, home address, telephone number, and e-mail address; and
 - b. Existing loan repayment contract number;
 - 2. The name of each service site where the primary care provider provides primary care services, including street address, telephone number, e-mail address, and fax number;
 - 3. Except for a request for change according to R9-15-211, list any changes that may affect the primary care provider's health service priority in R9-15-207 or R9-15-208;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

4. For each lender receiving loan repayment funds according to the initial application or R9-15-211, the:
 - a. Lender's name, street address, e-mail address, and telephone number;
 - b. Street address where the loan repayment funds are sent;
 - c. Loan identification number;
 - d. If different from the initial application, the percentage of the loan repayment funds that the primary care provider wants a lender to receive;
 - e. Current loan balance, including date provided; and
 - f. Whether the primary care provider requests to continue loan repayment to the lender;
5. If the primary care provider wants to add a qualifying educational loan:
 - a. The lender's name, street address, e-mail address, and telephone number;
 - b. The street address where the loan repayment funds are sent;
 - c. The loan identification number;
 - d. The original date of the loan;
 - e. The primary care provider's name as it appears on the loan contract;
 - f. The original loan amount;
 - g. The current balance of the loan, including the date provided;
 - h. The interest rate on the loan;
 - i. The purpose for the loan;
 - j. The month and year of the start and the end of the academic period covered by the loan; and
 - k. If more than one lender is receiving loan repayment funds, the primary care provider shall advise the Department of the percentage of the loan repayment funds that each lender is identified by the primary care provider to receive;
6. For each qualifying educational loan, a copy of the most recent billing statement from the lender;
7. For any qualifying educational loan identified in subsection (C)(5), documentation from the lender or the National Student Loan Data System established by the U.S. Department of Education verifying that the loan is a qualifying educational loan;
8. Whether the primary care provider is subject to a judgment lien for a debt to a federal agency;
9. If applying to participate in the Primary Care Provider LRP, whether the primary care provider:

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- a. Has defaulted on:
 - i. A Federal income tax liability,
 - ii. Any federally-guaranteed or insured student or home mortgage loan,
 - iii. A Federal Health Education Assistance Loan,
 - iv. A Federal Nursing Student Loan, or
 - v. A Federal Housing Authority Loan; or
 - b. Is delinquent on:
 - i. A payment for court-ordered child support, or
 - ii. A payment for state taxes; or
10. If applying to participate in the Rural Private Primary Care Provider LRP, whether the primary care provider is delinquent on payment for state taxes or court-ordered child support;
 11. Whether the primary care provider is providing services at a critical access hospital and primary care services at a service site according to R9-15-202(A)(1)(g);
 12. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-206;
 13. An attestation that:
 - a. Except for the circumstances listed in subsection (C)(3), the information in the initial application, other than loan balances and requested repayment amounts, is still current;
 - b. The Department is authorized to verify all information provided in the renewal application;
 - c. The primary care provider is applying to participate in the LRP for an additional year for loan repayment of all or part of the qualifying educational loans identified in the renewal application;
 - d. The primary care provider will charge fees for primary care services established in the sliding-fee schedule according to R9-15-202; and
 - e. The information submitted as part of the renewal application is true and accurate;
 14. The primary care provider's signature and date of signature;
 15. For each service site where a primary care provider provides primary care services, documentation, in a Department-provided format, that includes:
 - a. A statement signed by the licensee, licensee's designee, or tribal authority from the service site where the primary care provider provides primary care services

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- that the primary care provider's employment is extended at least for an additional year;
 - b. The date the primary care provider is expected to end providing primary care services;
 - c. Whether the primary care provider is providing primary care services full-time or half-time;
 - d. The number of primary care service hours per week the primary care provider is expected to provide;
 - e. Documentation of primary care services provided during the past 12 months including the:
 - i. Number of encounters,
 - ii. Number of AHCCCS encounters,
 - iii. Number of Medicare encounters,
 - iv. Number of self-pay encounters on sliding-fee schedule, and
 - iv. Number of encounters free-of-charge;
 - f. If the primary care provider will provide telemedicine, the number of telemedicine hours the primary care provider is expected to provide;
 - g. An attestation that the service site will comply with the requirements in R9-15-202, including agreeing to notify the Department when the employment status of the primary care provider changes;
 - h. The name, title, e-mail address, and telephone number of a contact individual for the service site; and
 - i. The service site licensee's, licensee's designee, or tribal authority's signature and date of signature;
16. If a primary care provider provides services at a critical access hospital according to R9-15-202(A)(1)(g), documentation in a Department-provided format that includes the:
- a. Name, street address, telephone number, e-mail address, and fax number of the critical access hospital;
 - b. Number of service hours per week that the primary care provider is expected to provide at the critical access hospital; and
 - c. Name, title, e-mail address, and telephone number of a contact individual for the critical access hospital;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

17. If the primary care provider's employer is not the licensee or tribal authority of the service site identified in subsection (C)(15), documentation in a Department-provided format, that includes:
 - a. A statement that the employer will extend the primary care provider's employment for at least an additional year;
 - b. The date the primary care provider is expected to end providing primary care services at the service site;
 - c. Whether the primary care provider is providing primary care services full-time or half-time;
 - d. The number of primary care service hours per week the primary care provider is expected to provide;
 - e. If the primary care provider will provide telemedicine, the number of telemedicine hours the primary care provider is expected to provide;
 - f. An attestation that the employer will comply with the requirements in R9-15-202, including agreeing to notify the Department when the employment status of the primary care provider changes;
 - g. The name, title, e-mail address, and telephone number of a contact individual for the employer; and
 - h. The employer's signature and date of signature; and
18. If more than one service site licensee, tribal authority, or employer is identified in subsection (C)(15) and (16), the signature and date of signature of each service site licensee, tribal authority, or employer.

D. In addition to the information required in subsection (C), the following documentation:

1. Except for a free-clinic or federal or state prison, for each service site where the primary care provider provides or will provide primary care services:
 - a. A copy of the sliding-fee schedule in R9-15-202(A)(2)(d)(i),
 - b. A copy of the sliding-fee schedule policy in R9-15-202(A)(2)(d)(ii), and
 - c. A copy of the service site's sliding-fee schedule signage in R9-15-202(A)(2)(d)(iii), posted on the premises;
2. If a free-clinic, a copy of the policy in R9-15-202(A)(2)(f) that the free-clinic provides primary care services to individuals at no charge;
3. Documentation of a service site's HPSA designation and HPSA score, dated within 30 calendar days before the renewal application submission date; and

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

4. For each lender receiving loan repayment funds, a copy of the most recent billing statement.
- E.** A primary care provider shall execute any document necessary for the Department to access records and acquire information necessary to verify information provided by the primary care provider.
- F.** The Department shall accept a renewal application no more than 30 calendar days before the renewal application submission date required in subsection (A) or (B).
- G.** If the Department receives a renewal application at a time other than the time stated in subsection (A) or (B), the Department shall return the renewal application to the primary care provider that submitted the renewal application.
- H.** The Department shall review a primary care provider's renewal application according to R9-15-206.

R9-15-205.01. Renewal Application Requirements

- A.** A primary care provider whose loan repayment contract ends before or on June 30, 2016 may renew the primary care provider's loan repayment contract by submitting a renewal application to the Department according to the requirements in 9 A.A.C. 15 that were effective August 9, 2001.
- B.** A primary care provider whose loan repayment contract ends after June 30, 2016, and before April 1, 2017, and whose service site has a HPSA score of 14 or more may is requesting to participate in the LRP for a third year may submit a renewal application in R9-15-205 to the Department before April 30, 2016.

R9-15-206. Time-frames

- A.** The overall time-frame begins, for:
 1. An initial application, on the date established as the deadline for submission of an initial application in R9-15-203;
 2. A supplemental initial application, on the date established as the deadline for submission of a supplemental initial application in R9-15-204;
 3. A renewal application, on the date established as the deadline for submission of a renewal application in R9-15-205; or
 4. A request to add or transfer to another service site or employer, add or change a lender, add or change a qualifying educational loan, change hours worked, suspend or cancel a loan repayment contract, or waive liquidated damages, on the date the request is received by the Department.

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- B.** Within the administrative completeness review time-frame for each type of approval in Table 2.1, the Department shall:
1. Provide a notice of administrative completeness to a primary care provider; or
 2. Provide a notice of deficiencies to a primary care provider, including a list of the missing information or documents.
- C.** If the Department provides a notice of deficiencies to a primary care provider:
1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the primary care provider;
 2. If the primary care provider submits the missing information or documents to the Department within the time-frame in Table 2.1, the substantive review time-frame begins on the date the Department receives the missing information or documents; and
 3. If the primary care provider does not submit the missing information or documents to the Department within the time-frame in Table 2.1, the Department shall consider the application withdrawn.
- D.** Within the substantive review time-frame for each type of approval in Table 2.1, the Department:
1. Shall approve or deny a primary care provider's request;
 2. May make a written comprehensive request for additional information or documentation; and
 3. May make supplement requests, if the primary care provider agrees to allow the Department to submit supplemental requests for additional information and documentation.
- E.** If the Department provides a written comprehensive request for additional information or documentation to the primary care provider:
1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request until the date the Department receives the information and documents requested; and
 2. The primary care provider shall submit to the Department the information and documents listed in the written comprehensive request within 10 working days after the date of the written comprehensive request.
- F.** During the substantive review time-frame the Department shall, for each initial, supplemental initial, or renewal application that the Department determines is complete and demonstrates that the primary care provider and service site comply with the requirements in A.R.S. Title 36,

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

Chapter 21 and this Article, by 60 calendar days after the application submission date established in this Article, determine a:

1. Health service priority according to R9-15-207 or R9-15-208, and
2. Highest HPSA score according to R9-15-207(B)(2) or R9-15-208(B)(1) or (B)(2).

G. The Department shall issue:

1. An approval for a primary care provider to participate in the:
 - a. Primary Care Provider Loan Repayment Program in A.R.S. § 36-2172 when:
 - i. The primary care provider and the primary care provider's service site complies with the requirements in A.R.S. Title 36, Chapter 21 and this Article; and
 - ii. The primary care provider has a health care priority according to R9-15-207 that makes the primary care provider eligible for available loan repayment funds according to R9-15-202; or
 - b. Rural Private Primary Care Provider Loan Repayment Program in A.R.S. § 36-2174 when:
 - i. The primary care provider and the primary care provider's service site complies with the requirements in A.R.S. Title 36, Chapter 21 and this Article; and
 - ii. The primary care provider has a health care priority according to R9-15-208 that makes the primary care provider eligible for loan repayment funds according to R9-15-202; or
2. A denial to a primary care provider, including the reason for the denial and the appeal process in A.R.S. Title 41, Chapter 6, Article 10, if:
 - a. The primary care provider does not submit all of the information and documentation listed in a written comprehensive request for additional information and documentation;
 - b. The Department determines that the primary care provider or the primary care provider's service site does not comply with the requirements in A.R.S. Title 36, Chapter 21 and this Article; or
 - c. The Department determines that the primary care provider and the primary care provider's service site comply with the requirements in A.R.S. Title 36, Chapter 21 and this Article, but:
 - i. There are no loan repayment funds available for the primary care provider;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- ii. For an initial application, the primary care provider's employer employs four other primary care providers approved to participate in the LRP; or
- iii. For an initial application, the primary care provider's service site employs two other primary care providers approved to participate in the LRP.

- H.** If the Department issues a denial based on the determination in subsection (G)(2)(c), the Department shall include in the denial, a notice that, depending on the availability of loan repayment funds, the primary care provider may submit a supplemental initial application for approval to participate in the LRP during the October allocation process of the same calendar year.
- I.** If the Department approves a primary care provider's initial application according to subsection (G)(1) for participation in the LRP, the primary care provider is approved to participate for two years.
- J.** The Department shall determine the effective date of a loan repayment contract after receiving acceptance from a primary care provider following the Department's notice of approval in subsection (G)(1).

Table 2.1. Time-frames (in calendar days)

Type of approval	Authority (A.R.S. § or A.A.C.)	Overall Time-frame (in working days)	Time-frame for applicant to complete application (in working days)	Administrative Completeness Time-frame (in working days)	Substantive Review Time-frame (in working days)
Initial application	R9-15-203	45	20	15	30
Supplemental initial application	R9-15-204	45	10	15	30
Renewal application	R9-15-205	45	10	15	30
Request for Change	R9-15-211	15		5	10
Request to suspend a loan repayment contract	R9-15-212	15		5	10
Request to waive liquidated damages	R9-15-214	15		5	10
Request to cancel a loan repayment contract	R9-15-215	15		5	10

R9-15-207. Primary Care Provider Health Service Priority

A. For a primary care provider providing primary care services at multiple service sites, the Department shall determine the health service priority points in subsection (B)(1) through (6) for each service site and:

1. If the number of primary care service hours worked at one service site is more than 50 percent of the primary care provider's total number of primary care service hours worked, the Department shall use that service site's points to determine an initial application or a renewal application health service priority; or
2. If the number of primary care service hours worked at one service site is not more than 50 percent of the primary care provider's total number of primary care service hours worked, the Department shall use the average of all service sites' points to determine an initial application or a renewal application health service priority.

B. The Department shall review an initial application or a renewal application and assign points based on the following factors to determine the initial application or renewal application health service priority:

1. The service site is located in a rural area:
 - a. Yes = 10 points, or
 - b. No = 0 points;
2. The service site's highest geographic, facility, or population HPSA score, consistent with subsection (A), assigned by the U.S. Secretary of Health and Human Services for the area in which the service site is located according to documentation provided by the primary care provider;
3. The service site's percentage of the total encounters reported according to R9-15-203(C)(15)(l) or R9-15-205(C)(15)(e) that are AHCCCS, Medicare, approved sliding-fee schedule, and free-of-charge encounters:

Percentage	Points
Greater than 50%	10,
35-50%	8,
26-34%	6,
11-25%	4, or
Less than 10%	2;

4. Except for a service site at a federal or state prison, if:

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- a. A medical primary care provider, including a pharmacist, and the distance from the primary care provider's service site to the next service site that provides medical services and offers reduced primary care services fees according to an approved sliding-fee schedule is:

Miles	Points
Greater than 25	4, or
Less than 25	0;

- b. A dental primary care provider and the distance from the primary care provider's service site to the next service site that provides dental services and offers reduced primary care services fees according to an approved sliding-fee schedule is:

Miles	Points
Greater than 25	4, or
Less than 25	0; and

- c. A behavioral health primary care provider and the distance from the primary care provider's service site to the next service site that provides behavioral health services and offers reduced primary care services fees according to an approved sliding-fee schedule is:

Miles	Points
Greater than 25	4, or
Less than 25	0;

- 5. For an initial application only, the primary care provider is newly employed at the service site or by the employer:
 - a. Yes = 2 points, or
 - b. No = 0 points;
- 6. The primary care provider only provides primary care services when the primary care provider and the patient are physically present at the same location:
 - a. Yes = 4 points, or
 - b. No = 0 points;
- 7. The primary care provider is a resident of Arizona according to A.R.S. § 15-1802:
 - a. Yes = 4 points, or
 - b. No = 0 point;
- 8. The primary care provider is a graduate of an Arizona graduate educational institution:
 - a. Yes = 4 points, or

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- b. No = 0 point;
 - 9. For an initial application only, the primary care provider has experience providing primary care services to a medically underserved population:
 - a. Yes = 4 points, or
 - b. No = 0 point; and
 - 10. The primary care provider is providing or agrees to provide primary care services full-time:
 - a. Yes = 3 points, or
 - b. No = 0 points.
- C.** To determine a service site's highest HPSA score, the Department shall apply the following HPSA designations:
 - 1. A Primary Medical Care HPSA score if a primary care provider provides medical or pharmaceutical primary care services,
 - 2. A Dental HPSA score if a primary care provider provides dental primary care services, and
 - 3. A Mental Health HPSA score if a primary care provider provides behavioral health primary care services.
- D.** For the purpose of determining a health service priority and allocating loan repayment funds, the Department shall consider a primary care provider who provides services at a critical access hospital, in addition to primary care services at a service site according to R9-15-202(A)(1)(g), to be providing services full-time.
- E.** The Department shall determine a primary care provider's initial or renewal application health service priority by calculating the sum of the assigned points for the factors described in subsection (B).
- F.** The Department shall apply the factors in subsection (G) if the Department determines there are:
 - 1. More than one initial application or renewal application that have the same health service priority and there are funds available for only one initial or renewal application; or
 - 2. Two or more initial applications that have the same health service priority for:
 - a. A service site and there is one health care provider with a higher health service priority approved to participate in the LRP during the same June allocation process, or
 - b. An employer and there are three primary care providers with a higher health service priority approved to participate in the LRP during the same June allocation process.

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- G.** To determine participation in the LRP for a primary care provider in subsection (F), the Department shall apply the following to each primary care provider's application:
1. If only one application is for a primary care provider who is a resident of Arizona, the Department shall approve the primary care provider for participation;
 2. If more than one application is for a primary care provider who is a resident of Arizona, the Department shall apply each of the following factors in descending order until no two applications are the same and all available loan repayment funds have been allocated:
 - a. Whether a primary care provider will provide primary care services full-time;
 - b. Whether the primary care provider's service site is located in a rural area;
 - c. The service site highest HPSA score reported in subsection (B)(2);
 - d. Whether the primary care provider provides primary care services when the primary care provider and a patient are at the same location;
 - e. Whether the primary care provider has experience providing primary care services to a medically underserved population;
 - f. The number of total hours the primary care provider has experience providing primary care services in a medically underserved population if reported in subsection (G)(2)(e); and
 - g. Whether the primary care provider's practice or specialty is identified as the greatest unmet healthcare discipline or specialty area in Arizona, as determined by the U. S. Department of Health & Human Services, Health Resources and Services Administration.
- H.** If more than one initial application or renewal application for a primary care provider in subsection (F) remains after the Department's determinations in subsection (G) and there are limited loan repayment funds available, the Department shall randomly select one primary care provider's initial application or renewal application and approve the primary care provider for participation in the LRP.
- I.** When the Department holds a random selection to determine one initial application or renewal application identified in subsection (H), the Department shall:
1. Assign an Assistant Director from a different division within in the Department than the LRP division to be responsible for the random selection, and
 2. Invite all the primary care providers whose initial applications or renewal applications are identified to participate in the random selection.
- J.** The Department shall notify a primary care provider of the Department's decision according to R9-15-206.

R9-15-208. Rural Private Primary Care Provider Health Service Priority

A. For a primary care provider providing primary care services at multiple service sites, the Department shall determine the health service priority points in subsection (B)(1) through (6) for each service site and:

1. If the number of primary care service hours worked at one service site is more than 50 percent of the primary care provider's total number of primary care service hours worked, the Department shall use that service site's points to determine an initial application or a renewal application health service priority; or
2. If the number of primary care service hours worked at one service site is not more than 50 percent of the primary care provider's total number of primary care service hours worked, the Department shall use the average of all service sites' points to determine an initial application or a renewal application health service priority.

B. The Department shall review an initial application or a renewal application and assign points based on the following factors to determine the initial application or renewal application health service priority:

1. If the service site is a designated HPSA, the service site's highest geographic, facility, or population HPSA score, consistent with subsection (A), assigned by the U.S. Secretary of Health and Human services for the area in which the service site is located according to documentation provided by the primary care provider;
2. If the service site is not a designated HPSA, the service site's AzMUA score, assigned by the Department, converted to an equivalent HPSA score as calculated by dividing the AzMUA score by 4.65 then rounding the quotient to the higher number;
3. The service site's percentage of the total encounters reported according to R9-15-203(C)(15)(l) or R9-15-205(C)(15)(e) that are AHCCCS, Medicare, approved sliding-fee schedule, and free-of-charge encounters:

Percentage	Points
Greater than 50%	10,
35-50%	8,
26-34%	6,
11-25%	4, or
Less than 10%	2;

4. Except for a service site at a federal or state prison, if:
 - a. A medical primary care provider, including a pharmacist, the distance from the primary care provider's service site to the next service site that provides medical

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

services and offers reduced primary care services fees according to an approved sliding-fee schedule:

Miles	Points
Greater than 25	4, or
Less than 25	0;

- b. A dental primary care provider, the distance from the primary care provider's service site to the next service site that provides dental services and offers reduced primary care services fees according to an approved sliding-fee schedule:

Miles	Points
Greater than 25	4, or
Less than 25	0; and

- c. A behavioral health primary care provider, the distance from the primary care provider's service site to the next service site that provides behavioral health services and offers reduced primary care services fees according to an approved sliding-fee schedule:

Miles	Points
Greater than 25	4, or
Less than 25	0;

5. For an initial application only, the primary care provider is newly employed at the service site or by the employer:
- a. Yes = 2 points, or
 - b. No = 0 points;
6. The primary care provider only provides primary care services when the primary care provider and the patient are physically present at the same location:
- a. Yes = 4 points, or
 - b. No = 0 points;
7. The primary care provider is a resident of Arizona according to A.R.S. § 15-1802:
- a. Yes = 4 points, or
 - b. No = 0 point;
8. The primary care provider is a graduate of an Arizona graduate educational institution:
- a. Yes = 4 points, or
 - b. No = 0 point;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

9. For an initial application only, the primary care provider has experience providing primary care services to a medically underserved population:
 - a. Yes = 4 points, or
 - b. No = 0 point; and
 10. The primary care provider is providing or agrees to provide primary care services full-time:
 - a. Yes = 3 points, or
 - b. No = 0 points.
- C.** To determine a service site's highest HPSA score, the Department shall apply the following HPSA designations:
1. A Primary Medical Care HPSA score if a primary care provider provides medical or pharmaceutical primary care services,
 2. A Dental HPSA score if a primary care provider provides dental primary care services, and
 3. A Mental Health HPSA score if a primary care provider provides behavioral health primary care services.
- D.** For the purpose of determining a health service priority and allocating loan repayment funds, the Department shall consider a primary care provider who provides services at a critical access hospital, in addition to primary care services at a service site according to R9-15-202(A)(1)(g), to be providing services full-time.
- E.** The Department shall determine a primary care provider's initial or renewal application health service priority by calculating the sum of the assigned points for the factors described in subsection (B).
- F.** The Department shall apply the factors in subsection (G) if the Department determines there are:
1. More than one initial application or renewal application that have the same health service priority and there are funds available for only one initial or renewal application; or
 2. Two or more initial applications that have the same health service priority for:
 - a. A service site and there is one primary care provider with a higher health service priority approved to participate in the LRP during the same June allocation process; or
 - b. An employer and there are three primary care providers with a higher health service priority approved to participate in the LRP during the same June allocation process.

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- G.** To determine participation in the LRP for a primary care provider in subsection (F), the Department shall apply the following to each primary care provider's application:
1. If only one application is for a primary care provider who is a resident of Arizona, the Department shall approve the primary care provider for participation;
 2. If more than one application is for a primary care provider who is a resident of Arizona, the Department shall apply each of the following factors in descending order until no two applications are the same and all available loan repayment funds have been allocated:
 - a. Whether a primary care provider will provide primary care services full-time;
 - b. Whether the primary care provider's service site is a non-profit;
 - c. The highest service site highest HPSA score or converted AzMUA score in subsection (B)(1) or (2);
 - d. Whether the primary care provider provides primary care services when the primary care provider and a patient are at the same location;
 - e. Whether the primary care provider has experience providing primary care services to a medically underserved population;
 - f. The number of clock hours the primary care provider has experience providing primary care services in a medically underserved population if reported in subsection (G)(2)(e); and
 - g. Whether the primary care provider's practice or specialty is identified as the greatest unmet healthcare discipline or specialty area in Arizona determined by the U. S. Department of Health & Human Services, Health Resources and Services Administration.
- H.** If more than one initial application or renewal application for a primary care provider in subsection (F) remains after the Department's determinations in subsection (G) and there are limited loan repayment funds available, the Department shall randomly select one primary care provider's initial application or renewal application and approve the primary care provider for participation in the LRP.
- I.** When the Department holds a random selection to determine one primary care provider from the primary care providers identified in subsection (H), the Department shall:
1. Assign an Assistant Director from a different division within in the Department than the LRP division to be responsible for the random selection, and
 2. Invite all the primary care providers whose initial applications or renewal applications are identified to participate in the random selection.

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- J.** The Department shall notify a primary care provider of the Department's decision according to R9-15-206.

R9-15-209. Allocation of Loan Repayment Funds

- A.** Each fiscal year, for an initial application or renewal application that demonstrates a primary care provider's and the primary care provider's service site's compliance with A.R.S. Title 36, Chapter 21 and this Article, the Department shall allocate loan repayment funds according to this Section and in the following order to the primary care provider with the highest health service priority:
1. During the April allocation process, primary care providers with a HPSA score of 14 or more who are approved to participate for a third year in the:
 - a. Primary Care Provider LRP, or
 - b. Rural Private Primary Care Provider LRP;
 2. During the June allocation process, if there are additional loan repayment funds available after the allocation process in subsection (A)(1), primary care providers who are approved for initial participation for two years in the:
 - a. Primary Care Provider LRP, or
 - b. Rural Private Primary Care Provider LRP; and
 3. During the October allocation process, if there are additional loan repayment funds available after the allocation process in subsection (A)(2), primary care providers delineated in subsection (B) in the:
 - a. Primary Care Provider LRP; or
 - b. Rural Private Primary Care Provider LRP.
- B.** A primary care provider is allowed to apply for participation in the LRP according to the requirements in this Chapter and be allocated loan repayment funds according to subsection (A)(3), if the primary care provider has:
1. Completed the first two years of participation in the LRP but was denied approval to continue participation because no loan repayment funds were available during the allocation process;
 2. Previously participated in the LRP, completed at least the first two years of participation, and is applying to resume participation in the LRP;
 3. Completed the first two years of participation in the LRP and is currently providing primary care services at a service site with a HPSA score below 14, and is applying to continue participation in the LRP during the same calendar year as the completion of the first two years;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

4. Completed the first three years of participation in the LRP and is applying to continue participation in the LRP during the same calendar year as the completion of the first three years of participation; or
 5. Submitted an initial application during the same calendar year that demonstrated the primary care provider's and the primary care provider's service site's compliance with A.R.S. Title 36, Chapter 21 and this Article but was denied approval to participate because:
 - a. There were no loan repayment funds available;
 - b. For an initial application, the primary care provider's employer employs four other primary care providers approved to participate in the LRP; or
 - c. For an initial application, the primary care provider's service site employs two other primary care providers approved to participate in the LRP.
- C.** The Department shall use monies donated to the LRP to supplement allocations made according to A.R.S. Title 36, Chapter 21 and this Article based on a primary care provider's health service priority and, if applicable, any designation made for the donation according to subsection (D).
- D.** A person donating monies to the LRP shall designate whether the donation is for:
1. The LRP to use at the discretion of the Department for loan repayment allocations or for LRP administrative costs; or
 2. One of the following:
 - a. The Primary Care Provider Loan Repayment Program established according to A.R.S. § 36-2172;
 - b. The Rural Private Primary Care Provider Loan Repayment Program established according to A.R.S. § 36-2174;
 - c. A specific type or types of primary care provider; or
 - d. A specific county in Arizona;
- E.** If state loan repayment funds and state-appropriated funds are depleted, but there are donated funds available and the primary care provider with the next highest health service priority is not designated to receive the donated funds according to (D)(2) the donated monies are not allocated during the current allocation process.
- F.** The Department shall determine the amount of loan repayment funds allocated to a primary care provider based on the primary care provider's service site's highest HPSA score as determined in R9-15-207(B)(2) or R9-15-208(B)(1) or (2), as follows:
1. If a service site's highest HPSA score is 18 to 26 points, 100 percent of the maximum annual amount;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

2. If a service site's highest HPSA score is 14 to 17 points, 90 percent of the maximum annual amount; and
3. If a service site's highest HPSA score is 0 to 13 points, 80 percent of the maximum annual amount.

G. The Department shall allocate loan repayment funds to physicians and dentists according to the following:

Contract Year of Service	Maximum Annual Amount for Full-Time		
	HPSA Score of 18-26	HPSA Score of 14-17	HPSA Score of 0-13
Initial two years	\$65,000	\$58,500	\$52,000
Third year	\$35,000	\$31,500	\$28,000
Fourth year	\$25,000	\$22,500	\$20,000
Fifth year and continuing	\$15,000	\$13,500	\$12,000

Contract Year of Service	Maximum Annual Amount for Half-Time		
	HPSA Score of 18-26	HPSA Score of 14-17	HPSA Score of 0-13
Initial two years	\$32,500	\$29,250	\$26,000
Third year	\$17,500	\$15,750	\$14,000
Fourth year	\$12,500	\$11,250	\$10,000
Fifth year and continuing	\$7,500	\$6,750	\$6,000

H. The Department shall allocate loan repayment funds to pharmacists, advance practice providers, and behavioral health providers according to the following:

Contract Year of Service	Maximum Annual Amount for Full-Time		
	HPSA Score of 18-26	HPSA Score of 14-17	HPSA Score of 0-13
Initial two years	\$50,000	\$45,000	\$40,000
Third year	\$25,000	\$22,500	\$20,000
Fourth year	\$20,000	\$18,000	\$16,000
Fifth year and continuing	\$10,000	\$9,000	\$8,000

Contract Year of Service	Maximum Annual Amount for Half-Time		
	HPSA Score of 18-26	HPSA Score of 14-17	HPSA Score of 0-13
Initial two years	\$25,000	\$22,500	\$20,000
Third year	\$12,500	\$11,250	\$10,000
Fourth year	\$10,000	\$9,000	\$8,000
Fifth year and continuing	\$5,000	\$4,500	\$4,000

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- I.** When calculating the allocation of loan repayment funds for a primary care provider who resumes participation in the LRP, the Department shall consider the loan repayment contract year of service to be the succeeding year following the actual loan repayment contract years of service completed during the primary care provider's previous participation in the LRP.
- J.** If the Department has inadequate funds to provide the maximum annual amount allowable and a primary care provider agrees to accept the lesser amount, the Department shall allocate the lesser amount agreed to by the primary care provider.
- K.** If the Department determines no loan repayment funds are available during a fiscal year for allocations based on an initial application or a renewal application, the Department shall provide a notice at least 30 calendar days before the initial or renewal application submission date that the Department is not accepting initial or renewal applications.

R9-15-210. Verification of Primary Care Services and Disbursement of Loan Repayment Funds

- A.** If primary care services are provided by means of telemedicine, a primary care provider shall:
 - 1. Report the number of telemedicine hours worked, and
 - 2. Attest that the originating site where the telemedicine patient is located and the distant site where the primary care provider is located are both in a HPSA or, if applicable, both in an AzMUA.
- B.** If a primary care provider provides primary care services at a critical access hospital with a separate qualifying service site, the primary care provider shall report the:
 - 1. Total number of hours the primary care provider provided primary care services at the qualifying service site separate from the critical access hospital, and
 - 2. Total number of hours worked at the critical access hospital.
- C.** A primary care provider shall submit verification of primary care service hours worked at the primary care provider's approved service site on a Department-provided format containing:
 - 1. The primary care provider's name;
 - 2. The beginning and ending dates during which the primary care services were provided;
 - 3. Whether the primary care provider is providing primary care services full-time or half-time;
 - 4. The primary care provider's notarized signature and date of signature; and
 - 5. The primary care provider's approved service site's licensee, tribal authority, or employer's notarized signature and date of signature.

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- D.** A primary care provider shall submit documentation of primary care service encounters provided at the primary care provider's approved service site in a Department-provided form containing:
1. The primary care provider's name;
 2. The beginning and ending dates during which the primary care services were provided;
 3. The number of total encounters the primary care provider provided during the time reported in subsection (D)(2);
 4. The number of total encounters used the sliding-fee scale the primary care provider provided during the time reported in subsection (D)(2);
 5. The primary care provider's notarized signature and date of signature; and
 6. The primary care provider's approved service site's licensee, tribal authority, or employer's notarized signature and date of signature.
- E.** Upon receipt of the verification in subsection (C) and the documentation in subsection (D), the Department shall disburse loan payment funds to the primary care provider's lender or lenders.
- F.** Primary care services performed before the effective date of a loan repayment contract do not satisfy the contracted primary care health professional service obligation and are not eligible for loan repayment funds.
- G.** The Department shall disburse loan repayment funds for primary care services provided during a loan repayment contract period according to the allocations in R9-15-209.
- H.** The Department may delay disbursing loan repayment funds to a primary care provider's lender or lenders if the primary care provider fails to submit complete or timely service verification and encounter report forms.
- I.** The Department shall not disburse loan repayment funds to a primary care provider's lender or lenders if the primary care provider fails to submit complete and accurate information required in the service verification and the encounter report forms.

R9-15-211. Request for Change

- A.** To request a change, a primary care provider shall submit the following information to the Department, in a Department-provided format:
1. The primary care providers name, home address, telephone number, and e-mail address;
 2. Whether the request is to:
 - a. Add or transfer to another service site or employer,
 - b. Add or change a qualifying educational loan or lender, or
 - c. Change primary care service hours from full-time to half-time or from half-time to full-time;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

3. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-206;
 4. An attestation that:
 - a. The Department is authorized to verify all the information provided, and
 - b. The information submitted is true and accurate; and
 5. The primary care provider's signature and date of signature.
- B.** In addition to the information required in subsection (A), a primary care provider:
1. If adding or transferring to a new service site or new employer, shall submit the following information about the new service site or employer:
 - a. In a Department-provided format:
 - i. The information required in R9-15-203(C)(15) for the new service site and in R9-15-203(C)(17) for a new critical access hospital, if applicable;
 - ii. An attestation signed and date signed by a licensee, licensee's designee, or tribal authority from the new service site stating that the new service site will comply with the requirements in R9-15-202, including agreeing to notify the Department when the employment status of the primary care provider changes;
 - iii. If the primary care provider's new employer is not the licensee or tribal authority of the service site identified in subsection (B)(1)(a)(i):
 - (1) An attestation that the new employer will comply with the requirements in R9-15-202, including agreeing to notify the Department when the primary care provider's employment status changes;
 - (2) The name, title, e-mail address, and telephone number of a contact individual for the new employer;
 - (3) Whether the primary care provider is providing primary care services full-time or half-time;
 - (4) The dates that the primary care provider is expected to start and end providing primary care services; and
 - (5) The new employer's signature and date of signature;
 - b. Except for a service site that is a free-clinic or a federal or state prison, a copy of the new service site's:
 - i. Sliding-fee schedule in R9-15-202(A)(2)(d)(i),
 - ii. Sliding-fee schedule policy in R9-15-202(A)(2) (d)(ii), and

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- iii. Sliding-fee schedule signage in R9-15-202(A)(2) (d)(iii), posted on the premises;
 - c. Documentation that the new service site is in a HPSA or an AzMUA; and
 - d. If more than one service site licensee, tribal authority, or employer is identified in subsection (B)(1)(a), the signature and date of signature of each service site licensee, tribal authority, or employer.
- 2. If adding or changing a qualifying educational loan or lender, shall submit the following information about the qualifying educational loan or lender:
 - a. In a Department-provided format:
 - i. An attestation signed and date signed by an individual from the lending institution, certifying that the loan meets the requirements in R9-15-201 for a qualifying educational loan, and
 - ii. The percentage of the loan repayment funds that the primary care provider is requesting that the lender receive;
 - b. Documentation from the lender or the National Student Loan Data System, established by the U.S. Department of Education, verifying that the loan is for a qualifying educational loan; and
 - c. For a qualifying educational loan, a copy of the most recent billing statement from the lender; and
- 3. If changing primary care service hours worked, shall submit the following information about the change in primary care service hours:
 - a. In a Department-provided format:
 - i. The name, title, e-mail address, and telephone number of a contact individual for each service site, tribal authority, or employer; and
 - ii. The percentage of loan repayment funds each lender may receive if different from the initial application; and
 - b. A copy of an agreement or a letter verifying approval to change primary care service hours signed by the licensee, tribal authority, or employer from the service site where the primary care provider provides primary care service, including:
 - i. The name of each service site where the primary care services are provided;
 - ii. The date the primary care provider is expected to begin revised primary care services hours;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- iii. The number of primary care service hours per week the primary care provider is expected to work; and
 - iv. If a primary care provider will provide telemedicine, the number of telemedicine hours the primary care provider is expected to provide per week.
- C.** If a primary care provider's personal information changes, the primary care provider shall submit:
 - 1. A written notice stating the information being changed and indicating the new information; and
 - 2. If the change is in the primary care provider's legal name, a copy of one of the following with the primary care provider's new name:
 - a. Marriage certificate,
 - b. Divorce decree,
 - c. Professional license, or
 - d. Other legal document establishing the primary care provider's legal name.
- D.** Before a primary care provider provides primary care service at another service site or employer, or changes primary care services from full-time or half-time hours worked, the primary care provider shall obtain the Department's approval for the change.
- E.** If a change in service site or a change in primary care service hours worked affects a primary care provider's service site points or health service priority, the Department shall determine whether the primary care provider's loan repayment amount will increase or decrease; and if:
 - 1. A loan repayment amount will increase, the primary care provider's loan repayment amount will not change until the primary care provider obtains approval to renew participation; or
 - 2. A loan repayment amount will decrease, the primary care provider's loan repayment amount will decrease according to amounts in R9-15-209, effective on the date the Department approves the primary care provider's request to change service site or primary care service hours.
- F.** If a change in primary care service hours worked is from full-time to half-time, the primary care provider's loan repayment funds allocated will decrease by half of the existing contracted loan repayment amount, effective on the date the Department approves the primary care provider's request to change the primary care service hours worked.
- G.** If a change in primary care service hours worked is from half-time to full-time:
 - 1. The primary care provider's allocated loan repayment funds will not change until the primary care provider's renewal application is approved to continue participation; and

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

2. For a primary care provider who was initially allocated loan repayment funds based on providing primary care services full-time but is currently providing primary care services half-time, the primary care provider's loan repayment funds will revert to the loan repayment funds initially allocated after the Department approves the primary care provider's request to change back to full-time primary care service hours.
- H.** A primary care provider shall submit a request to change according to this Section to the Department:
1. At least 10 working days before the effective date of a change to a qualifying educational loan or lender; and
 2. At least 30 calendar days before the effective date of a change to add or transfer to another service site or employer or to change primary care service hours worked.
- I.** A primary care provider shall execute any document necessary for the Department to access records and acquire information necessary to verify information provided.
- J.** For a request submitted according to subsection (A), the Department shall notify a primary care provider of the Department's decision according to R9-15-206.

R9-15-212. Loan Repayment Contract Suspension

- A.** A primary care provider may request a loan repayment contract suspension:
1. For a condition involving the primary care provider or a member of the primary care provider's immediate family that restricts the primary care provider's ability to complete the terms of the loan repayment contract, or
 2. To transfer to another service site or employer.
- B.** To request a loan repayment contract suspension, a primary care provider shall submit to the Department a written request for a loan repayment contract suspension, at least 30 calendar days before the proposed start date of the loan repayment contract suspension that includes:
1. The primary care provider's name, home address, telephone number, and e-mail address;
 2. The service site's name, street address, e-mail address, and telephone number, and the name of the individual authorized to act on behalf of the service site;
 3. The reasons for the primary care provider's request to suspend the loan repayment contract;
 4. The beginning and ending dates of the requested loan repayment contract suspension;
 5. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-206;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

6. A statement that the information included in the request for loan repayment contract suspension is true and accurate; and
 7. The primary care provider's signature and date of signature.
- C.** Upon receiving a request for a loan repayment contract suspension, the Department may contact the individual in subsection (B)(2):
1. To verify the information in the request for the loan repayment contract suspension, and
 2. To obtain information regarding the circumstances that caused the request for loan repayment contract suspension.
- D.** A primary care provider may request an initial loan repayment contract suspension for up to six months. If the primary care provider is unable to resume providing primary care services by the end of the initial loan repayment contract suspension period, the primary care provider may request an additional six-month loan repayment contract suspension for a total maximum allowable loan repayment contract suspension of 12 months.
- E.** A primary care provider requesting an additional six-month loan repayment contract suspension shall submit a written request to the Department at least 30 calendar days before the expiration of the initial loan repayment contract suspension period that includes the requirements in subsection (B).
- F.** During a primary care provider's loan repayment contract suspension period, a primary care provider who plans to continue to participate in the LRP is required to shall submit a renewal application according to R9-15-205.
- G.** During a primary care provider's loan repayment contract suspension period, the Department shall not disburse loan repayment funds to a primary care provider's lender.
- H.** A primary care provider is responsible for making loan payments during the loan repayment contract suspension period.
- I.** If the Department approves a primary care provider's request for a loan repayment contract suspension due to transfer to another service site or employer, the primary care provider shall written report progress made in identifying another service site or employer to the Department at least once every 30 calendar days.
- J.** If the primary care provider does not obtain employment at another service site or employer or resume providing primary care services by the end of the loan repayment contract suspension period, the Department shall consider that the primary care provider has failed to complete the terms of the loan repayment contract or does not intend to complete the terms of the loan repayment contract.

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- K. For a request submitted according to subsection (B) or (E), the Department shall notify a primary care provider of the Department's decision according to R9-15-206.

R9-15-213. Liquidated Damages for Failure to Complete a Loan Repayment Contract

- A. A primary care provider who fails to complete the terms of the loan repayment contract shall pay to the Department the liquidated damages owed under A.R.S. § 36-2172(I), unless the primary care provider receives a waiver of the liquidated damages under R9-15-214.
- B. Upon receiving notification or upon the Department's determination that a primary care provider is unable or does not intend to complete the terms of the primary care provider's loan repayment contract, the Department shall:
 - 1. Withhold loan repayment funds,
 - 2. Determine liquidated damages owed, and
 - 3. Notify the primary care provider of the amount of liquidated damages owed.
- C. A primary care provider shall pay the liquidated damages to the Department within one year after the termination date of a primary care provider's primary care service specified in the loan repayment contract or within one year after the end of a loan repayment contract suspension approved according to R9-15-212, whichever is later.

R9-15-214. Waiver of Liquidated Damages

- A. The Department shall waive liquidated damages owed under A.R.S. Title 36, Chapter 21 or this Article if the primary care provider is unable to complete the terms of the loan repayment contract due to the primary care provider's death.
- B. The Department may waive liquidated damages owed under A.R.S. Title 36, Chapter 21 or this Article if the primary care provider is unable to complete the terms of the loan repayment contract because:
 - 1. The primary care provider suffers from a physical or behavioral health condition resulting in the primary care provider's temporary or permanent inability to perform the services required by the loan repayment contract; or
 - 2. An individual in the primary care provider's immediate family has a chronic or terminal illness.
- C. To request a waiver of liquated damages, a primary care provider shall submit to the Department:
 - 1. A written request for a waiver of liquidated damages that includes:
 - a. The primary care provider's name, home address, telephone number, and e-mail address;

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

- b. For each service site where the primary care provider provided primary care services, the service site's:
 - i. Name, street address, e-mail address, and telephone number; and
 - ii. The name of a contact individual for the service site;
 - c. A statement describing the primary care provider's physical or behavioral health condition or the chronic or terminal illness of the primary care provider's immediate family member;
 - d. A statement describing why the primary care provider cannot complete the contact;
 - e. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-206;
 - f. A statement that the information included in the request for waiver is true and accurate; and
 - g. The primary care provider's signature and date of signature; and
2. Documentation of the primary care provider's physical or behavioral health condition or the chronic or terminal illness of the primary care provider's immediate family member.
- D.** Upon receiving a request for waiver, the Department may contact the individual authorized to act on behalf of the service site to verify the information in the request for waiver and to obtain any additional information regarding the request for waiver.
- E.** In determining whether to waive liquidated damages, the Department shall consider:
- 1. The physical or behavioral health condition of the primary care provider or the chronic or terminal illness of the primary care provider's immediate family member; and
 - 2. Whether the documentation demonstrates that the primary care provider is permanently unable or temporarily unable to provide primary care services during or beyond the expiration date of the loan repayment contract.
- F.** For a request submitted according to subsection (C), the Department shall notify a primary care provider of the Department's approval or disapproval according to R9-15-206.

R9-15-215. Loan Repayment Contract Cancellation

- A.** A primary care provider may submit a written request to the Department requesting cancellation of a loan repayment contract within 60 calendar days after the start date of the loan repayment contract if:
- 1. No loan repayment has been disbursed to the primary care provider's lender; and

9 A.A.C. 15 DEPARTMENT OF HEALTH SERVICES - LOAN REPAYMENT PROGRAM

2. The primary care provider is unable or does not intend to complete the terms of the loan repayment contract, and
3. A written request that includes:
 - a. The primary care provider's name, home address, telephone number, and e-mail address;
 - b. The service site's name, street address, e-mail address, and telephone number; and the name of the individual authorized to act on behalf of the service site;
 - c. Whether the primary care provider agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-15-206; and
 - d. The primary care provider's signature and date of signature.
- B.** For a request submitted according to subsection (A), the Department shall notify a primary care provider of the Department's decision according to R9-15-206.
- C.** The Department may cancel a loan repayment contract and waive liquidated damages based upon a primary care provider's request to cancel the loan repayment contract in subsection (A).
- D.** The Department may cancel a primary care provider's loan repayment contract if the Department determines that:
 1. The primary care provider:
 - a. Except as allowed in subsection (A), has failed to complete the terms of the loan repayment contract; or
 - b. Is not complying with A.R.S. Title 36, Chapter 21 and this Article; or
 2. A primary care provider's service site is not complying with the requirements in A.R.S. Title 36, Chapter 21 or this Chapter.
- E.** If the Department cancels a primary care provider's loan repayment contract, the Department shall provide written notice that includes the specific reason for the cancellation and the appeal process in A.R.S. Title 41, Chapter 6, Article 10.

A.R.S. §§ 36-104, 36-132(A), 39-136(G) and 36-2171 through 36-2174

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

A.R.S. §§ 36-104, 36-132(A), 39-136(G) and 36-2171 through 36-2174

3. Make rules for the organization and proper and efficient operation of the department.
4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.
5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.
6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.
10. Establish and maintain separate financial accounts as required by federal law or regulations.
11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
12. Take appropriate steps to reduce or contain costs in the field of health services.
13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.
14. Encourage an effective use of available federal resources in this state.
15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.
16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.
17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.
19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

A.R.S. §§ 36-104, 36-132(A), 39-136(G) and 36-2171 through 36-2174

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration,

A.R.S. §§ 36-104, 36-132(A), 39-136(G) and 36-2171 through 36-2174

provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

A.R.S. §§ 36-104, 36-132(A), 39-136(G) and 36-2171 through 36-2174

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.
16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
17. License and regulate health care institutions according to chapter 4 of this title.
18. Issue or direct the issuance of licenses and permits required by law.
19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
 - (a) Screening in early pregnancy for detecting high-risk conditions.
 - (b) Comprehensive prenatal health care.
 - (c) Maternity, delivery and postpartum care.
 - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
 - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant,

A.R.S. §§ 36-104, 36-132(A), 39-136(G) and 36-2171 through 36-2174

sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

A.R.S. §§ 36-104, 36-132(A), 39-136(G) and 36-2171 through 36-2174

36-2171. Definitions

In this chapter, unless the context otherwise requires:

1. "Advance practice provider" means a physician assistant as defined in section 32-2501 or a registered nurse practitioner as defined in section 32-1601.
2. "Behavioral health provider" means a physician who is a board-certified or board-eligible psychiatrist, a psychologist, a physician assistant or a registered nurse practitioner who is certified to practice as a behavioral health specialist or a person who is licensed pursuant to title 32 as a clinical social worker, professional counselor or marriage and family therapist.
3. "Department" means the department of health services.
4. "Pharmacist" has the same meaning prescribed in section 32-1901.
5. "Rural" means either of the following:
 - (a) A county with a population of less than four hundred thousand persons according to the most recent United States decennial census.
 - (b) A census county division with less than fifty thousand persons in a county with a population of four hundred thousand or more persons according to the most recent United States decennial census.

36-2172. Primary care provider loan repayment program; purpose; eligibility; default; use of monies

- A. The primary care provider loan repayment program is established in the department to pay off portions of education loans taken out by physicians, dentists, pharmacists, advance practice providers and behavioral health providers.
- B. The department shall prescribe application and eligibility requirements that are consistent with the requirements of the national health service corps loan repayment program (42 Code of Federal Regulations part 62). To be eligible to participate in the primary care provider loan repayment program, an applicant shall meet all of the following requirements:
 1. Have completed the final year of a course of study or program approved by recognized accrediting agencies for higher education in a health profession licensed pursuant to title 32 or hold an active license in a health profession licensed pursuant to title 32.
 2. Demonstrate current or prospective employment with a public or nonprofit entity located and providing services in a federally designated health professional shortage area in this state as designated under 42 Code of Federal Regulations section 62.52.
 3. Contract with the department to serve and be qualified to serve in general dentistry, family medicine, pediatrics, obstetrics, internal medicine, geriatrics, psychiatry, pharmacy or behavioral health.
- C. In addition to the requirements of subsection B of this section, an applicant who is a physician shall meet both of the following requirements:
 1. Have completed a professional residency program in family medicine, pediatrics, obstetrics, internal medicine or psychiatry or a fellowship, residency or certification program in geriatrics.

A.R.S. §§ 36-104, 36-132(A), 39-136(G) and 36-2171 through 36-2174

2. Contract with the department to serve for at least two years.

D. An advance practice provider, behavioral health provider or dentist who participates in the primary care provider loan repayment program shall initially contract with the department to provide services pursuant to this section for at least two years.

E. In making recommendations for the primary care provider loan repayment program, the department shall give priority to applicants who:

1. Intend to practice in rural areas most in need of primary care services.

2. Have been assigned to a high-need health professional shortage area pursuant to 42 Code of Federal Regulations section 62.52.

3. Meet criteria established in rule to determine priority consistent with the national health service corps loan repayment program (42 Code of Federal Regulations part 62, subpart B).

F. All loan repayment contract obligations are subject to the availability of monies and legislative appropriation. The department may cancel or suspend a loan repayment contract based on unavailability of monies for the program. The department is not liable for any claims, actual damages or consequential damages arising out of a cancellation or suspension of a contract.

G. This section does not prevent the department from encumbering an amount that is sufficient to ensure payment of each primary care provider loan for the services rendered during a contract period.

H. The department shall issue program monies to pay primary care provider loans that are limited to the amount of principal, interest and related expenses of educational loans, not to exceed the provider's total student loan indebtedness, according to the following schedule:

1. For physicians and dentists:

(a) For the first two years of service, a maximum of sixty-five thousand dollars.

(b) For subsequent years, a maximum of thirty-five thousand dollars.

2. For advance practice providers, pharmacists and behavioral health providers:

(a) For the first two years of service, a maximum of fifty thousand dollars.

(b) For subsequent years, a maximum of twenty-five thousand dollars.

I. A participant in the primary care provider loan repayment program who breaches the loan repayment contract by failing to begin or to complete the obligated services is liable for liquidated damages in an amount equivalent to the amount that would be owed for default as prescribed by the federal grants to states for loan repayment program or as determined and authorized by the department. The department may waive the liquidated damages provisions of this subsection if it determines that death or permanent physical disability accounted for the failure of the participant to fulfill the contract. The department may prescribe additional conditions for default, cancellation, waiver or suspension that are consistent with the national health service corps loan repayment program (42 Code of Federal Regulations sections 62.27 and 62.28).

A.R.S. §§ 36-104, 36-132(A), 39-136(G) and 36-2171 through 36-2174

J. Notwithstanding section 41-192, the department may retain legal counsel and commence whatever actions are necessary to collect loan payments and charges if there is a default or a breach of a contract entered into pursuant to this section.

K. The director of the department may authorize the program to be implemented independent of the federal grants for state loan repayment program based on the needs of this state.

L. The department may use monies to develop programs such as resident-to-service loan repayment and employer recruitment assistance to increase participation in the primary care provider loan repayment program. The department may use private donations, grants and federal monies to implement, support, promote or maintain the program.

36-2173. Obstetrical practitioners; underserved areas; payment of insurance premiums; prioritization

A. A physician or an advance practice provider who provides obstetrical services in rural areas of this state may apply for and receive financial assistance to offset medical malpractice premium expenses.

B. To be qualified for assistance, a person shall apply to the department on a form and in a manner prescribed by the department and shall meet the following requirements:

1. Have current obstetrical delivery privileges at one or more hospitals that are located in rural areas of this state and that are not operated by the federal government.
2. Have a contract with the Arizona health care cost containment system administration for obstetrical services with one or more of the system's prepaid contractors.
3. Be licensed under title 32, chapter 13, 15, 17 or 25.
4. Personally incur malpractice insurance costs.

C. The department shall establish an index that uses indicators to determine a score for each applicant service area. These indicators shall include:

1. The availability of obstetrical services based on a population to provider ratio.
2. The area's geographic accessibility to obstetrical services.
3. The percentage of the area's population that is at or below a designated federal poverty level.

D. The department shall identify physicians and advance practice providers who are practicing in medically underserved areas and shall notify them of the eligibility for assistance under this section. A physician or advance practice provider shall submit an application for assistance within thirty days of receiving the notification. The department shall offer assistance to qualified applicants based on the ranking of the area in which the applicant serves as established under subsection C of this section. The applicant shall enter into a contract with the department under which the applicant agrees to remain in practice in the specific area for one year. These contracts are exempt from the requirements of title 41, chapter 23.

E. Family physicians and advance practice providers who perform less than fifty-one deliveries per year and who are required to pay an additional premium to perform obstetrical services are eligible to receive an amount of not more than five thousand dollars. Family physicians and obstetricians who perform more than fifty deliveries per year are eligible to receive an amount of not more than ten thousand dollars.

A.R.S. §§ 36-104, 36-132(A), 39-136(G) and 36-2171 through 36-2174

F. The health care provider shall submit a report to the department that contains statistical information required by the department and that identifies the number of women to whom the provider has provided medical services during childbirth, the women's ages, the number of prenatal visits each woman received, the number of these women who are enrolled in the Arizona health care cost containment system and the women's insurance status.

36-2174. Rural private primary care provider loan repayment program; private practice; rules

A. Subject to the availability of monies, the department shall establish a rural private primary care provider loan repayment program for physicians, dentists, pharmacists, behavioral health providers and advance practice providers with current or prospective rural primary care practices located in federally designated health professional shortage areas or medically underserved areas in this state, as prescribed in section 36-2352. To be eligible to participate in the program, an applicant shall agree to provide organized, discounted, sliding fee scale services for medically uninsured individuals from families with annual incomes below two hundred percent of the federal poverty guidelines as established annually by the United States department of health and human services. The department shall approve the sliding fee scale used by the provider. The provider shall ensure notice to consumers of the availability of these services. The department shall give preference to applicants who agree to serve in rural areas.

B. Except as provided in section 36-2172, subsection B, paragraph 2, the program established pursuant to this section and loan repayment contracts made pursuant to this section shall comply with the requirements of section 36-2172.

C. The department may apply for and receive private donations and grant monies to implement the rural private primary care provider loan repayment program established pursuant to this section.

D. The department shall adopt rules to cancel or suspend a loan repayment contract, impose a penalty for default or find a person in default of a contract.

DEPARTMENT OF PUBLIC SAFETY
Title 13, Chapter 3, Tow Trucks



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 7, 2021

SUBJECT: DEPARTMENT OF PUBLIC SAFETY
Title 13, Chapter 3, Tow Trucks

Summary:

This Five-Year Review Report (5YRR) from the Department of Public Safety (Department) relates to all rules in Title 13, Chapter 3 related to tow trucks. Specifically, the rules relate to the design and operation of tow trucks and set the requirements and inspection standards for tow trucks.

In the prior 5YRR approved by the Council in July 2016, the Department proposed to amend the following rules: R13-3-701, R13-3-703, R13-3-902, R13-3-1201, R13-3-1301, and R13-3-1303. All listed rules were amended pursuant to rulemakings completed in April 2019 and May 2020, except for the proposed amendments to R13-3-1301 and R13-3-1303. The Department indicates the previous supervisor of the Tow Truck Unit retired from the Department and is not available to clarify this change. The Department states current leadership is not able to determine a need for any changes.

Proposed Action

The Department does not propose to take any action regarding these rules.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

Stakeholders include the Department and businesses in the towing industry.

According to the Department, the rules have no effect on state revenue. There is no cost to tow companies for inspections and decals, and no new monies from the State General Fund are anticipated to be requested for the Department to conduct tow truck safety inspections. Small businesses benefit from the no-fee structure of tow truck inspections.

The Department determined the previous EIS is still relevant for these rules.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The application of tow truck rules as written have a minimal, if any, negative monetary effect on the regulated public in order to meet the underlying regulatory objective. Small businesses benefit from a one-time no-fee structure of tow truck inspections with no annual re-inspection requirement.

A comparison of other state tow truck regulations revealed numerous states and cities across the country require tow truck permit and operator fees on an annual basis. In contrast, Arizona tow truck rules provide an economically efficient no-fee environment for small business, which reduces pass-through cost to the consumer.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department indicates it received one written comment relevant to these rules in the last five years. Specifically, with regards to rule R13-3-902, the Department indicates the tow truck industry requested the permit decal be moved from the windshield to the back window/cab area. The Department states this change was requested to reduce out-of-service times to replace decals worn out from exposure to the sun, windshield cleaning chemicals and windshield replacement.

This comment was addressed in a rulemaking completed on May 15, 2020. (Notice of Final Rulemaking, 26 A.A.R. 963, May 15, 2020).

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules have been effective in achieving their objectives to set requirements and inspection standards for tow trucks. The Department indicates it's inspectors are inspecting and enforcing tow truck compliance according to these rules and the Department has not received any negative feedback from the tow truck industry (which helped develop these rules) or general public to where the rules have been ineffective; with the exception of rule R13-3-902, indicated above.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department indicates that the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. There are no corresponding federal laws.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules require a permit with regards to tow truck inspections. Pursuant to A.R.S. § 41-1037(A), if an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature, unless certain exceptions are met.

Here, the Department states a general permit is not technically feasible and would not meet the applicable statutory requirements that each tow truck be inspected. The Department states a general permit cannot be issued as an individual tow truck's condition is not indicative of the condition of all tow trucks in a company's fleet. As such, the permit issued by the Department falls within the exception of A.R.S. § 41-1037(A)(3). Therefore, the Department is in compliance with A.R.S. § 41-1037.

11. **Conclusion**

The Department indicates the rules in Title 13, Chapter 3 are clear, concise, understandable, consistent, effective, and enforced as written. The Department does not propose to take any action on these rules.

Council staff recommends approval of this report.

March 11, 2021

VIA EMAIL: grrc@azdoa.gov

Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Public Safety 13 A.A.C. 3 *Tow Trucks* Five-Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report of the Department of Public Safety for 13 A.A.C. 3, *Tow Trucks* which is due on May 31, 2021.

The Department hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Mr. Paul Swietek, Research and Planning Unit at 602-223-2049 or pswietek@azdps.gov.

Sincerely,



**Colonel Heston Silbert
Director**

Arizona Department of Public Safety
Five-year Review Report
13 A.A.C. 3, Tow Trucks
March 9, 2021

- A. List any rule you intend to expire on the date the five-year review is due under A.R.S. § 41-1056(J) and R1-6-301. An explanation of why the rule is intended to expire is required. Once a rule has expired, only a formal rulemaking process can reestablish it.

The Department does not intend for any rule to expire.

- B. Provide a certification the rules are in compliance with A.R.S. § 41-1091 on substantive policy statements.

The Department has not promulgated any substantive policy statements and is therefore in compliance with the statute.

Complete the following for each rule, table and exhibit pursuant to A.R.S. § 41-1056(A) and R1-6-301:

1. Authorization of the rule by existing statutes:

A.R.S. § 41-1713(A)(4): General authority to make rules necessary for the operation of the Department.

A.R.S. § 41.1830.51(A)(1): Specific authority to adopt and enforce rules regarding the design and operation of all tow trucks.

A.R.S. § 41-1830.53: Specific authority to establish a heavy-duty rotator recovery vehicle classification for towing services. The Department determined the specification listed in the statute is sufficient to define this type of vehicle and existing Rules 1102 (axles/wheels/tires), 1103 (air brakes) and 1104 (chains/straps/hoods) are applicable as they apply to all tow trucks regardless of class. Therefore, adding this classification to the rules is not necessary.

A.A.C. R17-5-202 Specifies a tow truck operator of a tow truck with a gross vehicle weight rating of 26,000 or less is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.

2. The objective of the rule:

Rule	Objective
701	To clarify the rules by defining words that are used in a manner specific to the rules.
702	To ensure a clear understanding is achieved on who and what this chapter applies to.
703	To convey clearly the dates Articles 7 through 13 became effective and enforced.

801	To set forth procedures for a tow truck company to properly register with the Department.
901	To ensure a tow truck in operation has been inspected for safety and compliance purposes.
902	To inform the public of the duties of the Department regarding inspection of tow trucks.
903	To set forth the procedures on what a tow truck company should do when a change in ownership occurs.
1001	To set forth the requirements and specifications to operate a light-duty tow truck.
1002	To set forth the requirements and specifications to operate a light-duty tow truck that recovers vehicles from collisions.
1003	To set forth the requirements and specifications to operate a light-duty flatbed tow truck.
1004	To set forth the requirements and specifications to operate a light-duty flatbed tow truck that recovers vehicles involved in collisions.
1005	To set forth the requirements and specifications to operate a light-duty tow truck-tractor and semi-trailer combination.
1006	To set forth the requirements and specifications to operate a medium-duty tow truck that recovers vehicles involved in a collision.
1007	To set forth the requirements and specifications to operate a medium-duty flatbed tow truck that recovers vehicles involved in a collision.
1008	To set forth the requirements and specifications to operate a medium-duty truck-tractor and semi-trailer combination.
1009	To set forth the requirements and specifications to operate a heavy-duty tow truck.
1010	To set forth the requirements and specifications to operate a heavy-duty tow truck that recovers vehicles involved in collisions.
1011	To set forth the requirements and specifications to operate a heavy-duty flatbed tow truck that recovers vehicles involved in collisions.
1012	To set forth the requirements and specifications to operate a heavy-duty tow truck-tractor and semi-trailer combination.
1101	To set forth the requirements on markings required for tow trucks.
1102	To set forth requirements on tow truck axles, wheels, and tires.
1103	To set forth the requirements for tow truck brakes.
1104	To set forth the equipment requirements for tow trucks in the categories of strapping and anchors, warning lights, load securement devices, working lights, mirrors, backup light sources, fire extinguishers and steering wheel locking mechanisms.
1105	To set forth the equipment requirements for a tow truck to operate as a collision-recovery tow truck.
1106	To set forth the conditions that a wire rope would be prohibited from being used in conjunction with a tow truck.
1107	To set forth the conditions, specifications and installation of a wire rope end.
1201	To set forth the operating practices for a tow truck agent and company.

1301	To set forth the procedures to request a waiver of enforcement of the rules in writing to the Director of the Department of Public Safety if there is a compelling public necessity.
1302	To set forth the conditions under which an owner or agent in violation may have their permit denied or suspended.
1303	To set forth the conditions under which an appeal or hearing would be set for persons with denied or suspended permits.

3. Are the rules effective in achieving their objectives? *Yes*

The rules have been effective in achieving their objectives to set requirements and inspection standards for tow trucks. The Department’s inspectors are inspecting and enforcing tow truck compliance according to these rules and the Department has not received any negative feedback from the tow truck industry (which helped develop these rules) or general public to where the rules have been ineffective; with the exception of Item 7, Rule 902.

Rule	Explanation
N/A	

4. Are the rules consistent with other rules and statutes? *Yes*

Rule	Statute	Explanation
N/A		

5. Are the rules enforced as written? *Yes*

Rule	Explanation
N/A	

6. Are the rules clear, concise and understandable? *Yes*

Rule	Explanation
N/A	

7. Has the agency received written criticisms of the rules within the last five years? *Yes*

Rule	Criticism	Action
Chapter 3 in general.	February 15, 2017. R. Scott (rscott34313@cox.net) stated to AZ Game and Fish a complaint about on-water towing. Game and Fish referred the issue to DPS about tow actions once a boat is removed from the	This criticism directly relates to watercraft and applicable regulations as enforced by the Arizona Game and Fish Department (AZGFD).

	<p>water and towed on land to a storage facility. <i>“Something needs to be done about the CRIMINALS that are running a towing/salvage company at Lake Pleasant. Two summers ago, I hit a rock and it flooded my boat and we had to be rescued. The rescue cost \$500.00 dollars and they went out the next day and retrieved my boat. They locked it up in a compound and told me I had to pay \$19,000.00 to get it out. The mechanic at the shop told me I had to get the boat to them within 24 hours or lose the engine. No insurance company works that fast and the charges were way over industry standard. They are criminals and you should do something about them. Want more information? Call the owner or Scorpion Bay Dennis Gorney at Sun Country and he will tell you some more stories of fraud. Btw, I got my boat to the shop, in time to save it and the insurance settle for just about \$7,000.00 The name of the company was Vessel Assist. I think they operated under a new name, now.”</i></p>	<p>Watercraft recovery, transportation and salvage is a specialized business requiring specialized equipment to navigate on and off Arizona waterways.</p> <p>Watercraft as defined in ARS 5-301 “means any boat designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water, or as may be defined by rule of the commission.”</p> <p>After reviewing definitions as listed below, watercraft are not regulated by tow truck rules. Watercraft enforcement and regulation would more appropriately fall under the regulatory jurisdiction of the AZGFD.</p> <p>The definition of a tow truck as specified in the tow truck rules “means a motor vehicle designed, manufactured, or altered to tow or transport one or more vehicles.</p> <p>A vehicle as defined in A.R.S. § 28-101 “means a device in, on or by which a person or property is or may be transported or drawn on a public highway.”</p> <p>A ‘highway’ as specified in A.R.S. § 28-101 “means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for</p>
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		purposes of vehicular travel.”
902	The tow truck industry requested the permit decal be moved from the windshield to the back window/cab area. This change was requested to reduce out of service times to replace decals worn out from exposure to the sun, windshield cleaning chemicals and windshield replacement.	Notice of Final Rulemaking, 26 A.A.R. 963, May 15, 2020.

8. Economic, small business and consumer impact comparison:

The 2020 rulemaking had an EIS. The 2019 rulemaking was an expedited rulemaking and did not require an EIS. The most recent EIS before that is 2007.

The Department determined the previous EIS is still relevant for these rules.

The Department is statutorily required to adopt and enforce rules related to the design and operation of all tow trucks to ensure safe recover operations and safe travel on Arizona roadways.

A safety inspection is required for each tow truck seeking a permit and for those in which there is an ownership change. The Department performs an initial, one-time safety inspection at no cost to the towing industry. Arizona tow truck rules do not require annual re-inspections of tow trucks to renew a permit decal. Under current rules, the towing industry will not realize any loss of revenue such as diverting in-service permitted tow trucks from potential revenue generating trip services unless a random roadside inspection. Random roadside inspection revealing significant safety violations as established in the rules may result in a permit decal suspension pending re-inspection.

There will be no new effect on state revenues. There is no cost to the tow companies for inspections and decals and no new monies from the State General Fund are anticipated to be requested for the Department to conduct tow truck safety inspections.

The application of tow truck rules as written will have a minimal, if any, effect on consumers.

Small business benefits from the no-fee structure of tow truck inspections; which, should have no impact on consumers.

Current rules encourage tow truck owners to comply with safety regulations at all times due to the random nature of roadside inspections.

A comparison of other state tow truck requirements revealed numerous states and cities across the country require tow truck permit and operator fees on an annual basis. In contrast, Arizona tow truck rules provide an economically efficient environment for the consumer and small business, which reduces pass-through cost to the consumer. Arizona does not require fees for safety inspections or permit decals and annual tow truck inspections are not required.

9. Has the agency received any business competitiveness analysis of the rules? *No*

10. Has the agency completed the course of action indicated in the agency’s previous five-year review report? *Yes*

Rule	Action Needed	Action Taken
701	In the 2016 report the Legislature had renumbered the statutory reference from A.R.S. § 28-1108 to A.R.S. § 41-1830.51. A technical fix was performed by the Secretary of State on August 4, 2016. However, in the interim period, the Legislature renumbered the statutes back to their original numbering.	Notice of Final Expedited Rulemaking, 25 A.A.R. 844, April 5, 2019 to again reflect A.R.S. § 28-1108.
703	Repeal Paragraph 2 which exceeded its grandfathering date of 2010.	Notice of Final Expedited Rulemaking, 25 A.A.R. 844, April 5, 2019.
902	1. Update the mailing address and e-mail address. 2. Under Paragraph E change the location of the permit decal on the tow truck from the front windshield to the back window/cab area.	1. Notice of Final Expedited Rulemaking, 25 A.A.R. 844, April 5, 2019. 2. Notice of Final Rulemaking, 26 A.A.R. 963, May 15, 2020.
1201	Update the incorporated by reference to refer to A.A.C. R17-5-202. In the 2016 report the Legislature had renumbered the statutory reference from A.R.S. § 28-1108 to A.R.S. § 41-1830.51. A technical fix was performed by the Secretary of State on August 4, 2016. However, in the interim period, the Legislature renumbered the statutes back to their original numbering.	Notice of Final Expedited Rulemaking, 25 A.A.R. 844, April 5, 2019 to again reflect A.R.S. § 28-1108.
1301	There is no record of a request for a waiver, but the Department believes the rule would	No action required. The previous supervisor of the

	be effective if a waiver request were submitted. This waiver request is for new or improved design technology for a tow truck which has not been specified in the rules. The waiver request is only for the registered tow truck company making the request.	Tow Truck Unit retired from the Department and is not available to clarify this change. Current leadership is not able to determine a need for any changes.
1303	There is no record of a request for a waiver but the Department believes the rule would be effective if a waiver request were submitted. This appeal is for the tow truck company as opposed to the individual person as currently specified in the rule that has been issued tow permits and those permits have been denied or suspended per violations in R13-3-1201. There is no appeal if the Department denied the tow truck company waiver request for new technology items in R13-3-1301.	No action required. The previous supervisor of the Tow Truck Unit retired from the Department and is not available to clarify this change. Current leadership is not able to determine a need for any changes.

11. A determination the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to regulated persons by the rules including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Department is statutorily required to regulate the design and operation of all tow trucks pursuant to Item 1 of this report and the associated rules are written with public safety in mind for safe operation during recovery and transport on Arizona’s roadways.

The application of tow truck rules as written will have a minimal, if any, negative monetary effect on the regulated public in order to meet the underlying regulatory objective. Small business benefits from a one-time no-fee structure of tow truck inspections with no annual re-inspection requirement.

At the request of the tow truck industry, the Department in 2020 conducted a final rulemaking to move the location of permit decals from the front windshield to the rear window (rear cab if no rear window) in order to minimize tow truck down time for permit replacements as a result of windshield repair/replacement, windshield cleaning solution damage and weather damage.

A comparison of other state tow truck regulations revealed numerous states and cities across the country require tow truck permit and operator fees on an annual basis. In contrast, Arizona tow truck rules provide an economically efficient no-fee environment for small business, which reduces pass-through cost to the consumer.

12. Are the rules more stringent than corresponding federal laws? *No*

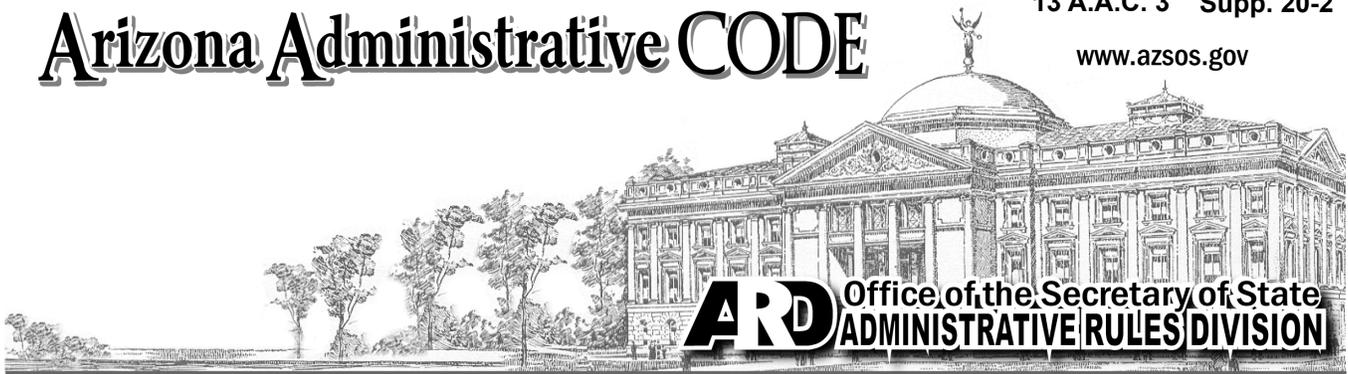
Rule	Federal Law	Explanation
N/A		

13. For rules adopted or amended after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization, state whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes and exception applies:

Pursuant to A.R.S. § 41-1037(A)(3), a general permit is not technically feasible and would not meet the applicable statutory requirements that each tow truck be inspected. A general permit cannot be issued as an individual tow truck's condition is not indicative of the condition of all tow trucks in a company's fleet.

14. Proposed course of action:

There are no proposed changes therefore there is no course of action.



TITLE 13. PUBLIC SAFETY

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2020 through June 30, 2020 (Supp. 20-2).

[R13-3-902.](#) [Inspection by the Department](#) 6

Questions about these rules? Contact:

Name: Sergeant Lance Larson
Address: Arizona Department of Public Safety
 POB 6638, MD1240
 Phoenix, AZ 85005-6638
Telephone: (602) 712-5808
E-mail: llarson@azdps.gov

The release of this Chapter in Supp. 20-2 replaces Supp. 19-1, 1-12 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
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TITLE 13. PUBLIC SAFETY

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

(Authority: A.R.S. § 28-1007 et seq.)

Editor's Note: This Chapter was recodified under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4).

ARTICLE 1. REPEALED AND EXPIRED

Article 1, consisting of Section R13-3-101, automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

Section
R13-3-101. Repealed and Expired 3

ARTICLE 2. REPEALED AND EXPIRED

Article 2, consisting of Sections R13-3-201 through R13-3-204, automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

Section
R13-3-201. Repealed and Expired 3
R13-3-202. Repealed and Expired 3
R13-3-203. Repealed and Expired 3
R13-3-204. Repealed and Expired 3

ARTICLE 3. REPEALED AND EXPIRED

Article 3, consisting of Sections R13-3-301 through R13-3-308, automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

Section
R13-3-301. Repealed and Expired 3
R13-3-302. Repealed and Expired 3
R13-3-303. Repealed and Expired 3
R13-3-304. Repealed and Expired 3
R13-3-305. Repealed and Expired 3
R13-3-306. Repealed and Expired 3
R13-3-307. Repealed and Expired 3
R13-3-308. Repealed and Expired 4

ARTICLE 4. REPEALED AND EXPIRED

Article 4, consisting of Sections R13-3-401 and R13-3-402, automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

Section
R13-3-401. Repealed and Expired 4
R13-3-402. Repealed and Expired 4

ARTICLE 5. REPEALED AND EXPIRED

Article 5, consisting of Section R13-3-501, automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

Section
R13-3-501. Repealed and Expired 4

ARTICLE 6. REPEALED AND EXPIRED

Article 6, consisting of Sections R13-3-601 through R13-3-604, automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

Section
R13-3-601. Repealed and Expired4
R13-3-602. Repealed and Expired4
R13-3-603. Repealed and Expired4
R13-3-604. Repealed and Expired4

ARTICLE 7. DEFINITIONS, SCOPE, AND ENFORCEMENT DATES

Article 7, consisting of Sections R13-3-701 through R13-3-703, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

Section
R13-3-701. Definitions4
R13-3-702. Scope of Chapter5
R13-3-703. Enforcement Dates5

ARTICLE 8. TOW TRUCK COMPANY REGISTRATION

Article 8, consisting of Section R13-3-801, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

Section
R13-3-801. Tow Truck Company Registration5

ARTICLE 9. TOW TRUCK REGISTRATION AND COMPLIANCE INSPECTION

Article 9, consisting of Sections R13-3-901 through R13-3-903, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

Section
R13-3-901. Tow Truck Registration6
R13-3-902. Inspection by the Department6
R13-3-903. Changes in Ownership6

ARTICLE 10. TOW TRUCK SPECIFICATIONS BY CLASS

Article 10, consisting of Sections R13-3-1001 through R13-3-1012, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

Section
R13-3-1001. Light-duty Tow Truck7
R13-3-1002. Light-duty Tow Truck with Collision Recovery Capabilities7
R13-3-1003. Light-duty Flatbed Tow Truck7
R13-3-1004. Light-duty Flatbed Tow Truck with Collision Recovery Capabilities7
R13-3-1005. Light-duty Tow Truck-tractor and Semi-trailer Combination7

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

R13-3-1006. Medium-duty Tow Truck with Collision Recovery Capabilities 8

R13-3-1007. Medium-duty Flatbed Tow Truck with Collision Recovery Capabilities 8

R13-3-1008. Medium-duty Tow Truck-tractor and Semi-trailer Combination 8

R13-3-1009. Heavy-duty Tow Truck 8

R13-3-1010. Heavy-duty Tow Truck with Collision Recovery Capabilities 8

R13-3-1011. Heavy-duty Flatbed Tow Truck with Collision Recovery Capabilities 8

R13-3-1012. Heavy-duty Tow Truck-tractor and Semi-trailer Combination 9

ARTICLE 11. TOW TRUCK EQUIPMENT REQUIREMENTS

Article 11, consisting of Sections R13-3-1101 through R13-3-1107, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

Section

R13-3-1101. Compliance with Chapter and Identification Requirements 9

R13-3-1102. Axle, Wheel, and Tire Requirements 9

R13-3-1103. Brake Requirements 9

R13-3-1104. Required Equipment9

R13-3-1105. Collision Recovery Equipment Requirements ...10

R13-3-1106. Wire Rope Restrictions10

R13-3-1107. Wire Rope End Specifications and Installation ..10

ARTICLE 12. REQUIREMENTS FOR TOW TRUCK AGENTS AND COMPANIES

Article 12, consisting of Section R13-3-1201, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

Section

R13-3-1201. Tow Truck Agent and Company Requirements ..10

ARTICLE 13. ENFORCEMENT

Article 13, consisting of Sections R13-3-1301 through R13-3-1303, made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

Section

R13-3-1301. Waiver11

R13-3-1302. Suspension or Denial of Tow Truck Permit Decal11

R13-3-1303. Appeals12

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

ARTICLE 1. REPEALED AND EXPIRED**R13-3-101. Repealed and Expired****Historical Note**

Former rules 2.0 - 2.08; Former Section R13-3-01 repealed, former Section R13-3-02 renumbered and amended as Section R13-3-101 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

ARTICLE 2. REPEALED AND EXPIRED**R13-3-201. Repealed and Expired****Historical Note**

Former rule 3.0; Former Section R13-3-11 renumbered and amended as Section R13-3-201 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

R13-3-202. Repealed and Expired**Historical Note**

Former rules 3.01 - 3.01.03; Former Section R13-3-12 renumbered and amended as Section R13-3-202 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

R13-3-203. Repealed and Expired**Historical Note**

Former rules 3.02 - 3.02.05; Former Section R13-3-13 renumbered and amended as Section R13-3-203 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 713, effective April 5, 2008 (Supp. 08-1). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

R13-3-204. Repealed and Expired**Historical Note**

Former rules 3.02.06 - 3.02.10; Former Section R13-3-14 renumbered and amended as Section R13-3-204 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

ARTICLE 3. REPEALED AND EXPIRED**R13-3-301. Repealed and Expired****Historical Note**

Former rules 4.0 - 4.02; Former Section R13-3-21 renumbered and amended as Section R13-3-301 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175,

both effective June 1, 2010 (Supp. 10-2).

R13-3-302. Repealed and Expired**Historical Note**

Former rule 5.0; Former Section R13-3-22 renumbered without change as Section R13-3-302 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

R13-3-303. Repealed and Expired**Historical Note**

Former rules 6.0 - 6.02; Former Section R13-3-23 renumbered and amended as Section R13-3-303 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

R13-3-304. Repealed and Expired**Historical Note**

Former rules 7.0 - 7.03; Former Section R13-3-24 renumbered and amended as Section R13-3-304 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

R13-3-305. Repealed and Expired**Historical Note**

Former rules 8.0 - 8.04; Correction, subsection C. Paragraph 4. not included in original publication (Supp. 77-1). Former Section R13-3-25 renumbered and amended as Section R13-3-305 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

R13-3-306. Repealed and Expired**Historical Note**

Former rules 9.0 - 9.05.03; Correction, subsection (C)(3) and (4) not included in original publication (Supp. 77-1). Former Section R13-3-26 renumbered and amended as Section R13-3-306 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

R13-3-307. Repealed and Expired**Historical Note**

Former rules 10.0 - 10.04; Former Section R13-3-27 renumbered and amended as Section R13-3-307 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175,

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

both effective June 1, 2010 (Supp. 10-2).

R13-3-308. Repealed and Expired**Historical Note**

Former rules 11.0 - 11.06; Former Section R13-3-28 renumbered as Section R13-3-308 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

ARTICLE 4. REPEALED AND EXPIRED**R13-3-401. Repealed and Expired****Historical Note**

Former rules 12.0 - 12.17.02.02; Former Section R13-3-35 renumbered and amended as Section R13-3-401 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

R13-3-402. Repealed and Expired**Historical Note**

Former rule 12.18; Former Section R13-3-36 renumbered and amended as Section R13-3-402 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

ARTICLE 5. REPEALED AND EXPIRED**R13-3-501. Repealed and Expired****Historical Note**

Former rules 13.0 - 13.05; Former Section R13-3-40 renumbered and amended as Section R13-3-501 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

ARTICLE 6. REPEALED AND EXPIRED**R13-3-601. Repealed and Expired****Historical Note**

Former rules 14.0 - 14.02; Former Section R13-3-45 renumbered and amended as Section R13-3-601 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

R13-3-602. Repealed and Expired**Historical Note**

Former rules 15.0 - 15.01; Former Section R13-3-46 renumbered and amended as Section R13-3-602 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175,

both effective June 1, 2010 (Supp. 10-2).

R13-3-603. Repealed and Expired**Historical Note**

Former rules 16.0 - 16.01.05; Former Section R13-3-47 renumbered and amended as Section R13-3-603 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

R13-3-604. Repealed and Expired**Historical Note**

Former rules 17.0 - 17.08; Former Section R13-3-48 renumbered and amended as Section R13-3-604 effective September 26, 1985 (Supp. 85-5). Amended by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Section automatically repealed; expired by G.R.R.C. under A.R.S. § 41-1056(E) at 16 A.A.R. 1175, both effective June 1, 2010 (Supp. 10-2).

ARTICLE 7. DEFINITIONS, SCOPE, AND ENFORCEMENT DATES**R13-3-701. Definitions**

- A. The definitions in A.R.S. §§ 28-101 and 41-1701 apply to this Chapter.
- B. In this Chapter:
1. "Alter" means adding, modifying, or removing any equipment or component after a tow truck has received a permit decal from the Department, in a manner that may affect the operation of the tow truck, compliance with A.R.S. § 28-1108 and this Chapter, or the health, safety, or welfare of any individual.
 2. "Bed assembly" means the part of a tow truck that is located behind the cab, is attached to the frame, and is used to mount a boom assembly, hoist, winch, or equipment for transporting vehicles.
 3. "Boom assembly" means a device, consisting of sheaves, one or more winches, and wire rope, that is attached to a tow truck and used to lift or tow another vehicle.
 4. "Collision" means an incident involving one or more moving vehicles resulting in damage to a vehicle or its load that requires the completion of a written report of accident under A.R.S. § 28-667(A).
 5. "Collision recovery" means initial towing or removing a vehicle involved in a collision from the collision scene.
 6. "Denial" means refusal to satisfy a request.
 7. "Department" means the Arizona Department of Public Safety.
 8. "Director" means the Director of the Arizona Department of Public Safety or the Director's designee.
 9. "Emergency brake" means the electrical, mechanical, hydraulic, or air brake components used to slow or stop a vehicle after a failure of the service brake system.
 10. "Flatbed" means an open platform that is located behind the cab and attached to the frame of a truck.
 11. "G.V.W.R." means Gross Vehicle Weight Rating, the value specified by the manufacturer as the fully assembled weight of a single motor vehicle.
 12. "Hook" means a steel hook attached to an end of a wire rope or chain.
 13. "Parking brake system" means the electrical, mechanical, hydraulic, or air brake components used to hold the tow truck or combination under any condition of loading to prevent movement when parked.

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

14. "Permit decal" means the non-transferable decal that a tow truck company is required to obtain from the Department before operating a tow truck for the purpose of towing a vehicle.
15. "Person" means the same as in A.R.S. § 1-215.
16. "Power-assisted service brake system" means a service-brake system that is equipped with a booster to supply additional power to the service-brake system by means of air, vacuum, electric, or hydraulic pressure.
17. "Power-operated winch" means a winch that is operated by electrical, mechanical, or hydraulic power.
18. "Service-brake system" means the electrical, mechanical, hydraulic, or air brake components used to slow or stop a vehicle in motion.
19. "Snatch block" means a metal case that encloses one or more pulleys and can be opened to receive a wire rope and redirect energy from a winch.
20. "State" means the state of Arizona.
21. "Steering wheel clamp" means a device used to secure in a fixed position the steering wheel of a vehicle being towed.
22. "Suspension" is the temporary withdrawal of the tow truck permit decal because the Department determines the tow truck or tow truck agent is not in compliance with one or more requirements of this Chapter.
23. "Tow bar" means a device attached to the rear of a tow truck to secure a towed vehicle to the tow truck by chains, straps, or hooks.
24. "Tow plate" means a solid metal support attached to the rear of a tow truck to secure a towed vehicle to the tow truck by chains, straps, or hooks.
25. "Tow sling" means two or more flexible straps attached to the wire rope or boom assembly of a tow truck to hoist a towed vehicle by chains, straps, or hooks.
26. "Tow truck" means a motor vehicle designed, manufactured, or altered to tow or transport one or more vehicles. The following are tow trucks:
 - a. A truck with a flatbed equipped with a winch;
 - b. A truck drawing a semi-trailer or trailer equipped with a winch;
 - c. A motor vehicle that has a boom assembly or hoist permanently attached to its bed or frame;
 - d. A motor vehicle that has a tow sling, tow plate, tow bar, under-lift, or wheel-lift attached to the rear of the vehicle; and
 - e. A truck-tractor drawing a semi-trailer equipped with a winch.
27. "Tow truck agent" means an individual who operates a tow truck on behalf of a tow truck company, and includes owners, individuals employed by the tow truck company, and independent contractors.
28. "Tow truck company" means a person that owns, leases, or operates a tow truck that travels on a street or highway to transport a vehicle, including, but not limited to a vehicle that is damaged, disabled, unattended, repossessed, or abandoned.
29. "Truck-tractor protection valve" means a device that supplies air to the service brake system of a trailer to release the service brakes while the trailer is being towed by a truck- tractor, or to activate the service brakes if the supply of air from the truck-tractor to the trailer is disconnected or depleted.
30. "Under-lift" means an electrical, mechanical, or hydraulic device attached to the rear of a tow truck used to lift the front or rear of a vehicle by its axles or frame.
31. "Vehicle" means the same as in A.R.S. § 28-101.
32. "Wheel lift" means an electrical, hydraulic, or mechanical device attached to the rear of a tow truck used to lift the front or rear of a vehicle by its tires or wheels.
33. "Winch" means a device used for winding or unwinding wire rope.
34. "Wire rope" means flexible steel or synthetic strands that are twisted or braided together and may surround a hemp or wire core.
35. "Work lamp" means a lighting system that is mounted on a tow truck capable of illuminating an area to the rear of the tow truck.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). At the Department's request, the A.R.S. citation was corrected in subsection (B)(1) as Laws 2015, Ch. 265 transferred duties relating to towing services; Office file number M16-202 (Supp. 16-3). Amended by final expedited rulemaking at 25 A.A.R. 844, effective March 19, 2019 (Supp. 19-1).

R13-3-702. Scope of Chapter

This Chapter applies only to a tow truck company in the business of towing and a tow truck agent.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-703. Enforcement Dates

As of the effective date of Articles 7 through 13, a tow truck agent shall ensure that a tow truck:

1. Introduced into the state on or after the effective date of Articles 7 through 13 meets the requirements of Articles 7 through 13;
2. Sold to a new owner meets the requirements of Articles 7 through 13 before operating as a tow truck within this state; or
3. Not included in the definition of "tow truck" in R13-3-701 before the effective date of Articles 7 through 13, meets the requirements of Articles 7 through 13 within six months of the effective date of Articles 7 through 13 when operating as a tow truck in this state.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Amended by final expedited rulemaking at 25 A.A.R. 844, effective March 19, 2019 (Supp. 19-1).

ARTICLE 8. TOW TRUCK COMPANY REGISTRATION**R13-3-801. Tow Truck Company Registration**

A. A person shall not operate a tow truck to tow a vehicle unless a tow truck agent registers the tow truck company with the Department. The tow truck agent shall:

1. Obtain a tow truck company application from the Department and complete the application form by including the following information:
 - a. The name, address, and telephone number of the tow truck company;
 - b. The tow truck owner's name, address, telephone number and date of birth. If the owner is a corporation, the corporation's name, address, and telephone number;
2. Obtain and keep in effect at all times the minimum limits of financial responsibility required by A.R.S. §§ 28-4009, 28-4032, 28-4033, 28-4131, and 28-4135, as applicable, for each tow truck owned, leased, or operated by the company; and

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

3. Sign the application in the presence of a Notary Public or Department Officer certifying under penalty of suspension of the permit decal that the tow truck company and the tow truck agent shall:
 - a. Comply with this Chapter; and
 - b. Have the necessary experience and qualifications to operate a tow truck in the manner required by this Chapter;
 4. Include with a completed application, proof of financial responsibility that indicates:
 - a. Name of the insured;
 - b. Name, address, and telephone number of the insurance carrier;
 - c. Policy number;
 - d. Date on which the policy expires; and
 - e. Amount of coverage; and
 5. Submit the completed application form and proof of financial responsibility in person to the Department.
- B.** If information provided on the original application form changes, the tow truck agent shall submit a new application form to the Department within 10 calendar days of the change. The Department may suspend a tow truck permit decal for failure to notify the Department of a change.
- C.** If it is discovered that a tow truck permit decal was issued on information supplied by the applicant that the applicant knew or should have reasonably known was false or inaccurate, the Department may suspend the tow truck permit decal.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

ARTICLE 9. TOW TRUCK REGISTRATION AND COMPLIANCE INSPECTION**R13-3-901. Tow Truck Registration**

- A.** A tow truck company shall register each tow truck by obtaining an identification number and permit decal before operating the tow truck to tow a vehicle.
- B.** A tow truck company shall apply for an identification number and permit decal by completing the Department's tow truck inspection application. The company may obtain the application from the Department. The signature on the application of the owner or a tow truck agent shall be notarized or signed in the presence of a Department officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-902. Inspection by the Department

- A.** The Department shall inspect a tow truck for compliance with this Chapter as soon as possible after the tow truck inspection application form is filed and no later than seven days after the application form is filed.
- B.** The Department may conduct unannounced, in-service inspections of a tow truck at the roadside, at the company's place of business, or any reasonable time and place to determine the condition of the tow truck.
- C.** The Department shall issue tow truck permit decals and identification number decals individually for each approved tow truck.
- D.** When a tow truck inspection is conducted under subsection (A) or (B), the following apply:
 1. Department inspectors shall examine the tow truck for compliance with the safety requirements and specifications for the tow truck class under this Chapter.

2. If the Department finds that the tow truck complies with this Chapter, the Department shall issue an inspection report and if applicable, a permit decal.
 3. If the Department finds that the tow truck does not comply with this Chapter, but has no deficiency listed in R13-3-1201(C)(7), the Department shall issue an inspection report that:
 - a. Specifies the deficiencies found,
 - b. Requires corrective measures, and
 - c. Allows five calendar days for the tow truck agent to correct the deficiencies.
 4. If the Department finds that the tow truck does not comply with this Chapter because of deficiencies listed in R13-3-1201(C)(7), the Department shall not issue a permit decal but shall issue an inspection report that:
 - a. Specifies the deficiencies found, and
 - b. Requires corrective measures.
- E.** A tow truck agent shall ensure that a legible copy of the most recent tow truck inspection report is kept in the driver's compartment area of the tow truck and is produced upon demand to any peace officer. The Department may suspend a tow truck permit decal for failure to comply with this subsection.
1. A tow truck agent shall ensure that:
 - a. A permit decal is affixed to the lower outside left rear window or the left outside of the rear cab wall of the tow truck windshield. A permit decal issued prior to the effective date of this Section may remain on the lower outside right corner of the tow truck's windshield until the permit has expired or been replaced, and
 - b. An identification number decal is permanently affixed to the driver's compartment area.
 2. The Department may suspend a permit decal for failure to maintain the permit decal or identification number decal in compliance with subsection (E)(1).
 3. If a tow truck inspection report, permit decal, or identification number decal is lost, damaged, destroyed, or stolen, the tow truck company shall immediately notify the Department.
 - a. The tow truck company shall provide notification in writing either to Arizona Department of Public Safety, P.O. Box 6638, Mail Drop 1240, Phoenix, AZ 85005-6638, or by e-mail to TowTruck-Unit@azdps.gov and include the name of the tow truck agent who registered the tow truck and the number of the lost, damaged, destroyed, or stolen inspection report, permit decal, or identification number decal.
 - b. Upon receipt of the notification, the Department shall issue the replacement inspection report, permit decal, or identification number decal.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 713, effective April 5, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 25 A.A.R. 844, effective March 19, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 963, effective June 20, 2020 (Supp. 20-20).

R13-3-903. Changes in Ownership

If a tow truck is sold, leased, or otherwise disposed of, the permit decal issued to the tow truck immediately becomes void.

1. Before sale, lease, or other disposal of a tow truck, a tow truck agent shall remove and destroy the permit decal.

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

2. Within 10 calendar days following the sale, lease, or other disposal of the tow truck, a tow truck agent shall notify the Department in writing of the action. The notice shall include:
 - a. Date on which ownership changed or the tow truck was disposed of;
 - b. Whether the tow truck was sold, leased, or the method and reason for other disposal;
 - c. Name of person who sold, leased, or disposed of the tow truck;
 - d. If applicable, name and address of the person that purchased or leased the tow truck; and
 - e. Vehicle identification number of tow truck that was sold, leased, or disposed of.
3. A person to whom a tow truck is sold, leased, or otherwise disposed of shall complete the registration and inspection process before operating the tow truck to tow a vehicle within this state.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

ARTICLE 10. TOW TRUCK SPECIFICATIONS BY CLASS**R13-3-1001. Light-duty Tow Truck**

A light-duty tow truck has a minimum of:

1. A G.V.W.R. of 10,000 pounds;
2. A boom assembly with a rated capacity of 8,000 pounds, if so equipped;
3. A power-operated winch with a line pull capacity of 8,000 pounds and a 3/8-inch diameter wire rope with a breaking strength of 12,200 pounds, if so equipped;
4. A tow sling, tow plate, or tow bar that meets the requirements of R13-3-1201(C)(16), or a wheel-lift or under-lift with a lifting capacity of 2,500 pounds when fully extended;
5. Chains or straps and hooks that meet the requirements of R13-3-1104;
6. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
7. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1002. Light-duty Tow Truck with Collision Recovery Capabilities

A light-duty tow truck with collision recovery capabilities has a minimum of:

1. A G.V.W.R. of 14,001 pounds;
2. A boom assembly with a rated capacity of 8,000 pounds;
3. A power-operated winch with a line pull capacity of 8,000 pounds and a 3/8-inch diameter wire rope with a breaking strength of 12,200 pounds;
4. A tow sling, tow plate, or tow bar that meets the requirements of R13-3-1201(C)(16), or a wheel-lift or under-lift with a lifting capacity of 3,000 pounds when fully extended;
5. Chains or straps and hooks that meet the requirements of R13-3-1104;
6. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
7. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R.

1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1003. Light-duty Flatbed Tow Truck

A light-duty flatbed tow truck has a minimum of:

1. A G.V.W.R. of 10,000 pounds;
2. A power-operated winch with a line pull capacity of 8,000 pounds and a 3/8-inch diameter wire rope with a breaking strength of 12,200 pounds;
3. A bed assembly with a distributed load capacity of 7,500 pounds;
4. A wheel-lift or under-lift with a lifting capacity of 2,000 pounds when fully extended, if so equipped;
5. A tow plate or tow bar that meets requirements of R13-3-1201(C)(16), if so equipped;
6. Chains or straps and hooks that meet the requirements of R13-3-1104;
7. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
8. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 713, effective April 5, 2008 (Supp. 08-1).

R13-3-1004. Light-duty Flatbed Tow Truck with Collision Recovery Capabilities

A light-duty flatbed tow truck with collision recovery capabilities has a minimum of:

1. A G.V.W.R. of 14,001 pounds;
2. A power-operated winch with a line pull capacity of 8,000 pounds and a 3/8-inch diameter wire rope with a breaking strength of 12,200 pounds;
3. A bed assembly with a distributed load capacity of 7,500 pounds;
4. A wheel-lift or under-lift with a lifting capacity of 2,500 pounds when fully extended, if so equipped;
5. A tow plate or tow bar that meets requirements of R13-3-1201(C)(16), if so equipped;
6. Chains or straps and hooks that meet the requirements of R13-3-1104;
7. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
8. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 713, effective April 5, 2008 (Supp. 08-1).

R13-3-1005. Light-duty Tow Truck-tractor and Semi-trailer Combination

A light-duty tow truck-tractor and semi-trailer combination has a minimum of:

1. A G.V.W.R. of 8,600 pounds for a truck-tractor;
2. A G.V.W.R. of 7,500 pounds for a semi-trailer;
3. A power-operated winch with a line pull capacity of 8,000 pounds and a 3/8-inch diameter wire rope with a breaking strength of 12,200 pounds;
4. Chains or straps and hooks that meet the requirements of R13-3-1104;
5. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
6. Brakes that meet the requirements of R13-3-1103 and A.R.S. § 28-952(A).

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1006. Medium-duty Tow Truck with Collision Recovery Capabilities

A medium-duty tow truck has a minimum of:

1. A G.V.W.R. of 23,500 pounds;
2. A boom assembly with a rated capacity of 24,000 pounds;
3. A power-operated winch with a line-pull capacity of 20,000 pounds and a 1/2-inch diameter wire rope with a breaking strength of 21,400 pounds, or two power-operated winches each with a line-pull capacity of 10,000 pounds and a 7/16-inch diameter wire rope with breaking strength of 16,540 pounds;
4. A tow sling, tow plate, or tow bar that meets the requirements of R13-3-1201(C)(16), or a wheel-lift or under-lift with a lifting capacity of 5,000 pounds when fully extended;
5. Chains or straps and hooks that meet the requirements of R13-3-1104;
6. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
7. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1007. Medium-duty Flatbed Tow Truck with Collision Recovery Capabilities

A medium-duty flatbed tow truck has a minimum of:

1. A G.V.W.R. of 23,500 pounds;
2. A power-operated winch with a line pull capacity of 10,000 pounds and a 7/16-inch diameter wire rope with a breaking strength of 16,540 pounds;
3. A bed assembly with a distributed load capacity of 15,000 pounds;
4. A wheel-lift or under-lift with a lifting capacity of 3,000 pounds when fully extended, if so equipped;
5. A tow plate or tow bar that meets the requirements of R13-3-1201(C)(16), if so equipped;
6. Chains or straps and hooks that meet the requirements of R13-3-1104;
7. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
8. Brakes that meet the requirements of R13-3-1103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1008. Medium-duty Tow Truck-tractor and Semi-trailer Combination

A medium-duty tow truck-tractor and semi-trailer combination has a minimum of:

1. A G.V.W.R. of 23,500 pounds for a truck-tractor;
2. A G.V.W.R. of 17,000 pounds for a semi-trailer;
3. A power-operated winch with a line pull capacity of 10,000 pounds and a 7/16-inch diameter wire rope with a breaking strength of 16,540 pounds;
4. Chains or straps and hooks that meet the requirements of R13-3-1104;
5. Axles, wheels, and tires that meet the requirements of R13-3-1102; and
6. Brakes that meet the requirements of R13-3-1103 and A.R.S. § 28-952(A)(3).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1009. Heavy-duty Tow Truck

A heavy-duty tow truck has a minimum of:

1. A G.V.W.R. of 35,000 pounds;
2. Tandem rear axles;
3. A boom assembly with a rated capacity of 50,000 pounds, if so equipped;
4. Two power-operated winches with a line pull capacity of 25,000 pounds each and a 9/16-inch diameter wire rope with a breaking strength of 27,000 pounds, if so equipped;
5. A tow sling, tow plate, or tow bar that meets the requirements of R13-3-1201(C)(16), or a wheel-lift or under-lift with a lifting capacity of 12,000 pounds when fully extended;
6. Chains or straps and hooks that meet the requirements of R13-3-1104;
7. Axles, wheels, and tires that meet the requirements of R13-3-1102;
8. Air brakes that meet the requirements of R13-3-1103; and
9. Seventy-five feet of air line configured so the ends can be connected between the tow truck and the towed unit, allowing the air supply of the tow truck's brake system to be transmitted to the towed unit's service brake system.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1010. Heavy-duty Tow Truck with Collision Recovery Capabilities

A heavy-duty tow truck has a minimum of:

1. A G.V.W.R. of 35,000 pounds;
2. Tandem rear axles;
3. A boom assembly with a rated capacity of 50,000 pounds;
4. Two power-operated winches with a line pull capacity of 25,000 pounds each and a 9/16-inch diameter wire rope with a breaking strength of 27,000 pounds;
5. A tow sling, tow plate, or tow bar that meets the requirements of R13-3-1201(C)(16), or a wheel-lift or under-lift with a lifting capacity of 12,000 pounds when fully extended;
6. Chains or straps and hooks that meet the requirements of R13-3-1104;
7. Axles, wheels, and tires that meet the requirements of R13-3-1102;
8. Air brakes that meet the requirements of R13-3-1103; and
9. Seventy-five feet of air line configured so the ends can be connected between the tow truck and the towed unit, allowing the air supply of the tow truck's brake system to be transmitted to the towed unit's service brake system.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1011. Heavy-duty Flatbed Tow Truck with Collision Recovery Capabilities

A heavy-duty flatbed tow truck has a minimum of:

1. A G.V.W.R. of 33,000 pounds;
2. A power-operated winch with a line pull capacity of 20,000 pounds and a 1/2-inch diameter wire rope with a breaking strength of 21,400 pounds;

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

3. A bed assembly with a distributed load capacity of 20,000 pounds;
 4. A wheel-lift or under-lift with a lifting capacity of 4,000 pounds when fully extended, if so equipped;
 5. A tow plate or tow bar that meets the requirements of R13-3-1201(C)(16), if so equipped;
 6. Chains or straps and hooks that meet the requirements of R13-3-1104;
 7. Axles, wheels and tires that meet the requirements of R13-3-1102; and
 8. Air brakes that meet the requirements of R13-3-1103.
2. A tire contacting another tire, suspension, or any other part of the vehicle; or
 3. A tire visibly under-inflated or flat.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1103. Brake Requirements

- A.** A tow truck shall have a power-assisted service brake system, separate from the parking brake system, capable of stopping and holding the tow truck and its load under all conditions and on any grade on which the tow truck is operated. If a tow truck's service brake system is actuated by air, the tow truck shall be equipped with:
1. A truck-tractor protection valve; and
 2. An audible or visible low air warning device that actuates at a minimum of 55 psi.
- B.** A tow truck shall have a parking brake system, separate from the service brake system, which is capable of holding the tow truck and its load. If the tow truck's parking brake system is actuated by air, the tow truck shall be equipped with:
1. A truck-tractor protection valve; and
 2. An audible or visible low air warning device that actuates at a minimum of 55 psi.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1104. Required Equipment

- A.** A light-duty tow truck shall be equipped with a minimum of 20 feet of recovery straps or 5/16-inch diameter chains with a hook on each end of each section. The straps or chains shall have an identifiable mark indicating a minimum working load limit strength of 3,900 pounds.
- B.** A medium-duty tow truck shall be equipped with a minimum of 20 feet of recovery straps or 3/8-inch diameter chains with a hook on each end of each section. The straps or chains shall have an identifiable mark indicating a minimum working load limit strength of 7,100 pounds.
- C.** A heavy-duty tow truck shall be equipped with a minimum of 20 feet of recovery straps or 1/2-inch diameter chains with a hook on each end of each section. The straps or chains shall have an identifiable mark indicating a minimum working load limit strength of 12,000 pounds.
- D.** A semi-trailer or flatbed shall be equipped with "T" slots, eye bolts, "D" rings, or other means for attaching chains or straps, and four tie-down chains or straps with appropriate attachment hooks.
- E.** All tow trucks shall be equipped with:
1. Appropriate load securement devices if equipped with a wheel-lift, under-lift, tow bar, tow plate, or tow sling.
 2. A warning light assembly with a minimum of two light emitting sources. The lights shall:
 - a. Be mounted on the tow truck as high as practical and be visible from the front and rear of the tow truck for a distance of 100 feet under normal atmospheric conditions;
 - b. Show amber to the front and amber or red to the rear; and
 - c. Be wired independently of all other electrical circuits.
 3. A minimum of two work lamps. The lamps shall:
 - a. Have clear lenses;
 - b. Be capable of illuminating the area directly behind the tow truck for a distance of 50 feet; and

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1012. Heavy-duty Tow Truck-tractor and Semi-trailer Combination

A heavy-duty tow truck-tractor and semi-trailer combination has a minimum of:

1. A truck tractor with a G.V.W.R. of 35,000 pounds;
2. Tandem rear axles for both a truck-tractor and semi-trailer;
3. A G.V.W.R. of 30,000 pounds on the semi-trailer;
4. A power-operated winch with a single line pull capacity of 20,000 pounds and a 1/2-inch diameter wire rope with a breaking strength of 21,400 pounds;
5. Chains or straps and hooks that meet the requirements of R13-3-1104;
6. Axles, tires, and wheels that meet the requirements of R13-3-1102; and
7. Air brakes that meet the requirements of R13-3-1103 for both a truck-tractor and semi-trailer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

ARTICLE 11. TOW TRUCK EQUIPMENT REQUIREMENTS**R13-3-1101. Compliance with Chapter and Identification Requirements**

- A.** At all times a tow truck agent shall display on both sides of each tow truck the company name, full name of the town or city in which the company is located, and ten digit telephone number. Letters shall contrast sharply in color with the background on which the letters are placed, be readily legible during daylight hours from a distance of 50 feet while the tow truck is stationary, and be maintained in a manner that retains the legibility.
- B.** A tow truck agent shall ensure that all tow trucks meet the requirements of this Chapter. The Department may suspend a permit decal for failure to meet the requirements of this Chapter.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1102. Axle, Wheel, and Tire Requirements

- A.** A tow truck agent shall ensure that a tow truck has:
1. Axles, wheels, and tires with a manufacturer's capacity rating equal to or greater than the tow truck's G.V.W.R.; and
 2. At all points on major tread grooves, a tread-groove pattern depth of at least 4/32 of an inch on all tires on the steering axle, and 2/32 of an inch on all other tires.
- B.** A tow truck agent shall ensure that a tow truck does not have:
1. Fabric or cord exposed through the tire tread or sidewall;

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

- c. Be wired independently of all other electrical circuits.
- 4. Two portable lamps consisting of tail lights, brake lights, turn signals, and emergency flashers, if a tow truck is equipped with a wheel-lift, under-lift, tow bar, tow plate or tow sling. Each portable lamp shall be visible from 100 feet under normal atmospheric conditions and comply with A.R.S. §§ 28-925(A), 28-927, and 28-939.
- 5. One rear-vision mirror on each side of the tow truck. Each mirror shall have a minimum surface area of 24 square inches.
- 6. An operational battery-powered electric lantern or a two-cell flashlight.
- 7. A fire extinguisher having an Underwriter's Laboratories rating of 10 B:C or higher. The fire extinguisher shall be filled, readily accessible for use, and mounted securely to the tow truck.
- 8. A steering wheel securement device of sufficient strength to lock the steering mechanism in a straight, forward position, if a tow truck is equipped with a wheel-lift, under-lift, tow bar, tow plate or tow sling.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1105. Collision Recovery Equipment Requirements

A tow truck with collision recovery capabilities shall be equipped with at least:

- 1. One #2 or larger square-point shovel;
- 2. One 14-inch wide or larger push broom;
- 3. Five gallons or 20 pounds of fluid absorbent material stored in a weatherproof container; and
- 4. One snatch block for each installed winch on the tow truck. Each snatch block shall be of a size and rating compatible with the size and rating of the installed wire rope.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1106. Wire Rope Restrictions

A tow truck agent shall ensure that a wire rope is not used in a tow truck if it:

- 1. Has kinks, bird caging, or knots;
- 2. Is crushed more than 33% of original diameter;
- 3. Has core protrusion along the length of the rope;
- 4. Has more than 11 broken wires in six diameters of length;
- 5. Has more than three broken wires in any one strand; or
- 6. Has more than two broken wires at the end connection or fitting.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1107. Wire Rope End Specifications and Installation

A tow truck agent shall ensure that:

- 1. All wire rope eye loops used on a tow truck are protected by a thimble;
- 2. Cable clamps are not used on a wire rope; and
- 3. Thimbles are not cracked, deformed, worn, loose, or have a strand of wire that slips.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

ARTICLE 12. REQUIREMENTS FOR TOW TRUCK AGENTS AND COMPANIES**R13-3-1201. Tow Truck Agent and Company Requirements**

- A. A tow truck company shall ensure that each tow truck agent:
 - 1. While operating a tow truck possesses and carries a valid driver's license for the class of tow truck operated;
 - 2. While operating a tow truck possesses and carries a current medical examination certificate in accordance with 49 CFR 391.45 as referenced in A.A.C. R17-5-202;
 - 3. Does not operate a tow truck if the agent has more than two moving violation convictions within the previous 12 months;
 - 4. Possesses the skill and knowledge to rig, move, pick up, and transport a vehicle without causing avoidable damage to the vehicle or other property;
 - 5. Has not consumed any alcoholic beverage within four hours of operating the tow truck;
 - 6. Is not using or under the influence of alcohol or any of the following substances as defined in A.R.S. § 13-3401 while operating a tow truck:
 - a. Peyote;
 - b. Vapor-releasing substance containing a toxic substance;
 - c. Marijuana;
 - d. Dangerous drugs;
 - e. Narcotic drugs; or
 - f. Prescription-only drug unless the tow truck agent obtains the prescription-only drug pursuant to a valid prescription.
 - 7. Has not been convicted of committing a crime involving fraud, embezzlement, or theft in the five years before operating a tow truck and has never been convicted of committing a felony homicide, felony kidnapping, felony assault, felony sexual offense, or felony robbery;
 - 8. Has not been convicted under A.R.S. § 28-1381 (driving while under the influence of narcotics, dangerous drugs, or intoxicating beverages) or A.R.S. § 28-693 (reckless driving) while engaged in the operation of a tow truck; and
 - 9. Does not operate a tow truck while the agent's license to drive is suspended under A.R.S. § 28-1321 (Implied Consent Law), A.R.S. § 28-3473 (license suspension or revocation), or A.R.S. § 28-4141 (suspended license, no insurance).
- B. A tow truck agent shall:
 - 1. Comply with A.R.S. § 28-1108;
 - 2. Permit a peace officer or other duly authorized agent of a law enforcement agency to inspect a tow truck to determine compliance with the requirements of this Chapter. The inspection may be conducted without notice at any reasonable time and place; and
 - 3. Have a certification from a licensed testing facility certifying the tested line-pull of the winch or the tested lifting capacity of the boom assembly, if the tow truck is equipped with a homemade boom assembly or homemade winch.
- C. A tow truck agent shall not:
 - 1. Operate a tow truck without an identification number and a legible copy of a tow truck inspection report, as required by this Chapter;
 - 2. Transfer a permit decal or tow truck inspection report from one tow truck to another;
 - 3. Tow or move a vehicle from a highway, street, or public property without prior authorization from the owner or operator of the vehicle, the owner's agent, a person responsible for maintaining the public property, or a law

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

- enforcement officer. The tow truck agent may move, but shall not tow, a vehicle to extract an individual from wreckage or to remove a hazard to life or property at a collision scene;
4. Use a hand-operated or electric winch for collision recovery work;
 5. Operate a tow truck for collision recovery work unless certified for collision recovery;
 6. Use a flatbed tow truck with a G.V.W.R. of less than 14,001 pounds to transport more than one vehicle unless the additional vehicle is a golf cart, a motor-driven cycle, or a trailer that weighs less than 1,500 pounds;
 7. Operate a tow truck that has one or more of the following defects;
 - a. Both warning light assembly lights missing or inoperative;
 - b. All load securement devices missing or defective;
 - c. A portable lamp not in compliance with A.R.S. §§ 28-925(A), 28-927 or 28-939, if a portable lamp is required;
 - d. Any steering axle tire with less than 4/32-inch tread depth in one major groove;
 - e. For an axle other than a steering axle, a tire with less than 2/32-inch tread depth and for a dual wheel axle, both tires on the same side with less than 2/32-inch tread depth;
 - f. Any flat tire or tire with cord exposed by cut or wear;
 - g. Any tow plate, tow bar, tow sling, wheel-lift, or under-lift exhibiting wear in excess of manufacturer standards at any pivot point or any crack in a structural component;
 - h. Wire rope in violation of R13-3-1106;
 - i. Any component not maintained within manufacturer standards; or
 - j. A deficiency noted on an inspection report after the time-frame available to the tow truck agent to correct deficiencies has elapsed;
 8. Equip a tow truck with homemade boom assembly or homemade winch, unless the tow truck company has a certification from a licensed testing facility certifying the tested line pull of the winch or the tested lifting capacity of the boom assembly;
 9. Tow a vehicle using a tow sling, tow plate, or tow bar unless appropriate load securement devices are attached;
 10. Transport a vehicle by flatbed or truck, truck-tractor, or semi-trailer unless the vehicle is secured with a minimum of a four-point tie-down, not including the winch;
 11. Tow a vehicle with a wheel-lift, under-lift, tow plate, tow bar, or tow sling unless two safety chains are attached by crossing the chains with one end of each chain attached to a major structural member of the tow truck and the other end attached to a major structural member of the towed vehicle, with no attachments to the bumpers;
 12. Tow a vehicle using a tow plate, tow bar, tow sling, wheel-lift, or under-lift unless a portable lamp is affixed to the rear of the rear-most towed vehicle, in plain view, and when activated, visible to traffic traveling in the same direction;
 13. Activate warning light assembly except at the scene of service, or when transporting a vehicle that presents a hazard from a collision scene;
 14. Use any vehicle towed or article stored in the towed vehicle, unless it is the property of the tow truck company or tow truck agent;
 15. Operate a tow truck that exceeds the manufacturer's G.V.W.R. without a load or the manufacturer's rated capacity for the boom or bed assembly;
 16. Operate a tow truck that is equipped with a tow plate, tow bar, or tow sling unless the tow plate, tow bar, or tow sling has a manufacturer weight rating that exceeds any load carried on it; or
 17. Refuse to make prompt restitution for any damage for which the tow truck company is legally liable.
- D.** The Department may suspend a permit decal for failure to comply with these standards.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). At the Department's request, the A.R.S. citation was corrected in subsection (B)(1) as Laws 2015, Ch. 265 transferred duties relating to towing services; Office file number M16-202 (Supp. 16-3). Amended by final expedited rulemaking at 25 A.A.R. 844, effective March 19, 2019 (Supp. 19-1).

ARTICLE 13. ENFORCEMENT**R13-3-1301. Waiver**

If the Director determines there is a compelling public necessity, the Director may waive the enforcement of this Chapter.

1. A person shall make a waiver request in writing.
2. The Director shall separately consider and decide each request for a waiver and each waiver shall only apply to the person requesting the waiver.
3. The Director shall provide the decision in writing.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1302. Suspension or Denial of Tow Truck Permit Decal

- A.** The Director may deny or suspend a permit decal for up to one year if a person violates this Chapter.
- B.** The Department shall provide a written notice of a permit decal suspension to a tow truck company that includes the information specified in A.R.S. § 41-1092.03(A) and lists:
 1. The effective date of the suspension;
 2. The tow truck affected by the suspension;
 3. The specific violation; and
 4. The actions necessary for compliance and for the Department to end the suspension.
- C.** Beginning on the effective date of the suspension, the tow truck company shall not operate the identified tow truck to tow.
- D.** The tow truck company shall submit a corrective action plan to the Department that lists the steps the tow truck company will take to reach compliance.
 1. A tow truck agent shall sign the plan and submit the plan to the Department for approval and signature.
 2. Failure to submit a plan within 90 days of written notice of suspension by the Department constitutes withdrawal from the permit process and requires the tow truck company to reapply under Article 9 of this Chapter.
- E.** If the tow truck company complies with the corrective action plan, the Department shall reinstate the tow truck permit decal.
- F.** The Department shall not suspend a permit decal for a violation of R13-3-1201(A)(3) unless the tow truck company owner knew or should have known of the tow truck agent's convictions.

Historical Note

New Section made by final rulemaking at 12 A.A.R.

CHAPTER 3. DEPARTMENT OF PUBLIC SAFETY - TOW TRUCKS

1735, effective July 1, 2006 (Supp. 06-2).

R13-3-1303. Appeals

- A.** A person that has had issuance of a tow truck permit decal denied or suspended has a right to a hearing.
1. The Director or designee may combine requests for hearings into one hearing where there are common parties or issues.
 2. The hearing shall be conducted by the Office of Administrative Hearings pursuant to A.R.S. § 41-1092, et seq.
- B.** A person shall make a request for a hearing in writing to the Department within 30 calendar days from receipt of the notice of denial or suspension. If the request for a hearing is not received within the 30-day period, the person's right to a hearing is waived, unless the person shows that failure to timely request a hearing was beyond the person's control.
- C.** If a hearing is requested, the Department shall notify the person in writing at least 30 calendar days before the date set for hearing and include the following in the notice:

1. A statement of the time, place, and nature of the hearing;
 2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 3. A reference to the particular sections of the statutes and rules involved; and
 4. A short and plain statement of the matters asserted.
- D.** A final administrative decision shall be issued pursuant to A.R.S. § 41-1092.08.
1. A copy of the decision shall be mailed to each party.
 2. Within 35 calendar days after the date of service of the final decision rendered in the hearing, an appeal may be taken to the Superior Court of the county in which any of the conditions in A.R.S. § 12-905 apply. Appeals to the Superior Court are governed by the provisions of A.R.S. § 12-901 et seq.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2).

41-1713. Powers and duties of director; authentication of records

A. The director of the department shall:

1. Be the administrative head of the department.
2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department on the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by section 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.
3. Except as provided in sections 12-119, 41-1304 and 41-1304.05, employ officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall described in section 41-1362, state office buildings in Tucson and persons who are on any of those properties. Department officers may make arrests and issue citations for crimes or traffic offenses and for any violation of a rule adopted under section 41-796. For the purposes of this paragraph, security does not mean security services related to building operation and maintenance functions provided by the department of administration.
4. Make rules necessary for the operation of the department.
5. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.
6. Appoint a deputy director with the approval of the governor.
7. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.
8. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
10. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.
11. Develop procedures to exchange information with the department of transportation for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.
12. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by section 37-1302, subsection B.

B. The director may:

1. Issue commissions to officers of the department.
2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.

3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.
4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.
5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title unless otherwise provided by law.
6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.
8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.
9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.
10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4. Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.
12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to section 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.

13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department on the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to sections 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 7 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.

41-1830.51. Vehicle towing; rules; contractual agreement for towing services; definition

A. The director shall:

1. Adopt and enforce rules that are not inconsistent with this article to govern the design and operation of all tow trucks.
2. Adopt guidelines to protect consumers against being overcharged for towing services. The guidelines shall specify that a larger class of tow vehicle used for lighter tows must be billed at the lighter duty towing service rates.

B. The director or a county, city or town may enter into a contractual agreement with a towing firm or firms for towing or storage services, or both. At the time of application for a contractual agreement, a towing firm must disclose in writing the owners of the towing firm and, if the owners own other towing firms that are also applying for the same contractual agreement, the names of those towing firms. The contractual agreement shall comply with this section and all rules adopted under this section. Contracts shall be awarded on the basis of competitive bidding. The director or a county, city or town shall reserve the right to reject all bids. If only one bid is received, the director or a county, city or town may reject the bid and negotiate a contract without bidding if the negotiated contract is at a price lower than the bid price under the terms and conditions specified in the call for bids.

C. Except as provided in subsection D of this section, a towing firm may only have one contractual agreement per geographic towing area with the department or a county, city or town for towing or storage services, or both. If an owner of a towing firm has a common ownership interest in another towing firm or the assets, or shared use of the assets, of another towing firm, the owner may not participate in any other application for a contractual agreement within the same geographic towing area for that application. The department or a county, city or town must determine that each towing firm is in compliance with this subsection. The director or a county, city or town must review any complaints that are submitted with supporting documentation and that allege a violation of this subsection.

D. If a towing firm that has a contractual agreement pursuant to this section acquires another towing firm that has a contractual agreement pursuant to this section, both contractual agreements remain valid for one year after the date of the acquisition or until the end of the contractual agreement, whichever is shorter.

E. Notwithstanding subsection C of this section, an agency may allow a towing firm to use resources from another towing firm if an agency deems the use of those resources is necessary for traffic incident management.

F. If towing companies share any employees or staff, the companies shall be considered as one company for the purposes of the rotation list in that geographically contracted towing area.

G. For the purposes of this section, "asset" means any property that has a value, including financial, intangible and physical assets, and includes:

1. Vehicles.
2. Equipment.
3. Stock.
4. A membership in a limited liability company.
5. A partnership interest.
6. A beneficial interest in a trust or another like item.

41-1830.53. Heavy-duty rotator recovery vehicle classification; rates and guidelines; definition

(Conditionally Rpld.)

A. The department shall establish a heavy-duty rotator recovery vehicle classification for towing services and establish rates and general guidelines for the use of heavy-duty rotator recovery vehicles.

B. For the purposes of this section, "heavy-duty rotator recovery vehicle" means a tow vehicle that has all of the following:

1. A manufacturer's gross vehicle weight rating in excess of fifty-two thousand pounds.
2. A boom that is capable of moving its position to the side of the vehicle to perform recoveries and that has a boom rating of at least forty tons.
3. Air brakes that are capable of providing air to the towed vehicle's brakes.

ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

Title 13, Chapter 4, Article 1, General Provisions, and Article 2, Correctional Officers



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 7, 2021

SUBJECT: **ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD**
Title 13, Chapter 4, Article 1, General Provisions, and Article 2, Correctional Officers

Summary:

This Five-Year Review Report (5YRR) from the Arizona Peace Officers Standards and Training Board (Board) relates to all rules in Title 13, Chapter 4, Article 1, related to General Provisions, and Article 2, related to Correctional Officers. The rules in Article 1 relate to the qualifications, certification, and training of peace officers in Arizona and the rules in Article 2 relate specifically to the standards and training of correctional officers.

In the previous 5YRR for these rules, approved by the Council in 2011, the Board indicated it planned to amend R13-4-101, R13-4-105, R13-4-106, R13-4-108, R13-4-110, R13-4-116, and R13-4-205. The Board indicates all of these Sections were amended in the rulemaking approved by the Council in 2016.

Proposed Action

The Board intends to complete a rulemaking that addresses the issues identified in the report and outlined below and indicates it will submit the rulemaking for review and approval by March 31, 2022.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Board cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board has determined that the economic impact of the rules do not differ significantly from what was originally determined by the economic, small business, and consumer impact statement (EIS) from 2016. A copy of the prior EIS is included in the final materials for your reference.

The stakeholders include: The Board, certified peace officers, applicants to be peace officers, training academies, and law enforcement agencies.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board has determined that the rules provide the least costly method of achieving the regulatory objective. The Board, certified peace officers, and applicants to be peace officers bear the cost of, and directly benefit, from the rulemaking. The Board has determined that although there is a cost associated with the rules, the benefits of protecting public safety and welfare outweigh the costs.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Board indicates it has not received any written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board indicates that the rules are most clear, concise, and understandable. However, the Board states, to be consistent with Board practice and the practice of other agencies, the term "outside provider" should be changed to "vendor" throughout the rules.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Except as noted below, the Board states the rules reviewed are mostly consistent with other rules and statutes:

- The internal citation in R13-4-118(C) is incorrect. The correct citation is A.R.S. § 41-1822(D)(1).
- The definition of "experimentation" in R13-4-201 needs to be repealed to be consistent with R13-4-105.

- The minimum standards in R13-4-202 regarding drug use need to be made consistent with the standards recently enacted at R13-4-105.
- The evidence of military discharge referenced in R13-4-203(C)(4) should be the same as that referenced in R13-4-106(B)(3).

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board believes the rules are effective in achieving their objectives. However, the following changes will make the rules more effective:

- Throughout the rules, reference is made to the 585-hour full authority peace officer training course. To provide flexibility regarding the training course, the "585" needs to be removed from the rules.
- **R13-4-101**: to expand the Board's disciplinary options to include a form of delayed eligibility, delete the word "permanent" in the definition of "denial." The Board believes this will also expand the pool of potential peace officers.
- **R13-4-106(C)(8)**: clarify that the polygraph examination must have been given within the last year to capture any changes in information.
- **R13-4-110**: to be consistent with agency practice, a subsection needs to be added specifying that before graduation, an individual is required to pass the Peace Officer Physical Aptitude Test and demonstrate proficiency in vehicle and pursuit operations.
- **R13-4-114(B)(1)(a)**: remove reference to "a scientifically conducted validation study" because the requirement is too restrictive.
- **R13-4-117(D)(1)**: remove meals as an allowable reimbursement expense to be consistent with agency practice.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Board indicates that the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Board states the rules are not more stringent than correspondence federal law. The Board indicates there are many federal laws that apply to law enforcement agencies and the work done by peace officers, including general laws such as OSHA, EEOC, and ADA, federal laws regarding crimes, and federal case law regarding law enforcement. The Board states training provided to peace officers is consistent with federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037(A), if an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities,

activities or practices in the class are substantially similar in nature, unless certain exceptions are met.

The Board states certification of an individual as a peace officer or correctional officer is not a general permit as defined under A.R.S. § 41-1001. Here, the Board states a general permit is not technically feasible and would not meet the applicable statutory requirements for the certification of devices and personnel pursuant to A.R.S. § 41-1037(A)(3) Under A.R.S. § 41-1822(A) and (B), the Board is required to prescribe reasonable minimum qualifications for peace officers and correctional officers. The Board established those qualifications at R13-4-105, R13-4-109, and R13-4-202 and certifies only individuals who meet the prescribed qualifications.

The certifications issued by the Department fall within the exception of A.R.S. § 41-1037(A)(3). Therefore, the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

The Board indicates that, except as outlined above, the rules in Title 13, Chapter 4, Articles 1 and 2 are generally clear, concise, understandable, consistent, effective and enforced. For those rules that are not, the Board indicates it intends to complete a rulemaking that addresses the issues identified above.. The Board states it will submit the rulemaking to the Council for review and approval by March 31, 2022.

Council staff recommends approval of this report.



Arizona Peace Officer Standards and Training Board

2643 East University Drive Phoenix, Arizona 85034-6914 Phone (602) 223-2514 FAX (602) 244-0477

April 9, 2021

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair

Governor's Regulatory Review Council

100 North 15th Avenue, Suite 305

Phoenix, Arizona 85007

**RE: Arizona Peace Officer Standards and Training Board
Five-year-review Report
13 A.A.C. 4, Articles 1 and 2**

Dear Ms. Sornsin:

The Arizona Peace Officer Standards and Training Board submits the referenced 5YRR for the Council's review and approval. The 5YRR is due under an extension on May 31, 2021.

The Board certifies it complies with A.R.S. § 41-1091.

For questions about this report, please contact Michael Giammarino at 602-418-7941 or mikeg@azpost.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Giordano", written over a white background.

Matt Giordano
Executive Director

Five-year-review Report
A.A.C. Title 13. Public Safety
Chapter 4. Arizona Peace Officer Standards and Training Board
Submitted for June 1, 2021

INTRODUCTION

The Peace Officer Standards and Training Board (Board), which is established by A.R.S. § 41-1821, was created in 1968 to address the need for uniform minimum peace officer selection, recruitment, retention, and training standards and to provide curriculum and standards for all certified law enforcement training facilities. In 1984, the legislature charged the Board with the added responsibilities of approving a state correctional officer training curriculum and establishing minimum standards for state correctional officers. The Board is also responsible for administering the Peace Officer Training Fund, which receives approximately 18.97% of the monies generated by a surcharge on all criminal and traffic fines (See A.R.S. §§ 12-116.01 and 41-2401). During FY2020, the Fund received \$5,110,788.78.

The Board, whose mission is to foster public trust and confidence by establishing and maintaining standards of integrity, competence, and professionalism for Arizona peace officers and correctional officers, provides services to approximately 160 law enforcement agencies, 14,898 peace officers, and 5,411 correctional officers. There are 16 peace officer training academies.

The Board currently has 24 FTEs. The Office of the Attorney General has two attorneys and one other FTE assigned as support to the Board.

All of the Board's rules were last reviewed in 2011. In 2016, following completion of a rulemaking that amended all of the Board's rules (See 22 A.A.R. 555, March 11, 2016) but before R13-4-103, R13-4-105, R13-4-107, R13-4-110, and R13-4-111 went into effect under the terms of A.R.S. § 41-1823(A), the Council required the Board to prepare a report regarding those five rules in their un-amended form. The Board submitted the required report, which was approved by the Council on

July 6, 2016 (See 22 A.A.R. 2207, July 29, 2016). The five reviewed rules ceased to exist on August 8, 2016.

On July 7, 2020, the Council approved a one-year review report of R13-4-202 that was required under A.R.S. § 41-1095.

In addition to the 2016 rulemaking that amended all of the Board's rules and the 2019 rulemaking that amended R13-4-202, the Board recently completed a rulemaking that made several important changes including updating minimum qualifications regarding pre-application use of marijuana, other dangerous drugs, prescription medications, steroids, and narcotics (See 26 A.A.R. 2745, October 23, 2020). There have been no changes to the Board's statutes during the last five years.

Statute that generally authorizes the agency to make rules: The rules in Article 1, which deal with peace officers, are generally authorized by A.R.S. § 41-1822(A). The rules in Article 2, which deal with correctional officers, are generally authorized by A.R.S. § 41-1822(B).

1. Specific statute authorizing the rule:

R13-4-101. Definitions: A.R.S. § 41-1822(A)

R13-4-102. Internal Organization and Control of the Board: A.R.S. § 41-1822(A)(1)

R13-4-103. Certification of Peace Officers: A.R.S. §§ 41-1822(A)(3) and 41-1823(B)

R13-4-104. Peace Officer Category Restrictions: A.R.S. § 41-1822

R13-4-105. Minimum Qualifications: A.R.S. § 41-1822(A)(3)

R13-4-106. Background Investigation Requirements: A.R.S. § 41-1822(A)(3)

R13-4-107. Medical Requirements: A.R.S. § 41-1822(A)(3)

R13-4-108. Agency Records and Reports: A.R.S. §§ 41-1822(A)(6) and 41-1828.01

R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status: A.R.S. § 41-1822(D)

R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies: A.R.S. § 41-1822

R13-4-110. Basic Training Requirements: A.R.S. § 41-1822(A)(4)

R13-4-111. Certification Retention Requirements: A.R.S. § 41-1822(A)(4)

R13-4-112. Time Frames: A.R.S. § 41-1073

R13-4-114. Minimum Course Requirements: A.R.S. § 41-1822(A)(4)

R13-4-116. Academy Requirements: A.R.S. § 41-1822(A)(4)

R13-4-117. Training Expense Reimbursements: A.R.S. § 41-1822
R13-4-118. Hearings; Rehearings: A.R.S. §§ 41-1822 and 41-1092.09
R13-4-201. Definitions: A.R.S. § 41-1822
R13-4-202. Uniform Minimum Standards: A.R.S. § 41-1822(B)(2)
R13-4-203. Background Investigation: A.R.S. § 41-1822(B)(3)
R13-4-204. Records and Reports: A.R.S. § 41-1822
R13-4-205. Basic Training Requirements: A.R.S. § 41-1822(B)(1)
R13-4-206. Field Training and Continuing Training Including Firearms Qualification: A.R.S. § 41-1822(B)(5)
R13-4-208. Re-employment of State Correctional Officers: A.R.S. § 41-1822

2. Objective of the rules:

R13-4-101. Definitions: The objective of this rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R13-4-102. Internal Organization and Control of the Board: The objective of this rule is to establish the manner in which regular and special meetings are noticed and the use and responsibilities of subcommittees.

R13-4-103. Certification of Peace Officers: The objective of this rule is to reiterate that active certified status is required to function as a peace officer; establish an exception to required certified status; establish the categories of certified status; list the requirements for applying for certification; and indicate the Board's authority to waive a qualification, standard, or training requirement when the Board determines that waiver is in the best interest of the law enforcement profession.

R13-4-104. Peace Officer Category Restrictions: The objective of this rule is to establish limitations on certain peace officer categories, circumstances for changing from one peace officer category to another, the difference between inactive and lapsed status, and standards for reinstatement from inactive status.

R13-4-105. Minimum Qualifications: The objective of this rule is to specify the minimum qualifications for appointment to or attendance at an academy; establish standards for determining when use of illegal substances disqualifies an individual from being appointed or attending an academy; provide procedures for petitioning the Board for a determination that disqualifying use of

illegal substances should not be disqualifying; and set forth a Code of Ethics to which a peace officer must commit.

R13-4-106. Background Investigation Requirements: The objective of this rule is to establish the responsibility of an individual seeking appointment to a peace officer training academy to provide information to the appointing agency and for the appointing agency to conduct a background investigation of the applicant's suitability to be a peace officer.

R13-4-107. Medical Requirements: The objective of this rule is to establish the medical, physical, and mental standards required for certification as a peace officer, the procedure for appointing an individual who is unable to perform the essential functions of the job of peace officer effectively, and the process for conducting a medical examination.

R13-4-108. Agency Records and Reports: The objective of this rule is to inform agencies of the reports that must be submitted to the Board before an individual is appointed to a peace officer training academy and when a peace officer is terminated and of the records that must be maintained regarding each individual who seeks certification.

R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status: The objective of this rule is to delineate the causes and establish procedures for denial, revocation, suspension, or cancellation of certified status.

R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies: The objective of this rule is to delineate the circumstances and establish procedures of imposing a restriction on the certified status of a peace officer.

R13-4-110. Basic Training Requirements: The objective of this rule is to specify the training required for an individual to obtain certified status as a peace officer, exceptions to the required training, and a procedure for obtaining a waiver of the required training.

R13-4-111. Certification Retention Requirements: The objective of this rule is to specify the continuing, proficiency, and firearms training required for an individual to maintain certified status as a peace officer and to establish standards for and identify approved providers of continuing, proficiency, and firearms training courses.

R13-4-112. Time Frames: The objective of this rule is to specify the time frames within which the Board will grant or deny certified status to an applicant.

R13-4-114. Minimum Course Requirements: The objective of this rule is to establish classifications and minimum qualifications of instructors who facilitate Board-prescribed training and minimum curriculum standards for Board-prescribed courses.

R13-4-116. Academy Requirements: The objective of this rule is to establish minimum requirements with which an academy that conducts Board-prescribed training must comply. The requirements address the physical facility, administrative standards, academic standards, basic training course functional areas, records, reports, and inspections.

R13-4-117. Training Expense Reimbursements: The objective of this rule is to establish the training expenses for which the Board will reimburse an agency or training academy, the limitations on reimbursement, and the requirement that application be made for reimbursement.

R13-4-118. Hearings; Rehearings: The objective of this rule is to inform an individual aggrieved by an action of the Board that the Board follows the Uniform Administrative Appeals Procedures for hearings and rehearings.

R13-4-201. Definitions: The objective of this rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R13-4-202. Uniform Minimum Standards: The objective of this rule is to establish the minimum standards for being admitted to an academy for training as a correctional officer, including a Code of Ethics to which a correctional officer must commit.

R13-4-203. Background Investigation: The objective of this rule is to establish the responsibility of an individual seeking to be admitted to a training academy to provide information and for the Department of Corrections to use the information to conduct a background investigation of the applicant's suitability to be a correctional officer.

R13-4-204. Records and Reports: The objective of this rule is to inform the Department of Corrections of the reports that it must submit to the Board before an individual is appointed to a training academy and of the records that must be maintained regarding each individual who seeks certification.

R13-4-205. Basic Training Requirements: The objective of this rule is to establish the standards for Board approval of a basic training course; time frames within which the Board will act on an application for approval; academic requirements for completing a basic training course; and circumstances under which training will be waived.

R13-4-206. Field Training and Continuing Training Including Firearms Qualification: The objective of this rule is to establish the training that a correctional officer must receive to maintain certification.

R13-4-208. Re-employment of State Correctional Officers: The objective of this rule is to establish the circumstances under which a terminated correctional officer may be re-employed by the Department of Corrections as a correctional officer.

3. Are the rules effective in achieving their objectives? Mostly yes

The Board believes the rules are effective in achieving their objectives. However, the following changes will make the rules more effective:

- Throughout the rules, reference is made to the 585-hour full authority peace officer training course. To provide flexibility regarding the training course, the “585” needs to be removed from the rules.
- R13-4-101: to expand the Board’s disciplinary options to include a form of delayed eligibility, delete the word “permanent” in the definition of “denial.” The Board believes this will also expand the pool of potential peace officers.
- R13-4-106(C)(8): clarify that the polygraph examination must have been given within the last year to capture any changes in information.
- R13-4-110: to be consistent with agency practice, a subsection needs to be added specifying that before graduation, an individual is required to pass the Peace Officer Physical Aptitude Test and demonstrate proficiency in vehicle and pursuit operations.
- R13-4-114(B)(1)(a): remove reference to “a scientifically conducted validation study” because the requirement is too restrictive.

- R13-4-117(D)(1): remove meals as an allowable reimbursement expense to be consistent with agency practice.

4. Are the rules consistent with other rules and statutes? Mostly yes

Except as specified below, the Board determined the rules are consistent with other rules and statutes. There are many federal laws that apply to law enforcement agencies and the work done by peace officers. These include general laws such as OSHA, EEOC, and ADA, federal laws regarding crimes, and federal case law regarding law enforcement. The training provided to peace officers is consistent with federal law.

- The internal citation in R13-4-118(C) is incorrect. The correct citation is A.R.S. § 41-1822(D)(1).
- The definition of “experimentation” in R13-4-201 needs to be repealed to be consistent with R13-4-105.
- The minimum standards in R13-4-202 regarding drug use need to be made consistent with the standards recently enacted at R13-4-105.
- The evidence of military discharge referenced in R13-4-203(C)(4) should be the same as that referenced in R13-4-106(B)(3).

5. Are the rules enforced as written? Yes

6. Are the rules clear, concise, and understandable? Mostly yes

To be consistent with Board practice and the practice of other agencies, the term “outside provider” should be changed to “vendor” throughout the rules.

7. Has the agency received written criticisms of the rules within the last five years? No

The Board’s 2020 rulemaking was informed by the following study: “Chief Executive and Student Views about Peace Officer Pre-Employment Drug Use Standards,” by Jon Bottema, Arizona State University, January 2020.

8. Economic, small business, and consumer impact comparison:

The Board’s rules were completed in one of three rulemakings. In a rulemaking that went into effect in 2016, the Board amended or made all of its rules. Two subsequent rulemakings amended some of those rules again.

2016 Rulemaking (22 A.A.R. 555, October 23, 2020)

The rules made or amended in this rulemaking that have not been subsequently amended are: R4-13-102, R4-13-103, R4-13-107, R4-13-109.01, R4-13-112, R4-13-117, R4-13-118, R4-13-201, R4-13-203, R4-13-204, R4-13-205, R4-13-206, and R4-13-208. The economic, small business, and consumer impact statement prepared when this rulemaking was done was available for review. Provisions of this rulemaking remaining applicable include simplifying the medical assessment, adding grounds for denial, suspension, or revocation of certification, adding that certification required passing a comprehensive final examination, and adding field training as a requirement for a state correctional officer.

During the last year, 14 individuals were appointed to or were an open enrollee at one of Arizona's academies. Of these, six (40 percent) completed the training and passed the comprehensive final examination. During the last year, 953 individuals were appointed to an Arizona academy. Of these, 770 granted and all passed the comprehensive final examination.

Rather than specifying medical standards in great detail, the rulemaking simplified the medical assessment to focus on whether an individual is able to perform the essential functions of the job of peace officer. The Board provides an eight-hour training class to physicians interested in performing screenings of peace officer applicants. During the last year, 12 physicians completed the training. There are currently approximately 314 physicians qualified to provide the required medical screening for peace officers.

During the last year, the Board revoked the certification of 17 peace officers and suspended the certification of 10 peace officers. The revoked and suspended certifications were the result of a finding of officer misconduct in violation of R13-4-109. An additional 43 peace officers voluntarily relinquished certification.

2019 Rulemaking (25 A.A.R. 1267, May 17, 2019)

R13-4-202 was amended in this exempt rulemaking to lower the minimum age for being a correctional officer from 21 to 18. This was done to address the vacancy issue experienced by the Department of Corrections and the competitive disadvantage ADOC experienced relative to other law enforcement agencies and the U.S. Department of Defense and Military. Because this was an exempt rulemaking, no economic, small business, and consumer impact statement was prepared. In a report of a review of the rule approved by the Council on July 7, 2020, ADOC indicated the rule change had the intended effect of increasing the pool from which to draw correctional officers. Since the rule

went into effect, 463 officers completed the academy while they were younger than 21. Approximately 29 percent of current cadets are younger than 21.

2020 Rulemaking (26 A.A.R. 2745, October 23, 2020)

In this rulemaking, the Board amended R13-4-101, R13-4-104, R13-4-105, R13-4-106, R13-4-108, R13-4-109, R13-4-110, R13-4-111, R13-4-114, and R13-4-116. The economic, small business, and consumer impact statement prepared with the rulemaking was available for review. The primary change made by the rulemaking was updating minimum qualifications regarding pre-application use of marijuana, other dangerous drugs, prescription medications, steroids, and narcotics. The change allowed the Board to remove “experimentation” as an explanation for pre-application drug use. The Board anticipated the change would expand the pool of eligible applicants and treat all applicants in a more fair and equitable manner. The rulemaking also updated procedures to allow online administration of the comprehensive final examination, require law enforcement agencies to share information regarding individuals who previously applied for appointment, and require law enforcement agencies to address “resolve-in-the-future” (RF) designations before placing a peace officer in a sworn position.

Because the rules regarding minimum qualifications took effect on April 7, 2021, the Board has not had time to evaluate their effect. However, the Board remains confident the updated minimum qualifications will expand the pool of available applicants and treat all applicants in a more fair and equitable manner. During calendar year 2020, the Board assigned an RF designation to two cases.

9. Has the agency received any business competitiveness analyses of the rules? No

10. How the agency completed the course of action indicated in the agency’s previous 5YRR:

Yes

In the 5YRR approved by the Council in 2011, the Board indicated it planned to amend R13-4-101, R13-4-105, R13-4-106, R13-4-108, R13-4-110, R13-4-116, and R13-4-205. All of these Sections were amended in the rulemaking approved by the Council in 2016.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Board determined the benefits of the rules, protecting public safety and welfare while certifying only individuals who meet the Board's specified standards outweigh the burdens and costs imposed by the rules. The rules impose the following burdens and costs on peace officers including applicants and state correctional officers, law enforcement agencies, training academies, and continuing training providers:

Peace officers, applicants, and state correctional officers:

- Must satisfy the minimum qualifications and training requirements specified by the Board
- Must make application to an agency for certification and obtain appointment
- Must complete a personal history statement and submit to a background investigation
- Must submit to a medical examination
- Must avoid behaviors that may result in denial, revocation, suspension, or cancellation of peace officer certification
- Must participate in continuing and proficiency training

Law enforcement agencies:

- Must complete a background investigation of each individual seeking appointment
- Must obtain a Board waiver before appointing an individual who does not satisfy all minimum qualifications or who is unable to perform all essential functions of the job of peace officer
- Must prepare, submit, and retain Board-prescribed records
- Must share with other agencies records retained regarding individuals who applied to or were appointed by the agency
- If providing continuing or proficiency training, must ensure the training meets the Board's specified standards
- If applicable, must apply to the Board for reimbursement of training expenses

Training academies:

- Must ensure all training courses meet Board-prescribed academic requirements including curriculum standards
- Must ensure an academy's facilities and personnel meet specified standards
- Must maintain all specified records and make them available on request of the Board
- Must allow inspections by the Board
- If applicable, may seek reimbursement from the Board of training expenses

Continuing training providers:

- Must ensure continuing training meets the standards established by the Board
- May obtain Board confirmation that continuing training meets specified standards

12. Are the rules more stringent than corresponding federal laws? No

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

All of the Board's rules were made after July 29, 2010. Certification of an individual as a peace officer or correctional officer is not a general permit as defined under A.R.S. § 41-1001. Under A.R.S. § 41-1822(A) and (B), the Board is required to prescribe reasonable minimum qualifications for peace officers and correctional officers. The Board established those qualifications at R13-4-105, R13-4-109, and R13-4-202 and certifies only individuals who meet the prescribed qualifications. The rules comply with A.R.S. § 41-1037(A)(3).

14. Proposed course of action:

The Board intends to complete a rulemaking that addresses the issues identified in this report. It will submit the rulemaking for review and approval by March 31, 2022.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 13. PUBLIC SAFETY

CHAPTER 4. PEACE OFFICER STANDARDS AND TRAINING BOARD

1. Identification of the rulemaking:

In response to a five-year-review report approved by the Council on June 7, 2011, and statutory changes (See Laws 2011, Chapter 303), the Board is updating its rules to make them consistent with statute, agency practice, and current rule-writing standards.

The Board believes the following changes made in this rulemaking will have minimal economic impact:

- Clarifying that an outside provider of training may provide only continuing training;
- Clarifying that the Board may withdraw its confirmation that a continuing training course conducted by an outside provider meets requirements of the basic peace officer course if the Board receives information that the course content does not meet requirements;
- Adding requirements regarding the time within which an open enrollee must obtain an appointment and additional training requirements if an appointment is not obtained within the specified time;
- Establishing that illegally possessing marijuana, as well as illegally using it, disqualifies an individual from being a peace officer. A definition of illegal is added;
- Simplifying the medical assessment of whether an individual is able to perform the essential functions of the job of peace officer;
- Adding three grounds for denial, suspension, or revocation of certification;
- Adding that certification as a specialty or limited-authority peace officer requires passing relevant portions of the comprehensive final examination;
- Adding a requirement that a cadet or state correctional officer complete a Board-approved field training program; and
- Deleting salary as a reimbursable training expense.

The Board made the following changes but believes they will have no economic impact:

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

- Clarifying the difference between an individual who is appointed to an academy and one who attends an academy as an open enrollee;
 - Deleting reference to a limited correctional peace officer because it is a position that no longer exists;
 - Specifying conditions under which an agency may seek to have an individual appointed with restrictions;
 - Clarifying restrictions on certified status that result from training or qualification deficiencies;
 - Clarifying that it is an agency rather than an individual that applies for a waiver of required training; and
 - Clarifying the status, training, and time requirements applicable to obtaining a waiver of required training.
- a. The conduct and its frequency of occurrence that the rule is designed to change:
Until the rulemaking is in effect, the Board's rules will continue to be inconsistent with statutory changes. They will also not be updated in ways identified in the five-year-review report approved by Council on June 7, 2011.
 - b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:
It is not good government and is a source of potential confusion for the public for an agency to have rules that are inconsistent with statute. Also, the legislature expects an agency to make timely the changes identified as needed in a five-year-review report.
 - c. The estimated change in frequency of the targeted conduct expected from the rule change:
When the rulemaking goes into effect, the rules will be consistent with statute. Also, the needed changes identified in the 2011 five-year-review report will be made.
2. A brief summary of the information included in the economic, small business, and consumer impact statement:
The Board believes the rulemaking will have minimal economic impact on certified peace officers, applicants to be peace officers, law enforcement agencies, and the Board. The economic impact will result primarily from the changes listed in item 1.
 3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:
Name: Lyle Mann, Executive Director
Address: 2643 E. University

Phoenix, AZ 85034

Telephone: (602) 774-9350

Fax: (602) 244-0477

E-mail: lmann@azpost.gov

Web site: www.azpost.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Certified peace officers, applicants to be peace officers, law enforcement agencies, and the Board are persons that are directly affected by, will bear the costs of, and directly benefit from the rulemaking.

There are currently 14,604 certified peace officers in Arizona and 5,807 corrections officers. These individuals work for 165 law enforcement agencies. During the last year, 870 individuals were appointed to (75 percent) or were an open enrollee (25 percent) at one of the 12 academies in Arizona². Of these, 680 (78 percent) completed the training and 97 percent passed the comprehensive final examination on the first attempt. One individual who started the training was denied certification for academic dishonesty while at the academy.

The rules provide a means for an agency to petition the Board for a determination that an applicant's use of illegal drugs was only for experimentation or otherwise disqualifying conduct constitutes juvenile indiscretion. Because the standards for granting a petition are defined clearly, the Board generally receives petitions only if the standards are met. During the last year, the Board received five petitions regarding use of illegal drugs and granted all of them.

The rulemaking adds illegally possessing marijuana as conduct that disqualifies an individual from becoming a peace officer although a petition can be made that the illegal possession was for experimentation. This change is necessary to protect public safety and enhance public confidence in law enforcement. It will have a negative economic impact on an individual who

² The 12 academies are: AZ Law Enforcement Academy, AZ Western College Law Enforcement Training Academy, Chandler-Gilbert Community College Law Enforcement Training Academy, Glendale Community College Law Enforcement Training Academy, Maricopa County Sheriff's Office Academy, Mesa Police Department Academy, Northern AZ Regional Training Academy, Northeastern AZ Law Enforcement Training Academy, Phoenix Police Reserve Academy, Pima Community College Law Enforcement Training Academy, Pima County Sheriff's Department Training Academy, and Western AZ Law Enforcement Training Academy.

illegally possessed marijuana for other than experimentation. It is difficult to estimate the number of individuals affected by this change because those who do not meet the minimum qualifications generally do not seek appointment or open enrollment.

Rather than specifying medical standards in great detail, the rulemaking simplifies the medical assessment to focus on whether an individual is able to perform the essential functions of the job of peace officer. Detail regarding the medical assessment that was previously in rule is now in a medical screening manual that is provided to physicians who complete an eight-hour Board-provided training class. The Board pays \$500 each to two physicians who teach the training class for other physicians. A screening manual that costs \$10 is provided to each attendee. During 2015, thirteen physicians completed the training. There are currently approximately 43 physicians qualified to provide the required medical screening for peace officers.

The newly required field training for correctional officers was developed within the Department of Corrections so the cost was absorbed into the operating budget. The training is being expanded from one to four weeks. The Department of Corrections intends to assist all cadets to complete the training successfully so there will be no cost to cadets. If necessary, a cadet will return to the academy and repeat relevant coursework.

The Board conducted 121 hearings last year. Of these, 115 involved allegations of misconduct and five were to evaluate petitions regarding drug experimentation. The final hearing was to deny future certification to an individual. As a result of the hearings, the Board revoked the certification of 34 peace officers. Eight of the revocations were automatic upon conviction for a felony. The remaining 26 revocations resulted from Board action. Thirteen were for criminal offenses and 13 were for dishonesty during an internal affairs investigation. The Board also suspended the certification of 19 peace officers. Nine of these were for off-duty DUIs, six for on-duty sexual activity, three for misdemeanor criminal offenses, and one for performance issues.

Four peace officers currently have restricted status. One of these is for failing to comply with the annual training requirements. The others result from medical issues.

The Board currently has 26 FTEs. Fourteen of these are actually employed by the Board. Six are DPS employees assigned as support staff to the Board and one is employed by the Office of the Attorney General and assigned as support to the Board. There are also five outside law enforcement agency contractors who work with the Board. The Board's funding comes from the Criminal Justice Enhancement Fund established at A.R.S. § 41-2401. The monies in the fund come from surcharges imposed under A.R.S. § 12-116.01. The Board receives 16.64 percent of the monies in the fund. Last year this amounted to \$6,553,201.

The Board incurred the cost of making these rules and will incur the cost of implementing them. It has the benefit of rules that are consistent with statute, practice, and current rule-writing standards.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only agency directly affected by the rulemaking. Its costs and benefits are described in item 4.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Some political subdivisions operate academies. All political subdivisions employ certified peace officers and many employ corrections officers. The costs and benefits of doing so are described in item 4.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Physicians who voluntarily choose to participate in the Board-provided training that enables the physicians to conduct medical examinations for peace officers will be affected by the rulemaking. Outside providers of training that previously provided other than continuing training will be restricted to providing continuing training under the new rules.

6. Impact on private and public employment:

The Board believes there will be no impact on private or public employment.

7. Impact on small businesses³:

- a. Identification of the small business subject to the rulemaking:

As indicated in item 5(c), physicians who voluntarily choose to participate in the Board-provided training that enables the physicians to conduct medical examinations

³ Small business has the meaning specified in A.R.S. § 41-1001(21).

for peace officers and outside providers of continuing training are small businesses subject to this rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:

The provider of continuing training is required to provide each attendee with a certificate verifying attendance and either a copy of the Board's written confirmation that the course meets curriculum standards or a copy of the lesson plan or other information sufficient to determine compliance with curriculum standards (See R13-4-111(2)). The training provider voluntarily incurs this cost.

A physician who conducts a medical evaluation of an individual is required to provide a report to the agency appointing the individual (See R13-4-107(B)(2)). The physician voluntarily incurs this cost.

c. Description of methods that may be used to reduce the impact on small businesses:

The economic impact on small businesses is the least possible that allows the Board to fulfill its statutory responsibilities.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private persons or consumers are directly affected by the rulemaking.

9. Probable effects on state revenues:

There will be no effect on state revenue.

10. Less intrusive or less costly alternative methods considered:

The Board believes the rules are the least intrusive and costly possible and there is no less intrusive or less costly alternative method. None was considered.

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2020 through December 31, 2020

Supp. 20-4

Questions about these rules? Contact:

Board: Arizona Peace Officer Standards and Training Board
Name: Michael Orose, Compliance Program Administrator
2643 E. University Dr.
Phoenix, AZ 85034
Telephone: (602) 774-9354
E-mail: michaelo@azpost.gov
Website: www.azpost.gov

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

(Authority: A.R.S. § 41-1822(1) et seq.)

The Arizona Law Enforcement Officer Advisory Council's name was changed by Laws 1994, Ch. 324, § 1, effective July 17, 1994. All references to the Council were changed to reflect the new Board. (Supp. 94-3).

ARTICLE 1. GENERAL PROVISIONS

New Article 1 consisting of Sections R13-4-101 through R13-4-118 adopted effective March 23, 1989.

Former Article 1 consisting of Sections R13-4-01 through R13-4-08 repealed effective March 23, 1989.

Section		
R13-4-101.	Definitions	2
R13-4-102.	Internal Organization and Control of the Board	
2		
R13-4-103.	Certification of Peace Officers	
2		
R13-4-104.	Peace Officer Category Restrictions	3
R13-4-105.	Minimum Qualifications	3
R13-4-106.	Background Investigation Requirements	5
R13-4-107.	Medical Requirements	6
R13-4-108.	Agency Records and Reports	6
R13-4-109.	Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status	
7		
R13-4-109.01.	Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies	
7		
R13-4-110.	Basic Training Requirements	8
R13-4-111.	Certification Retention Requirements	9
R13-4-112.	Time Frames	10
R13-4-113.	Repealed	11
R13-4-114.	Minimum Course Requirements	11
R13-4-115.	Repealed	12
R13-4-116.	Academy Requirements	12
R13-4-117.	Training Expense Reimbursements	14
R13-4-118.	Hearings; Rehearings	15

ARTICLE 2. CORRECTIONAL OFFICERS

Article 2, consisting of Sections R13-4-201 through R13-4-208, adopted effective December 16, 1992, filed June 16, 1992 (Supp. 92-2).

Section		
R13-4-201.	Definitions	15
R13-4-202.	Uniform Minimum Standards	15
R13-4-203.	Background Investigation	16
R13-4-204.	Records and Reports	17
R13-4-205.	Basic Training Requirements	
17		
R13-4-206.	Field Training and Continuing Training Including Firearms Qualification	
19		
R13-4-207.	Repealed	19
R13-4-208.	Re-employment of State Correctional Officers	19

ARTICLE 1. GENERAL PROVISIONS

R13-4-101. Definitions

In this Article, unless the context otherwise requires:

“Academy” means an entity that conducts the Board-prescribed basic training courses for full-authority, specialty, or limited-authority peace officers.

“Adderall,” as used in R13-4-105, means a combination drug containing salts of amphetamine that acts as a central nervous system stimulant. The combination may include amphetamine, methamphetamine, methylphenidate, dextroamphetamine, levoamphetamine, or other stimulants.

“Agency” means a law enforcement entity empowered by the state of Arizona.

“Appointment” means the selection by an agency of an individual to be a peace officer or peace officer trainee.

“Approved training program” means a course of instruction that meets Board-prescribed course requirements.

“Board” means the Arizona Peace Officer Standards and Training Board.

“Board-trained physician” means an occupational medicine specialist or a physician who has attended a Board course on peace officer job functions.

“Cancellation” means the annulment of certified status without prejudice to reapply for certification.

“Certified” means approved by the Board as being in compliance with A.R.S. Title 41, Chapter 12, Article 8 and this Chapter.

“CFE” means the Board-approved Comprehensive Final Examination that measures mastery of the knowledge and skills taught in the 585-hour full-authority peace officer basic training course.

“Denial” means the permanent refusal of the Board to grant certified status.

“Dangerous drug or narcotic” means a substance identified in A.R.S. § 13-3401 as being a dangerous drug or narcotic drug.

“Full-authority peace officer” means a peace officer whose authority to enforce the laws of this state is not limited by this Chapter.

“Illegal” means in violation of federal or state statute, rule, or regulation.

“Lapse” means the expiration of certified status.

“Limited-authority peace officer” means a peace officer who is certified to perform the duties of a peace officer only in the presence and under the supervision of a full-authority peace officer.

“Open enrollee” means an individual who is admitted to an academy but is not appointed by an agency.

“Outside provider” means an entity other than the Board or an agency that makes continuing training available to peace officers.

“Peace officer” has the meaning in A.R.S. § 1-215.

“Peace officer trainee” means an individual recruited and appointed by an agency to attend an academy.

“Physician” means an individual licensed to practice allopathic or osteopathic medicine in this or another state.

“Resolve-in-the-future or RF” means a designation assigned by the Board regarding alleged misconduct of an inactive peace officer and requires an agency to resolve the alleged misconduct before the agency may appoint the peace officer.

“Restriction” means the Board’s limitation on duties allowed to be performed by a certified peace officer.

“Revocation” means the permanent withdrawal of certified status.

“Service ammunition” means munitions that perform equivalently in all respects when fired during training or qualification to those carried on duty by a peace officer.

“Service handgun” means the specific handgun or equivalent that a peace officer carries for use on duty.

“Specialty peace officer” means a peace officer whose authority is limited to enforcing specific sections of the Arizona Revised Statutes or Arizona Administrative Code, as specified by the appointing agency’s statutory powers and duties.

“Success criteria” means a numerical statement that establishes the performance needed for an individual to demonstrate competency in a knowledge, task, or ability required by this Chapter.

“Suspension” means the temporary withdrawal of certified status.

“Termination” means the end of employment or service with an agency as a peace officer through removal, discharge, resignation, retirement, or otherwise.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). References to “Council” changed to “Board” (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2).

Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-102. Internal Organization and Control of the Board

- A. Scheduled meetings. The Chair, in consultation with the Board, shall set regular meeting dates of the Board.
- B. Special meetings. Except in the case of an emergency meeting declared by the Governor or the Chair, the Chair shall give at least five days’ written notice of a special meeting to each member of the Board.
- C. Subcommittees. The Chair may appoint subcommittees to inquire into any matter of Board interest. Each subcommittee shall report its findings, conclusions, and recommendations to the Board, in a manner directed by the Chair.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to “Council” changed to “Board” (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-103. Certification of Peace Officers

- A. Certified status mandatory. An individual who is not certified by the Board or whose certified status is inactive shall not function as a peace officer or be assigned the duties of a peace officer by an agency, except as provided in subsection (B).
- B. Sheriffs who are elected are exempt from the requirement of certified status.
- C. An individual shall satisfy the minimum qualifications and training requirements to receive certified status.
- D. Peace officer categories. The categories for which certified status may be granted are:
 - 1. Full-authority peace officer,
 - 2. Specialty peace officer, and
 - 3. Limited-authority peace officer
- E. Application for certification. An individual who seeks to be certified as a peace officer shall make application as follows:
 - 1. Submit to an agency an application that contains all documents required by R13-4-105, R13-4-106(A) and (B), and R13-4-107;
 - 2. Obtain an appointment from the agency; and
 - 3. Obtain either a certificate of graduation from a Board-prescribed Peace Officer Basic Course or a certificate of successful completion of the waiver of training process prescribed by R13-4-110(D).
- F. An open enrollee shall obtain an appointment from an agency within one year after graduating from a Board-prescribed Peace Officer Basic Course.
 - 1. If more than one year but less than three years elapse after graduation from a Board-prescribed Peace Officer Basic Course before an open enrollee obtains an appointment from an agency, the open enrollee shall again take the CFE required under R13-4-110 and satisfactorily perform the practical demonstrations of proficiency in physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).
 - 2. If more than three years elapse after graduation from a Board-prescribed Peace Officer Basic Course, an open enrollee shall again graduate from the Board-prescribed Peace Officer Basic Course before obtaining an appointment from an agency.
- G. Establishing or enforcing qualifications, standards, or training requirements. The Board may waive in whole or in part any provision of this Article upon a finding that the best interests of the law enforcement profession are served and the public welfare and safety is not jeopardized by the waiver. The Board may place restrictions or requirements on a peace officer as a condition of certified status.
- H. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1).

R13-4-104. Peace Officer Category Restrictions

- A. Limited-authority peace officer.
 - 1. A limited-authority peace officer shall be in the presence and under the supervision of a full-authority peace officer when engaged in patrol or investigative activities performed to detect, prevent, or suppress crime, or to enforce criminal or traffic laws of the state, county, or municipality.
 - 2. A limited-authority peace officer may perform the following duties without supervision of a full-authority peace officer:
 - a. Directing traffic;
 - b. Assisting with crowd control; or
 - c. Maintaining public order in the event of riot, insurrection, or disaster.
- B. Specialty peace officer. A specialty peace officer has only the authority specified in R13-4-101.
- C. Peace officer category change. A certified peace officer may be appointed to another peace officer category within the same agency without the background investigation and medical examination required in R13-4-105, R13-4-106, and R13-4-107 when these requirements were previously satisfied for appointment if:
 - 1. No more than 30 days have elapsed since the peace officer's termination, and
 - 2. The change is to a category for which the officer is qualified under R13-4-110(A).
- D. Inactive status. Certified status of a peace officer becomes inactive upon termination.
- E. Lapse of certified status. The certified status of a peace officer lapses after three consecutive years on inactive status.
- F. Reinstatement from inactive status. A peace officer whose certified status is inactive and has not lapsed may have certification reinstated if the requirements of R13-4-105 are met for the new appointment, and if appointed:
 - 1. In the same peace officer category, or;
 - 2. As a specialty peace officer from inactive status as a full-authority peace officer.
- G. Active status as a specialty or limited-authority peace officer does not prevent lapse of certified status as a full-authority peace officer.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-105. Minimum Qualifications

- A. Except as provided in subsection (C) or (D), an individual shall meet the following minimum qualifications before being appointed to or attending an academy:
 - 1. Be a United States citizen;
 - 2. Be at least 21 years of age. An individual may attend an academy if the individual will be 21 years of age before graduating;
 - 3. Meet one of the following education standards:
 - a. Have a diploma from a high school recognized by the department of education of the jurisdiction from which the diploma is issued,
 - b. Have successfully completed a General Education Development (G.E.D.) examination,
 - c. Have a homeschool diploma or certificate of completion that is recognized as the equivalent of a high school diploma by the jurisdiction from which the homeschool diploma or certificate is issued, or
 - d. Have a degree from an institution of higher education accredited by an agency recognized by the U.S. Department of Education;
 - 4. Undergo a complete background investigation that meets the standards of R13-4-106. An individual shall not begin an academy until the agency has completed the background investigation requirements at R13-4-106(C)(1), (C)(2), and (C)(4) through

(C)(9). However, an individual may begin an academy before the results of the fingerprint query referenced in R13-4-106(C)(3) are returned. The academy shall not graduate the individual and the Board shall not reimburse the academy for the individual's training expenses until a qualifying background investigation report, as specified in R13-4-106(C)(9), is completed;

5. Undergo a medical examination that meets the standards of R13-4-107 within one year before appointment. An agency may make a conditional offer of appointment before the medical examination. If the medical examination is conducted more than 180 days before appointment, the individual shall submit a written statement indicating that the individual's medical condition has not changed since the examination;
 6. Not have been convicted of a felony or any offense that would be a felony if committed in Arizona;
 7. Not have been dishonorably discharged from the United States Armed Forces;
 8. Not have been previously denied certified status, have certified status revoked, or have current certified status suspended, or have voluntarily surrendered certified status in lieu of possible disciplinary action in this or any other state if the reason for denial, revocation, suspension, or possible disciplinary action was or would be a violation of R13-4-109(A) if committed in Arizona;
 9. Not have illegally possessed, produced, cultivated, or transported marijuana for sale or sold marijuana;
 10. Not have illegally possessed or used marijuana for any purpose within the past two years;
 11. Not have illegally sold, produced, cultivated, or transported for sale a dangerous drug or narcotic;
 12. Not have illegally used a dangerous drug or narcotic, other than marijuana, for any purpose within the past seven years;
 13. Not have a pattern of abuse of prescription medication;
 14. Undergo a polygraph examination that meets the requirements of R13-4-106, unless prohibited by law;
 15. Not have been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with a frequency within the past three years that indicates a disrespect for traffic laws or a disregard for the safety of others on the highway;
 16. Read the code of ethics in subsection (E) and affirm by signature the individual understands and agrees to abide by the code.
- B.** To determine whether an individual's possession or use of marijuana, or a dangerous drug or narcotic disqualifies the individual from being appointed or attending an academy, the Board shall use the following standards:
1. Marijuana.
 - a. All forms of marijuana, including THC extracts, cannabis, hashish, marijuana extracts, and marijuana edibles, and all forms of use will be treated the same;
 - b. The individual has not illegally possessed or used marijuana within the two years before appointment as a peace officer; and
 - c. The individual has never illegally possessed or used marijuana as a peace officer;
 2. Dangerous drugs, hallucinogens, narcotics, and prescription drugs containing an active ingredient that is a narcotic or dangerous drug.
 - a. The individual has not illegally possessed or used any of these substances:
 - i. Within the seven years before appointment as a peace officer;
 - ii. More than a total of five times for all substances combined;
 - iii. More than one time for all substances combined since turning 21 years of age; and
 - iv. As a peace officer;
 - b. Dangerous drugs. All dangerous drugs, including methamphetamine, amphetamine, speed, spice, and bath salts will be treated the same;
 - c. Hallucinogens. All hallucinogens, including peyote, mushrooms, ecstasy, lysergic acid diethylamide (LSD), ketamine, mescaline, salvia, and phencyclidine (PCP) will be treated the same;
 - d. Narcotics. All narcotics, including cocaine, heroin, and opioids will be treated the same; and
 - e. Prescription medications. All prescription medications containing an active ingredient that is a narcotic or dangerous drug will be treated the same. Possession or use for recreational purposes of a prescription medication containing an active ingredient that is a narcotic or dangerous drug is disqualifying under subsection (B)(2);
 3. Steroids.
 - a. All steroids, including anabolic-androgenic steroids and corticosteroids will be treated the same;
 - b. The individual has not illegally possessed or used a steroid within the three years before appointment as a peace officer; and
 - c. The individual has never illegally possessed or used a steroid as a peace officer;
 4. Adderall.
 - a. All uses of Adderall, except as prescribed by a physician, will be treated the same;
 - b. The individual has not possessed or used Adderall, except as prescribed by a physician, within the three years before appointment as a peace officer, and
 - c. The individual has never possessed or used Adderall, except as prescribed by a physician, as a peace officer; and
 5. Over-the-counter products containing cannabidiol (CBD). The Board does not consider possession or use of over-the-counter products containing CBD, as allowed under federal and state law, as disqualifying an individual from appointment as a peace officer.
- C.** An agency head who wishes to appoint an individual whose illegal possession or use of marijuana or a dangerous drug or narcotic is determined to be disqualifying under this Section may petition the Board for a determination that, given the unique circumstances of the individual's possession or use, the use should not be disqualifying. The petition shall:
1. Specify the type of drugs illegally possessed or used, the number of uses, the age at the time of each possession or use, the method by which the information regarding illegal possession or use of drugs came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
 2. State the factors the agency head wishes the Board to consider in making its determination. These factors may include:
 - a. The duration of possession or use,
 - b. The motivation for possession or use,
 - c. The time elapsed since the last possession or use,
 - d. How the drug was obtained,
 - e. How the drug was ingested,
 - f. Why the individual stopped possessing or using the drug, and
 - g. Any other factor the agency head believes is relevant to the Board's determination.
- D.** An agency head who wishes to appoint an individual whose conduct is grounds to deny certification under R13-4-109 may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion. The petition shall:
1. Specify the nature of the conduct, the number of times the conduct occurred, the method by which information regarding the conduct came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
 2. Include sufficient information for the Board to determine that all of the following are true:
 - a. The conduct occurred when the individual was younger than age 18;

- b. The conduct occurred more than 10 years before application for appointment;
 - c. The individual has consistently exhibited responsible, law-abiding behavior between the time of the conduct and application for appointment;
 - d. There is reason to believe that the individual's immaturity at the time of the conduct contributed substantially to the conduct;
 - e. There is evidence that the individual's maturity at the time of application makes reoccurrence of the conduct unlikely; and
 - f. The conduct was not so egregious that public trust in the law enforcement profession would be jeopardized if the individual is certified.
3. If the Board finds that the information submitted is sufficient for the Board to determine that the factors listed in subsection (D)(2) are true, the Board shall determine that the conduct constituted juvenile indiscretion and grant appointment.
- E.** Code of Ethics. Because the people of the state of Arizona confer upon all peace officers the authority and responsibility to safeguard lives and property within constitutional parameters, a peace officer shall commit to the following Code of Ethics and shall affirm the peace officer's commitment by signing the Code.
- "I will exercise self-restraint and be constantly mindful of the welfare of others. I will be exemplary in obeying the laws of the land and loyal to the state of Arizona and my agency and its objectives and regulations. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secure unless revelation is necessary in the performance of my duty.
- I will never take selfish advantage of my position and will not allow my personal feelings, animosities, or friendships to influence my actions or decisions. I will exercise the authority of my office to the best of my ability, with courtesy and vigilance, and without favor, malice, ill will, or compromise. I am a servant of the people and I recognize my position as a symbol of public faith. I accept it as a public trust to be held so long as I am true to the law and serve the people of Arizona."
- F.** This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). Amended effective January 13, 1993; filed July 13, 1992 (Supp. 92-3). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed October 7, 2020, effective date April 7, 2021 (Supp. 20-4).

R13-4-106. Background Investigation Requirements

- A.** Personal history statement. An individual who seeks to be appointed shall complete and submit to the appointing agency a personal history statement on a form prescribed by the Board before the start of a background investigation. The Board shall use the answers to questions contained in the personal history statement to determine whether the individual is eligible for certified status as a peace officer. The Board shall ensure that the questions concern whether the individual meets the minimum requirements for appointment, has engaged in conduct or a pattern of conduct that would jeopardize the public trust in the law enforcement profession, and is of good moral character.
- B.** Investigative requirements for the applicant. To assist with the background investigation, an individual who seeks to be appointed shall provide the following:
- 1. Proof of United States citizenship. A copy of a birth certificate, United States passport, or United States naturalization papers is acceptable proof.
 - 2. Proof of education. A copy of a diploma, certificate, or transcript is acceptable proof.
 - 3. Record of any military discharge. A copy of the Military Service Record (DD Form 214 or NGB Form 22), which documents the character of service, separation code, and reentry code, is acceptable proof.
 - 4. Personal references. The names and addresses of at least three people who can provide information as personal references.
 - 5. Previous employers or schools attended. The names and addresses of all employers and schools attended within the previous five years.
 - 6. Residence history. The complete address for every location at which the individual has lived in the last five years.
- C.** Investigative requirements for the agency. A complete background investigation includes the following inquiries and a review of the returns to determine that the individual seeking appointment meets the requirements of R13-4-105, and that the individual's personal history statement is accurate and truthful. For each individual seeking to be appointed, the appointing agency shall:
- 1. Query all the law enforcement agency records in jurisdictions listed in subsections (B)(5) and (B)(6);
 - 2. Query the motor vehicle division driving record from any state listed in subsections (B)(5) and (B)(6);
 - 3. Complete and submit a Fingerprint Card Inventory Sheet to the Federal Bureau of Investigation and Arizona Department of Public Safety for query;
 - 4. Query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state listed in subsections (B)(5) and (B)(6);
 - 5. Contact all personal references and employers listed in subsections (B)(4) and (B)(5) and document the answers to inquiries concerning whether the individual meets the standards of this Section;
 - 6. Query the Board regarding the individual's certification status, reports of alleged misconduct by the individual, and whether the individual has a Board case with an RF designation;
 - 7. Query all Arizona law enforcement agencies where the individual was appointed or applied for appointment as a peace officer regarding records maintained under R13-4-108(C);
 - 8. Administer a polygraph examination, unless prohibited by law. The results shall include a detailed report of the pre-test interview and any post-test interview and shall cover responses to all questions that concern:
 - a. Minimum standards for appointment as required by R13-4-105,
 - b. Truthfulness on the personal history statement,
 - c. Commission of any crimes; and
 - d. Any Board case with an RF designation; and
 - 9. If the results of the background investigation show that the individual meets minimum qualifications for appointment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character, complete a report that attests to those findings. If the agency is unable to obtain all information required under subsections (C)(1) through (C)(8), include in the report a description of the missing information and efforts made to obtain it.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective January 13, 1993; filed July 13, 1992 (Supp. 92-3). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-107. Medical Requirements

- A.** Medical, physical, and mental eligibility for certification.
1. An agency may appoint an individual if the individual meets the minimum qualifications in R13-4-105 and is able to perform all the essential functions of the job of peace officer effectively, with or without reasonable accommodation, without creating a reasonable probability of substantial harm to the individual or others.
 2. If an agency wishes to appoint an individual who is unable to perform all the essential functions of the job of peace officer effectively, the agency may seek a restricted certification for the individual. The Board shall determine whether placing restrictions or requirements on the individual as a condition of certification will enable the individual to perform the essential functions authorized within the restriction without creating a reasonable probability of harm to the individual or others.
- B.** Medical examination process.
1. Medical history. An individual applying to be appointed shall provide to the examining, board-trained, physician a written statement of the individual's medical history that includes past and present diseases, illnesses, symptoms, conditions, injuries, functionality, surgeries, procedures, immunizations, medications, and psychological information.
 2. Medical examination.
 - a. The examining, board-trained, physician shall not delegate any part of the medical examination process to another person;
 - b. The examining, board-trained, physician shall review the medical history statement and take an additional verbal history from the applicant;
 - c. The examining, board-trained, physician shall conduct a physical examination consistent with the standard of care for occupational medical examinations;
 - d. The examining, board-trained, physician shall order tests, obtain medical records, and require specialist or functional examinations and evaluations that the examining physician deems necessary to determine the applicant's ability to perform all the essential functions of the job of peace officer;
 - e. The examining, board-trained, physician shall make a report to the agency and provide a:
 - i. Summary of the examination;
 - ii. Description of any significant medical findings;
 - iii. Description of any limitation to the ability to perform the essential functions of the job of a peace officer;and
 - iv. Medical opinion about the applicant's ability to perform the essential functions of the job of peace officer, with or without reasonable accommodations; and
 - f. The examining, board-trained, physician shall consult with the agency, upon request, about the report and the efficacy of any accommodations the agency deems reasonable.
- C.** This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1).

R13-4-108. Agency Records and Reports

- A.** Agency reports. On forms prescribed by the Board, an agency shall submit:
1. A report by the agency head attesting that the requirements of R13-4-105 are met for each individual appointed. The report shall be submitted to the Board before an individual attends an academy or performs the duties of a peace officer.
 2. A report of the termination of a peace officer. The report shall be submitted to the Board within 15 days of the termination and include:
 - a. The nature of the termination and effective date;
 - b. A detailed description of any termination for cause; and
 - c. A detailed description of, and supporting documentation for, any cause existing for suspension or revocation of certified status.
- B.** Agency records. An agency shall make its records available on request by the Board or staff. The agency shall maintain the following for each individual for whom certification is sought:
1. An application file that contains all of the information required in R13-4-103(E) and R13-4-106(C) for each individual appointed for certification as a peace officer;
 2. A copy of reports submitted under subsection (A);
 3. A signed copy of the affirmation to the Code of Ethics required under R13-4-105;
 4. A written report of the results of a completed or partially completed background investigation and all written documentation obtained or recorded under R13-4-106, including information obtained regarding a Board case with an RF designation;
 5. A completed medical report required under R13-4-107; and
 6. A record of all continuing training, proficiency training, and firearms qualifications conducted under R13-4-111.
- C.** Record retention. An agency shall maintain the records required by this Section as follows:
1. For applicants investigated under R13-4-106 who are not appointed: three years;
 2. For applicants who are appointed: five years from the date of termination, except records retained under subsection (B)(6) shall be retained for three years following completion of training; and
 3. Reports of a polygraph examination given under R13-4-106(C)(6) shall be maintained in accordance with state law.
- D.** An agency shall make the records maintained under subsection (C) available, on request, to another agency completing a background investigation under R13-4-106(C).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status

- A.** Causes for denial, suspension, or revocation. The Board may deny certified status or suspend or revoke the certified status of a peace officer for:

1. Failing to satisfy a minimum qualification for appointment listed in R13-4-105;
 2. Willfully providing false information in connection with obtaining or reactivating certified status;
 3. Having a medical, physical, or mental disability that substantially limits the individual's ability to perform the duties of a peace officer effectively, or that may create a reasonable probability of substantial harm to the individual or others, for which a reasonable accommodation cannot be made;
 4. Violating a restriction or requirement for certified status imposed under R13-4-109.01, R13-4-103 (G), or R13-4-104;
 5. Engaging in behavior that would be disqualifying under R13-4-105(B);
 6. Using or being under the influence of spirituous liquor on duty without authorization;
 7. Committing a felony, an offense that would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;
 8. Committing malfeasance, misfeasance, or nonfeasance in office;
 9. Performing the duties or exercising the authority of a peace officer without having active certified status;
 10. Making a false or misleading statement, written or oral, to the Board or its representative;
 11. Failing to furnish information in a timely manner to the Board or its representative on request; or
 12. Engaging in any conduct or pattern of conduct that tends to disrupt, diminish, or otherwise jeopardize public trust in the law enforcement profession.
- B.** Cause for cancellation. The Board shall cancel the certified status of a peace officer if the Board determines that the individual was not qualified when certified status was granted, and revocation is not warranted under subsection (A).
- C.** Cause for mandatory revocation. Upon the receipt of a certified copy of a judgment of a felony conviction of a peace officer, the Board shall revoke certified status of the peace officer.
- D.** Action by the Board. Upon receipt of information that cause exists to deny certification, or to cancel, suspend, or revoke the certified status of a peace officer, the Board shall determine whether to initiate action regarding the retention of certified status. The Board may conduct additional inquiries or investigations to obtain sufficient information to make a fair determination.
- E.** Notice of action. The Board shall notify the affected individual of Board action to initiate proceedings regarding certified status for a cause listed under subsection (A) or (B). The notice shall be served as required by A.R.S. § 41-1092.04 and specify the cause for the action. Within 30 days after receiving the notice, the individual named in the notice shall advise the Board or its staff in writing whether a hearing is requested. Failure to file a written request for hearing at the Board offices within 30 days after receiving the notice constitutes a waiver of the right to a hearing.
- F.** Effect of agency action. Action by an agency or a decision resulting from an appeal of that action does not preclude action by the Board to deny, cancel, suspend, or revoke the certified status of a peace officer.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies

- A.** Restricted status. The Board shall restrict certified status if a peace officer fails to satisfy the requirements of R13-4-111.
1. The Board shall consider reports of training or qualification deficiencies at a regularly scheduled public meeting and provide a peace officer alleged to have a training or qualification deficiency the opportunity to be heard without referral to an independent hearing officer. At the public meeting, the Board shall determine only whether the peace officer has successfully completed the required training or qualification and can produce documentation to verify it.
 2. The Board shall leave a restriction in effect until the training or qualification requirement is met and the peace officer files written verification of the training or qualification with the Board.
 3. The Board shall provide notice of restriction or reinstatement following a restriction under this Section by regular mail to the peace officer at the employing agency address. The Board shall provide a copy of the restriction or reinstatement notice by regular mail to the agency head.
- B.** Firearms qualification. If a peace officer fails to satisfy R13-4-111(C), the peace officer shall not carry or use a firearm on duty.
- C.** Continuing and proficiency training. If a peace officer fails to satisfy R13-4-111(A) or (B), the peace officer shall not engage in enforcement duties, carry a firearm, wear or display a badge, wear a uniform, make arrests, perform patrol functions, or operate a marked police vehicle.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-110. Basic Training Requirements

- A.** Required training for certified status. The Board shall not certify and an individual shall not perform the duties of a peace officer until the individual successfully completes basic training as follows:
1. To be certified as a full-authority peace officer, an individual shall complete the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass the CFE.
 - a. The Board shall ensure the CFE is administered in a secure manner.
 - b. The Board shall ensure that the CFE is administered during the final two weeks of the full-authority peace officer basic training course.
 - c. An individual passes the CFE by achieving a score of at least 70 percent on each of the three blocks of the CFE when each block is scored separately.
 - d. An individual who fails one or more blocks of the CFE may retake the failed block one time before the individual is scheduled to graduate from the academy.
 - e. An individual who fails a retake of a block of the CFE, as described in subsection (A)(1)(d), may retake the failed block once more within 60 days from the original testing date if the individual remains appointed by the original appointing agency or enrolled in the academy.
 - f. An individual who fails a second retake of a block of the CFE, as described in subsection (A)(1)(e), may pursue certification only by repeating the 585-hour full-authority peace officer basic training course.
 - g. An agency head is not required to continue to appoint an individual during the 60 days permitted for a second retake of a failed block of the CFE, as described in subsection (A)(1)(e).
 2. To be certified as a specialty peace officer, an individual shall complete a Board-prescribed specialty peace officer basic training course or the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass blocks of the CFE prescribed under subsection (A)(1) that are relevant to the duties of a specialty peace officer.
 3. To be certified as a limited-authority peace officer, an individual shall complete a Board-prescribed limited-authority peace officer basic training course or the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an

academy and pass blocks of the CFE prescribed under subsection (A)(1) that are relevant to the duties of a limited-authority peace officer.

- B.** Exceptions. The training requirement in subsection (A) is waived when an agency uses an individual during a:
1. Riot, insurrection, disaster, or other event that exhausts the peace officer resources of the agency and the individual is attending an academy; or
 2. Field training program that is a component of a basic training program at an academy, and the individual is under the direct supervision and control of a certified peace officer.
- C.** Firearms training required. Unless otherwise specified in this Section, a peace officer shall complete the firearms qualification courses required in R13-4-116(E) before the peace officer carries a firearm in the course of duty.
- D.** Waiver of required training. An agency, on behalf of an individual, may apply to the Board for a waiver of required training if the individual's certified status is lapsed or the individual has functioned in the capacity of a peace officer in another state or for a federal law enforcement agency. The Board shall grant a waiver of required training if the Board determines that the best interests of the law enforcement profession are served, the public welfare and safety are not jeopardized, and:
1. The appointing agency submits to the Board written verification of the individual's previous experience and training on a form prescribed by the Board;
 2. The individual meets the minimum qualifications listed in R13-4-105;
 3. The individual complies with the requirements of R13-4-103(E)(1);
 4. The appointing agency complies with the requirements of R13-4-106(C);
 5. The individual successfully completes an examination measuring the individual's comprehension of the 585-hour full-authority peace officer basic training course as follows:
 - a. If the individual has experience as a certified peace officer in another state or for a federal law enforcement agency and submits to the Board basic training and in-service training records that the Board determines demonstrate substantial comparability to Arizona's 585-hour full-authority peace officer basic training course, the individual shall pass all blocks of the CFE; and
 - b. If the individual's certification is lapsed, the individual shall pass all blocks of the CFE; and
 - c. The provisions in subsections (A)(1)(c) through (f) apply to this subsection; and
 6. In addition to the examination required under subsection (D)(5), the individual demonstrates proficiency in the areas of physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).
- E.** This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed October 7, 2020, effective date April 7, 2021 (Supp. 20-4).

R13-4-111. Certification Retention Requirements

- A.** Continuing training required.
1. A full-authority, specialty, or limited-authority peace officer shall complete eight hours of continuing training each year beginning January 1 following the date the officer is certified.
 2. Continuing training course standards for peace officers. The provider of a continuing training course for peace officers shall ensure that:
 - a. The course curriculum consists of instruction on topics related to law enforcement operations and peace officer functions and skills;
 - b. The instructor meets the requirements of R13-4-114(A)(2)(a) or (b);
 - c. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes;
 - d. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit;
 - e. If the training provider is an outside provider that does not seek confirmation that the course meets the requirements under subsection (A)(3)(c), a copy of the lesson plan or other information sufficient to determine compliance with this Section is given to each attendee; and
 - f. If the training provider is an outside provider that seeks and receives confirmation under subsection (A)(3)(c), a copy of the Board's written confirmation is distributed to each attendee.
 3. Training providers. Courses of continuing training may be conducted by the Board, an agency, or an outside provider.
 - a. All Board-provided continuing training courses meet the requirements of this Section.
 - b. Agency-provided continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met.
 - c. Outside-provider continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met. The Board may inform an outside provider in writing whether a continuing training course meets these requirements if a course package is submitted to the Board, in a timely manner before the training is conducted, that includes:
 - i. A description of the training course that allows the Board to determine whether the course contains advanced or remedial instruction on one or more of the topic areas specified in R13-4-116(E)(1);
 - ii. The name of the individual, or if applicable, the institution or organization, providing the training with sufficient information to allow the Board to determine whether the requirements of R13-4-114(A)(2)(a) or (b) are met;
 - iii. A course schedule listing the number of instructional hours; and
 - iv. An attestation that the outside provider shall, upon request by the Board, make the lesson plan or other information sufficient to determine compliance with this Section available for Board audit, and shall ensure that the requirement of subsection (A)(2)(b) is met.
 - d. The Board's confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section is not an evaluation of the content of the course. Rather, confirmation indicates only that the topic of the course is consistent with R13-4-116(E)(1). Confirmation is effective as long as the information submitted to the Board under subsection (A)(3)(c) is unchanged.
 - e. The Board shall withdraw confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section if the Board receives information that the course content conflicts with the basic peace officer

course content and the Board finds that the conflict creates an issue of public safety, liability, or ethics.

- f. If an agency wishes to host an outside-provider continuing training course:
 - i. Both the agency and outside provider shall comply with the provisions of subsections (A)(3)(c)(i) through (iii);
 - ii. The agency shall provide the confirmation described under subsection (A)(3)(c);
 - iii. The outside provider shall distribute to each attendee an attendance verification certificate described under subsection (A)(2)(c) and a copy of the confirmation received under subsection (A)(3)(f)(ii); and
 - iv. Upon request, the agency shall make available to the Board the lesson plan and other information used to determine the outside-provider continuing training course met the requirements of this Section.
 4. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer under subsection (A)(2)(c), (A)(2)(e), (A)(2)(f), or (A)(3)(f)(iii). The appointing agency shall maintain the documents and make them available, upon request by the Board, for Board audit.
- B. Proficiency training required.**
1. To retain certification, a peace officer who is not in a Sergeant or higher rank within the peace officer's appointing agency shall complete eight hours of proficiency training every three years beginning January 1, following the date the peace officer is certified.
 2. Proficiency training course standards. The provider of a proficiency training course for peace officers shall ensure that:
 - a. The training requires physical demonstration of one or more performance objectives included in the 585-hour full-authority peace officer basic training course under R13-4-116 and demonstration of the use of judgment in the application of the physical act;
 - b. The curriculum consists of advanced or remedial instruction on one or more of the following topic areas:
 - i. Arrest and control tactics,
 - ii. Tactical firearms (not the annual firearms qualification required under this Section),
 - iii. Emergency vehicle operations,
 - iv. Pursuit operations,
 - v. First aid and emergency care,
 - vi. Physical conditioning, and
 - vii. High-risk stops;
 - c. The instructor meets the requirements of R13-4-114(A)(2)(c);
 - d. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes; and
 - e. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit.
 3. Training providers. Courses that qualify for proficiency training credit may be conducted by the Board or an agency.
 - a. All Board-provided proficiency training courses meet the requirements of this Section.
 - b. Agency-provided proficiency training courses meet the requirements of this Section if all the requirements of subsection (B)(2) are met.
 4. Required records. A peace officer shall provide to the appointing agency a copy of the document provided to the peace officer under subsection (B)(2)(d). The appointing agency shall maintain and make the document available, upon request by the Board, for Board audit.
- C. Firearms qualification required.** A peace officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each year beginning January 1 following certification by completing a Board-prescribed firearms qualification course, using a service handgun and service ammunition, and a Board-prescribed target identification and judgment course.
1. Firearms qualification course standards.
 - a. A firearms qualification course is a course:
 - i. Prescribed under R13-4-116(E)(1), or
 - ii. Determined by the Board to measure firearms competency at least as accurately as courses prescribed under R13-4-116(E)(1).
 - b. The provider of a firearms qualification course shall ensure that the course includes:
 - i. A timed accuracy component;
 - ii. A type and style of target that is equal to, or more difficult than, targets used in a course prescribed under R13-4-116(E)(1); and
 - iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
 2. Firearms target identification and judgment course standards.
 - a. A firearms target identification and judgment course is a course:
 - i. Prescribed under R13-4-116(E)(1), or
 - ii. Determined by the Board to measure target identification and judgment competency at least as accurately as courses prescribed under R13-4-116(E)(1).
 - b. The provider of a firearms target identification and judgment course shall ensure that the course includes:
 - i. A timed accuracy component;
 - ii. A type and style of target discrimination test that is equal to, or more difficult than, those used in a course prescribed under R13-4-116(E)(1); and
 - iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
 3. The provider of a firearms qualification or firearms target identification and judgment course shall ensure that the course is taught by a firearms instructor who meets the requirements of R13-4-114(A)(2)(c).
- D.** This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed October 7, 2020, effective date April 7, 2021 (Supp. 20-4).

R13-4-112. Time Frames

- A.** For the purposes of A.R.S. § 41-1073, the Board establishes the following time frames for peace officer certification:

1. Administrative completeness review time frame: 90 days.
 2. Substantive review time frame: 180 days.
 3. Overall time frame: 270 days.
- B.** The administrative completeness review time frame begins on the date the Board receives the report required by R13-4-108(A)(1) from an appointing agency.
1. Within 90 days, the Board shall review the report and issue to the appointing agency a notice of administrative completeness or a notice of administrative deficiency that lists each document or item of information establishing compliance with R13-4-105 that is missing.
 2. If the Board issues a notice of administrative deficiency, the appointing agency shall make the missing documents and information available to the Board within 90 days of the date of the notice. The administrative completeness review time frame is suspended from the date of the deficiency notice until the date the missing documents and information are made available to the Board.
 3. If the appointing agency fails to make available all missing documents and information within the 90 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
 4. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the appointing agency.
- C.** The substantive review time frame begins on the date the Board issues the notice of administrative completeness.
1. During the substantive review time frame, the Board may make one comprehensive written request for additional information.
 2. The appointing agency shall make available to the Board the additional information identified in the request for additional information within 60 days. The time frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the additional information is made available to the Board.
 3. If the appointing agency fails to make available the additional information requested within the 60 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
 4. When the substantive review is complete, the Board shall grant or deny certification.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Adopted effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-113. Repealed

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). Reference to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3).

R13-4-114. Minimum Course Requirements

- A.** Instructors. An academy administrator or agency head shall ensure that only an instructor who meets the requirements of this Section facilitates a Board-prescribed course.
1. Instructor classifications.
 - a. General instructor. An individual qualified to teach topics not requiring a proficiency instructor under subsection (A)(1)(c).
 - b. Specialist instructor. An individual, other than an Arizona peace officer, qualified to teach a topic in which the instructor has special expertise but who does not qualify for general instructor status.
 - c. Proficiency instructor. An individual qualified to teach a topic area listed in R13-4-111(B)(2)(b).
 2. Instructor qualification standards.
 - a. A general instructor shall meet the following requirements:
 - i. Have two years' experience as a certified peace officer;
 - ii. Maintain instructional competency;
 - iii. Successfully complete a Board-sponsored instructor training course or an instructor training course that contains all of the performance objectives and demonstrations of the Board-sponsored instructor course.
 - b. A specialist instructor shall meet the requirements of subsections (A)(2)(b)(i) and (A)(2)(b)(ii) and either subsection (A)(2)(b)(iii) or (A)(2)(b)(iv):
 - i. Be nominated by an agency head or the administrator of an academy authorized to provide a peace officer basic training course;
 - ii. Maintain instructional competency;
 - iii. Possess a professional license or certification other than a peace officer certification that relates to the topics to be taught;
 - iv. Provide documentation to the agency head or academy administrator for forwarding to the Board that demonstrates the expertise and ability to enhance peace officer training in a special field.
 - c. A proficiency instructor shall meet the requirements of subsections (A)(2)(c)(i) and (A)(2)(c)(ii) and either subsection (A)(2)(c)(iii) or (A)(2)(c)(iv):
 - i. Meet the requirements for general instructor;
 - ii. Maintain instructional competency;
 - iii. Successfully complete a proficiency instructor course in a topic area listed in R13-4-111(B)(2)(b) that includes a competency assessment to instruct in that area within the 585-hour full-authority peace officer basic training course listed in R13-4-116(E);
 - iv. Complete a form prescribed by the Board that documents advanced training and experience in the topic area including a competency assessment to instruct in that area within the 585-hour full-authority peace officer basic training course listed in R13-4-116(E);
 - d. A proficiency instructor shall meet the requirements of subsection (A)(2)(c) separately for each topic area listed in R13-4-111(B)(2)(b) for which the proficiency instructor seeks qualification.
 3. Instructional competency. An academy administrator or an agency head shall immediately notify the Board in writing of any instructor:
 - a. Who jeopardizes the safety of students or the public,
 - b. Whose instruction violates acceptable training standards,

- c. Who is grossly deficient in performance as an instructor, or
 - d. Who is a proficiency instructor and fails to complete satisfactorily the competency assessment to instruct in the instructor's topic area within the 585-hour full-authority peace officer basic training course.
4. If the Board determines that an instructor fails to comply with the provisions of this Section, has an instructional deficiency, or fails to maintain proficiency, any course facilitated by the instructor does not meet the requirements of this Section.
- B. Curriculum standards.** An academy administrator or agency head shall ensure that the curriculum for a Board-prescribed course meets the following standards:
- 1. Curriculum.
 - a. Curriculum development employs valid, job-based performance objectives and learning activities, and promotes student, officer, and public safety, as determined by a scientifically conducted validation study of the knowledge, skills, abilities, and aptitudes needed by the affected category of Arizona peace officer.
 - b. The curriculum meets or exceeds the requirements of subsection (B)(2), unless otherwise provided in this Section.
 - 2. Curriculum format standard. The curriculum consists of the following:
 - a. A general statement of instructional intent that summarizes the desired learning outcome, is broad in scope, and includes long-term or far-reaching learning goals;
 - b. Lesson plans containing:
 - i. Course title,
 - ii. Hours of instruction,
 - iii. Materials and aids to be used,
 - iv. Instructional strategy,
 - v. Topic areas in outline form,
 - vi. Performance objectives or learning activities,
 - vii. Success criteria, and
 - viii. Reference material;
 - c. Performance objectives consisting of at least the following components:
 - i. The student, which is an individual or group that performs a behavior as the result of instruction;
 - ii. The behavior, which is an observable demonstration by the student at the end of instruction that shows that the objective is achieved and allows evaluation of the student's capabilities to perform the behavior; and
 - iii. The conditions, which is a description of the important conditions of instruction or evaluation under which the student performs the behavior. Unless specified otherwise within the lesson plan, instruction and evaluation will be in written or oral form;
 - d. Learning activities. A student is not required to demonstrate mastery of learning activities as a condition for successfully completing the training. Learning activities are subject areas for which performance objectives are not appropriate because either:
 - i. Reliable and meaningful assessment of mastery of the material would be extremely difficult or impossible, or
 - ii. Mastery of the material is not likely to bear a direct relationship to the ability to perform entry-level peace officer job duties; and
 - e. The following decimal numbering system to provide a logical means of organization:
 - i. Functional area (1.0, 2.0, 3.0),
 - ii. Topic area (1.1.0, 1.2.0, 1.3.0), and
 - iii. Performance objective or learning activity (1.1.1, 1.1.2, 1.1.3).
- C.** The Board shall maintain and provide upon request a copy of curricula that meet the standards of this Section.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-115. Repealed

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Section repealed by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3).

R13-4-116. Academy Requirements

- A.** Unless otherwise provided in this Article, only the basic training provided by an academy that the Board determines meets the standards prescribed in this Section may be used to qualify for certified peace officer status.
- B.** The academy administrator shall ensure that the academy has the following:
- 1. A classroom with adequate heating, cooling, ventilation, lighting, and space;
 - 2. Chairs with tables or arms for writing;
 - 3. Visual aid devices for classroom presentation;
 - 4. Equipment in good condition for specialized instruction;
 - 5. A safe driving range for conducting the defensive and pursuit driving course;
 - 6. A firing range with adequate backstop to ensure the safety of all individuals on or near the range; and
 - 7. A safe location for practical exercises.
- C.** Administrative requirements. The academy administrator shall ensure that the academy:
- 1. Establishes and maintains written policies, procedures, and rules concerning:
 - a. Operation of the academy,
 - b. Entrance requirements,
 - c. Student and instructor conduct, and
 - d. Administering examinations;
 - 2. Admits only individuals who meet the requirements of R13-4-105, as attested to by the appointing agency or, in the case of an open enrollee, by the academy administrator, on form A1 or A4, as applicable, which is submitted to the Board on or before the first day of training;
 - 3. Administers to each student at the beginning of each academy session a written examination prescribed by the Board measuring competency in reading and writing English;
 - 4. Schedules sufficient time for the CFE to be administered as required by R13-4-110(A); and
 - 5. Uses only instructors who are qualified under R13-4-114(A).

- D.** Academic requirements. The academy administrator shall ensure that the academy:
1. Establishes a curriculum with performance objectives and learning activities that meet the requirements of subsection (E) and R13-4-114(B);
 2. Requires instructors to use lesson plans that cover the course content and list the performance objectives to be achieved and learning activities to be used;
 3. Administers written, oral, or practical demonstration examinations that measure the attainment of the performance objectives;
 4. Reviews examination results with each student and ensures that the student is shown any necessary corrections and signs and dates an acknowledgment that the student participated in the review;
 5. Requires a student to complete successfully oral or written examinations that cover all topics in all functional areas before graduating.
 - a. Successful completion of an examination is a score of 70 percent or greater;
 - b. For a student who scores less than 70 percent, the academy shall:
 - i. Provide remedial training, and
 - ii. Re-examine the student in the area of deficiency; and
 - c. The academy shall allow a student to retake each examination only once;
 6. Requires a student to qualify with firearms as described in R13-4-116(E);
 7. Ensures that a student meets the success criteria for police proficiency skills under subsection (E)(1);
 8. Provides remedial training for a student who misses a class before allowing the student to graduate; and
 9. Refuses to graduate a student who is absent more than 32 hours from the 585-hour full-authority peace officer basic training course or 16 hours from the specialty or limited-authority peace officer basic training course.
- E.** Basic course requirements. The academy administrator shall ensure that the academy uses curricula that meet the requirements of R13-4-114 for the following basic courses of instruction.
1. The 585-hour full-authority peace officer basic training course shall include all of the topics listed in each of the following functional areas:
 - a. Functional Area I - Introduction to Law Enforcement.
 - i. Criminal justice systems,
 - ii. History of law enforcement,
 - iii. Law enforcement services,
 - iv. Supervision and management,
 - v. Ethics and professionalism, and
 - vi. Stress management.
 - b. Functional Area II - Law and Legal Matters.
 - i. Introduction to criminal law;
 - ii. Laws of arrest;
 - iii. Search and seizure;
 - iv. Rules of evidence;
 - v. Summonses, subpoenas, and warrants;
 - vi. Civil process;
 - vii. Administration of criminal justice;
 - viii. Juvenile law and procedures;
 - ix. Courtroom demeanor;
 - x. Constitutional law;
 - xi. Substantive criminal law, A.R.S. Titles 4, 13, and 36; and
 - xii. Liability issues.
 - c. Functional Area III - Patrol Procedures.
 - i. Patrol and observation (part 1),
 - ii. Patrol and observation (part 2),
 - iii. Domestic violence,
 - iv. Mental illness,
 - v. Crimes in progress,
 - vi. Crowd control formations and tactics,
 - vii. Bomb threats and disaster training,
 - viii. Intoxication cases,
 - ix. Communication and police information systems,
 - x. Hazardous materials,
 - xi. Bias-motivated crimes,
 - xii. Fires, and
 - xiii. Civil Disputes.
 - d. Functional Area IV - Traffic Control.
 - i. Impaired driver cases;
 - ii. Traffic citations;
 - iii. Traffic collision investigation;
 - iv. Traffic collision (practical);
 - v. Traffic direction; and
 - vi. Substantive Traffic Law, A.R.S. Title 28.
 - e. Functional Area V - Crime Scene Management.
 - i. Preliminary investigation and crime scene management,
 - ii. Crime scene investigation (practical),
 - iii. Physical evidence procedures,
 - iv. Interviewing and questioning,
 - v. Fingerprinting,
 - vi. Sex crimes investigations,
 - vii. Death investigations including sudden infant death syndrome,
 - viii. Organized crime activity,
 - ix. Investigation of specific crimes, and
 - x. Narcotics and dangerous drugs.
 - f. Functional Area VI - Community and Police Relations.
 - i. Cultural awareness,

- ii. Victimology,
 - iii. Interpersonal communications,
 - iv. Crime prevention, and
 - v. Police and the community.
 - g. Functional Area VII - Records and Reports. Report writing.
 - h. Functional Area VIII - Police Proficiency Skills.
 - i. First aid,
 - ii. Firearms training (including firearms qualification),
 - iii. Physical conditioning,
 - iv. High-risk stops,
 - v. Arrest and control tactics,
 - vi. Vehicle operations, and
 - vii. Pursuit operations.
 - i. Functional Area IX - Orientation and Introduction.
 - i. Examinations and reviews,
 - ii. Counseling, and
 - iii. Non-Board specified courses.
2. The specialty peace officer basic training course shall include all of the topics necessary from the 585-hour full-authority peace officer basic training course for the curriculum to meet the requirements of R13-4-114(B).
 3. The limited-authority peace officer basic training course shall include all of the topics necessary from the 585-hour full-authority peace officer basic training course for the curriculum to meet the requirements of R13-4-114(B).
 4. Administrative functions such as orientation, introductions, examinations and reviews, and counseling are exempt from the requirements of R13-4-114(B).
- F.** Records required. The academy administrator shall ensure that the following records are maintained and made available for inspection by the Board or staff. The academy administrator shall provide to the Board copies of records upon request.
1. A record of all students attending the academy;
 2. A manual containing the policies, procedures, and rules of the academy;
 3. A document signed by each student indicating that the student received and read a copy of the academy policies, procedures, and rules;
 4. An application for each student, on a form prescribed by the Board, from the appointing agency or, in the case of an open enrollee, from the academy administrator, attesting that the requirements of R13-4-105 are met;
 5. A copy of all lesson plans used by instructors;
 6. An annually signed and dated acknowledgment that the academy administrator reviewed and approved each lesson plan used at the academy;
 7. A copy of all examinations, answer sheets or records of performance, and examination review acknowledgments;
 8. An attendance roster for all classes or other record that identifies absent students;
 9. A record of classes missed by each student and the remedial training received;
 10. A record of disciplinary actions for all students; and
 11. A file for each student containing the student's performance history.
- G.** Reports required. The academy administrator shall submit to the Board:
1. At least 10 working days before the start of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
 2. No more than five working days after the start of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student;
 3. No more than five working days after dismissing a student from the academy, notification of the dismissal and the reason;
 4. No later than the tenth day of each month, a report containing:
 - a. A summary of training activities and progress of the academy class to date;
 - b. Unusual occurrences, accidents, or liability issues; and
 - c. Other problems or matters of interest noted in the course of the academy, if not included under subsection (G)(4)(b);
 5. No more than 10 working days after the end of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
 6. No more than 10 working days after the end of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student successfully completing the training.
- H.** Required inspections. Before an academy provides training to individuals seeking certification for any category of peace officer, the Board staff shall conduct an onsite inspection of the academy to determine compliance with this Section and R13-4-114. Board staff shall conduct additional inspections as often as the Board deems necessary.
1. Within 30 days after the inspection, the Board staff shall provide to the academy administrator an inspection report that lists any deficiencies identified and remedial actions the academy is required to take to comply with the standards of this Section and R13-4-114.
 2. Within 30 days after receipt of the inspection report, the academy administrator shall submit to the Board a response that indicates the progress made to complete the remedial actions necessary to correct the deficiencies described in the inspection report. The academy administrator shall submit to the Board additional responses every 30 days until all remedial action is complete.
 3. Within 30 days after receipt of notice that all remedial action is complete, Board staff shall conduct another inspection.
 4. Following each inspection, Board staff shall present an inspection report to the Board describing the academy's compliance in meeting the standards of this Section and R13-4-114.
- I.** If an academy does not conduct a peace officer basic training course for 12 consecutive months, the academy shall not provide training until Board staff conducts another inspection as required by subsection (H). Otherwise, an academy may continue to provide training unless the Board determines that the academy is not in compliance with the standards of this Section or R13-4-114.
- J.** If the Board finds that an academy fails to comply with the provisions of this Section or R13-4-114, the academy shall not provide training to individuals seeking to be certified as peace officers.
- K.** An academy administrator shall ensure that an open enrollee is admitted only after the academy administrator complies with every requirement of an agency or agency head imposed by R13-4-105, R13-4-106, R13-4-107, and R13-4-108 except for R13-4-106(C)(4).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective

July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-117. Training Expense Reimbursements

- A. Approval of training courses. The Board shall approve or deny training courses for training expense reimbursement based on compliance with this Section and R13-4-111, and availability of funds.
- B. Application for reimbursement. Before the beginning of a training program described in R13-4-111, an agency planning to participate in the training and apply for reimbursement, shall notify the Board on prescribed forms.
- C. Claim for reimbursement. When an individual completes a training course, the appointing agency may submit a claim for reimbursement on a form prescribed by the Board. The agency shall submit the claim within 60 days after the training is completed.
- D. Allowable reimbursements. The Board shall allow the following reimbursements subject to the limits on the amount of reimbursement as determined by the Board under subsection (E):
 - 1. The actual cost of lodging and meals while a peace officer attended a training course,
 - 2. Tuition for a training course on a pro-rata basis for the actual hours of training attended, and
 - 3. Other expenses incurred by a peace officer.
- E. Limitations on reimbursements. The following limitations apply to applications for reimbursement involving training courses.
 - 1. The Board shall not reimburse an agency if the peace officer has previously completed the same training course within three years;
 - 2. The Board shall not reimburse an agency for a peace officer who fails to complete a training course except upon request of the appointing agency. The agency shall present the reasons for the non-completion to the Board with the request for reimbursement; and
 - 3. The Board shall not reimburse an agency for the cost of insurance, medical, pension, uniform, clothing, equipment, or other benefits or expenses of a peace officer while attending a training course.
- F. Academy reimbursement. The Board may reimburse an academy for the actual costs of materials, books, ammunition, registration fees and tuition, necessary for completion of a basic course up to the limits set by the Board. To receive reimbursement, an academy shall furnish paid receipts or invoices or other information as required by the Board to verify costs incurred. The Board shall not reimburse an academy for costs incurred for registration fees, tuition, books, materials, or ammunition for a peace officer, if the Board has made these reimbursements for the peace officer's previous attendance at an academy.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-118. Hearings; Rehearings

- A. If a respondent makes a request for hearing under R13-4-109(E), the hearing shall be held in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- B. If a respondent fails to comply with the requirements under R13-4-109(E) within 30 days of the notice of action sent under R13-4-109(E), the Board may consider the case based on the information available.
- C. If a respondent requests a hearing, but fails to appear at the hearing, the Board or administrative law judge may vacate the hearing. If a hearing is vacated, the Board may deem the acts and violations charged in the notice of action admitted, and impose any of the sanctions provided by A.R.S. § 41-1822(C)(1).
- D. The Board shall render a decision in writing. The Board shall serve notice of the decision on each party as required by A.R.S. § 41-1092.04.
- E. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies.
- F. A party may file a motion for rehearing or review of a decision with the Board not later than 30 days after service of the Board's decision, specifying the particular grounds for the motion.
- G. The Board may grant a rehearing or review of a decision for any of the following reasons materially affecting the moving party's rights:
 - 1. Irregularity in the administrative proceedings, or any abuse of discretion that deprived the moving party of a fair hearing;
 - 2. Misconduct of the Board, the administrative law judge, or the prevailing party;
 - 3. Mistake or surprise that could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the hearing;
 - 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
 - 6. The decision was not justified by the evidence or the decision was contrary to law.
- H. The Board may affirm or modify the decision or grant a rehearing to any or all of the parties, on part or all of the issues, for any of the reasons in subsection (G). An order granting a rehearing shall specify the particular issues in the rehearing and the rehearing shall concern only the matters specified.
- I. If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final decision without an opportunity for rehearing or review.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

ARTICLE 2. CORRECTIONAL OFFICERS

R13-4-201. Definitions

The definitions in A.R.S. § 41-1661 apply to this Article. Additionally, unless the context otherwise requires:

"Academy" means the Correctional Officer Training Academy (COTA) of the Arizona Department of Corrections in Tucson, Arizona, or a satellite location authorized by the Director.

"Appointment" means the selection of an individual as a correctional officer.

"Applicant" means an individual who applies to be a correctional officer.

"Cadet" means an individual who is attending the academy and, upon graduation, will become a state correctional officer.

“Dangerous drug or narcotic” is defined in R13-4-101.

“Department” means the Arizona Department of Corrections.

“Experimentation” means the illegal use of marijuana, a dangerous drug, or narcotic, as described in R13-4-105(B) and (C).

“State correctional officer” means an individual employed by the Department in the correctional officer series.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Reference to “Council” changed to “Board” and definitions relabeled accordingly (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-202. Uniform Minimum Standards

- A.** To be admitted to the academy for training as a state correctional officer, an individual shall:
1. Be a citizen of the United States or eligible to work in the United States;
 2. Be at least 18 years of age by the date of graduation from the academy;
 3. Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination or equivalent as specified in R13-4-203(C)(3);
 4. Have a valid Arizona driver’s license (Class 2 or higher) by the date of graduation from the academy;
 5. Undergo a complete background investigation that meets the standards of R13-4-203;
 6. Undergo a physical examination (within 12 months before appointment) as prescribed by the Director by a licensed physician designated by the Director;
 7. Not have been dishonorably discharged from the United States Armed Forces;
 8. Not have experimented with marijuana within the past 12 months;
 9. Not have experimented with a dangerous drug or narcotic within the past five years;
 10. Not have ever illegally used marijuana, or a dangerous drug or narcotic other than for experimentation;
 11. Not have a pattern of abuse of prescription medication; and
 12. Not have committed a felony or a misdemeanor of a nature that the Board determines has a reasonable relationship to the functions of the position, in accordance with A.R.S. § 13-904(E).
- B.** If the Director wishes to appoint an individual whose conduct is grounds to deny certification under R13-4-109, the Director may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion by complying with R13-4-105(D).
- C.** Code of Ethics. To enhance the quality of performance and the conduct and the behavior of correctional officers, an individual appointed to be a correctional officer shall commit to the following Code of Ethics and shall affirm the commitment by signing the Code:

“I shall maintain high standards of honesty, integrity, and impartiality, free from any personal considerations, favoritism, or partisan demands. I shall be courteous, considerate, and prompt when dealing with the public, realizing that I serve the public. I shall maintain mutual respect and professional cooperation in my relationships with other staff members.

I shall be firm, fair, and consistent in the performance of my duties. I shall treat others with dignity, respect, and compassion, and provide humane custody and care, void of all retribution, harassment, or abuse. I shall uphold the Constitutions of the United States and the state of Arizona, and all federal and state laws. Whether on or off duty, in uniform or not, I shall conduct myself in a manner that will not bring discredit or embarrassment to my agency or the state of Arizona.

I shall report without reservation any corrupt or unethical behavior that could affect either inmates, employees, or the integrity of my agency. I shall not use my official position for personal gain. I shall maintain confidentiality of information that has been entrusted to me and designated as such.

I shall not permit myself to be placed under any kind of personal obligation that could lead any person to expect official favors. I shall not accept or solicit from anyone, either directly or indirectly, anything of economic value such as a gift, gratuity, favor, entertainment, or loan, that is or may appear to be, designed to influence my official conduct. I will not discriminate against any inmate, employee, or any member of the public on the basis of race, gender, creed, or national origin. I will not sexually harass or condone sexual harassment of any person. I shall maintain the highest standards of personal hygiene, grooming, and neatness while on duty or otherwise representing the state of Arizona.”

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Reference to “Council” changed to “Board” (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by exempt rulemaking, under Laws 2019, Chapter 93, at 25 A.A.R. 1267, with an immediate effective date of April 24, 2019 (Supp. 19-2).

R13-4-203. Background Investigation

- A.** The Department shall conduct a background investigation before an applicant is admitted to the academy. The Department shall review the personal history statement submitted under subsection (B) and the results of the background investigation required in subsection (C) to determine whether the individual meets the requirements of R13-4-202 and the individual’s personal history statement is accurate and truthful.
- B.** Personal history. An applicant shall complete and submit to the employing agency a personal history statement on a form prescribed by the Board. The applicant shall complete the personal history statement before the start of the background investigation and ensure that the personal history statement provides the information necessary for the Department to conduct the investigation described in subsection (C).
- C.** Investigative requirements. Before admitting an applicant to the academy, the Department shall collect, verify, and retain documents establishing that the applicant meets the standards specified in this Article. At a minimum, this documentation shall include:
1. Proof of the applicant’s age and United States citizenship or eligibility to work in the United States. A copy of any of the following regarding the applicant is acceptable proof:
 - a. Birth certificate,
 - b. United States passport,
 - c. Certification of United States Naturalization,
 - d. Certificate of Nationality, or
 - e. Immigration Form I-151 or I-1551.
 2. Proof of the applicant’s valid driver’s license. A copy of the applicant’s driver’s license and written verification of the applicant’s driving record from the applicable state’s Department of Transportation, Motor Vehicle Division, is required proof.
 3. Proof that the applicant is a high school graduate or its equivalent. The following are acceptable proof:
 - a. A copy of a diploma from a high school recognized by the department of education of the jurisdiction in which the

- diploma is issued;
- b. A copy of a certificate showing successful completion of the General Education Development (G.E.D.) test; or
- c. In the absence of proof of high school graduation or successful completion of the G.E.D. test,
 - i. A copy of a degree or transcript from an accredited college or university showing successful completion of high school or high school equivalency;
 - ii. A United States Military Service Record DD Form 214-#4 with the Education block indicating high school completion, or
 - iii. Other evidence of high school education equivalency submitted to the Board for consideration.
- 4. Record of any military discharge. A copy of the Military Service Record (DD Form 214-#4) is acceptable proof.
- 5. Results of a psychological fitness assessment approved by the Director and conducted by a psychologist or psychiatrist designated by the Department.
- 6. Personal references: The names and addresses of at least three individuals who can provide information regarding the applicant.
- 7. Previous employers or schools attended. The names and addresses of all employers of and schools attended by the applicant for the past five years.
- 8. Residence history. The complete address for every location at which the applicant has lived in the last five years.
- 9. Law enforcement agency records. The Department shall request and review law enforcement agency records in jurisdictions where the applicant has lived, worked, or attended school in the past five years. The Department shall document the information obtained.
- 10. Criminal history query. The Department shall query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state where the applicant has lived, worked, or attended school in the past five years and review the criminal history record for any arrest or conviction to determine compliance with R13-4-202.
- 11. Fingerprint card. The Department shall obtain from an applicant and submit a fingerprint card for processing by the Arizona Department of Public Safety and the Federal Bureau of Investigation.
 - a. The Department shall process a fingerprint card for an applicant entering the academy, except as provided in subsections (C)(9)(b) and (C)(9)(c). The Department shall process a fingerprint card for an applicant even if the applicant has a processed applicant fingerprint card from a previous employer.
 - b. If the fingerprint card is not fully processed when the applicant is ready to enter the academy, the Department may allow the applicant to attend the academy if:
 - i. A computerized criminal history check has been made and the results are on file with the Department, and
 - ii. The applicant meets all other requirements of this Section and R13-4-202.
 - c. If the Department has not received a fully processed fingerprint card within 15 weeks of the date of admission to the academy, the individual does not meet the requirements of this Section and may be terminated from the academy. The Department may extend the deadline for receipt of a processed fingerprint card an additional 15 weeks. An individual terminated from the academy under this subsection may be re-employed under R13-4-208 when a fully processed fingerprint card is received.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Reference to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-204. Records and Reports

- A. Reports. The Department shall submit to the Board a report by the Director attesting that each individual completing the academy meets the requirements of R13-4-202.
- B. Records. The Department shall make Department records available to the Board upon request of the Board or its staff. The Department shall keep the records in a central location. The Department shall maintain:
 - 1. A copy of reports submitted under subsection (A);
 - 2. All written documentation obtained or recorded under R13-4-202 and R13-4-203; and
 - 3. A record of all advanced training, specialized training, continuing education, and firearms qualification conducted under R13-4-206.
- C. Record retention. The Department shall maintain the records required by this Section as follows:
 - 1. For applicants investigated under R13-4-203 who are not appointed: two years; and
 - 2. For applicants who are appointed: five years from the date of termination, except records retained under subsection (B)(3), shall be retained for three years.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-205. Basic Training Requirements

- A. Required training for state correctional officers. Before appointment as a state correctional officer, an individual shall complete a Board-approved basic correctional officer training program. This program shall meet or exceed the requirements of this Section.
- B. Curricula or training material approval time frames.
 - 1. For the purposes of A.R.S. § 41-1073, the Board establishes the following time frames for curricula or training material that require Board approval under this Section and R13-4-206.
 - a. Administrative completeness time frame: 60 days.
 - b. Substantive review time frame: 60 days.
 - c. Overall time frame: 120 days.
 - 2. The administrative completeness review time frame begins on the date the Board receives the documents required by this Section or R13-4-206.
 - a. Within 60 days, the Board shall review the documents and issue to the Department a statement of administrative completeness or a notice of administrative deficiencies that lists each item required by this Section that is missing.
 - b. If the Board issues a notice of administrative deficiency, the Department shall submit the missing documents and information within 90 days of the notice. The administrative completeness time frame is suspended from the date of the deficiency notice until the date the Board receives the missing documents and information.
 - c. If the Department fails to provide the missing documents within the 90 days provided, the Board shall deny the approval.
 - d. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the

- Department.
3. The substantive review time frame begins on the date the Board issues the notice of administrative completeness.
 - a. During the substantive review time frame, the Board may make one comprehensive written request for additional information.
 - b. The Department shall submit to the Board the additional information identified in the request for additional information within 60 days. The time frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the Board receives the additional information.
 - c. The Board shall deny the approval if the additional information is not supplied within the 60 days provided.
 - d. When the substantive review is complete, the Board shall grant or deny approval.
- C. Basic course specifications.**
1. The Department shall develop the curriculum for the basic correctional officer training program.
 - a. The curriculum shall include courses in the following functional areas.
 - i. Functional Area I - Ethics and Professionalism;
 - ii. Functional Area II - Inmate Management;
 - iii. Functional Area III - Legal Issues;
 - iv. Functional Area IV - Communication Skills;
 - v. Functional Area V - Officer Safety, including firearms;
 - vi. Functional Area VI - Applied Skills;
 - vii. Functional Area VII - Security, Custody, and Control;
 - viii. Functional Area VIII - Conflict and Crisis Management; and
 - ix. Functional Area IX - Medical Emergencies, and Physical and Mental Health.
 - b. The curriculum shall also contain administrative time for orientation, counseling, testing, and remedial training.
 2. The Department shall ensure that curriculum submitted to the Board for approval contains lesson plans that include:
 - a. Course title,
 - b. Hours of instruction,
 - c. Materials and aids to be used,
 - d. Instructional strategy,
 - e. Topic areas in outline form,
 - f. Success criteria, and
 - g. The performance objectives or learning activities to be achieved.
 3. After initial approval by the Board, the Director or the Director's designee shall:
 - a. Annually review each lesson plan submitted to and approved by the Board under subsection (C)(2); and
 - b. If an approved lesson plan has been changed, submit the changed lesson plan to the Board for approval; or
 - c. If an approved lesson plan has not been changed, sign and date an acknowledgment of approval for each lesson plan.
 4. The Department shall ensure that the following three components are specified for each performance objective:
 - a. The learner, which is an individual or group that performs a behavior as the result of instruction;
 - b. The behavior, which is an observable demonstration by the learner at the end of instruction that shows that the objective is achieved and allows evaluation of the learner's capabilities relative to the behavior
 - c. The conditions, which is a description of the important conditions of instruction or evaluation under which the learner will perform the stated behavior. Unless specified otherwise, the instruction and evaluation shall be in written or oral form.
 5. The Department shall ensure that instructors of basic correctional officer training courses meet proficiency requirements developed by the Department and approved by the Board. The Department shall ensure that proficiency requirements for instructors include education, experience, or a combination of both. The Department shall affirm to the Board that each instructor has the necessary qualifications before the instructor delivers any instruction. In addition to these requirements, instructors of courses dealing with the proficiency skills of defensive tactics, physical conditioning, firearms, and medical emergencies shall complete specialized training developed by the Department and approved by the Board. Instructors shall use lesson plans described in subsection (C)(2).
- D. Academic requirements.**
1. A cadet shall be given a combination of written, oral, or practical demonstration examinations capable of measuring the cadet's attainment of the performance objectives in each approved lesson plan.
 2. Academy staff shall review examination results and academic progress with each cadet weekly. Academy staff shall ensure that each cadet is informed of correct responses.
 3. A cadet shall complete all examinations before graduating from the academy. To successfully complete a written or oral examination, a cadet shall score at least 70 percent.
 - a. If a cadet receives a score of less than 70 percent, the academy shall provide the cadet with remedial training in areas of deficiency.
 - b. The academy shall not offer a cadet more than one re-examination per lesson plan.
 4. A cadet shall qualify with firearms as specified in subsection (C). Firearms qualification shall include:
 - a. 50-shot daytime or nighttime qualification course with service handgun. The minimum passing score is 210 points out of a possible 250 points;
 - b. Seven-shot qualification course with service shotgun; and
 - c. Target identification and discrimination course.
 5. A cadet shall meet success criteria described in the Board-approved curriculum for the proficiency skills of self-defense, physical conditioning, and medical emergencies, as approved under R13-4-205(C).
 6. The academy shall provide a cadet who does not attend a lesson with remedial training before graduation.
 7. The academy shall not graduate a cadet who attends less than 90 percent of the total hours of basic training.
- E. Exceptions. A cadet shall not function as a state correctional officer except:**
1. As a part of an exercise within the approved basic training program, if the cadet is under the direct supervision and control of a state correctional officer; or
 2. At the discretion of the Director, for the duration of an emergency situation including, but not limited to, riots, insurrections, and natural disasters. A cadet shall not carry a firearm in the course of duty unless the cadet has successfully met the requirement of R13-4-205(D)(4).
- F. Waiver of required training. The Board shall grant a complete or partial waiver of the required basic training, at the request of the Director, upon a finding by the Board that the best interests of the corrections profession are served and the public welfare and safety is not jeopardized by the waiver if an applicant:**
1. Successfully completes a basic corrections officer training course comparable to or exceeding, in hours of instruction and subject matter, the Board-approved basic correctional officer training course and has a minimum of one year of experience as a

- correctional officer. The applicant shall include verification of previous experience and training with the application for waiver;
2. Meets the minimum qualifications specified in R13-4-202; and
 3. Successfully completes a comprehensive examination measuring comprehension of the basic correctional officer training course. The comprehensive examination shall be prepared by the Department, approved by the Board, and include a written test and practical demonstrations of proficiency in firearms, physical conditioning, and defensive tactics.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to “Council” changed to “Board” (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-206. Field Training and Continuing Training Including Firearms Qualification

- A. Field training requirement. Before graduating from the academy or within two months after graduation, a cadet or state correctional officer shall participate in and successfully complete a Board-approved field training program.
- B. Continuing training requirement.
 1. A state correctional officer shall receive eight hours of Board-approved continuing training each calendar year beginning January 1 following the date the officer received certified status.
 2. In addition to the training required under subsection (B)(1), a state correctional officer authorized to carry a firearm shall qualify each calendar year after appointment beginning January 1 following the date the officer received certified status. The firearms qualification training shall meet the standards specified under subsection (F) and shall not be used to satisfy the requirements of R13-4-206 (C).
- C. Continuing training requirements may be fulfilled by:
 1. Advanced training programs, or
 2. Specialized training programs.
- D. Advanced training programs. The Department shall develop, design, implement, maintain, evaluate, and revise advanced training programs that include courses enhancing a correctional officer’s knowledge, skills, or abilities for the job that the correctional officer performs. The courses within an advanced training program shall include advanced or remedial training in any topic listed in R13-4-205(C).
- E. Specialized training programs. The Department shall develop, design, implement, maintain, evaluate, and revise specialized training programs that address a particular need of the Department and target a select group of officers. The courses within a specialized training program shall include topics different from those in the basic corrections training program or any advanced training programs.
- F. Firearms qualification required. A correctional officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each calendar year beginning the year following the receipt of certified status by completing a Board-prescribed firearms qualification course using a service handgun, service shotgun, and service ammunition, and a Board-prescribed target identification and judgment course.
 1. Firearms qualification course standards.
 - a. A firearms qualification course is:
 - i. A course prescribed under R13-4-205(C); or
 - ii. A course determined by the Board to measure firearms competency at least as accurately as the course prescribed under R13-4-205(C).
 - b. All firearms qualification courses shall include:
 - i. A timed accuracy component;
 - ii. A type and style of target that is equal to, or more difficult than, the targets used under R13-4-205(C); and
 - iii. Success criteria that are equal to, or more difficult than, the success criteria used under R13-4-205(C).
 2. Firearms target identification and judgment course standards.
 - a. A firearms target identification and judgment course is:
 - i. A course prescribed under R13-4-205(C); or
 - ii. A course determined by the Board to measure target identification and judgment competency at least as accurately as those prescribed under R13-4-205(C).
 - b. All firearms target identification and judgment courses shall include:
 - i. A timed accuracy component;
 - ii. A type and style of target discrimination that is equal to, or more difficult than, those used under R13-4-205(C); and
 - iii. Success criteria that are equal to, or more difficult than, those used under R13-4-205(C).
 3. All courses shall be presented by a firearms instructor who meets the requirements under R13-4-205(C)(5).

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to “Council” changed to “Board” (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-207. Repealed

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to “Council” changed to “Board” (Supp. 94-3). Section repealed by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3).

R13-4-208. Re-employment of State Correctional Officers

- A. A state correctional officer who terminates employment may be re-employed by the Department within two years from the date of termination if the former state correctional officer meets the requirements of R13-4-202 and R13-4-203 at the time of re-employment.
- B. A state correctional officer who terminates employment may be re-employed by the Department if re-employment is sought more than two years but less than three years from the original date of termination, if the former state correctional officer meets the requirements of R13-4-202 and R13-4-203 at the time of re-employment and completes the waiver provisions of R13-4-205(F).
- C. A former state correctional officer who seeks re-employment more than three years from the date of termination shall meet all the requirements of this Article at the time of re-employment.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

As of March 26, 2020

[41-1821. Arizona peace officer standards and training board; membership; appointment; term; vacancies; meetings; compensation; acceptance of grants](#)

A. The Arizona peace officer standards and training board is established and consists of thirteen members appointed by the governor. The membership shall include:

1. Two sheriffs, one of whom is appointed from a county having a population of two hundred thousand or more persons and the remaining sheriff who is appointed from a county having a population of less than two hundred thousand persons.

2. Two chiefs of police, one of whom is appointed from a city or federally recognized Native American tribe having a population of sixty thousand or more persons and the remaining chief who is appointed from a city or federally recognized Native American tribe having a population of less than sixty thousand persons.

3. A college faculty member in public administration or a related field.

4. The attorney general.

5. The director of the department of public safety.

6. The director of the state department of corrections.

7. One member who is employed in administering county or municipal correctional facilities.

8. Two certified law enforcement officers who have knowledge of and experience in representing peace officers in disciplinary cases. One of the certified law enforcement officers must have a rank of officer and the other must have a rank of deputy. One of the appointed officers must be from a county with a population of less than five hundred thousand persons.

9. Two public members.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The governor shall appoint a chairman from among the members at its first meeting and every year thereafter, except that an ex officio member shall not be appointed chairman. The governor shall not appoint more than one member from the same law enforcement agency. No board member who was qualified when appointed becomes disqualified unless the member ceases to hold the office that qualified the member for appointment.

D. Meetings shall be held at least quarterly or on the call of the chairman or by the written request of five members of the board or by the governor. A vacancy on the board shall occur when a member except an ex officio member is absent without the permission of the chairman from three consecutive meetings. The governor may remove a member except an ex officio member for cause.

E. The term of each regular member is three years unless a member vacates the public office that qualified the member for this appointment.

F. The board members are not eligible to receive per diem but are eligible to receive reimbursement for travel expenses pursuant to title 38, chapter 4, article 2.

G. On behalf of the board, the executive director may seek and accept contributions, grants, gifts, donations, services or other financial assistance from any individual, association, corporation or other organization having an interest in police training, and from the United States of America and any of its agencies or instrumentalities, corporate or otherwise. Only the executive director of the board may seek monies pursuant to this subsection. Such monies shall be deposited in the fund created by section 41-1825.

H. Membership on the board shall not constitute the holding of an office, and members of the board shall not be required to take and file oaths of office before serving on the board. No member of the board shall be disqualified from holding any public office or employment nor shall such member forfeit any such office or employment by reason of such member's appointment, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

41-1822. Powers and duties of board; definition

A. With respect to peace officer training and certification, the board shall:

1. Establish rules for the government and conduct of the board, including meeting times and places and matters to be placed on the agenda of each meeting.

2. Make recommendations, consistent with this article, to the governor, the speaker of the house of representatives and the president of the senate on all matters relating to law enforcement and public safety.

3. Prescribe reasonable minimum qualifications for officers to be appointed to enforce the laws of this state and the political subdivisions of this state and certify officers in compliance with these qualifications. Notwithstanding any other law, the qualifications shall require United States citizenship, shall relate to physical, mental and moral fitness and shall govern the recruitment, appointment and retention of all agents, peace officers and police officers of every political subdivision of this state. The board shall constantly review the qualifications established by this section and may amend the qualifications at any time, subject to the requirements of section 41-1823.

4. Prescribe minimum courses of training and minimum standards for training facilities for law enforcement officers. Only this state and political subdivisions of this state may conduct basic peace officer training. Basic peace officer academies may admit individuals who are not peace officer cadets only if a cadet meets the minimum qualifications established by paragraph 3 of this subsection. Training shall include:

(a) Courses in responding to and reporting all criminal offenses that are motivated by race, color, religion, national origin, sexual orientation, gender or disability.

(b) Training certified by the director of the department of health services with assistance from a representative of the board on the nature of unexplained infant death and the handling of cases involving the unexplained death of an infant.

(c) Medical information on unexplained infant death for first responders, including awareness and sensitivity in dealing with families and child care providers, and the importance of forensically competent death scene investigations.

(d) Information on the protocol of investigation in cases of an unexplained infant death, including the importance of a consistent policy of thorough death scene investigation.

(e) The use of the infant death investigation checklist pursuant to section 36-3506.

(f) If an unexplained infant death occurs, the value of timely communication between the medical examiner's office, the department of health services and appropriate social service agencies that address the issue of infant death and bereavement, to achieve a better understanding of these deaths and to connect families to various community and public health support systems to enhance recovery from grief.

5. Recommend curricula for advanced courses and seminars in law enforcement and intelligence training in universities, colleges and community colleges, in conjunction with the governing body of the educational institution.

6. Make inquiries to determine whether this state or political subdivisions of this state are adhering to the standards for recruitment, appointment, retention and training established pursuant to this article. The failure of this state or any political subdivision to adhere to the standards shall be reported at the next regularly scheduled meeting of the board for action deemed appropriate by that body.

7. Employ an executive director and other staff as are necessary to fulfill the powers and duties of the board in accordance with the requirements of the law enforcement merit system council.

B. With respect to state department of corrections correctional officers, the board shall:

1. Approve a basic training curriculum of at least two hundred forty hours.

2. Establish uniform minimum standards. These standards shall include high school graduation or the equivalent and a physical examination as prescribed by the director of the state department of corrections.

3. Establish uniform standards for background investigations, including criminal histories under section 41-1750, of all applicants before enrolling in the academy. The board may adopt special procedures for extended screening and investigations in extraordinary cases to ensure suitability and adaptability to a career as a correctional officer.

4. Issue a certificate of completion to any state department of corrections correctional officer who satisfactorily complies with the minimum standards and completes the basic training program. The board may issue a certificate of completion to a state department of corrections correctional officer who has received comparable training in another state if the board determines that the training was at least equivalent to that provided by the academy and if the person complies with the minimum standards.

5. Establish continuing training requirements and approve curricula.

C. With respect to peace officer misconduct, the board may:

1. Receive complaints of peace officer misconduct from any person, request law enforcement agencies to conduct investigations and conduct independent investigations into whether an officer is in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section.

2. Receive a complaint of peace officer misconduct from the president or chief executive officer of a board recognized law enforcement association that represents the interests of certified law enforcement officers if the association believes that a law enforcement agency refused to investigate or made findings that are contradictory to prima facie evidence of a violation of the qualifications established pursuant to subsection A, paragraph 3 of this section. If the board finds that the law enforcement agency refused to investigate or made findings that contradicted prima facie evidence of a violation of the qualifications

established pursuant to subsection A, paragraph 3 of this section, the board shall conduct an independent investigation to determine whether the officer is in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section and provide a letter of the findings based on the investigation conducted by the board to the president or chief executive officer of the board recognized law enforcement association who made the complaint.

D. The board may:

1. Deny, suspend, revoke or cancel the certification of an officer who is not in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section.
2. Provide training and related services to assist state, tribal and local law enforcement agencies to better serve the public, including training for emergency alert notification systems.
3. Enter into contracts to carry out its powers and duties.

E. This section does not create a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation.

F. For the purposes of this section, "sexual orientation" means consensual homosexuality or heterosexuality.

41-1823. Adoption of minimum qualifications; certification required

A. No minimum qualifications for law enforcement officers adopted pursuant to this article shall be effective until six months after they have been filed with the secretary of state pursuant to section 41-1031.

B. Except for agency heads duly elected as required by the constitution and persons given the authority of a peace officer pursuant to section 8-205, 11-572, 12-253, 13-916 or 22-131, no person may exercise the authority or perform the duties of a peace officer unless he is certified by the board pursuant to section 41-1822, subsection A, paragraph 3.

41-1824. Training expenditures

In exercising its powers and duties, the board shall endeavor to minimize costs of administration, including utilization of training facilities already in existence and available, so that the greatest possible proportion of the funds available to it shall be expended for the purposes of providing training for local law enforcement officers.

41-1825. Peace officers' training fund

A. A special fund designated as the peace officers' training fund is established. All monies deposited in the fund are continuously appropriated to the department of public safety for the benefit of the board. The monies shall be used exclusively for the costs of training peace officers, including Indian tribe police officers who are training to be qualified pursuant to section 13-3874 and full authority peace officers who are appointed by the director of the state department of corrections and the director of the department of juvenile corrections, for grants to state agencies, counties, cities and towns of this state for peace officer training and for expenses for the operation of the board. No peace officers' training fund monies may be spent for training correctional officers of the state department of corrections.

B. All amounts to be paid or advanced from the fund shall be on warrants drawn by the department of administration on presentation of a proper claim or voucher that is approved and signed by the executive director.

C. The executive director shall lawfully disburse monies as approved by the board.

D. The board may use and the department of public safety shall provide to the board administrative support services. The board shall reimburse the department for expenses incurred for administrative support services. This subsection does not require the department to provide administrative support services that are different in kind from those that were provided on January 1, 2000. For the purposes of this subsection, "administrative support services" includes all services relating to business office, finance and procurement, information management and technology, fleet, human resources, supply, telecommunications, facilities, security and clerical and administrative assistance personnel.

[41-1826. Arizona law enforcement training academy; former property; title transfer](#)

A. Notwithstanding any law to the contrary and for the benefit of the board, the department of public safety shall transfer to the state department of corrections the title to the property that was formerly known as the Arizona law enforcement training academy and that is operated as the correctional officer training academy in Tucson.

B. If at any time after title is transferred the state department of corrections leases or sells the property, the proceeds from the lease or sale shall be deposited, pursuant to sections 35-146 and 35-147, as follows:

1. 53.66 per cent of the proceeds or 53.66 per cent of the fair market value, whichever is greater, in the peace officers' training fund established by section 41-1825.

2. 46.34 per cent of the proceeds or 46.34 per cent of the fair market value, whichever is greater, in the state general fund.

[41-1827. Application for grants](#)

Any state agency, county, city or town which desires to receive a grant pursuant to section 41-1825 shall make application to the board for such aid. The application shall contain such information as the board may request.

[41-1828. Allocation of monies](#)

A. On the recommendation of the board, the executive director shall allocate and the state treasurer shall pay from the peace officers' training fund to each county, city or town of this state that has applied and qualified for a grant pursuant to this chapter a sum that will reimburse the political subdivision in an amount not to exceed one-half of the salary paid to each peace officer while participating in training. The cost of the training and living and travel expenses up to the maximum as prescribed by title 38, chapter 4, article 2 that are incurred by state, county, city or town officers while participating in training may be paid to the appropriate state agency or political subdivision.

B. If the monies in the peace officers' training fund budgeted by the board for such salary reimbursement are insufficient to allocate such amount to each participating county, city or town, the amount that is allocated to each shall be reduced proportionately. The board may refuse to allocate monies to any state agency, county, city or town that has not, throughout the period covered by the allocation, adhered to the recruitment and training standards established by the board as applicable to personnel recruited or trained by the state agency, county, city or town during the allocation period.

[41-1828.01. Required law enforcement agency reporting](#)

A. A law enforcement agency may report to the board any peace officer misconduct in violation of the rules for retention established pursuant to section 41-1822, subsection A, paragraph 3 at any time and shall report this misconduct on the peace officer's termination, resignation or separation from the agency.

B. On request of a law enforcement agency conducting a background investigation of an applicant for the position of a peace officer, another law enforcement agency employing, previously employing or having conducted a complete or partial background investigation on the applicant shall advise the requesting agency of any known misconduct in violation of the rules for retention established pursuant to section 41-1822, subsection A, paragraph 3.

C. Civil liability may not be imposed on either a law enforcement agency or the board for providing information specified in subsections A and B of this section if there exists a good faith belief that the information is accurate.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
Title 9, Chapter 30, Medicare Part D Prescription Coverage Extra Help Subsidy Program



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 14, 2021

SUBJECT: Arizona Health Care Cost Containment System (AHCCCS)
Title 9, Chapter 30, Articles 1-4

This Five-Year-Review Report (5YRR) from AHCCSS relates to rules in Title 9, Chapter 30, regarding the Medicare Part D Prescription Coverage Extra Help Subsidy Program. The report cover the following:

- Article 1:** Definitions
- Article 2:** Eligibility
- Article 3:** Services
- Article 4:** Grievance System

The Department did not propose any changes to the rules in the last 5YRR.

Proposed Action

The Department is not proposing any changes to the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

AHCCCS anticipated that contractors, members, providers, and AHCCCS would be minimally impacted by the Extra Help subsidy program's rule language. AHCCCS initiated the rulemaking to make the rules consistent with the federal law changes for the Medicare Part D prescription drug benefit program. AHCCCS determined that this Economic Impact Statement from the initial rulemaking is still accurate.

AHCCCS identified stakeholders as Medicare members.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

AHCCCS determined that the benefits of the rule, both the way it is written and the underlying substance, outweigh any costs of the rule, although as a federally funded program, there is little to no state cost, and the rule imposes the least burden possible on regulated persons necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No, the Department indicates the rules are not more stringent than the corresponding federal law, 31 U.S.C. 3729-3733.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable.

11. **Conclusion**

AHCCCS is not proposing any changes to the rules. The rules are overall, clear, concise, understandable, and effective. Council staff recommends approval of this report.

March 29, 2021

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 30, Articles 1-4, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five Year Review Report of AHCCCS for Title 9, Chapter 30, Articles 1-4 which is due on March 31, 2021.

AHCCCS reviewed the following rules on this date because the Council rescheduled the initial review of an article under A.R.S. 41-1056(H).

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,



Matthew Devlin
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 30, Articles 1-4

March 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-2903(O) and 36-2903.01(F)

Specific Statutory Authority: A.R.S. § 36-2907(A)(4)

2. The objective of each rule:

Rule	Objective
R9-30-101	The objective of the rule is to provide definitions for terms used within the Medicare Prescription Drug Program.
R9-30-201	The objective of the rule is to describe when and how the AHCCCS Administration may assist an applicant in applying for Extra Help.
R9-30-202	The objective of the rule is to inform the public that they have the opportunity to apply with the Administration at any time.
R9-30-203	The objective of the rule is to provide the public information on how to apply for the Extra Help program.
R9-30-204	The objective of the rule is to provide the public with information about an applicant's ability to choose a representative and also advise an applicant that they can receive assistance from the Administration.
R9-30-205	The objective of the rule is to inform the public to obtain a SSN number in order to meet the eligibility requirements.
R9-30-206	The objective of the rule is to provide Arizona residency as an eligibility requirement.
R9-30-207	The objective of the rule is to provide the income eligibility calculation for the extra help program.
R9-30-208	The objective of the rule is to specify that a person residing in a penal institution is not eligible for this program.
R9-30-209	The objective of the rule is to describe the resource eligibility determination process for the Extra Help program.
R9-30-210	The objective of the rule is to allow AHCCCS to obtain the information needed to determine eligibility.
R9-30-211	The objective of the rule is to provide information to the public of the Medicare eligibility requirement for extra help.
R9-30-212	The objective of the rule is to inform the public what the timeframe by when the agency will make an eligibility determination.
R9-30-213	The objective of the rule is to provide the public information of the amount of assistance that the Extra Help program provides. The Extra Help amounts provided are set by federal regulations which are incorporated by reference. (the premium subsidy is in 423.780, copayment subsidy 423.782, deductibles 423.782, donut hole assistance 423.782, etc.)

R9-30-214	The objective of the rule is to provide the public information regarding notice requirements when an eligibility determination is made.
R9-30-215	The objective of the rule is to provide the public with the date eligibility will go into effect for the Extra Help program.
R9-30-216	The objective of the rule is to provide the public with an explanation of the circumstances that can cause discontinuance or changes in benefit amounts.
R9-30-217	The objective of the rule is to provide the public the timeframe when a redetermination will take place.
R9-30-218	The objective of the rule is to provide the public information on how to report changes that occur in their household to the Administration.
R9-30-301	The objective of the rule is to notify the public that the Administration does not provide pharmaceutical services.

3. **Are the rules effective in achieving their objectives?** Yes No

4. **Are the rules consistent with other rules and statutes?** Yes No

5. **Are the rules enforced as written?** Yes No

6. **Are the rules clear, concise, and understandable?** Yes No

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

8. **Economic, small business, and consumer impact comparison:**

No changes are proposed to the program and no applicants have applied for the Extra Help program since it was created, therefore the Economic Impact Statement from the initial rulemaking is still accurate and has been attached.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

In the last 5YRR no changes were recommended.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

Since the subject matter of Title 9, Chapter 30 is regarding the Medicare Part D Prescription Coverage Extra Help Subsidy Program, the method of determining eligibility is federally mandated, therefore AHCCCS has pulled those standards from the federal statute and regulations. The language regarding procedures for how to apply and as well as general definitions and grievances (Articles 1 and 4 respectively) mirror the other language AHCCCS uses for these definitions and grievances in other chapters in Title 9 to make them easily understandable to the public. Therefore, the benefits of the rule, both the way it is written and

the underlying substance, outweigh any costs of the rule, although as a federally funded program, there is little to no state cost, and the rule imposes the least burden possible on regulated persons necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ____ No X

The rules are not more stringent than 31 U.S.C. 3729-3733.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action**

No changes are proposed.

TITLE 9. HEALTH SERVICES

CHAPTER 30. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
MEDICARE PART D PRESCRIPTION COVERAGE EXTRA HELP SUBSIDY PROGRAM

Editor's Note: 9 A.A.C. 30, consisting of Article 1 through Article 4, Sections R9-30-101, R9-30-201 through R9-30-218, R9-30-301, and R9-30-401 through R9-30-402, made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

Editor's Note: 9 A.A.C. 30, which formerly contained the rules for AHCCCS - Premium Sharing Program, repealed by summary rulemaking at 9 A.A.R. 4358, with an interim effective date of October 10, 2003. The rescinded Chapter is on file in the Office of the Secretary of State (Supp. 03-3). Notice of Final Summary Rulemaking published at 10 A.A.R. 875; interim effective date of October 10, 2003 becomes permanent effective date April 4, 2004 (Supp. 04-1).

ARTICLE 1. DEFINITIONS

Article 1, consisting of Section R9-30-101, made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

Section
R9-30-101. General Definitions

ARTICLE 2. ELIGIBILITY

Article 2, consisting of Sections R9-30-201 through R9-30-218, made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

Section
R9-30-201. General
R9-30-202. Opportunity to Apply
R9-30-203. How to File an Application
R9-30-204. Assistance with an Application
R9-30-205. Social Security Number (SSN)
R9-30-206. Residency
R9-30-207. Income
R9-30-208. Ineligible Person
R9-30-209. Resources
R9-30-210. Verification
R9-30-211. Medicare Requirements
R9-30-212. Eligibility Determination
R9-30-213. Determination of Extra Help Amount
R9-30-214. Notice of Eligibility Determination by AHCCCS
R9-30-215. Effective Date of Eligibility
R9-30-216. Discontinuance of Eligibility or Change in the Extra Help Amount
R9-30-217. Redetermination
R9-30-218. Reporting Changes

ARTICLE 3. SERVICES

Article 3, consisting of Section R9-30-301, made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

Section
R9-30-301. Legal Obligations

ARTICLE 4. GRIEVANCE SYSTEM

Article 4, consisting of Sections R9-30-401 through R9-30-402, made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

Section
R9-30-401. State Fair Hearing Request
R9-30-402. State Fair Hearing for an Applicant or a Member

ARTICLE 1. DEFINITIONS

R9-30-101. General Definitions

In addition to definitions contained under 20 CFR 418.3010, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“Act” means the Social Security Act.

“AHCCCS” means the Arizona Health Care Cost Containment System.

“Extra Help” means the subsidies that are available for Medicare Part D premiums, deductibles, and co-payments in accordance with Section 1860D-14 of the Social Security Act (42 U.S.C. 1395w-114).

“SSA” means the Social Security Administration.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

ARTICLE 2. ELIGIBILITY

R9-30-201. General

A. In accordance with the requirements of Section 1860D-14(a)(3) of the Act (42 U.S.C. 1395w-114(a)(3)), the applicant may apply for Extra Help with the SSA or with AHCCCS. AHCCCS shall offer to help an applicant complete the SSA's application for Extra Help. If the applicant declines to apply with SSA for the Extra Help program, AHCCCS shall determine eligibility for Extra Help under this Article.

B. Confidentiality. The Administration shall maintain the confidentiality of an Extra Help applicant's or member's records and limit the release of safeguarded information under R9-22-512.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-202. Opportunity to Apply

The Administration shall provide the opportunity to apply without delay.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-203. How to File an Application

A. To apply for the Extra Help with AHCCCS, a person shall submit a written application form prescribed by AHCCCS to any AHCCCS office or outstation location.

B. The application is considered filed and complete under R9-22-1501(D).

C. An application shall be submitted by:

1. The applicant, or
2. The applicant's personal representative.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-204. Assistance with an Application

- A.** AHCCCS shall allow a personal representative of an applicant's choice to accompany, assist, and represent the applicant in the application process.
- B.** Assistance by AHCCCS. If requested, AHCCCS shall help a person complete an application.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-205. Social Security Number (SSN)

To be eligible for Extra Help, a person shall furnish a SSN or apply for a SSN.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-206. Residency

To be eligible for Extra Help, a person shall reside in Arizona.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-207. Income

- A.** AHCCCS shall calculate countable income under 20 CFR 418.3301 through 418.3350, as of December 30, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B.** AHCCCS shall determine income eligibility under 42 CFR 423.773 as of January 28, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-208. Ineligible Person

A person residing in a penal institution is not eligible under this Article.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-209. Resources

- A.** AHCCCS shall calculate countable resources under 20 CFR 418.3401 through 418.3425, as of December 30, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B.** AHCCCS shall determine resource eligibility under 42 CFR 423.773, as of January 28, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-210. Verification

To be eligible for Extra Help, a person shall provide verification, or authorize the release of verification, for all information necessary to complete the determination of eligibility.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-211. Medicare Requirements

A person is not eligible for Extra Help unless the person is a Medicare beneficiary as defined in 20 CFR 418.3010, December 30, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-212. Eligibility Determination

Determinations of eligibility for Extra Help under this Article are made by AHCCCS within 45 days of the date of the application being filed if the individual applies with AHCCCS.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-213. Determination of Extra Help Amount

AHCCCS shall determine the amount of an applicant or member's Extra Help under 42 CFR 423.773, 42 CFR 423.780, and 42 CFR 423.782, as of January 28, 2005, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-214. Notice of Eligibility Determination by AHCCCS

- A.** Notice. The administration shall send an applicant written notice of the eligibility decision. The notice shall include a statement of the action and an explanation of an applicant or member's hearing rights under 9 A.A.C. 34, Article 1.
- B.** Approval. If AHCCCS determines that the applicant is eligible, the notice shall contain the effective date of eligibility and the amount of the Extra Help.
- C.** Denial. If AHCCCS determines that the applicant is not eligible, the notice shall contain:
1. The effective date of the decision;
 2. A statement detailing the reason for the decision, including specific financial calculations and the financial eligibility standard, if applicable; and
 3. The legal authority supporting the decision.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-215. Effective Date of Eligibility

The effective date of eligibility is the first day of the first month that the applicant is eligible for Extra Help under this Article, but no

Arizona Health Care Cost Containment System – Medicare Part D Prescription Coverage Extra Help Subsidy Program

earlier than the month in which the applicant applies or January 1, 2006, whichever is later.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-216. Discontinuance of Eligibility or Change in the Extra Help Amount

- A. Discontinuance. AHCCCS shall discontinue a person's eligibility if any of the conditions of eligibility under this Article are not met.
- B. Change in the amount of subsidy. AHCCCS will adjust the amount of the Extra Help, if a change in countable income or a change in countable resources causes the subsidy amount to change.
- C. Notice.
 1. AHCCCS shall follow the discontinuance notice requirements under R9-22-1501(K).
 2. AHCCCS will issue a notice if there is a change in the amount of the Extra Help.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-217. Redetermination

AHCCCS shall redetermine an individual's eligibility at least every 12 months.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-218. Reporting Changes

A member shall report any changes to AHCCCS, under R9-22-1501(H).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

ARTICLE 3. SERVICES

R9-30-301. Legal Obligations

The Administration and Administration's designee are under no legal obligation to provide pharmaceutical services to individuals approved for Extra Help. Pharmaceutical services are provided by Medicare.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

ARTICLE 4. GRIEVANCE SYSTEM

R9-30-401. State Fair Hearing Request

A request for State Fair Hearing under this Chapter shall comply with 9 A.A.C. 34, Article 1.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-402. State Fair Hearing for an Applicant or a Member

A State Fair Hearing for a member or an applicant under this Chapter shall comply with 9 A.A.C. 34, Article 1.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

36-2903. Arizona health care cost containment system; administrator; powers and duties of director and administrator; exemption from attorney general representation; definition

A. The Arizona health care cost containment system is established consisting of contracts with contractors for the provision of hospitalization and medical care coverage to members. Except as specifically required by federal law and by section 36-2909, the system is only responsible for providing care on or after the date that the person has been determined eligible for the system, and is only responsible for reimbursing the cost of care rendered on or after the date that the person was determined eligible for the system.

B. An agreement may be entered into with an independent contractor, subject to title 41, chapter 23, to serve as the statewide administrator of the system. The administrator has full operational responsibility, subject to supervision by the director, for the system, which may include any or all of the following:

1. Development of county-by-county implementation and operation plans for the system that include reasonable access to hospitalization and medical care services for members.
2. Contract administration and oversight of contractors, including certification instead of licensure for title XVIII and title XIX purposes.
3. Provision of technical assistance services to contractors and potential contractors.
4. Development of a complete system of accounts and controls for the system including provisions designed to ensure that covered health and medical services provided through the system are not used unnecessarily or unreasonably including but not limited to inpatient behavioral health services provided in a hospital. Periodically the administrator shall compare the scope, utilization rates, utilization control methods and unit prices of major health and medical services provided in this state in comparison with other states' health care services to identify any unnecessary or unreasonable utilization within the system. The administrator shall periodically assess the cost effectiveness and health implications of alternate approaches to the provision of covered health and medical services through the system in order to reduce unnecessary or unreasonable utilization.
5. Establishment of peer review and utilization review functions for all contractors.
6. Assistance in the formation of medical care consortiums to provide covered health and medical services under the system for a county.
7. Development and management of a contractor payment system.
8. Establishment and management of a comprehensive system for assuring the quality of care delivered by the system.
9. Establishment and management of a system to prevent fraud by members, subcontracted providers of care, contractors and noncontracting providers.
10. Coordination of benefits provided under this article to any member. The administrator may require that contractors and noncontracting providers are responsible for the coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage.
11. Development of a health education and information program.
12. Development and management of an enrollment system.
13. Establishment and maintenance of a claims resolution procedure to ensure that ninety per cent of the clean claims shall be paid within thirty days of receipt and ninety-nine per cent of the remaining clean claims shall be

paid within ninety days of receipt. For the purposes of this paragraph, "clean claims" has the same meaning prescribed in section 36-2904, subsection G.

14. Establishment of standards for the coordination of medical care and patient transfers pursuant to section 36-2909, subsection B.

15. Establishment of a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.

16. Establishment of an employee recognition fund.

17. Establishment of an eligibility process to determine whether a medicare low income subsidy is available to persons who want to apply for a subsidy as authorized by title XVIII.

C. If an agreement is not entered into with an independent contractor to serve as statewide administrator of the system pursuant to subsection B of this section, the director shall ensure that the operational responsibilities set forth in subsection B of this section are fulfilled by the administration and other contractors as necessary.

D. If the director determines that the administrator will fulfill some but not all of the responsibilities set forth in subsection B of this section, the director shall ensure that the remaining responsibilities are fulfilled by the administration and other contractors as necessary.

E. The administrator or any direct or indirect subsidiary of the administrator is not eligible to serve as a contractor.

F. Except for reinsurance obtained by contractors, the administrator shall coordinate benefits provided under this article to any eligible person who is covered by workers' compensation, disability insurance, a hospital and medical service corporation, a health care services organization, an accountable health plan or any other health or medical or disability insurance plan including coverage made available to persons defined as eligible by section 36-2901, paragraph 6, subdivisions (b), (c), (d) and (e), or who receives payments for accident-related injuries, so that any costs for hospitalization and medical care paid by the system are recovered from any other available third party payors. The administrator may require that contractors and noncontracting providers are responsible for the coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage. The system shall act as payor of last resort for persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2974 or section 36-2981, paragraph 6 unless specifically prohibited by federal law. By operation of law, eligible persons assign to the system and a county rights to all types of medical benefits to which the person is entitled, including first party medical benefits under automobile insurance policies based on the order of priorities established pursuant to section 36-2915. The state has a right to subrogation against any other person or firm to enforce the assignment of medical benefits. The provisions of this subsection are controlling over the provisions of any insurance policy that provides benefits to an eligible person if the policy is inconsistent with the provisions of this subsection.

G. Notwithstanding subsection E of this section, the administrator may subcontract distinct administrative functions to one or more persons who may be contractors within the system.

H. The director shall require as a condition of a contract with any contractor that all records relating to contract compliance are available for inspection by the administrator and the director subject to subsection I of this section and that such records be maintained by the contractor for five years. The director shall also require that these records be made available by a contractor on request of the secretary of the United States department of health and human services, or its successor agency.

I. Subject to existing law relating to privilege and protection, the director shall prescribe by rule the types of information that are confidential and circumstances under which such information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other provision of law, such rules shall be designed to provide for the exchange of necessary information among the counties, the administration and the department of economic security for the purposes of eligibility determination under this article. Notwithstanding any law to the contrary, a member's medical record shall be released without the member's consent in situations or suspected cases of fraud or abuse relating to the system to an officer of the state's certified Arizona health care cost containment system fraud control unit who has submitted a written request for the medical record.

J. The director shall prescribe rules that specify methods for:

1. The transition of members between system contractors and noncontracting providers.
2. The transfer of members and persons who have been determined eligible from hospitals that do not have contracts to care for such persons.

K. The director shall adopt rules that set forth procedures and standards for use by the system in requesting county long-term care for members or persons determined eligible.

L. To the extent that services are furnished pursuant to this article, and unless otherwise required pursuant to this chapter, a contractor is not subject to title 20.

M. As a condition of the contract with any contractor, the director shall require contract terms as necessary in the judgment of the director to ensure adequate performance and compliance with all applicable federal laws by the contractor of the provisions of each contract executed pursuant to this chapter. Contract provisions required by the director shall include at a minimum the maintenance of deposits, performance bonds, financial reserves or other financial security. The director may waive requirements for the posting of bonds or security for contractors that have posted other security, equal to or greater than that required by the system, with a state agency for the performance of health service contracts if funds would be available from such security for the system on default by the contractor. The director may also adopt rules for the withholding or forfeiture of payments to be made to a contractor by the system for the failure of the contractor to comply with a provision of the contractor's contract with the system or with the adopted rules. The director may also require contract terms allowing the administration to operate a contractor directly under circumstances specified in the contract. The administration shall operate the contractor only as long as it is necessary to assure delivery of uninterrupted care to members enrolled with the contractor and accomplish the orderly transition of those members to other system contractors, or until the contractor reorganizes or otherwise corrects the contract performance failure. The administration shall not operate a contractor unless, before that action, the administration delivers notice to the contractor and provides an opportunity for a hearing in accordance with procedures established by the director. Notwithstanding the provisions of a contract, if the administration finds that the public health, safety or welfare requires emergency action, it may operate as the contractor on notice to the contractor and pending an administrative hearing, which it shall promptly institute.

N. The administration for the sole purpose of matters concerning and directly related to the Arizona health care cost containment system and the Arizona long-term care system is exempt from section 41-192.

O. Notwithstanding subsection F of this section, if the administration determines that according to federal guidelines it is more cost-effective for a person defined as eligible under section 36-2901, paragraph 6, subdivision (a) to be enrolled in a group health insurance plan in which the person is entitled to be enrolled, the administration may pay all of that person's premiums, deductibles, coinsurance and other cost sharing obligations for services covered under section 36-2907. The person shall apply for enrollment in the group health insurance plan as a condition of eligibility under section 36-2901, paragraph 6, subdivision (a).

P. The total amount of state monies that may be spent in any fiscal year by the administration for health care shall not exceed the amount appropriated or authorized by section 35-173 for all health care purposes. This

article does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

Q. Notwithstanding section 36-470, a contractor or program contractor may receive laboratory tests from a laboratory or hospital-based laboratory for a system member enrolled with the contractor or program contractor subject to all of the following requirements:

1. The contractor or program contractor shall provide a written request to the laboratory in a format mutually agreed to by the laboratory and the requesting health plan or program contractor. The request shall include the member's name, the member's plan identification number, the specific test results that are being requested and the time periods and the quality improvement activity that prompted the request.
2. The laboratory data may be provided in written or electronic format based on the agreement between the laboratory and the contractor or program contractor. If there is no contract between the laboratory and the contractor or program contractor, the laboratory shall provide the requested data in a format agreed to by the noncontracted laboratory.
3. The laboratory test results provided to the member's contractor or program contractor shall only be used for quality improvement activities authorized by the administration and health care outcome studies required by the administration. The contractors and program contractors shall maintain strict confidentiality about the test results and identity of the member as specified in contractual arrangements with the administration and pursuant to state and federal law.
4. The administration, after collaboration with the department of health services regarding quality improvement activities, may prohibit the contractors and program contractors from receiving certain test results if the administration determines that a serious potential exists that the results may be used for purposes other than those intended for the quality improvement activities. The department of health services shall consult with the clinical laboratory licensure advisory committee established by section 36-465 before providing recommendations to the administration on certain test results and quality improvement activities.
5. The administration shall provide contracted laboratories and the department of health services with an annual report listing the quality improvement activities that will require laboratory data. The report shall be updated and distributed to the contracting laboratories and the department of health services when laboratory data is needed for new quality improvement activities.
6. A laboratory that complies with a request from the contractor or program contractor for laboratory results pursuant to this section is not subject to civil liability for providing the data to the contractor or program contractor. The administration, the contractor or a program contractor that uses data for reasons other than quality improvement activities is subject to civil liability for this improper use.

R. For the purposes of this section, "quality improvement activities" means those requirements, including health care outcome studies specified in federal law or required by the centers for medicare and medicaid services or the administration, to improve health care outcomes.

36-2907. Covered health and medical services; modifications; related delivery of service requirements; definition

A. Subject to the limitations and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital for the care and treatment of inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.
2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner, including occupational therapy.
3. Other laboratory and X-ray services ordered by a physician or a primary care practitioner.
4. Medications that are ordered on prescription by a physician or a dentist licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.
5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.
6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.
7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.
8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.
9. Podiatry services that are performed by a podiatrist who is licensed pursuant to title 32, chapter 7 and ordered by a primary care physician or primary care practitioner.
10. Nonexperimental transplants approved for title XIX reimbursement.
11. Dental services as follows:
 - (a) Except as provided in subdivision (b) of this paragraph, for persons who are at least twenty-one years of age, emergency dental care and extractions in an annual amount of not more than \$1,000 per member.
 - (b) Subject to approval by the centers for medicare and medicaid services, for persons treated at an Indian health service or tribal facility, adult dental services that are eligible for a federal medical assistance percentage of one hundred percent and that are in excess of the limit prescribed in subdivision (a) of this paragraph.
12. Ambulance and nonambulance transportation, except as provided in subsection G of this section.

13. Hospice care.

14. Orthotics, if all of the following apply:

(a) The use of the orthotic is medically necessary as the preferred treatment option consistent with medicare guidelines.

(b) The orthotic is less expensive than all other treatment options or surgical procedures to treat the same diagnosed condition.

(c) The orthotic is ordered by a physician or primary care practitioner.

B. The limitations and exclusions for health and medical services provided under this section are as follows:

1. Circumcision of newborn males is not a covered health and medical service.

2. For eligible persons who are at least twenty-one years of age:

(a) Outpatient health services do not include speech therapy.

(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to \$12,500 per contract year.

(c) Percussive vests are not covered health and medical services.

(d) Durable medical equipment is limited to items covered by medicare.

(e) Nonexperimental transplants do not include pancreas-only transplants.

(f) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.

C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.

D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum limitations for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.

E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules providing for transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:

1. Emergency services and specialty services provided pursuant to section 36-2908.

2. That the director may allow the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state that are similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.

K. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.

L. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for transferring patients and medical records and initiating medical care.

M. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

ARIZONA CRIMINAL JUSTICE COMMISSION

Title 10, Chapter 4, Article 3, Criminal Justice Enhancement Fund, and Article 5, Full-service Forensic Crime Laboratory Account



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 14, 2021

SUBJECT: **Arizona Criminal Justice Commission**
Title 10, Chapter 4, Articles 3 & 5

This Five-Year-Review Report (5YRR) from the Arizona Criminal Justice Commission (Commission) relates to rules in Title 10, Chapter 4. The report covers the following:

Article 3 - Criminal Justice Enhancement Fund

Article 5 - Full-service Forensic Crime Laboratory Account

The Commission did not propose any changes to the rules in the last 5YRR.

Proposed Action

_____The Commission is proposing to amend two rules (R10-4-501(3) and R10-4-502) to improve their overall effectiveness and make the rules more clear, concise, and understandable. The Commission plans to complete a rulemaking that addresses these changes by October 2021.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Commission cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Article 5 rules were last amended in 2006. In the rulemaking, the Commission updated the rules regarding the full-service forensic crime laboratory account to make them more clear, concise, and understandable. The Commission believes it correctly estimated the economic costs and benefits of the rule changes to be minimal.

The Commission identifies the following as stakeholders: the Arizona Departments of Public Safety and Law, the Supreme Court, fifteen county sheriffs, and Arizona's five full-service forensic crime laboratories.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Commission determined the benefits from the rules, improving the processing of criminal cases and improving the efficiency and effectiveness of the state's various full-service forensic crime laboratories, outweigh the costs associated with ensuring fund monies are used as intended by statute.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Commission indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Commission indicates the rules are overall clear, concise, and understandable with the exception of one rule:

_____ **R10-4-502(A)** - Grant Solicitation Process

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Commission indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Commission indicates the rules are effective in achieving their objectives with the exception of one rule:

R10-4-501(3) - Definitions

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Commission indicates the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

Not applicable. There is no corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules were created after July 29, 2010 and do not require the issuance of a regulatory permit or license.

11. Conclusion

As mentioned above, the Commission is proposing to amend two rules to improve their overall effectiveness, and make the rules more clear, concise, and understandable. The Commission plans to complete a rulemaking by October 2021.

Council staff recommends approval of this report.



Arizona Criminal Justice Commission

Chairperson
SHEILA POLK
Yavapai County Attorney

Vice-Chairperson
STEVE STAHL
Law Enforcement Leader

ALLISTER ADEL
Maricopa County Attorney

MARK BRNOVICH
Attorney General

DAVID K. BYERS, Director
Administrative Office of the Courts

MINA MENDEZ
Board of Executive Clemency

GREG MENGARELLI, Mayor
City of Prescott

PAUL PENZONE
Maricopa County Sheriff

DAVID SANDERS
Pima County Chief Probation Officer

DAVID SHINN, Director
Department of Corrections

HESTON SILBERT, Director
Department of Public Safety

VACANT
County Supervisor

VACANT
County Attorney

VACANT
Former Judge

VACANT
County Sheriff

VACANT
County Sheriff

VACANT
Chief of Police

VACANT
Chief of Police

VACANT
Chief of Police

Executive Director
Andrew T. LeFevre

1110 West Washington, Suite 230
Phoenix, Arizona 85007
PHONE: (602) 364-1146
FAX: (602) 364-1175
www.azcjc.gov

April 6, 2021

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

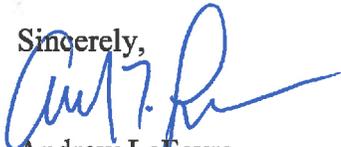
RE: Arizona Criminal Justice Commission
Five-year-review Report
10 A.A.C. 4, Articles 3 (Criminal Justice Enhancement Fund)
and 5 (Full-service Forensic Crime Laboratory Account)

Dear Ms Sornsins:

The Arizona Criminal Justice Commission submits the referenced report for the Council's review and approval. The report is due on June 30, 2021.

The Commission certifies it is in compliance with A.R.S. § 41-1091.

For questions about this report, please contact Candice Millsap at cmillsap@azcjc.gov.

Sincerely,

Andrew LeFevre
Executive Director

Five-year-review Report
A.A.C. Title 10. Law
Chapter 4. Arizona Criminal Justice Commission
Articles 3 (Criminal Justice Enhancement Fund) and 5 (Full-service Forensic
Crime Laboratory Account)
Submitted for June 1, 2021

INTRODUCTION

The Arizona Criminal Justice Commission was established in 1982 to carry out various coordinating, monitoring, and reporting functions regarding the administration and management of criminal justice programs in Arizona. This report focuses on rules developed for two of the programs.

The Criminal Justice Enhancement Fund provides funding for the various Arizona county attorneys to improve processing of criminal cases. Under A.R.S. § 12-116.01(H), the Fund receives a 42 percent surcharge assessment on fines, penalties, and forfeitures imposed by the courts for criminal offenses, civil motor vehicle violations, or game and fish violations. The Arizona Criminal Justice Commission is required to distribute Fund monies to the Arizona Department of Public Safety, Attorney General, Administrative Office of the Courts, and the sheriff in each county. The distribution to each county is based on a composite index formula using Superior Court felony filings and county population.

The goal of the Arizona Criminal Justice Commission Full-service Forensic Crime Laboratory Program, which receives funding under A.R.S. § 41-2521(J)(5), is to improve the efficiency and effectiveness of the state's various full-service crime laboratories.

Statute that generally authorizes the agency to make rules: A.R.S. §§ 41-2405(A)(8) and 41-2421(J)(5)

1. Specific statute authorizing the rule:

- R10-4-301: A.R.S. § 41-2405(A)(8)
- R10-4-302: A.R.S. § 41-2405(A)(8)
- R10-4-303: A.R.S. § 41-2405(A)(8)
- R10-4-304: A.R.S. § 41-2405(A)(8)
- R10-4-305: A.R.S. § 41-2405(A)(8)
- R10-4-501: A.R.S. § 41-2421(J)(5)
- R10-4-502: A.R.S. § 41-2421(J)(5)
- R10-4-503: A.R.S. § 41-2421(J)(5)
- R10-4-504: A.R.S. § 41-2421(J)(5)

2. Objective of the rules:

R10-4-301. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R10-4-302. Contact Information Required: The objective of the rule is to ensure the Commission is able to communicate timely with recipient agencies by having accurate information regarding the head of recipient agencies.

R10-4-303. Fund Guidelines Required: The objective of the rule is to protect Fund monies from misuse by requiring recipient agencies to have guidelines regarding handling, allocating, expending, and assessing the impact of Fund monies.

R10-4-304. Records Required: The objective of the rule is to facilitate review of Fund monies expenditures by requiring recipient agencies to maintain specified records.

R10-4-305. Complaints: The objective of the rule is to protect the public and ensure Fund monies are expended as required by law by providing a procedure for complaining to the Commission that Fund monies are being expended in a manner inconsistent with statute.

R10-4-501. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R10-4-502. Grant Solicitation Process: The objective of the rule is to establish the procedure the Commission will use to inform potential grant applicants when funds are available for distribution and to specify the information the Commission will make available to potential applicants.

R10-4-503. Grant Application Evaluation; Decision of the Commission: The objective of the rule is to describe the procedure the Commission uses to evaluate a grant application and list the factors on which a grant decision is based.

R10-4-504. Reports: The objective of the rule is to inform grant recipients when reports are due and the information required in a report.

3. Are the rules effective in achieving their objectives? Mostly yes
- Rapid changes in technology used by full-service forensic crime laboratories lead the Commission to believe R10-4-501(3) would be more effective if the definition of full-service forensic crime laboratory is amended as follows:
- Full-service forensic crime laboratories' accreditation must be based on ILAC G19 and ISO/IEC 17025 or ISO/IEC 17020 to remain consistent with current industry standards.
 - ILAC – International Laboratory Accreditation Cooperation
 - G19 – G series # 19 (standard number for forensic science processes)
 - ISO – International Organization of Standardization
 - 17025 - standard number for calibration testing laboratories
 - 17020 – standard number of general operation of bodies performing inspections
 - A full-service forensic crime laboratory must provide a minimum of six forensic disciplines from among the following: trace evidence, blood and breath alcohol, firearms and tool marks, crime scene processing, latent print comparisons, seized drugs, DNA, digital forensics, and drug toxicology. The six disciplines provided must include one of the following: DNA, digital forensics, or drug toxicology.

4. Are the rules consistent with other rules and statutes? Yes
5. Are the rules enforced as written? Yes
6. Are the rules clear, concise, and understandable? Mostly yes
R10-4-502(A): The Commission's website is listed incorrectly.
7. Has the agency received written criticisms of the rules within the last five years? No

8. Economic, small business, and consumer impact comparison:

2006 Rulemaking (12 A.A.R. 2294)

The Article 5 rules were last amended in 2006. The economic, small business, and consumer impact statement prepared with the rulemaking was available for review. In the rulemaking, the Commission updated the rules regarding the full-service forensic crime laboratory account to make them more clear, concise, and understandable. Specifically, the Commission:

- Amended the definition of a full-service forensic crime laboratory to require accreditation;
- Allowed the Commission to distribute its grant solicitation electronically;
- Established the time within which a grant applicant must respond to a Commission request for additional information or modification;
- Substituted a fourth quarterly report for the previously required annual report;
- Reduced the amount of time for submitting a quarterly report; and
- Clarified the information that must be in a quarterly report.

The Commission believes it correctly estimated the economic cost and benefit of the rule changes would be minimal. Arizona currently has five full-service forensic crime laboratories. Two of the full-service forensic crime laboratories are within the Arizona Department of Public Safety. There is one each in the Mesa, Phoenix, and Tucson police departments. Last year, the Commission distributed \$500,000 in grants to the full-service forensic crime laboratories. Each full-service forensic crime laboratory was awarded \$100,000. DPS used the monies received to fund three forensic science positions. These individuals processed evidence and helped to reduce the backlog of cases. The Mesa police department used the monies to purchase equipment and provide advanced training

opportunities for forensic personnel. The Phoenix police department also used the monies to purchase equipment and provide training for forensic personnel. Additionally, Phoenix used the monies to pay overtime hours required to address backlogged cases. The Tucson police department used the monies to upgrade a server and hired an evidence examination specialist to process evidence from violent crimes.

During the last year, the Commission received no appeals regarding its funding decisions and no allegations that Fund monies were misspent.

2011 Rulemaking (17 A.A.R. 1469)

The Article 3 rules were made in 2011. The economic, small business, and consumer impact statement prepared with the rulemaking was available for review. The Commission believes it correctly estimated the new rules, which were made in response to legislative clarification regarding the entity responsible for making the rules, would have minimal economic costs for recipient agencies. The costs would be greatly outweighed by the Fund monies received.

The Commission is responsible for distributing only part of the monies in the Fund (See A.R.S. § 41-2401(G)). Recipients of Fund monies distributed by the Commission include the Arizona Departments of Public Safety and Law, the Supreme Court, and county sheriffs. The Department of Law passes the monies received to the fifteen country attorneys for use in enhancing prosecutions. During FY2020, the Commission distributed \$2,237,584 to the Arizona Department of Public Safety, \$2,876,980 to the Department of Law, \$1,851,563 to the Supreme Court, and \$3,546,804 to the country sheriffs for jail enhancement.

During 2020, the Commission received no complaints alleging Fund monies were expended in a manner inconsistent with A.R.S. § 41-2401(D).

9. Has the agency received any business competitiveness analyses of the rules? No

10. How the agency completed the course of action indicated in the agency's previous 5YRR:
Yes

In a 5YRR approved by the Council on December 8, 2016, the Commission indicated it had no plan to amend or repeal an existing rule or make a new rule. The Commission has taken no rulemaking action on Article 3 or 5 since that 5YRR was approved.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Commission determined the benefits from the rules, improving the processing of criminal cases and improving the efficiency and effectiveness of the state's various full-service forensic crime laboratories, outweigh the costs associated with ensuring fund monies are used as intended by statute.

The only persons regulated by the Criminal Justice Enhancement Fund rules are the four entities to which the Commission distributes monies. These are the Arizona Departments of Public Safety and Law, the Supreme Court, and the fifteen county sheriffs. The rules impose the following costs on these persons:

- Ensure the Commission has accurate contact information for the individual with whom the Commission communicates regarding the Fund;
- Prepare written guidelines for handling Fund monies and ensure they are used as intended;
- Review and update the guidelines annually;
- Maintain records regarding Fund monies available and disbursed;
- Assess whether Fund monies enhanced criminal justice; and
- Make maintained records available to the Commission for review.

The only persons regulated by the Full-service Forensic Crime Laboratory Account rules are Arizona's five full-service forensic crime laboratories. The rules impose the following costs on full-service forensic crime laboratories:

- Prepare and submit a grant application to receive Account monies; and
- Prepare quarterly reports regarding activities supported by a grant of Account monies.

12. Are the rules more stringent than corresponding federal laws? No

No federal law is applicable to the subject matter of the rules. The federal government provides additional funding for certain criminal justice activities. The Commission complies with federal requirements for funds received.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

The rules in Article 3 were made after July 29, 2010. None of the rules requires issuance of a regulatory permit, license, or other agency authorization.

14. Proposed course of action:

The Commission will complete a rulemaking that amends R10-4-501 and R10-4-502 by October 2021.

ARTICLE 3. CRIMINAL JUSTICE ENHANCEMENT FUND

Article 3, consisting of R10-4-301 through R10-4-305, made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

Article 3, consisting of R10-4-301 through R10-4-305, adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1).

Article 3, consisting of R10-4-301 through R10-4-305, repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4).

Article 3, consisting of Sections R10-4-301 through R10-4-305, adopted effective September 11, 1986.

Section

R10-4-301.	Definitions	11
R10-4-302.	Contact Information Required	
	11	
R10-4-303.	Fund Guidelines Required	
	11	
R10-4-304.	Records Required	
	12	
R10-4-305.	Complaints	
	12	
	14	

ARTICLE 5. FULL-SERVICE FORENSIC CRIME LABORATORY ACCOUNT

Article 5, consisting of Sections R10-4-501 through R10-4-504, made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2).

Section

R10-4-501.	Definitions	14
R10-4-502.	Grant Solicitation Process	15
R10-4-503.	Grant Application Evaluation; Decision of the Commission	15
R10-4-504.	Reports	15

ARTICLE 3. CRIMINAL JUSTICE ENHANCEMENT FUND

R10-4-301. Definitions

In this Article:

1. "Commission" means the Arizona Criminal Justice Commission.
2. "Contact" means the individual representative of a recipient or the Arizona Sheriffs' Association, on behalf of the various county sheriffs' offices, who communicates with the Commission regarding the Fund.
3. "Enhance" or "enhancing," as used in A.R.S. § 41-2401(D), means to supplement rather than replace monies from other sources.
4. "Fund" means the Criminal Justice Enhancement Fund established by A.R.S. § 41-2401(A).
5. "Head" means:
 - a. The Director of the Arizona Department of Public Safety,
 - b. The Arizona Attorney General,
 - c. The Director of the Administrative Office of the Courts, and
 - d. The sheriff of each Arizona county.
6. "Recipient" means the Arizona Department of Public Safety, Arizona Department of Law, the Supreme Court, and each Arizona county sheriff's office.

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-301 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-302. Contact Information Required

- A. Within 60 days after this Article takes effect, each Head and the President of the Arizona Sheriffs' Association shall submit to the Commission the name, address, telephone and fax numbers, and e-mail of the contact.
- B. If any of the information submitted under subsection (A) changes, the Head or the President of the Arizona Sheriffs' Association shall provide immediate notice of the change to the Commission.

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-302 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-303. Fund Guidelines Required

- A.** Within 60 days after this Article takes effect, the contact within the Arizona Department of Public Safety, Arizona Department of Law, and the Administrative Office of the Courts shall submit to the Commission the recipient's guidelines regarding the following:
1. The procedure for handling Fund monies until they are allocated for expenditure,
 2. The procedure used to allocate Fund monies,
 3. The procedure used to ensure that Fund monies are expended as specified in A.R.S. § 41-2401(D), and
 4. The procedure used to assess the impact of the Fund monies on enhancing criminal justice in the manner specified in A.R.S. § 41-2401(D).
- B.** Within 60 days after this Article takes effect, the contact for each county Sheriff's Office or the Arizona Sheriffs' Association shall submit to the Commission guidelines that meet the standard described in subsections (A)(3) and (4);
- C.** Within 60 days after the guidelines submitted under subsections (A) and (B) are received, the Commission shall review the guidelines and assist the contact to make any changes necessary to protect Fund monies and ensure that Fund monies are expended as specified in A.R.S. § 41-2401.
- D.** A recipient or the Arizona Sheriffs' Association shall review and, if necessary, update the guidelines. By October 1 of each year, the contact for each recipient or the Arizona Sheriffs' Association shall provide to the Commission the guidelines as revised or inform the Commission that no revision is necessary. Within 60 days after revised guidelines submitted under this subsection are received, the Commission shall review the revised guidelines and assist the contact to make any changes necessary to protect Fund monies and ensure that Fund monies are expended as specified in A.R.S. § 41-2401.

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-303 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-304. Records Required

- A.** A Head shall ensure that the following records are maintained for the recipient:
1. The amount of Fund monies available to the recipient,
 2. To whom Fund monies were disbursed and the amount of Fund monies disbursed,
 3. A detailed description of the manner in which the Fund monies are expended, and
 4. An assessment of the impact of the Fund monies on enhancing criminal justice.
- B.** A Head shall ensure that the records required under subsection (A) are:
1. Maintained for three years; and
 2. Made available, upon request, for review by the Commission and the Arizona Auditor General.
- C.** All reports required of a recipient by statute to be submitted to the Commission are subject to review and verification by the Commission.

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-304 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-305. Complaints

- A.** An individual who believes that Fund monies are being expended in a manner that is inconsistent with A.R.S. § 41-2401(D) may:
1. Submit a written complaint to the Commission; and
 2. If the complaint relates to an expenditure by a court, shall submit the complaint to the Director of the Administrative Office of the Courts.
- B.** An individual who submits a complaint shall ensure that the complaint includes sufficient information to enable the Commission to investigate the expenditure alleged to be inconsistent with A.R.S. § 41-2401(D).
- C.** Except as specified in subsection (E), if the Commission determines that an expenditure about which a complaint is submitted appears to be inconsistent with A.R.S. § 41-2401(D), the Commission shall ask the Head to explain the expenditure.
- D.** If the Commission determines that the expenditure is inconsistent with A.R.S. § 41-2401(D), the Commission shall take action allowed by law to remedy the expenditure.
- E.** The Director of the Administrative Office of the Courts shall:
1. Investigate an expenditure about which a complaint is submitted under subsection (A)(2),
 2. Determine whether the expenditure is inconsistent with A.R.S. § 41-2401(D), and

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

3. Notify the Commission of the determination and any action taken to remedy the expenditure.

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-305 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

ARTICLE 5. FULL-SERVICE FORENSIC CRIME LABORATORY ACCOUNT**R10-4-501. Definitions**

In this Article:

1. "Account" means the Full-service Forensic Crime Laboratories Account established by A.R.S. § 41-2421(J)(5).
2. "Commission" means the Arizona Criminal Justice Commission established by A.R.S. § 41-2404.
3. "Full-service forensic crime laboratory" means a facility that:
 - a. Is operated by a criminal justice agency that is a political subdivision of the state;
 - b. Employs at least one full-time forensic scientist who holds a minimum of a bachelor's degree in a physical or natural science;
 - c. Is registered as an analytical laboratory with the Drug Enforcement Administration of the United States Department of Justice for possession of all scheduled, controlled substances;
 - d. Is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board; and
 - e. Provides, at a minimum, services in the areas of controlled substances, forensic biology, DNA, blood and breath alcohol, firearms, and toolmarks.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

R10-4-502. Grant Solicitation Process

- A. The Commission shall annually publish and post on the Commission's internet site, which is www.azajc.gov, a grant solicitation for distribution of Account monies. When the grant solicitation is posted, the Commission shall send an electronic notice of the posting to all Arizona criminal justice agencies that operate a full-service forensic crime laboratory.
- B. The Commission shall ensure that the grant solicitation contains:
 1. The Commission's goals for the grant program for the allocation year,
 2. Applicant eligibility criteria,
 3. The format in which a grant application is to be submitted,
 4. The date by which a grant application is to be submitted,
 5. Grant application evaluation criteria,
 6. Project expenses for which Account monies may be used,
 7. The period in which all Account monies must be expended,
 8. Account money reversion criteria and process, and
 9. The award denial appeal process.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

R10-4-503. Grant Application Evaluation; Decision of the Commission

- A. The Commission shall evaluate each grant application and make a decision to award or deny a grant within 120 days of the date by which grant applications are due.
- B. If the Commission determines additional information is needed to facilitate its evaluation of an application, the Commission shall request from the applicant:
 1. Additional information, or
 2. Application modification.
- C. An applicant from whom additional information or application modification is requested shall submit the information or modification to the Commission within 10 business days from the date of the request.
- D. After completing its evaluation of an application, the Commission shall vote to award, in whole or in part, or deny a grant based on:
 1. The grant criteria published in the grant solicitation;
 2. The amount of funds available for allocation; and
 3. Compliance with the application format.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

R10-4-504. Reports

Within 15 days after the end of each calendar quarter, a grantee shall submit a written report, on a form prescribed by the Commission, containing:

1. A financial report that includes itemized budget information, and
2. An activity report that documents activities supported by the grant funds and includes:
 - a. A narrative of activities undertaken during the reporting period;
 - b. An evaluation of progress toward achieving the goals and objectives in the grant application;
 - c. An evaluation of adherence to the time-frames in the grant application; and
 - d. A description of equipment purchased with grant funds during the reporting period, how the equipment is related to achieving the goals and objectives of the project, and the current status of the equipment, such as whether it is operational, waiting to be installed, or undergoing testing; and
3. A copy of any deliverable provided by a consultant paid with grant funds.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

As of July 14, 2020

41-2401. Criminal justice enhancement fund

A. The criminal justice enhancement fund is established consisting of monies collected pursuant to section 12-116.01 and monies available from any other source. The state treasurer shall administer the fund.

B. On or before November 1 of each year, each department, agency or office that receives monies pursuant to this section shall provide to the Arizona criminal justice commission a report for the preceding fiscal year. The report shall be in a form prescribed by the Arizona criminal justice commission. The report shall set forth the sources of all monies and all expenditures. The report shall not include any identifying information about specific investigations.

C. On or before December 1 of each year, the Arizona criminal justice commission shall compile all reports into a single comprehensive report and shall submit a copy of the comprehensive report to the governor, the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee.

D. On the first day of each month, the state treasurer shall distribute or deposit:

1. 19.09 percent in the department of public safety forensics fund established by section 41-1730.
2. 1.84 percent to the department of juvenile corrections for the treatment and rehabilitation of youth who have committed drug-related offenses.
3. 18.97 percent in the peace officers' training fund established by section 41-1825.
4. 3.45 percent in the prosecuting attorneys' advisory council training fund established by section 41-1830.03.
5. 10.66 percent to the supreme court for the purpose of reducing juvenile crime.
6. 8.29 percent to the department of public safety for allocation to state and local law enforcement authorities for the following purposes:
 - (a) To enhance projects that are designed to prevent residential and commercial burglaries, to control street crime, including the activities of criminal street gangs, and to locate missing children.
 - (b) To provide support to the Arizona automated fingerprint identification system.
 - (c) Operational costs of the criminal justice information system.
7. 10.66 percent to the department of law for allocation to county attorneys for the purpose of enhancing prosecutorial efforts.

8. 6.86 percent to the supreme court for the purpose of enhancing the ability of the courts to process criminal and delinquency cases, orders of protection, injunctions against harassment and any proceeding relating to domestic violence matters, for auditing and investigating persons or entities licensed or certified by the supreme court and for processing judicial discipline cases. Notwithstanding section 12-143, subsection A, the salary of superior court judges pro tempore who are appointed for the purposes provided in this paragraph shall, and the salary of other superior court judges pro tempore who are appointed pursuant to section 12-141 for the purposes provided in this paragraph may, be paid in full by the monies received pursuant to this paragraph.

9. 13.34 percent to the county sheriffs for the purpose of enhancing county jail facilities and operations, including county jails under the jurisdiction of county jail districts.

10. 1.79 percent to the Arizona criminal justice commission.

11. 2.62 percent in the department of public safety forensics fund established by section 41-1730.

12. 2.43 percent to the supreme court for the purpose of providing drug treatment services to adult probationers through the community punishment program established in title 12, chapter 2, article 11.

E. Monies distributed pursuant to subsection D, paragraphs 3, 4, 7, 9 and 11 of this section constitute a continuing appropriation. Monies distributed pursuant to subsection D, paragraphs 1, 2, 5, 8, 10 and 12 of this section are subject to legislative appropriation.

F. The portion of the monies for direct operating expenses of the department of public safety in subsection D, paragraph 6 of this section is subject to legislative appropriation. The remainder of the monies in subsection D, paragraph 6 of this section, including the portion for local law enforcement, is continuously appropriated.

G. The allocation of monies pursuant to subsection D, paragraphs 6, 7, 8 and 9 of this section shall be made in accordance with rules adopted by the Arizona criminal justice commission pursuant to section 41-2405.

41-2402. Drug and gang enforcement fund; resource center fund; uses

A. The drug and gang enforcement fund is established and consists of monies appropriated by the legislature and any other monies available from other sources, public or private. Monies in the fund shall be used to enhance efforts to deter, investigate, prosecute, adjudicate and punish drug offenders and members of criminal street gangs as defined in section 13-105. The Arizona criminal justice commission shall administer the fund.

B. The Arizona criminal justice commission shall distribute monies from the drug and gang enforcement fund in the following manner:

1. Up to fifty percent to fund law enforcement agencies approved by the commission to enhance both:

(a) The investigation of drug and gang offenses and related criminal activity.

(b) Drug and gang education and prevention programs.

2. Up to fifty percent to fund programs and agencies approved by the commission to enhance the state, county, city or town prosecution of drug and gang offenses and related criminal activity.

3. Up to thirty percent to fund programs and agencies approved by the commission for the purpose of enhancing the ability of the courts to process drug and gang offenses and related criminal cases, either through the appointment of judges pro tempore or the establishment of additional divisions of the courts only for the purposes of this section, enhancing defense and probation services, including treatment, and funding the drug testing program.

4. Up to thirty percent to fund programs by county sheriffs and the state department of corrections, as approved by the commission, to enhance drug offender treatment programs and the jail operations and facilities available to detain and incarcerate drug offenders and members of criminal street gangs as defined in section 13-105.

5. Up to thirty percent to fund programs and agencies, as approved by the commission, to enhance the integration of criminal justice records relating to drug and gang offenders and their related criminal activity.

C. Any state agency that receives monies allocated from the drug and gang enforcement fund shall not include the monies as part of the state agency's continuation budget base for the purpose of requesting appropriations for the following fiscal year.

D. All the monies allocated from the drug and gang enforcement fund shall be dedicated solely to the purpose of enhancing efforts to deter, investigate, prosecute, adjudicate and punish drug and gang and related criminal offenders, except those monies allocated pursuant to subsection G of this section.

E. Notwithstanding the limitations prescribed in subsection B of this section, any federal monies or matching state monies in the drug and gang enforcement fund may only be allocated by the commission pursuant to a plan approved by the federal government.

F. The auditor general shall annually perform a full and complete audit of the drug and gang enforcement fund or the commission shall annually contract with an accounting firm to perform the audit and deliver a report to the governor and the legislature. The audit shall be charged to the drug and gang enforcement fund.

G. The resource center fund is established consisting of monies received pursuant to section 12-284.03, subsection A, paragraph 1 and section 41-178 and all monies received from public or private gifts, grants or other sources, excluding federal monies and monies to be passed through to other entities, to be used solely for funding the Arizona youth survey and Arizona statistical analysis center. The Arizona criminal justice commission shall administer the fund. Monies in the fund are subject to legislative appropriation. Any monies unexpended or unencumbered on June 30 of each year shall not be subsequently expended or encumbered unless reappropriated. Monies in the drug and gang enforcement fund shall not be used to fund the Arizona youth survey.

[41-2403. Designated state administering agency for federal Edward Byrne memorial justice assistance grants; report](#)

A. The Arizona criminal justice commission is this state's designated state administering agency for the federal Edward Byrne Memorial justice assistance grant that is administered by the United States department of justice, bureau of justice assistance, office of justice programs.

B. The Arizona criminal justice commission shall submit a copy of the federal application for Edward Byrne memorial justice assistance grant monies to the joint legislative budget committee for review at least thirty days before the federal application for the grant is submitted.

41-2404. Arizona criminal justice commission; members; compensation; terms; meetings

A. The Arizona criminal justice commission is established consisting of the following members:

1. The attorney general or the attorney general's designee.
2. The director of the department of public safety or the director's designee.
3. The director of the state department of corrections or the director's designee.
4. Fourteen members who are appointed by the governor or their designees. No more than seven of these members may be from the same political party.
5. The administrative director of the courts or the director's designee.
6. The chairman of the board of executive clemency or the chairman's designee.

B. The members who are appointed pursuant to subsection A, paragraph 4 shall include at least one police chief, one county attorney and one county sheriff from a county with a population of one million five hundred thousand or more persons, one police chief, one county attorney and one county sheriff from a county with a population equal to or greater than eight hundred thousand persons but fewer than one million five hundred thousand persons and one police chief, one county attorney and one county sheriff from counties with a population of fewer than eight hundred thousand persons. The remaining members shall include one law enforcement leader, one former judge, one mayor, one member of a county board of supervisors and one chief probation officer.

C. Members who are appointed pursuant to subsection A, paragraph 4 shall serve for terms of two years terminating on the convening of the first regular session of the legislature. Any appointive member who ceases to be a member of the body the member represents on the commission is deemed to have resigned. Appointments to fill a vacancy shall be made in the same manner as the original appointment.

D. The commission shall meet and organize by electing from among its membership such officers as are deemed necessary or advisable. The commission shall meet at least once during each calendar quarter and additionally as the chairman deems necessary, and a majority of the members constitutes a quorum for the transaction of business.

E. Members of the commission are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

41-2405. Arizona criminal justice commission; powers and duties; staff

A. The Arizona criminal justice commission shall:

1. Monitor the progress and implementation of new and continuing criminal justice legislation.
2. Facilitate research among criminal justice agencies and maintain criminal justice system information.
3. Facilitate coordinated statewide efforts to improve criminal justice information and data sharing.
4. Prepare for the governor a biennial criminal justice system review report. The report shall contain:
 - (a) An analysis of all criminal justice programs created by the legislature in the preceding two years.
 - (b) An analysis of the effectiveness of the criminal code, with a discussion of any problems and recommendations for revisions if deemed necessary.
 - (c) A study of the level of activity in the several areas of the criminal justice system, with recommendations for redistribution of criminal justice revenues if deemed necessary.
 - (d) An overall review of the entire criminal justice system, including crime prevention, criminal apprehension, prosecution, court administration and incarceration at the state and local levels as well as funding needs for the system.
 - (e) Recommendations for constitutional, statutory and administrative revisions that are necessary to develop and maintain a cohesive and effective criminal justice system.
5. Provide supplemental reports on criminal justice issues of special timeliness.
6. In coordination with other governmental agencies, gather information on programs that are designed to effectuate community crime prevention and education using citizen participation and on programs for alcohol and drug abuse prevention, education and treatment and disseminate that information to the public, political subdivisions, law enforcement agencies and the legislature.
7. Make recommendations to the legislature and the governor regarding the purposes and formula for allocation of fund monies as provided in section 41-2401, subsection D and section 41-2402 through the biennial agency budget request.
8. Adopt rules for the purpose of allocating fund monies as provided in sections 41-2401, 41-2402 and 41-2407 that are consistent with the purposes set forth in those sections and that promote effective and efficient use of the monies.
9. Make reports to the governor and the legislature as they require.
10. Oversee the research, analyses, studies, reports and publication of crime and criminal justice statistics prepared by the Arizona statistical analysis center, which is an operating section of the Arizona criminal justice commission.
11. Prepare an annual report on law enforcement activities in this state that are funded by the drug and gang enforcement fund or the criminal justice enhancement fund and that relate to illicit drugs and drug related gang activity. The report shall be submitted by October 31 of each year to the governor, the president of the senate and the speaker of the house of representatives and a copy shall be submitted to the secretary of state. The report shall include:

(a) The name and a description of each law enforcement program dealing with illegal drug activity or street gang activity, or both.

(b) The objective and goals of each program.

(c) The source and amount of monies received by each program.

(d) The name of the agency or entity that administers each program.

(e) The effectiveness of each program.

12. Compile and disseminate information on best practices for cold case investigations, including effective victim communication procedures. For the purposes of this paragraph, "cold case" means a homicide or a felony sexual offense that remains unsolved for one year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.

13. Beginning January 1, 2019, submit an annual recidivism report to the legislature that compares the recidivism rate for a person who serves a term of mandatory incarceration in a county jail pursuant to section 28-1383 and a person who serves that term of mandatory incarceration in prison.

B. The Arizona criminal justice commission, as necessary to perform its functions, may:

1. Request any state or local criminal justice agency to submit any necessary information.

2. Form subcommittees, make studies, conduct inquiries and hold hearings.

3. Subject to chapter 4, article 4 of this title, employ consultants for special projects and such staff as deemed necessary or advisable to carry out this section.

4. Delegate its duties to carry out this section, including:

(a) The authority to enter into contracts and agreements on behalf of the commission.

(b) Subject to chapter 4, article 4 and, as applicable, articles 5 and 6 of this title, the authority to appoint, hire, terminate and discipline all personnel of the commission, including consultants.

5. Establish joint research and information facilities with governmental and private agencies.

6. Accept and expend public and private grants of monies, gifts and contributions and expend, distribute or allocate monies appropriated to the commission for the purpose of enhancing efforts to investigate or prosecute and adjudicate any crime and to implement this chapter.

41-2406. Sexual assault records; reports

A. The department of public safety shall electronically provide a data extract from the Arizona computerized criminal history system of all records relating to sexual assaults pursuant to section 13-1406 twice a year to the Arizona criminal justice commission.

B. The Arizona criminal justice commission shall maintain the following records extract regarding sexual assaults pursuant to section 13-1406 that are submitted to the commission by the department of public safety:

1. The number of police reports that are filed if available.
2. The number of charges that are filed and what charges are filed.
3. The number of convictions that are obtained.
4. The sentences that are imposed for each conviction.

C. The commission shall annually submit the report required by subsection B of this section to the governor, the president of the senate and the speaker of the house of representatives and shall provide a copy of this report to the secretary of state. The commission may submit this report electronically.

41-2407. Victim compensation and assistance fund; subrogation; prohibited debt collection activity; definition

A. The victim compensation and assistance fund is established. The Arizona criminal justice commission shall administer the fund. The victim compensation and assistance fund shall consist of monies collected pursuant to section 31-411, subsection E and sections 12-116.08, 13-4311, 31-418, 31-467.06 and 41-1674, unclaimed victim restitution monies pursuant to sections 22-116 and 44-313 and monies available from any other source.

B. Subject to legislative appropriation, the Arizona criminal justice commission shall allocate monies in the victim compensation and assistance fund to public and private agencies for the purpose of establishing, maintaining and supporting programs that compensate and assist victims of crime.

C. The allocation of monies pursuant to this section shall be made in accordance with rules adopted by the Arizona criminal justice commission pursuant to section 41-2405, subsection A, paragraph 8. The rules shall provide that persons who suffered personal injury or death that resulted from an attempt to aid a public safety officer in the prevention of a crime or the apprehension of a criminal may be eligible for compensation.

D. This state and the applicable operational unit or qualified program, as defined in the victim compensation program rules, are subrogated to the rights of an individual who receives monies from the victim compensation and assistance fund to recover or receive monies or benefits from a third party, to the extent of the amount of monies the individual receives from the fund.

E. A licensed health care provider who agrees to the victim compensation program rules may receive program monies for providing health and medical services to a victim or claimant. A licensed health care provider who accepts the full allowable payment for those services from a victim compensation program funded pursuant to this section is deemed to have accepted the payment as the full payment for those services. The licensed health care provider may not collect or attempt to collect any payment for the same health and medical services from the victim or claimant, except that if a victim compensation program funded pursuant to this section is unable to pay the full allowable payment to a licensed health care provider because of a lack of available monies or for any other reason, the licensed health care provider may collect the unpaid balance for the services from the victim or claimant or from a third-party payor, and the total amount billed or requested by the licensed health care provider may not exceed the full

allowable payment that the licensed health care provider agreed to accept from the victim compensation program for the services.

F. If a licensed health care provider receives notice that a person has filed a claim with a victim compensation program funded by this section, the licensed health care provider is prohibited from any debt collection activity for any monies owed by the person that are included in the filed claim until an award is made on the claim or until a determination is made that the claim is noncompensable. For the purposes of this subsection, "debt collection activity" includes repeatedly telephoning or writing to the claimant and threatening to either turn the matter over to a debt collection agency or to an attorney for collection, enforcement or filing of any other debt collection process. Debt collection activity does not include routine billing or inquiries about the status of the claim.

G. For the purposes of this section, "licensed health care provider" means a person or institution that is licensed or certified by this state to provide health care services, medical services, nursing services, emergency medical services and ambulance services that are regulated pursuant to title 36, chapter 21.1, article 2 or other health-related services.

41-2409. State aid; administration

A. The Arizona criminal justice commission shall administer the state aid to county attorneys fund established by section 11-539. By September 1 of each year, the commission shall distribute monies in the fund to each county according to the following composite index formula:

1. The three year average of the total felony filings in the superior court in the county, divided by the statewide three year average of the total felony filings in the superior court.
2. The county population, as adopted by the department of economic security, divided by the statewide population, as adopted by the department of economic security.
3. The sum of paragraphs 1 and 2 divided by two equals the composite index.
4. The composite index for each county shall be used as the multiplier against the total funds appropriated from the state general fund and other monies distributed to the fund pursuant to section 41-2421.

B. The board of supervisors in each county shall separately account for the monies transmitted pursuant to subsection A of this section and may expend these monies only for the purposes specified in section 11-539. The county treasurer shall invest these monies and interest earned shall be expended only for the purposes specified in section 11-539.

C. The Arizona criminal justice commission shall administer the state aid to indigent defense fund established by section 11-588. By September 1 of each fiscal year, the commission shall distribute monies in the fund to each county according to the following composite index formula:

1. The three year average of the total felony filings in the superior court in the county divided by the statewide three year average of the total felony filings in the superior court.
2. The county population, as adopted by the department of economic security, divided by the statewide population, as adopted by the department of economic security.

3. The sum of paragraphs 1 and 2 divided by two equals the composite index.

4. The composite index for each county shall be used as the multiplier against the total funds appropriated from the state general fund and other monies distributed to the fund pursuant to section 41-2421.

D. The board of supervisors shall separately account for the monies transmitted pursuant to subsection C of this section and may expend these monies only for the purposes specified in section 11-588. The county treasurer shall invest these monies and interest earned shall be expended only for the purposes specified in section 11-588.

E. By January 8, 2001 and by January 8 each year thereafter, the commission shall report to each county board of supervisors, the governor, the legislature, the joint legislative budget committee, the chief justice of the supreme court and the attorney general on the expenditure of the monies in the state aid to county attorneys fund and the state aid to indigent defense fund for the prior fiscal year and on the progress made in achieving the goal of improved criminal case processing.

41-2411. Arizona automated fingerprint identification system; development and implementation

A. The Arizona automated fingerprint identification system is established in the department of public safety for the purpose of retaining fingerprint files to be used by the department and other authorized criminal justice automated fingerprint identification sites to make fingerprint identifications for criminal justice and noncriminal justice purposes specifically permitted pursuant to law.

B. The Arizona automated fingerprint identification system is an automated system consisting of:

1. A central fingerprint repository operated and maintained by the department of public safety.
2. Two remote full access system terminals which are operated and maintained by a law enforcement agency designated by the Arizona automated fingerprint identification system advisory board.

C. The department of public safety shall procure the necessary equipment and services to establish the system.

41-2412. Arizona automated fingerprint identification system advisory board; duties

A. The Arizona automated fingerprint identification system advisory board is established to oversee the development, operation and maintenance of the Arizona automated fingerprint identification system. The advisory board shall make recommendations to the department of public safety:

1. On system policies and procedures.
2. Relating to expansion of the system.

B. The advisory board consists of the following members:

1. The director of the department of public safety.
2. The sheriff of Maricopa county.

3. The sheriff of Pima county.
4. A sheriff designated by the Arizona sheriffs' association.
5. A chief of police designated by the Arizona chiefs' of police association.
6. Two prosecuting attorneys designated by the Arizona prosecuting attorney's advisory council.

[41-2413. Arizona automated fingerprint identification system manager; powers and duties; master plan; annual report](#)

The director of the department of public safety is the manager of the Arizona automated fingerprint identification system. The manager shall:

1. Supervise the operations and maintenance of the system.
2. Operate and maintain the central fingerprint repository of the system to be used by the department and other authorized criminal justice automated fingerprint identification sites to make fingerprint identifications for criminal justice and noncriminal justice purposes specifically permitted pursuant to law.
3. Develop a system master plan to describe the overall system design and functions and to establish the system and remote access network.
4. Develop a system policy manual to provide guidelines to all participating agencies.
5. Develop system standards of service for the central state repository and participating agencies.
6. Coordinate and standardize the design, development and implementation of the system and subsystems.
7. Provide for system and subsystem planning.
8. Establish as necessary advisory committees to assist in the development, implementation and operation of the system.
9. Enforce the rules adopted pursuant to section 41-1750 relating to the privacy, confidentiality and dissemination of criminal history record information collected and maintained in conjunction with operations of the system.
10. Procure equipment and services to establish the system.
11. Submit an annual report to the Arizona automated fingerprint identification system advisory board on the status of the system.

[41-2416. Chemical abuse and related gang activity survey](#)

The criminal justice commission shall conduct an annual statewide survey, when monies are specifically appropriated for that purpose, designed to measure both attitudes and the actual prevalence and frequency of substance abuse by children and adults and the prevalence of street gang activity in this state. The

survey shall address substance abuse by children and youth in the public schools and in state institutions of higher education, as well as the nature and extent of substance abuse by adults throughout this state's communities. The survey shall also address the nature and extent of drug related gang activity in this state. The criminal justice commission shall report the results of the survey to the governor, the president of the senate and the speaker of the house of representatives not later than January 1.

41-2417. State aid to detention fund; definition

A. The state aid to detention fund is established for the purposes of providing state assistance to counties in maintaining, expanding and operating juvenile detention centers required by section 8-305. On behalf of the juvenile court, the administrative office of the courts may use monies in the fund to enter into agreements with public agencies or private entities to acquire land for, build, purchase, lease-purchase, lease, maintain, expand or operate juvenile detention centers required by section 8-305. The fund consists of monies appropriated to the fund. The supreme court shall administer the fund.

B. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations and are continuously appropriated. Interest earned on monies in the fund shall be used for the purpose specified in subsection A of this section.

C. All monies distributed or expended from the fund shall be used to supplement, not supplant, funding to the juvenile court by the county. Unless a county has reached its expenditure limit, the county shall contribute to the project in a substantial amount through a cash or in-kind contribution.

D. Monies in the fund granted to a county by agreement with the supreme court may be used to secure payment of bonds for the construction, acquisition or improvement of a juvenile detention center required by section 8-305. A county board of supervisors may authorize the bonds notwithstanding any statutory debt limitations or budget requirements applicable to the county. Grant monies used to secure bonds shall be placed by the county treasurer in a special account that may be pledged or assigned to or in trust for the benefit of bondholders as is necessary to pay and secure payment of the principal of, and interest and premium, if any, on, the bonds as they come due. These bonds shall be administered in the manner provided in title 11, chapter 2, article 5. All principal and interest on bonds issued by a county under this section are payable solely out of monies from the state aid to detention fund established by this section to that county and shall not be a general obligation of the county.

E. Monies granted to a county by agreement with the supreme court under this section may be used to secure grant anticipation notes that a county board of supervisors shall be authorized to issue in the manner provided by title 35, chapter 3, article 3.2.

F. For the purposes of this section, "public agencies" has the same meaning as prescribed in section 11-951.

41-2418. Arizona deoxyribonucleic acid identification system

A. The Arizona deoxyribonucleic acid identification system is established in the department of public safety for the purposes of conducting deoxyribonucleic acid testing and analysis pursuant to section 13-610.

B. The scientific criminal analysis section established in section 41-1771 shall establish procedures for the implementation of section 13-610, subsection H.

41-2420. County jail juvenile improvement fund

A. The county jail juvenile improvement fund is established for the purpose of funding the construction of new juvenile beds in county jail facilities in which juveniles will be detained. The Arizona criminal justice commission shall administer the fund.

B. Monies in the fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations.

41-2421. Enhanced collections; allocation of monies; criminal justice entities

A. Notwithstanding any other law and except as provided in subsection J of this section, five per cent of any monies collected by the supreme court and the court of appeals for the payment of filing fees, including clerk fees, diversion fees, fines, penalties, surcharges, sanctions and forfeitures, shall be deposited, pursuant to sections 35-146 and 35-147, and allocated pursuant to the formula in subsection B of this section. This subsection does not apply to monies collected by the courts pursuant to section 16-954, subsection A, or for child support, restitution or exonerated bonds.

B. The monies deposited pursuant to subsection A of this section shall be allocated according to the following formula:

1. 21.61 per cent to the state aid to county attorneys fund established by section 11-539.
2. 20.53 per cent to the state aid to indigent defense fund established by section 11-588.
3. 57.37 per cent to the state aid to the courts fund established by section 12-102.02.
4. 0.49 per cent to the department of law for the processing of criminal cases.

C. Notwithstanding any other law and except as provided in subsection J of this section, five per cent of any monies collected by the superior court, including the clerk of the court and the justice courts in each county for the payment of filing fees, including clerk fees, diversion fees, adult and juvenile probation fees, juvenile monetary assessments, fines, penalties, surcharges, sanctions and forfeitures, shall be transmitted to the county treasurer for allocation pursuant to subsections E, F, G and H of this section. This subsection does not apply to monies collected by the courts pursuant to section 16-954, subsection A or for child support, restitution or exonerated bonds.

D. The supreme court shall adopt guidelines regarding the collection of revenues pursuant to subsections A and C of this section.

E. The county treasurer shall allocate the monies deposited pursuant to subsection C of this section according to the following formula:

1. 21.61 per cent for the purposes specified in section 11-539.
2. 20.53 per cent for the purposes specified in section 11-588.
3. 57.37 per cent to the local courts assistance fund established by section 12-102.03.

4. 0.49 per cent to the state treasurer for transmittal to the department of law for the processing of criminal cases.

F. The board of supervisors in each county shall separately account for all monies received pursuant to subsections C and E of this section and expenditures of these monies may be made only after the requirements of subsections G and H of this section have been met.

G. By December 1 of each year each county board of supervisors shall certify if the total revenues received by the justice courts and the superior court, including the clerk of the superior court, exceed the amount received in fiscal year 1997-1998. If the board so certifies, then the board shall distribute the lesser of either:

1. The total amount deposited pursuant to subsection C of this section.

2. The amount collected and deposited pursuant to subsection C of this section that exceeds the base year collections of fiscal year 1997-1998. These monies shall be distributed according to the formula specified in subsection E of this section. Any monies remaining after this allocation shall be transmitted as otherwise provided by law.

H. If a county board of supervisors determines that the total revenues transmitted by the superior court, including the clerk of the superior court and the justice courts in the county, do not equal the base year collections transmitted in fiscal year 1997-1998 the monies specified in subsection C of this section shall be transmitted by the county treasurer as otherwise provided by law.

I. For the purposes of this section, base year collections shall be those collections specified in subsection C of this section.

J. Monies collected pursuant to section 12-116.01, subsection B shall be allocated as follows:

1. 15.44 per cent to the state aid to county attorneys fund established by section 11-539.

2. 14.66 per cent to the state aid to indigent defense fund established by section 11-588.

3. 40.97 per cent to the state aid to the courts fund established by section 12-102.02.

4. 0.35 per cent to the department of law for the processing of criminal cases.

5. 14.29 per cent to the Arizona criminal justice commission for distribution to state, county and municipal law enforcement full service forensic crime laboratories pursuant to rules adopted by the Arizona criminal justice commission.

6. 14.29 per cent to the supreme court for allocation to the municipal courts pursuant to subsection K of this section.

K. The supreme court shall administer and allocate the monies received pursuant to subsection J, paragraph 6 of this section to the municipal courts based on the total amount of surcharges transmitted pursuant to section 12-116.01 by that jurisdiction's city treasurer to the state treasurer for the prior fiscal year divided by the total amount of surcharges transmitted to the state treasurer pursuant to section 12-116.01 by all city treasurers statewide for the prior fiscal year. The municipal court shall use the monies

received to improve, maintain and enhance the ability to collect and manage monies assessed or received by the courts, to improve court automation and to improve case processing or the administration of justice. The municipal court shall submit a plan to the supreme court and the supreme court shall approve the plan before the municipal court begins to spend these allocated monies.

12-116.01. Surcharges; remittance reports; fund deposits

A. In addition to any penalty provided by law, a surcharge shall be levied in an amount of forty-two percent on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and any civil penalty imposed and collected for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in title 17.

B. In addition to any penalty provided by law, a surcharge shall be levied in an amount of seven percent on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and any civil penalty imposed and collected for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in title 17.

C. In addition to any penalty provided by law, a surcharge shall be levied in an amount of six percent, on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and any civil penalty imposed and collected for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in title 17.

D. If any deposit of bail or bond or deposit for an alleged civil traffic violation is to be made for a violation, the court shall require a sufficient amount to include the surcharge prescribed in this section for forfeited bail, bond or deposit. If bail, bond or deposit is forfeited, the court shall transmit the amount of the surcharge pursuant to subsection G of this section. If bail, bond or deposit is returned, the surcharge made pursuant to this article shall also be returned.

E. After addition of the surcharge, the courts may round the total amount due to the nearest one-quarter dollar.

F. The surcharge imposed by this section shall be applied to the base fine, civil penalty or forfeiture and not to any other surcharge imposed.

G. After a determination by the court of the amount due, the court shall transmit, on the last day of each month, the surcharges collected pursuant to subsections A, B, C and D of this section and a remittance report of the fines, civil penalties, assessments and surcharges collected pursuant to subsections A, B, C and D of this section to the county treasurer, except that municipal courts shall transmit the surcharges and the remittance report of the fines, civil penalties, assessments and surcharges to the city treasurer.

H. The appropriate authorities specified in subsection G of this section shall transmit the surcharge prescribed in subsection A of this section and the remittance report as required in subsection G of this section to the state treasurer on or before the fifteenth day of each month for deposit in the criminal justice enhancement fund established by section 41-2401.

I. The appropriate authorities specified in subsection G of this section shall transmit the seven percent surcharge prescribed in subsection B of this section and the remittance report as required in subsection G

of this section to the state treasurer on or before the fifteenth day of each month for allocation pursuant to section 41-2421, subsection J.

J. The appropriate authorities specified in subsection G of this section shall transmit the surcharge prescribed in subsection C of this section and the remittance report as required in subsection G of this section to the state treasurer on or before the fifteenth day of each month for deposit in the department of public safety forensics fund established by section 41-1730.

K. Partial payments of the amount due shall be transmitted as prescribed in subsections G, H, I and J of this section and shall be divided according to the proportion that the civil penalty, fine, bail or bond and the surcharge represent of the total amount due.

F

CONSIDERATION AND DISCUSSION OF AN APPEAL/PETITION FROM THE GENWORTH LIFE INSURANCE COMPANY PURSUANT TO A.R.S. § 41-1033(E) AND (F)



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - A.R.S. § 41-1033(E) APPEAL AND 41-1033(F) PETITION

MEETING DATE: June 1, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 17, 2021

SUBJECT: **A.R.S. § 41-1033(E) Appeal and 41-1033(F) Petition- Genworth Life Insurance Company v. Division of Insurance and Financial Institutions**

I. BACKGROUND AND PROCEDURAL POSTURE

On April 30, 2021, Council staff received an appeal/petition from Genworth Life Insurance Company (Genworth), pursuant to A.R.S. § 41-1033(E) and 41-1033(F). Genworth is appealing a decision of the Director of the Department of Insurance and Financial Institutions (DIFI) dated April 1, 2021 rejecting a petition that Genworth filed with DIFI (*See* Genworth's Exhibit 2, p. 2-11). Specifically, Genworth's petition to DIFI challenged DIFI's alleged "Fictional Premium Rule," as an agency practice that Genworth alleged constituted a rule. DIFI rejected Genworth's petition pursuant to A.R.S. § 41-1033(C).

Pursuant to A.R.S. § 41-1033(E), Genworth filed the attached appeal with the Council within the thirty (30) days it had to file an appeal. Under this statute,

[i]f an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least

three council members make such a request of the council chairperson within two weeks after the filing of the appeal.

On Wednesday, May 12, 2021, the requisite number of Council Members requested that this appeal be placed on a meeting agenda. Therefore, on May 14, 2021, Council staff notified both Genworth and DIFI that this appeal would be on the agenda of the May 26, 2021 Study Session.

Additionally, in the filing before the Council, Genworth is petitioning the Council pursuant to A.R.S. § 41-1033(F) to request a review of DIFI's rule R20-6-1013(C) (Loss Ratio) based on Genworth's belief that it does not meet the requirements prescribed in A.R.S. § 41-1030. Specifically, Genworth alleges R20-6-1013(C) exceeds the scope of DIFI's rulemaking authority and was not promulgated in substantial compliance with the Administrative Procedures Act (APA).

II. STAFF RECOMMENDATION

At this juncture, the issue before the Council is whether Genworth has provided sufficient information in its appeal/petition that DIFI's conduct constitutes a "rule" that was not adopted pursuant to the APA and whether R20-6-1013(C) meets the requirements prescribed in section 41-1030 to warrant further consideration and a decision by the Council. Specifically, pursuant to A.R.S. § 41-1033(H), "if the [C]ouncil **receives information that indicates an existing agency practice or substantive policy statement *may* constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030**...and at least four [C]ouncil members request of the chairperson that the matter be heard in a public meeting...[w]ithin ninety days after receipt of the fourth [C]ouncil member's request, the [C]ouncil shall determine whether the agency practice or substantive policy statement constitutes a rule [and/or] whether the final rule meets the requirements prescribed in section 41-1030." (Emphasis added).

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard. To assist in making their assessments, Council staff encourages the Council to seek clarification and insights from the appellant/petitioner and the agency, as necessary.

April 30, 2021

VIA ELECTRONIC MAIL – GRRC@AZDOA.GOV

Ms. Nicole Sornsin, Chairwoman
Governor’s Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

Re: RE: GRRC REVIEW OF AN UNWRITTEN OR IMPROPERLY ENACTED DIFI
RULE PURSUANT TO ARS § 41-1033 (E), (F)

Dear Ms. Sornsin and Members of the Governor’s Regulatory Review Council (“GRRC”) :

Genworth Life Insurance Company (“Genworth”) provides over 16,000 Arizonans with long-term care insurance (“LTCI”). In the interest of the regulatory certainty that is essential to a strong marketplace, Genworth submitted an Amended Petition for Review (“Petition”) to the Department of Insurance and Financial Institutions (“DIFI”) requesting that DIFI stop its practice of repeatedly limiting or denying rate increases on the basis of an unwritten or improperly enacted “Fictional Premium Rule.” Copies of the Petition and DIFI’s April 1, 2021, rejection are attached.

Overview

LTCI insures against the costs of such things as stays at nursing homes or assisted care facilities or for home care for persons needing substantial assistance with certain activities of daily living. LTCI is “guaranteed renewable,” meaning the insurer must allow the insured to renew the policy and cannot terminate a non-profitable policy or book of business. Policies are typically in force for decades before a claim is made. If the claims on a block of business are anticipated to exceed the expectations upon which the original premiums were set, rate increases are appropriate.

The law in Arizona, and every other state, permits actuarially-justified premium rate increases uniform to all policyholders in the same class. The Arizona legislature anticipated and allowed for necessary rate increases in A.R.S. § 20-1691.02 which contemplates that in order to promote premium

adequacy, “substantial” rate increases may occur over time. Absent this authority, many companies would find writing LTCI to be impractical and financially unfeasible. Arizona policyholders are informed before they buy LTCI that premium rates are not guaranteed and may increase if necessary. All LTCI policies issued in Arizona are on forms approved by DIFI and allow for premium rate increases where approved by DIFI.

DIFI’s Unwritten Rule Limiting Rate Increases That Are Needed and Lawful

A.A.C. R20-6-1013(B), adopted in 1992 and amended in 2005, tracks the National Association of Insurance Commissioner’s (“NAIC”) model LTCI regulation and provides that:

Benefits under individual long-term care insurance policies are deemed reasonable in relation to premiums if the expected loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care risk.

An “expected loss ratio” is necessarily based on premium that an insurer has or actually “expects” to receive and 1013(B)(1) expressly references the use of actual “earned premium” in calculating that ratio. The regulation DIFI uses to justify its practice, 1013(C), is a corollary to 1013(B). 1013(C) was adopted in 2017 and is applicable only to policies issued prior to May 10, 2005. It provides:

A premium rate schedule or proposed revision to a premium rate schedule that is expected to produce, over the lifetime of the long-term care insurance policy, benefits that are less than 60% of the proposed premium rate schedule is deemed to be unreasonable.

Thus, for policies issued prior to May 10, 2005, insurers are entitled to charge rates such that the expected lifetime benefits are not less than 60% of the expected premium.

Contrary to A.R.S. § 20-1691.02 and existing regulations, DIFI is using an unwritten “Fictional Premium Rule,” applied broadly to rate increase applications from many different LTCI insurers, to deny or materially limit rate increases to which those insurers are entitled under Arizona law. DIFI’s Fictional Premium Rule assesses the 60% reasonability threshold **not** based on the premiums an insurer has actually received and will actually receive over the life of the policy if a rate increase is granted, **but instead** on the basis of what premium would have been received if the increased rates had been previously approved

by DIFI and charged from the inception of the policy (*i.e.*, premium an insurer did not and will not actually receive). DIFI rejects the requested increase if the expected benefits are less than 60% compared against this fictional premium.

DIFI's Fictional Premium Rule is also bad public policy. Fictional premiums, because they will never be received, cannot be used to pay claims. Repeated denials of necessary rate increases have contributed to the insolvency of several LTCI insurers. Insolvencies harm policyholders who are subjected to the benefit limits of state guaranty funds and other insurers who are ultimately on the hook for any shortfall in assets needed to pay claims.

DIFI's approach has been rejected by the NAIC and by the American Academy of Actuaries because it creates a significant risk that insurers will be underfunded. The American Council of Life Insurers and the Association of Health Insurance Plans have both advised DIFI in writing that DIFI's conduct is unlawful and harmful to the insurance industry, LTCI policyholders and the public because it deprives insurers of premiums necessary to support claim payments, a key element to *any* insurance policy. *See* Petition ¶¶ 84-85. A recent past-President of the NAIC and a well-respected LTCI actuary have also criticized DIFI's policy as bad public policy, inconsistent with sound regulatory and actuarial practices, which threatens the solvency of LTCI insurers. *See* Petition at Appendices A, B.

The GRRC Should Invalidate DIFI's Unlawful And Misguided Practice

GRRC should grant this Petition and compel DIFI to stop using the Fictional Premium Rule for the following reasons:

(1) DIFI's Fictional Premium Rule is an unlawful unwritten rule. DIFI began consistently applying the Fictional Premium Rule in early 2017, with no regulatory change or authority to do so. DIFI can point to no enacted rule that allowed for use of the Fictional Premium Rule during that period.

After A.A.C. R20-6-1013(C) was adopted in November 2017, DIFI began citing it as the authority for the Fictional Premium Rule. The language of 1013(C), which must be read together with the rest of

1013 that expressly references “earned premium,” requires calculation of an “expected” loss ratio using premiums an insurer has or expects to receive. 1013(C) thus does not authorize the Fictional Premium Rule and cannot be read to validate DIFI’s practice after the fact. Nothing in the language of 1013(C) sets forth the Fictional Premium Rule. There is no reference in 1013(C) to premiums that were never paid or will never be paid.

Notably, *DIFI’s own expert actuarial consultants have concluded that 1013 does not incorporate the Fictional Premium Rule.* On more than 77 occasions involving applications by 27 different insurers, DIFI’s consultants reviewed applications for LTCI rate increases and advised DIFI in writing that the application *meets the requirements for a rate increase* under the applicable Arizona regulation. See Petition ¶ 75. DIFI nonetheless applied the Fictional Premium Rule to deny or materially limit the requested rate increases.

Further, DIFI is applying the Fictional Premium Rule to rate increase applications for policies issued after May 10, 2005 and therefore not within the scope of 1013. DIFI can point to no regulation that justifies its application of the Fictional Premium Approach to policies issued after May 10, 2005. DIFI’s practice has been so consistent and prevalent, from before the 2017 rulemaking and to applications unaffected by the 2017 rulemaking, that it must be declared to be an unwritten “rule” that violates A.R.S. § 41-1030.

(2) If DIFI’s Interpretation of 1013(C) is Correct, then the Rule was Improperly Promulgated. The sole authority for enacting 1013(C) as exempt from the normal rule-making requirements of Title 41 was SB 1441 (2016), which provided a narrow exemption for DIFI to adopt rules that substantially conform to the NAIC model regulation. DIFI represented during the rulemaking process that its updates pursuant to SB 1441 would result in “greater uniformity for insurers operating in states with later versions of the NAIC Model Regulation resulting in reduced compliance costs.” Petition ¶ 58. The text of 1013(C), however, does not appear in the NAIC model and, indeed, the Fictional Premium

Rule is the exact opposite of DIFI's stated intention, making Arizona an outlier in the regulatory community.

Although DIFI contends it was required only to "substantially" conform Arizona regulations to the NAIC model, to the extent 1013(C) states the Fictional Premium Rule, it does not conform to the NAIC model in any fashion. To the contrary, the NAIC has expressly rejected the approach used in DIFI's Fictional Premium Rule. The model regulation and Arizona's 1992 adoption thereof expressly contemplate "earned" not fictional premiums. Accordingly, the Fictional Premium rule was not exempt from Title 41's rulemaking requirements.

If DIFI's interpretation of 1013(C) is accepted by the GRRC, then 1013(C) exceeds the scope of SB 1441 and is void because it was adopted without complying with Title 41. DIFI never told anyone that it intended 1013(C) to legitimize DIFI's use of the Fictional Premium Rule. To enact a formal rule that adopts the Fictional Premium Rule, DIFI is required to give clear, concise and understandable notice of its intended rule, allow for public comment on the propriety of the Fictional Premium Rule and provide an economic impact analysis of that Rule. DIFI did none of those things.

Because no validly enacted regulation permits the use of the Fictional Premium Rule, GRRC should direct DIFI to immediately stop applying the Fictional Premium Rule to limit or deny any application for an LTCI rate increase.

Sincerely,

A handwritten signature in blue ink that reads "S. David Childers". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

S. David Childers

ATTACHMENT 1

to

PETITION OF GENWORTH LIFE INSURANCE COMPANY

PURSUANT TO A.R.S. § 41-1033(E) AND A.R.S. § 1033(F)

IN THE MATTER OF

GENWORTH LIFE INSURANCE COMPANY	:	
6610 West Broad Street	:	
Richmond, VA 23230	:	No. _____
(804) 281-6600,	:	
	:	
	:	
PETITIONER	:	

**AMENDED PETITION FOR REVIEW AND REPEAL
PURSUANT TO ARIZONA REVISED STATUTES § 41-1033**

I. INTRODUCTION

1. This is a petition for review by Genworth Life Insurance Company (“Genworth”) of the Arizona Department of Insurance’s (“Department”) practice of restricting rate increases on long-term care insurance (“LTC” and “LTCL”) by imputing to insurers fictional premiums that were never earned and will never be earned. The Department’s practice is contrary to law, bad public policy and so pervasive as to constitute an impermissible and invalid unwritten rule.

2. The Department is reviewing and rejecting actuarially-justified requests for rate increases by assuming that the requested increase in premiums, and all prior increases, have been charged since inception of the policy even though new rates are obviously only actually charged prospectively from their approval. The Department’s approach – the “Fictional Premium Approach” – thus entails the calculation of a lifetime loss ratio based on fictional premiums that were never, and will never, actually be, collected or earned. As explained below, the Department’s position that it is “required” to use the Fictional Premium Approach flies in the face of regulatory language regarding the use of “earned” premium in calculating the “expected” loss ratio. There is no such requirement (or even authority) expressly stated or fairly implied in the regulatory language, and to read one in is squarely at odds with basic actuarial and

grammatical principles. The Department's insistence that it must apply the Fictional Premium Approach is a ruse to avoid granting, or severely limiting, actuarially-justified rate increases to LTC carriers, many of whom are facing financial pressures on their older blocks of business. The Department's practice makes Arizona an extreme outlier in the regulatory community, and contravenes the Department's statutory obligation to ensure premium adequacy and thus the solvency of insurers doing business in its state.

3. There is no legal authority for the Department's use of the Fictional Premium Approach. The regulation cited by the Department as the source of its authority, A.A.C. R20-6-1013 ("Section 1013"), does not authorize, much less require, the Fictional Premium Approach. To the contrary, the plain language of Section 1013 requires the Department to evaluate and approve rate increases on the basis of "earned" premium – *i.e.*, not fictional premium that was never, and will never be, received – and an "expected loss ratio" which can only mean losses expected to be incurred in relation to premium expected to be earned. The Department's written guidance to insurers likewise directs insurers to use earned and expected premium in the calculation of "expected loss ratio" for purposes of rate increase applications under Section 1013.

4. To the extent the Department contends that Subsection 1013(C), which was added by amendment in 2017, provides authority for the use of the Fictional Premium Approach, then that amendment was improperly promulgated and is void. Section 1013(C) was enacted outside of the required rulemaking process pursuant to a grant of emergency rulemaking authority that was expressly limited to conforming Arizona regulations to the 2014 Amendments to the NAIC Model Regulation for rate increases on LTCI policies. As reflected in the NAIC's own black-line of the changes to the Model Regulation, the 2014 Amendments made no change to the loss ratio provisions embodied in Section 1013. *See* Exhibit 2. The language added by Section

1013(C) is not included in the 2014 Amendments to the NAIC Model Regulation. Nor is there any basis in the NAIC Model Regulation, whether in the 2014 Amendments or any other previous iteration of the Model, that authorizes – much less requires – the use of the Fictional Premium Approach. In fact, other than Arizona’s adoption of Section 1013(C) in 2017, Section 1013 is otherwise materially identical to the NAIC Model Regulation’s loss ratio provision, including its direction to consider “earned” premium as part of the calculation of the “expected loss ratio.”

5. No other Arizona regulation authorizes the Fictional Premium Approach. Arizona regulations applicable to policies issued after May 10, 2005 provide detailed formulas for review and approval of rate increases that expressly provide for consideration of “earned premiums.” The Department nonetheless has applied the Fictional Premium Approach to limit or deny rate increases under these regulations as well, further exposing the illegitimacy of the Department’s position that Section 1013(C) is the source of the supposed “requirement” that the Department apply the Fictional Premium Approach.

6. The Department’s use of the Fictional Premium Approach is also so pervasive as to constitute an unwritten rule not promulgated in accordance with required procedures or legislative authorization. Over the past four years, the Department has used the Fictional Premium Approach to artificially limit or deny more than 77 rate increase requests that the Department’s own consultant confirmed were actuarially justified and complied with applicable Arizona regulations.

7. As recognized by a former insurance commissioner and past President of the National Association of Insurance Commissioners (“NAIC”),¹ the Fictional Premium Approach is “disastrous public policy, places Arizona consumers at risk and has been rejected by the NAIC as inappropriate.”²

8. This view is shared by two leading industry organizations, the American Council of Life Insurers (“ACLI”) and America’s Health Insurance Plans (“AHIP”), which have previously raised its concerns with the Department regarding the Fictional Premium Approach. As they stated in a letter to the Department, “[s]ustained denial of actuarially-justified rate increase requests creates the risk of insolvency. A liquidation that could otherwise be avoided by approval of actuarially-justified rate increases is bad policy and will negatively impact policyholders, insurers, and Arizona residents generally.” Exhibit 1.

9. ACLI and AHIP also advised the Department that the Fictional Premium Approach “is not grounded in actuarial science, and results in rates that are neither actuarially sound nor adequate to provide premiums necessary to fund anticipated claims.”

10. The absence of actuarial underpinnings to the Fictional Premium Approach are widely recognized. A leading consultant at a nationwide actuarial firm observed that the Fictional Premium Approach “is not anywhere considered standard actuarial practice. This

¹ The NAIC is the standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. [https://content.naic.org/index_about.htm].

² The expert report of Ted Nickel, former President of the National Association of Insurance Commissioners and former Commissioner of the Wisconsin Department of Insurance, is attached hereto as Appendix A (the “Nickel Report”).

method relies on Fictional Premiums that are not tied to actual or expected policy experience, and thus are not useful in evaluating the financial health of a book of business.”³

11. For the reasons set forth in detail in this Petition, Genworth respectfully requests that its Petition be granted and the Department cease its practice of utilizing the Fictional Premium Approach.

II. BACKGROUND

A. LONG-TERM CARE INSURANCE AND THE NEED FOR RATE INCREASES

12. LTCI policies generally cover the costs associated with, among other things, nursing home stays, assisted living facility stays and home care services for insureds who are either severely cognitively impaired or need substantial assistance with certain activities of daily living.

13. Private health insurance and government programs such as Medicare provide only limited coverage for individuals who require care of the type covered by LTCI. In addition, although Medicaid provides broader coverage for long-term care services, individuals generally only qualify for Medicaid if they are virtually asset-less. LTCI, which will typically provide maximum benefits that are many multiples of premiums paid, thus helps protect against the substantial risk that expensive long-term care services may quickly deplete an individual’s retirement savings. LTCI also affords independence and greater choice in making quality-of-life decisions for individuals requiring long-term care services.

14. Because policyholders typically buy their policies when they are relatively young and healthy, most LTCI claims occur many years (if not decades) after policies are issued.

³ The report of actuarial expert Robert Eaton, a consultant with Milliman, is attached hereto as Appendix B (the “Eaton Report”).

Consequently, LTCI insurers must, at the time policies are initially priced, make certain assumptions about how claims and other experience (*i.e.*, interest rates, morbidity, mortality, lapse rates) will emerge over many years. *See* Eaton Report at 2-3; *see also* “Long-Term Care Insurance: The SOA Pricing Project,” *Society of Actuaries* at 9-16 (Nov. 2016).

15. Changes in economic and interest rate risk, socio-demographics, behavioral trends such as location of care and level of benefit use and medical advances are among the factors that may cause actual claim experience to be materially different from the claims experience expected at the time of original pricing.⁴ *See* Eaton Report at 2-4. These factors have changed significantly since LTCI policies were first sold in Arizona.

16. Arizona requires that LTCI be guaranteed renewable or guaranteed non-cancellable. *See* A.A.C. R20-6-1004(A). “Guaranteed renewable” means “the insured has the right to continue a long-term-care insurance policy in force by the timely payment of premiums and the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, **except that the insurer may revise rates on a class basis.**” *See* A.A.C. R20-6-1003(10) (emphasis added). This express right to change premiums is critical to the ability of an insurer to manage the long-tail risk inherent in LTCI. Non-cancellable policies do not provide the same right to change premiums, which is why virtually all LTCI is written on a guaranteed renewable basis.

17. When actual experience after issue proves to be different from pricing assumptions, insurers may be left with insufficient funds to pay claims if they are not able to

⁴ LTCI does not have the extensive claims-experience history of other, more established forms of insurance that have been sold around the world for centuries (*e.g.*, life and fire insurance). Thus, in addition to the difficulty of predicting future claims experience generally, LTCI insurers did not have the benefit of decades of actual claims experience to help inform their expectations at pricing. Eaton Report at 2, 4.

increase premiums to a level adequate to support anticipated claims based upon actual experience. As a result, actuarially-justified rate increases are a critical tool to ensure continued premium adequacy on LTCI policies.

18. Rate increases reflect the need for LTCI policyholders as a group to pay premiums necessary to support the anticipated cost of benefits that will be payable to them over time. The consequences of failing to allow actuarially-justified rate increases to long-term care insurers are both foreseeable and dire. Insurers who are not able to charge premiums necessary to support anticipated future claims experience must necessarily look to other assets to pay claims, impairing surplus levels. As such, comprehensive failure to permit insurers to charge adequate rates creates the risk of insolvency. *See, e.g., Consedine v. Penn Treaty Network Am. Ins. Co.*, 63 A.3d 368, 376, 378 (Pa. Commw. Ct. 2012), *aff'd sub nom., In re Penn Treaty Network Am. Ins. Co. in Rehab.*, 119 A.3d 313 (Pa. 2015) (finding, in the context of an insolvent long-term care insurer, that “[t]his situation arose because regulators in key states such as **Arizona**, California, Florida, Illinois, and Pennsylvania have denied, delayed, or limited needed premium rate increases for the [long-term care] policies.”) (emphasis added).

19. The NAIC has recognized the need for rate increases on inforce LTCI policies, the importance of approving rate increases sufficient to assure the ongoing claims-paying ability of LTC insurers, and the impropriety of unreasonably and improperly restricting needed rate increases by using artificial constraints and unwritten rules like the Fictional Premium Approach. The NAIC is currently working to address the problem of outlier states that, like Arizona, are improperly denying necessary rate increases, to the detriment of insurers, their policyholders and the public generally. *See Nickel Report at 14-17.*

B. RATE INCREASES UNDER ARIZONA LAW

20. Arizona law expressly contemplates that LTCI insurers are entitled to actuarially-justified rate increases on guaranteed renewable policies. Every guaranteed-renewable LTCI policy sold in Arizona is written on a form, approved by the Department, that expressly provides that rates may be increased on a class basis.

21. Similarly, the Department requires that applicants for LTCI receive a “Shopper’s Guide” that discusses the terms and conditions of LTCI policies. The form of shoppers guide approved by the Department provides as follows with respect to premium rate increases:

Insurance companies can increase the premiums on guaranteed renewable insurance but only if they increase the premiums on all policies that are the same in that state. Any such premium increase must be filed and/or approved by the state insurance department. An insurance company can’t single out an individual for a premium increase, no matter whether you have filed a claim or your health has gotten worse. If you buy coverage under a group policy and later leave the group, you may be able to keep your group coverage or convert it to an individual policy, but you may pay more.

“A Shopper’s Guide to Long-Term Care Insurance,” NAIC at 27, 29 (2019).

22. The Department has enacted three regulations that entitle LTCI insurers to actuarially-justified premium rate increases on guaranteed-renewable LTCI policies: Section 1013, 1014 and 1015.

23. Section 1013, as enacted in 1992 and amended in 2005, governs “Pre-Rate Stability Policies” and provides in relevant part:

- A. This Section applies to policies and certificates issued any time prior to May 10, 2005.
- B. Benefits under an individual long-term care insurance policy are deemed reasonable in relation to premiums if the expected loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care

insurance risk. In evaluating the expected loss ratio, the director shall consider all relevant factors, including:

1. Statistical credibility of incurred claims experience and earned premiums;
2. The period for which rates are computed to provide coverage;
3. Experienced and projected trends;
4. Concentration of experience within early policy duration;
5. Expected claim fluctuation;
6. Experience refunds, adjustments, or dividends;
7. Renewability factors;
8. All appropriate expense factors;
9. Interest;
10. Experimental nature of the coverage;
11. Policy reserves;
12. Mix of business by risk classification; and
13. Product features such as long elimination periods, high deductibles, and high maximum limits.

A.A.C. R20-6-1013.⁵

24. Section 1013 is materially identical to the “loss ratio” provision embodied in Section 19 of the NAIC Model Long Term Care Regulation.

25. Section 1013(C) became effective on November 10, 2017 and provides:

- C. A premium rate schedule or proposed revision to a premium rate schedule that is expected to produce, over the lifetime of the long-term care insurance policy, benefits that are less than 60% of the proposed premium rate schedule is deemed to be unreasonable.

A.A.C. R20-6-1013(C).

26. Section 1014 was enacted in 2005 and applies to “Rate Stability Policies.” It provides, in relevant part:

⁵ Prior to November 2017, Section 1013 was identified as Section 1014, and Section 1014 was identified as Section 2015. In November 2017, the Regulations were renumbered to 1013 and 1014 respectively, and Section 1015 was added.

A. This Section applies to any long-term care policy or certificate issued in this state on or after May 10, 2005 and prior to November 10, 2017;

...

C. All premium rate schedule increases shall be determined in accordance with the following requirements;

1. The insurer shall return 70% of the present value of projected additional premiums from an exceptional increase to policyholders in benefits;
2. The sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, shall not be less than the sum of the following:
 - a. The accumulated value of the initial earned premium times 58%;
 - b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;
 - c. The present value of future projected initial earned premiums times 58%; and
 - d. 85% of the present value of future projected premiums not in subsection (C)(2)(c) on an earned basis;
3. If a policy form has both exceptional and other increases, the values in subsections (C)(2)(b) and (C)(2)(d) shall also include 70% for exceptional rate increase amounts; and
4. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in the NAIC Accounting Practices and Procedures Manual to which insurers are subject under A.R.S. § 20-223. The actuary shall disclose the use of any appropriate averages in the actuarial memorandum required under subsection (B)(3).

A.A.C. R20-6-1014.

27. Section 1014 is materially identical to the “rate stability” provisions in Section 20 of the NAIC Model Long Term Care Regulation.

28. Section 1015 was enacted in 2017 and applies to LTCI policies issued on or after November 10, 2017. *See* A.A.C. R20-6-1015. No rate increase applications have been made on policies subject to Section 1015, and the Department has never cited to or relied upon Section 1015 in applying the Fictional Premium Approach.

29. As set forth below, none of these regulations authorize the Department’s use of the Fictional Premium Approach.

C. GENWORTH LIFE INSURANCE COMPANY

30. Genworth is one of the nation’s leading issuers of long-term care insurance. Genworth has been writing long-term care insurance in Arizona since 1988 and currently provides LTCI insurance to 15,333 Arizona residents.

31. As a pioneer in the field of LTCI and one of the largest writers of LTCI in the United States, Genworth bears a substantial share of the financial burden arising from the evolving industry understanding of the costs of various benefit structures offered to LTCI policyholders – particularly benefit structures offered under older, earlier policy forms.

32. In December 2018, Genworth filed requests with the Department for approval of rate increases on several policy forms. The Department applied the Fictional Premium Approach to each request and, on that basis, limited some of the requests and denied all of the others.

33. Genworth has made multiple efforts to discuss with the Department its use of the Fictional Premium Approach. Genworth has articulated to the Department, on a legal, actuarial, business and public policy level, the impropriety of its approach. The Department has clung to the view that Section 1013(C) requires the Department to apply the Fictional Premium

Approach. Genworth has been unable, however, to move the Department and therefore filed this Petition to resolve the dispute.

D. THE DEPARTMENT’S PRACTICE OF USING FICTIONAL IMPUTED PREMIUMS TO DENY ACTUARIALLY-JUSTIFIED RATE INCREASES MANDATED UNDER ARIZONA LAW AND REGULATIONS

34. In contrast to its current approach, the Department previously reviewed rate increase applications in accordance with governing law using expected loss ratios calculated using premiums that LTCI insurers had actually earned and were projected to actually earn. *See, e.g.,* SERFF-STLH-128902666, Correspondence from Department (Mar. 18, 2013) (“Upon review of the materials provided and based upon this information, it appears that the resulting premium scale will comply with the reasonable relationship required between benefits and premiums. Therefore, ADOI is approving the above rate increase as requested.”). Also unlike its current approach, the Department properly confined its analysis to the standard in the regulation applicable to policies based on date of issue. *See, e.g.,* SERFF-AEGJ-128233915.

35. Then, beginning in January 2017, without notice or any intervening change in the law,⁶ the Department began explicitly using the Fictional Premium Approach to review rate increase applications for Pre-Rate Stability and Rate Stability policies. The effect was a widespread and pervasive practice of limiting and denying requests.

36. Between 2017 and 2020, there were 77 requests made by 25 different insurers for increases on Pre-Rate Stability and Rate Stability Policies that the Department denied or limited due to the Fictional Premium Approach. *See* Appendix C (summary of rate increase requests on Pre-Rate Stability Policies to which the Department explicitly applied the Fictional Premium

⁶ Subsection (C) to 1013, on which the Department relies as its authority for the application of the Fictional Premium Approach, was not enacted until November 10, 2017, over ten months after the Department began using that methodology. A.A.C. R20-6-1013(C).

Approach); Appendix D (summary of rate increase requests on Rate Stability Policies to which the Department explicitly applied the Fictional Premium Approach).

37. For at least 60 of the 77 rate increase requests reviewed by the Department during the period between 2017 and 2020, the Department’s actuarial consultant, INS Consulting, Inc. (“INS”), “performed an independent projection” of experience for the subject policies using earned premium and confirmed, as to each requested increase, that “the loss ratio requirements of Section R20-6-101[3] of Article 10 of the Arizona Administrative Code are satisfied,” and, where the rate increase request involved Rate Stability Policies, that “[t]he inequality test of Section R20-6-101[4] . . . is satisfied.” The Department nevertheless materially limited or denied the requests solely on the basis of the Fictional Premium Approach. *See* Appendices C & D.

38. The effect of the Department’s application of the Fictional Premium Approach has been material. As set forth in the examples below, by applying the Fictional Premium Approach and judging the propriety of a rate increase against its terms rather than those of the controlling regulations, the Department has denied LTC insurers all or a significant portion of requested rate increases:

Insurer	Increase Requested	Increase Approved	Shortfall
Ability Ins. Co. [TRIP-131076849]	36.7%	none	(36.7%)
Brighthouse Life Ins. Co. [MILL-131632438]	40%	15%	(25%)
CMFG Life Ins. Co. [CUNA-130321919]	100%	34%	(66%)
Continental Gen. Ins. Co. [GLTC-131575046]	132.6%	48%	(84.6%)
Equitable Life & Cas. Ins. Co. [ELCC-130730691]	50%	none	(50%)

Insurer	Increase Requested	Increase Approved	Shortfall
Genworth Life Ins. Co. [GEFA-130372516]	123% / 104%	20% / 20%	(103%) / (84%)
Medico Ins. Co. [TRIP-131076850]	36.7%	none	(36.7%)
MetLife Ins. Co. [MILL-130755405]	68.2%	20%	(48.2%)
Physicians Mut. Ins. Co. [PHYS-131365565]	138%	33%	(105%)
Transamerica Life Ins. Co. [AEGB-131058022]	117%	none	(117%)

III. BASIS FOR RECONSIDERATION OR REPEAL

A. THERE IS NO STATUTE OR REGULATION THAT PERMITS THE FICTIONAL PREMIUM APPROACH

39. Under Arizona law, regulations are interpreted according to the plain meaning of the words used. *See Sunflower Adult Day Care Corp. v. AHCCCS Admin.*, No. 1 CA-CV 18-0162, 2019 WL 470716, at *3 (Ariz. Ct. App. Feb. 7, 2019) (“We interpret regulations according to their plain meaning”). An administrative agency must follow the rules that it promulgates. *See Cochise Cty. v. Arizona Health Care Cost Containment Sys.*, 170 Ariz. 443, 445, 825 P.2d 968, 970 (Ct. App. 1991).

1. Section 1013 Does Not Authorize the Use of the Fictional Premium Approach

40. Section 1013, the regulation cited by the Department as the source of its authority, does not authorize or permit application of the Fictional Premium Approach.

41. As a threshold matter, by its express terms, Section 1013 does not apply to Rate Stability policies. *See* A.A.C. R20-6-1013. Section 1013 “applies to policies and certificates issued any time prior to May 10, 2005,” but Rate Stability policies, by definition, are policies issued on or after May 10, 2005. Nonetheless, the Department has repeatedly cited Section 1013

as the source of its authority to limit or deny rate increase requests for Rate Stability policies on the basis of the Fictional Premium Approach. *See* Appendix D. The Department’s conduct thus establishes that the Department is applying an impermissible unwritten rule rather than acting pursuant to a valid regulation.

42. Similarly, although the Department now cites to 1013(C) as the source of its authority for the Fictional Premium Approach, the Department repeatedly applied the Fictional Premium Approach before Subsection (C) was promulgated. As reflected in Appendices C and D, in at least 13 separate instances prior to November 10, 2017, the date on which Subsection (C) was promulgated, the Department denied or limited rate increase requests based expressly on the Fictional Premium Approach. Subsection (C) could not have been the source of the Department’s authority in those instances and the Department’s conduct demonstrates that it is acting pursuant to an unwritten rule rather than pursuant to a valid regulation.

43. Furthermore, in all cases where memoranda from the Department’s actuarial consultant are available, the actuary concluded that “[b]ased on INS’s projections, we conclude that the 60% loss ratio requirements of Section R20-6-101[3] of Article 10 are satisfied.” Then, according to INS, “[i]n order to give the Arizona Department of Insurance a view of the total cumulative rate increase, INS ran projections assuming that all past premiums were paid at issue at the newly proposed rate level,” which is “also referred to as the ‘If We Knew Premium’ – the premium that should have been charged at issue such that no future increases would be needed at this time.” According to INS, “[t]his methodology could act as a secondary guideline for the

Department in determining the merits of a proposed rate increase.” SERFF-TRST-132035911, INS Consultants, Inc. Memorandum (Mar. 13, 2020).⁷

44. Notwithstanding INS’s conclusion that the 60% loss ratio requirements were satisfied, notwithstanding the fact that the Fictional Premium Approach was intended to be a “secondary guideline,” and notwithstanding the fact that INS’s stated purpose for using the Fictional Premium Approach was “to give the . . . Department a view of the total cumulative rate increase,” the Department nonetheless use the Fictional Premium calculation as the sole basis upon which to determine what, if any, increase would be approved. SERFF-TRST-132035911, INS Consultants, Inc. Memorandum (Mar. 13, 2020). In other words, the Fictional Premium Approach is being used by the Department to override controlling law.

45. Additionally, Section 1013(B) is based directly on the NAIC Model Regulation applicable to Pre-Rate Stability policies which has been in place for several years preceding the recent emergence of the Fictional Premium Approach, and has never been intended by the NAIC to allow for the use of fictional premiums. *See* Nickel Report at 12.

2. Section 1013(B) Does Not Authorize or Permit Use of the Fictional Premium Approach

46. Even putting these patently problematic issues aside, the language of Section 1013 does not permit the Department to calculate rate increases on any LTCI policy on the basis of fictional premiums.

47. Section 1013(B) provides, in relevant part, that “[b]enefits under an individual long-term care insurance policy are deemed reasonable in relation to premiums if the expected

⁷ INS has also offered as a rationale for the Fictional Premium Approach that the methodology “prevents companies from recouping past losses.” *See, e.g.*, SERFF-META-130523270, INS Consultants, Inc. Memorandum (Dec. 13, 2016).

loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk.” A.A.C. R20-6-1013(B).

48. The touchstone of the analysis under Subsection (B) is whether the “expected loss ratio” is at least 60%. As a fundamental actuarial principle, an expected loss ratio must be calculated using earned premium. In fact, Section 1013 requires it: “In evaluating the expected loss ratio, the director shall consider all relevant factors, including . . . [s]tatistical credibility of incurred claims experience and earned premiums.”⁸ A.A.C. R20-6-1013(B)(1).

49. The Department’s own published guidance confirms that the calculation of an expected loss ratio for purposes of review and approval of an LTCI rate increase must be based on earned premiums. The Department has issued an “LTCI Checklist” to be used by LTCI insurers in preparing a request for a rate increase. *See* Arizona Review Requirements Checklist Pre-Rate Stabilization Long Term Care Insurance Rate Filings. The LTCI Checklist provides that an insurer should include in its filing “Arizona and Nationwide specific loss experience since inception by issue year, including earned premium, losses paid and losses incurred.” The LTCI Checklist further requires, “for all Long Term Care Insurance Rate Filings:”

⁸ “Expected loss ratio” means lifetime loss ratio, the components of which are past and future claims and premiums. Past (or historical) claims in the lifetime loss ratio may be expressed on an incurred basis or a paid basis. Claims on an incurred basis reflect all the payments for a single claim (even if they span many years) in the year in which the claim began, plus any expected payments beyond the valuation date. Past premiums in the lifetime loss ratio are presented as “earned” premiums, meaning for a given period of time the premiums covered the benefits that the company was obligated to pay. Eaton Report at 3-4.

Future claims in the lifetime loss ratio are those that the actuary expects to incur in the periods following the valuation date, under a certain set of assumptions. Future premiums are those that the actuary expects to earn in the periods following the valuation date, under a certain set of assumptions.

The anticipated lifetime loss ratio is calculated to be the sum of lifetime incurred claims (actual and anticipated) divided by the sum of lifetime earned premiums (actual and anticipated), where past cash flows are accumulated to the valuation date and future cash flows are discounted to the valuation date. *Id.* at 4.

- “Arizona specific loss experience including earned premium, losses paid and losses incurred.”
- “Nationwide loss experience including earned premium, losses paid and losses incurred.”

50. By definition, “earned premium” does not include the fictional premium the Department is imputing to insurers. “Earned premium” means the “portion of a premium paid by an insured that has been allocated to the insurance company’s loss experience, expenses, and profit year to date.” Harvey W. Rubin, *Barron’s Dictionary of Insurance Terms*, “Earned Premium;” NAIC Annual Statement Instructions for LTCI Experience Forms at 1, 3 6.

51. Further, Section 1013(B) requires that that the expected loss ratio be calculated in a manner that “provides for adequate reserving.” Fictional premiums cannot be used to fund reserves.⁹ Limiting premium rate increase requests based on the Fictional Premium Approach may leave an insurer with insufficient reserves to pay all appropriate claims over the life of the block of business. *See* Eaton Report at 10. In circumstances where an insurer’s other business is insufficient to fund the required reserves, insolvency is the result. *See, e.g., Consedine v. Penn Treaty Network Am. Ins. Co.*, 63 A.3d 368, 376, 378 (Pa. Commw. Ct. 2012), *aff’d sub nom., In re Penn Treaty Network Am. Ins. Co. in Rehab.*, 119 A.3d 313 (Pa. 2015) (insolvency arose as a result of an inability to obtain regulatory approval for rate increases necessary to support claim obligations of LTCI insurer).

3. Section 1013(C) Does Not Authorize or Permit Use of the Fictional Premium Approach

52. Section 1013(C) states that “[a] premium rate schedule or proposed revision to a premium rate schedule that is expected to produce, over the lifetime of the long-term care

⁹ Reserves are those amounts the company must hold in any year to pay future claims and to absorb annual fluctuations in financial results. Each state determines the minimum required level of reserves that a company must hold for an LTCI policy. *See* Eaton Report at 3.

insurance policy, benefits that are less than 60% of the proposed premium rate schedule is deemed to be unreasonable.” A.A.C. R20-6-1013. This language does not justify the use of the Fictional Premium Approach.

53. By its plain terms, Subsection (C) merely expresses the converse of Subsection (B) – an expected loss ratio calculated using earned premium and actual or anticipated claims that is less than 60% is “deemed to be unreasonable.” Like Subsection (B), Subsection (C) does not permit – and certainly does not require – the Department to calculate rate increases by including premiums that were never received.

54. In explaining its denials of rate increase requests due to the Fictional Premium Approach, the Department has stated that “the requested rates would have produced a loss ratio below 60% if charged from inception and do not represent a reasonable relationship between premiums and benefits as required by this standard.” SERFF-GEFA-130998471, Correspondence from Department (July 2, 2018) (emphasis added).

55. The language of subsection (C), however, does not refer to rates that “would have produced” a loss ratio below 60%, nor does it reference rates “charged from inception.” To the contrary, by its plain language, 1013(C) conditions the loss-ratio calculation on benefits “expected to [be] produced” over the lifetime of a long-term care insurance policy. Section 1013(C) works in tandem with Section 1013(B), which makes clear that the premiums to be included in the “expected” lifetime loss ratio are “earned,” not fictional, premiums.

56. The only way that a premium rate schedule revision can be “expected to produce” a certain loss ratio over the lifetime of a long-term care insurance contract is if the rates proposed to be charged are those that are “expected to be received” by the insurer. By using the phrase

“expected to produce” instead of the words “would have produced,” the regulation only permits a calculation that includes premiums expected to actually be received.

57. Moreover, as a grammatical matter, Subsection (C) focuses on the “benefits” (i.e., losses) that are expected to be produced. Thus, the phrase “over the lifetime of the long-term care insurance policy” must be read to modify the word “benefits,” not the phrase “proposed revision to a premium rate schedule.” When reading Sections 1013(B) and 1013(C) together, there is no reasonable interpretation of Section 1013(C) that requires the lifetime loss ratio to assume the proposed revised rates were fictionally collected over the “lifetime” of the policy form.

58. Furthermore, interpreting Subsection (C) as permitting or requiring application of the Fictional Premium Approach to determine rate increases is contrary to the expressed purpose of the regulation. In the notice of planned rulemaking for Subsection (C), the Department stated that the proposed rule would result in “greater uniformity for insurers operating in states with later versions of the NAIC Model Regulation resulting in reduced compliance costs.” Arizona Administrative Register, “Notices of Final Exempt Rulemaking” ¶ 9 at 2 (May 12, 2017). As set forth in greater detail below, however, Arizona’s use of the Fictional Premium Approach makes it an outlier in the manner in which states are regulating LTCI premium rate increases. The NAIC has evaluated the Fictional Premium Approach and concluded it that it is not an appropriate methodology to determine rate increases. Further, more recently, the NAIC has created an executive-level task force to address state inconsistencies and inequities in long-term care rates, such as Arizona’s use of the Fictional Premium Approach. *See* Nickel Report at 15-17; Eaton Report at 7; “Approaches to Reviewing Premium Rate Increases,” NAIC LTC Pricing Subgroup at 10 (Oct. 2018).

B. IF 1013(C) AUTHORIZES THE FICTIONAL PREMIUM APPROACH, IT WAS INVALIDLY PROMULGATED AND MUST BE REPEALED

59. A regulation that exceeds the scope of the rulemaking authority granted for its promulgation or which does not comply with the Notice Doctrine is not valid and therefore not enforceable. If Section 1013(C) authorizes the Fictional Premium Approach, then it is invalid on both grounds.

1. If Section 1013(C) Authorizes Or Requires The Fictional Premium Approach, Then It Exceeds The Scope Of The Department's Delegated Rulemaking Authority

60. In order to be enforceable, a regulation must be authorized by and promulgated in accordance with the law. *See State v. C & H Nationwide, Inc.*, 179 Ariz. 164, 168, 876 P.2d 1199, 1203 (Ct. App. 1994) (Arizona Department of Transportation regulation was unenforceable because it was not authorized by or promulgated pursuant to statute).

61. Here, the legislative delegation of authority for Subsection (C) was Senate Bill 1441 ("S.B 1441"), which authorized the Department to update its regulations to "substantially conform" to the latest 2014 updates to the NAIC Model Regulation. S.B. 1441 provides, in relevant part:

- i. The department of insurance shall adopt rules relating to long-term care insurance that substantially conform to those adopted in model regulations adopted by the national association of insurance commissioners, including the 2014 revisions.
- ii. For the purposes of implementing this section, the department of insurance is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the date of this section, except that the department shall provide public notice and an opportunity for public comment on proposed rules at least sixty days before the rules are amended or adopted.

62. Subsection (C) was expressly promulgated pursuant to the rulemaking exemption in S.B. 1441.¹⁰ Arizona Administrative Register, “Notices of Final Exempt Rulemaking” (May 12, 2017) ¶ 9. Construing Subsection (C) to permit or require application of the Fictional Premium Approach takes that section outside the scope of the emergency rulemaking exemption in S.B. 1441 because the Fictional Premium Approach does not constitute substantial conformity with the NAIC’s Model Regulation.

63. First, the text of Subsection (C) is not in the NAIC Model Regulations. *See* NAIC Long-Term Care Insurance Model Regulation (2014) § 19. Many states have conformed their regulations to the Model Regulation but none, other than Arizona, have added the language of Subsection (C). *See, e.g.*, 18 Del. Admin. Code 1404 (1990/2010); Ga Comp. R. & Regs. 120-2-16 (1989/2009); K.A.R. 40-4-37 (1988/2015) (Kansas); COMAR 31.14.01.01 (1994/2017) (Maryland); 211 CMR 65 (1989/2005 (Massachusetts); N.J.A.C. 11:4-34 (1989/2010); OAC 3901-4 (1993/2018) (Ohio).

64. Second, applying Subsection 1013(C) to rate increases on policies in-force prior to the adoption of subsection (C) is contrary to the NAIC Model Regulation. The NAIC Model Regulation applies only to policies issued after the effective date of the regulation when implemented or amended by a state. *See* NAIC Long-Term Care Insurance Model Regulation (2014) §§ 9, 20; “Approaches to Reviewing Premium Rate Increases,” NAIC LTC Pricing Subgroup at 1 (Oct. 2018) (noting that 2014 updates to the Model Regulation “apply to LTC

¹⁰ The Department relied on the emergency exemption and did not follow normal rulemaking procedures in promulgating Subsection (C). As a result, the Department did not fulfill the requirements to (i) submit a rule package to the Governor’s Regulatory Review Council (the “Council”) for review; (ii) prepare an economic, small business, and consumer impact statement, Ariz. Rev. Stat. § 41-1055(B), and obtain approval from the Council of the rule and its preamble and the economic, small business and consumer impact statement. Ariz. Rev. Stat. § 41-1052(A).

insurance policies issued on or after the date that the state where the policy is issued adopts the changes.”); Nickel Report at 13, 14.

65. Pursuant to Arizona law, an agency shall not make a rule that exceeds the subject matter areas specified in the rulemaking authority – in this case, Senate Bill 1441. *See* Ariz. Rev. Stat. § 41-1030(C). Moreover, rules that are not exempted from or adopted pursuant to the requirements of the Arizona Administrative Procedures Act are invalid. Ariz. Rev. Stat. Ann. § 41-1030 (“A rule is invalid unless it is made and approved in substantial compliance with §§ 41-1021 through 41-1029 [Administrative Procedures Act rules for rulemaking] . . . unless otherwise provided by law.”); *U S W. Commc'ns, Inc. v. Arizona Corp. Comm'n*, 197 Ariz. 16, 25, 3 P.3d 936, 945 (Ct. App. 1999) (Corporation Commission rules were improperly promulgated because they were enacted through plenary powers rather than through review by attorney general, as required, and rules were therefore invalid); *Pac. Fire Rating Bureau v. Ins. Co. of N. Am.*, 83 Ariz. 369, 375, 321 P.2d 1030, 1034 (1958) (promulgation of insurance rule that conflicted with enabling statute is invalid).

66. Here, Section 1013(C), to the extent it requires or permits the application of the Fictional Premium Approach, is void because it exceeds the scope of the statutory rulemaking authority, was not exempted from the rulemaking requirements of the Administrative Procedures Act, and was not promulgated in compliance with the requirements of the Administrative Procedures Act. Any application of the Fictional Premium Approach pursuant to Subsection (C) is thus *ultra vires* and of no effect. *Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc.*, 207 Ariz. 95, 126, 83 P.3d 573, 604 (Ct. App. 2004), as amended on denial of reconsideration (Mar. 15, 2004) (agency actions taken pursuant to improperly promulgated regulations are void); *Carondelet Health Servs., Inc. v. Arizona Health Care Cost Containment Sys. Admin.*, 182 Ariz.

221, 228, 895 P.2d 133, 140 (Ct. App. 1994) (changes made by agency to manner in which health care charges were calculated were void because those changes were made pursuant to improperly promulgated regulation).

2. If 1013(C) Authorizes Or Requires The Fictional Premium Approach, That Amendment Is Invalid Pursuant To The Notice Doctrine

67. If Subsection (C) is interpreted to permit or require the use of the Fictional Premium Approach, then the regulation is also invalid under the Notice Doctrine.

68. Under Arizona law, the text of a regulation must give fair notice of its intended application. *Bird v. State*, 184 Ariz. 198, 203, 908 P.2d 12, 17 (Ct. App. 1995) (“[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process.”); *see also Circle M Const., Inc. v. City of Apache Junction*, 145 Ariz. 354, 354, 701 P.2d 850, 850 (Ct. App. 1985) (zoning ordinance was invalid because “[t]here was virtually no way an ordinary citizen could ascertain from the face of the notice itself how or if his property might be affected.”).

69. Here, neither the Notices of Final Exempt Rulemaking nor the text of Subsection (C) itself put insurers affected by the regulation or the public more generally on notice that rate increase requests will be calculated by including premiums that were never received. The Department’s interpretation of Subsection (C) was not expressly stated in any of the notices provided prior to official promulgation and could not reasonably be implied therefrom, especially where the stated purpose was to bring the regulation into conformity with the NAIC Model Regulation. The same is true of the changes described in the notices, and the public comments on the proposed regulation, none of which mentioned the Fictional Premium Approach.

70. As is apparent from the recent letter to the Department from the ACLI and AHIP, attached hereto as Exhibit 1, had the industry been advised or understood that the Department intended Subsection (C) to authorize use of the Fictional Premium Approach, there would have been vigorous opposition to the proposed regulation. The absence of such opposition is further evidence that Subsection (C) cannot and should not be read as permitting or requiring the use of the Fictional Premium Approach.

C. **NO OTHER REGULATION AUTHORIZES THE FICTIONAL PREMIUM APPROACH**

1. **Section 1014 Does Not Authorize Or Permit Application Of The Fictional Premium Approach**

71. Section 1014 does not authorize use of the Fictional Premium Approach. Section 1014 provides, in relevant part that “[a]ll premium rate schedule increases shall be determined in accordance with the following requirements,” which requirements are comprised of a specific mathematical formula to be applied to calculate the increase. Contrary to the Department’s use of fictional imputed premium, the formula in Section 1014 repeatedly requires the use of premiums on an “earned basis:”

2. The insurer shall calculate premium rate increases such that the sum of the lesser of either the accumulated value of the actual incurred claims . . . or the accumulated value of historic expected claims . . . plus the present value of the future expected incurred claims . . . will not be less than the sum of the following:

- a. The accumulated value of the initial earned premium times the greater of 58% . . . ;
- b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;
- c. The present value of future projected initial earned premiums times 58% . . . ; and

- d. 85% of the present value of future projected premiums not in subsection (C)(2)(c) on an earned basis.

A.A.C. R20-6-1014 (emphasis added). Notably, the Department’s many denial letters never cite to Section 1014 as the source of its authority to use the Fictional Premium Approach.

2. Section 1015 Does Not Authorize or Permit Application of the Fictional Premium Approach

72. Section 1015, enacted in 2017, is the only other regulation applicable to the Department’s review of applications for rate increases on LTCI policies.

73. Like Section 1014, Section 1015 provides, in relevant part that “[a]ll premium rate schedule increases shall be determined in accordance with the following requirements,” which requirements are comprised of a specific mathematical formula to be applied to calculate the increase. And like Section 1014, the formula in Section 1015(C) requires the use of premiums on an “earned basis.” *See* A.A.C. R20-6-1015.

74. Sections 1013, 1014 and 1015 do not permit the use of the Fictional Premium Approach. There is, therefore, no authority for the Department’s repeated and systemic use of that approach to deny LTCI insurers the actuarially justified rate increases to which they are entitled under Arizona law.

D. THE FICTIONAL PREMIUM APPROACH CONSTITUTES AN UNWRITTEN, AND THEREFORE INVALID, RULE

75. Since 2017, the Department has expressly used the Fictional Premium Approach to deny or limit at least 77 applications for premium rate increases by more than 25 different LTCI insurers without regard to whether the affected policies were Pre-Rate Stability Policies or Rate Stability Policies, and therefore without regard to whether or not the Department’s review of the rate increase application was controlled by Section 1013 or Section 1014. *See* Appendices

C & D. The Department's use of the Fictional Premium Approach is so pervasive as to constitute an unwritten rule.

76. A "rule" is "an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency." Ariz. Rev. Stat. § 41-1001(19). Whenever a regulatory order is promulgated that includes anything that is properly the subject of a rule, the rule-making process must be followed. *See Sw. Ambulance, Inc. v. Arizona Dep't of Health Servs.*, 183 Ariz. 258, 262, 902 P.2d 1362, 1366 (Ct. App. 1995) (promulgation of ambulance rate schedules "without following the rule-making procedures in the Administrative Procedures Act was beyond [Department's] statutory power."). "A rule is invalid unless adopted and approved in substantial compliance with . . . [the relevant sections of the APA]." Ariz. Rev. Stat. § 41-1030(A).

77. As set forth above, no properly promulgated Arizona regulation permits the use of the Fictional Premium Approach. Thus, the Department's use of the Fictional Premium Approach to deny actuarially justified rate increases constitutes the enforcement of a rule which was not promulgated in compliance with the Arizona Procedures Act and is thus invalid. *See Cochise Cty. v. Arizona Health Care Cost Containment Sys.*, 170 Ariz. 443, 445, 825 P.2d 968, 970 (Ct. App. 1991) ("In order for a rule to be effective, it must be enacted in accordance with the provisions of the APA."); *see also Canon Sch. Dist. No. 50 v. W.E.S. Const. Co.*, 177 Ariz. 526, 530, 869 P.2d 500, 504 (1994) (invalidating Board of Education's "exclusive remedy procedure" because it was adopted outside the statutory authority afforded to the Board).

E. THE FICTIONAL PREMIUM APPROACH AS USED BY THE DEPARTMENT IS NOT CONSISTENT WITH NAIC RECOMMENDATIONS OR ESTABLISHED INDUSTRY PRINCIPLES

78. The NAIC, the American Academy of Actuaries, the Society of Actuaries, ACLI and AHIP have each rejected the Fictional Premium Approach because the rates produced by that approach are inadequate.

79. As set forth above, Section 1013(B) adopts the language of the NAIC's Model Regulation. NAIC Long-Term Care Insurance Model Regulation § 19 (2014). The NAIC has never considered the Model Regulation as permitting, much less requiring, the application of the Fictional Premium Approach. *See* Nickel Report at 12. To the contrary, the NAIC has, on several occasions, rejected the use of the Fictional Premium Approach as the sole basis for review of a rate increase request. For example, the NAIC actuarial task force charged with promulgating the 2014 Model Regulation considered, but rejected, the Fictional Premium Approach. The NAIC reasoned "that it [wa]s not realistic to define past losses this way." "Recouping Past LTC Losses," David Plumb & Robert Eaton, *Long-Term Care News* at 1 (Apr. 2017). Thereafter, in 2018, the NAIC LTC Pricing Subgroup studied approaches used by different states to review LTC rate increases and concluded that it was "not appropriate" to use the Fictional Premium Approach as the sole basis to determine a rate increase. "Long-term Care Insurance Approaches to Reviewing Premium Rate Increases," *NAIC LTC Pricing Subgroup* at 10 (Oct. 2018).

80. The NAIC has also rejected the notion that the Model Regulation contemplates anything other than earned premium. To the contrary, the Model Regulations – by their express language – contemplate that loss ratios will only be calculated based on earned premium. *See* Nickel Report at 8, 12.

81. Further, application of Subsection (C) to in-force business, as the Department is doing, is not contemplated at all by the NAIC Model Regulation, which makes clear in its Scope provision and repeatedly throughout that it applies only to new policies issued after the effective date of its implementation or of a revision. NAIC Long-Term Care Insurance Model Regulation §§ 9, 20 (2014).

82. Indeed, not only was the Fictional Premium Approach rejected by the NAIC, but, more recently, the NAIC has undertaken an effort to address the consequences of outlier states that are limiting rate increases through arbitrary rate caps and rules, such as the methodology used by Arizona. A Long-Term Care (EX) Task Force, created by the NAIC in 2019, is charged to deliver a report this year that includes recommendations on how to address the problem of outlier states that are unreasonably limiting necessary rate increases. *See* Nickel Report at 15-17.

83. From an actuarial perspective, the Fictional Premium Approach is an inappropriate tool for determining a premium rate increase that maintains a reasonable relationship of benefits to premium. Using fictional premium to calculate loss ratios is inconsistent with fundamental actuarial principles and does not achieve any reasonable actuarial objective.¹¹ *See* Eaton Report at 10. The American Academy of Actuaries issued a white paper in October 2018 which stated that using the Fictional Premium Approach “can cause serious solvency concerns, especially when companies have older blocks of business,” and therefore it would be “inappropriate” to use this methodology to determine the amount of a rate increase. “Long-Term Care Insurance: Consideration for Treatment of Past Losses in Rate Increase

¹¹ When the Fictional Premium Approach was first conceived, it was discussed as a potential method for preventing LTC insurers from using rate increases to recoup past losses. This was briefly considered by the NAIC and then rejected as “not realistic” because it would significantly expand the risk in the product by “not allowing companies to seek the appropriate premium levels needed to maintain the future financial health of policies.” This would be particularly problematic in the LTC industry given that the bulk of claims on inforce blocks will emerge in the coming decades. Eaton Report at 6-7.

Requests,” *American Academy of Actuaries* at 18 (Oct. 2018). Similarly, the Society of Actuaries has rejected this methodology. According to the SOA, the Fictional Premium Approach would “greatly expand[] the risk in the product,” “inject[] additional pricing risk by not allowing companies to seek the appropriate premium levels needed to maintain the future financial health of the policies,” and cause insurers to “suffer extreme losses.” “Recouping Past LTC Losses,” David Plumb & Robert Eaton, *Long-Term Care News* at 1 (Apr. 2017).

84. ACLI and AHIP, two leading industry organizations, have expressed their concern that “the methodology currently used by the Arizona Department of Insurance (Department) in reviewing and approving LTC rate increases is not grounded in actuarial science, and results in rates that are neither actuarially sound nor adequate to provide premiums necessary to fund anticipated claims.” Exhibit 1 at 2-3.

85. In 2020, ACLI and AHIP expressly advised the Department that its use of the fictional premium approach was actuarially unsound and unwise public and regulatory policy. As stated by these organizations, “[c]alculating a lifetime loss ratio based on premiums that were never collected, as opposed to actual, premiums is contrary to sound actuarial practice and contrary to the most basic principles underlying guaranteed renewability of LTC policies.” They also warned that “[s]ustained denial of actuarially-justified rate increase requests creates the risk of insolvency.” Exhibit 1.

F. THE DEPARTMENT'S FICTIONAL PREMIUM APPROACH IS BAD PUBLIC POLICY AND HARMFUL TO POLICYHOLDERS AND THE PUBLIC

86. The Department's statutory mandate is to enact regulations that promote premium adequacy and also protect policyholders. *See* Ariz. Rev. Stat. § 20-1691.02. The Fictional Premium Approach is contrary to this mandate.

87. The Department's refusal to approve rate increases that are actuarially justified on the basis of imputed fictional premiums and without consideration of need for the rate increase or the impact of a denial on future solvency is bad public policy, contrary to the interests of insurers, their policyholders and the citizens of Arizona.

88. Fictional premiums do not earn investment income, cannot be used to create or strengthen reserves, and cannot be used to pay claims or expenses. They do not benefit insurers or enable insurers to meet their obligations to policyholders.

89. Utilizing the Fictional Premium Approach, which results in the denial of actuarially-justified rate increases, creates the possibility (and, indeed, the probability) that larger or additional rate increases will be necessary in the future to maintain solvency. This is necessarily so because the rate increases approved by the Department, if any, under the Fictional Premium Approach, are smaller than what was actuarially determined to be necessary at the time. This reduces the amount of premium available to the insurer in the future, which necessitates even higher premiums for a shrinking policyholder base. This runs counter to the Department's mandate to protect policyholders and, indeed, is unfair to both policyholders and insurers.¹²

¹² As explained in the Eaton Report, the sooner a premium rate increase is implemented, the greater the impact of the higher rates because there will be more premium-paying policies contributing to the rate shortfall. Allowing premium rate increases in a timely fashion, instead of delaying them, also produces a greater time value of the additional payments. In summary, charging a premium rate increase on a

90. Moreover, denying actuarially-justified rate increases jeopardizes the solvency of insurers issuing LTCI policies. If insurers are not permitted to charge the rates necessary to ensure their continuing solvency, insolvency is a foreseeable consequence. The well-publicized Penn Treaty insolvency evidences the consequences of failing to allow long-term care insurance companies to charge rates commensurate with actual claims experience. A liquidation that could otherwise be avoided by approval of actuarially-justified rate increases is bad public policy, and contrary to the interests of policyholders and Arizona residents generally. In the context of a liquidation, policyholders are exposed to the risk that the applicable guaranty fund limits are less than the benefit limits of their policies. Further, any guaranty fund liabilities unfunded by the assets of the liquidating company are recouped via assessments on solvent life and health insurers, thereby burdening all citizens of the state who pay for life or health insurance.¹³

91. In contrast to the inevitable negative consequences of a practice of denying actuarially-justified rate increases, a practice of approving such rate increases gives policyholders collectively the security of knowing that their insurer will be able to pay claims when the need arises. Individual policyholders, who have the option of paying premiums commensurate with their benefits, adjusting their benefits so that they actually pay less premium or receiving a paid up policy with benefits comparable to premiums they have paid previously,

broader base of premium paying policyholders, and without unnecessary delays, allows the company to generate more revenue with a smaller rate increase, which lessens the burden on the policyholders. Eaton Report at 5.

¹³ As explained in the Nickel Report, Arizona's Fictional Premium Approach artificially suppresses justified rates, threatens insurers' financial viability and is harmful to consumers because it exposes them to a substantial risk of an insurer insolvency and a corresponding limited recovery available through state guaranty fund mechanisms. Rational public policy requires state Departments of Insurance to maintain the financial solvency of insurers, even to the extent premium rate increases are necessary, as the strongest tenet of consumer protection. Nickel Report at 8-11.

net of prior claim payments, can determine what is best for their individual circumstances in the context of a particular rate increase.

92. Finally, there is no other place in insurance law or regulation where the Department imputes to insurers premiums that they have not and will not earn. Imputing premiums that insurance companies cannot and will not earn is fundamentally inconsistent with the conservatism that is the hallmark of insurance regulation and which is intended to ensure the ongoing and long-term solvency and claims paying ability of insurers. NAIC Financial Analysis Handbook at 18 (2013 Annual, 2014 Quarterly) (noting that financial reporting by insurers “is based on the concepts of conservatism, consistency and recognition”).

G. THE FICTIONAL PREMIUM APPROACH RAISES SERIOUS CONSTITUTIONAL CONCERNS

93. The Fifth and Fourteenth Amendments to the United State Constitution and Article 2, Section 17 of the Arizona Constitution preclude the Department from setting rates that constitute confiscatory takings. *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944) (the constitution requires that regulated entities be permitted to charge rates that are just and reasonable); *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310 (1989) (regulated entities are entitled to rates that produce a fair rate of return).

94. In promulgating rate regulations, a regulatory agency must engage in a rational process of balancing consumer and investor interests to produce a rate that is just and reasonable. *Federal Power*, 320 U.S. at 602, 603.

95. Applying this principle, courts have sustained challenges to regulations that allow for rates at which insurers will operate at a loss because such rates are confiscatory. *See, e.g., Guar. Nat'l Ins. Co. v. Gates*, 916 F.2d 508, 515 (9th Cir. 1990) (Nevada statute rolling back and freezing insurance rates was unconstitutional in part because it “guarantee[d] only that an insurer

will break even; it does not guarantee the constitutionally required ‘fair and reasonable return.’”) (quoting *Hope*, 320 U.S. at 603); *Med. Malpractice Joint Underwriting Ass’n of R.I. v. Paradis*, 756 F. Supp. 669 (D.R.I. 1991) (regulation freezing rates at level that results in underwriting losses was unconstitutional); *Aetna Cas. & Sur. Co. v. Comm’r of Ins.*, 263 N.E.2d 698 (Mass. 1970) (regulation that compelled rate reductions to levels at which insurers would sustain an underwriting loss was unconstitutional); *Travelers Indem. Co. v. Comm’r of Ins.*, 265 N.E.2d 90 (Mass. 1970) (regulation freezing premium rates at levels that resulted in underwriting losses was unconstitutional); *Scates v. Ariz. Corp. Comm’n*, 578 P.2d 612, 614-615 (Ct. App. Ariz. 1978) (rates should be sufficient to produce a fair rate of return).

96. Application of the Fictional Premium Approach is likely to result in rates that are so inadequate as to be confiscatory and an unconstitutional taking.

97. Application of a materially new ratemaking standard to policies in force prior to the adoption of the ratemaking standard is also likely to violate the Contracts Clauses of the United States Constitution, U.S. Const. art. I, § 10, cl. 1 and the Arizona Constitution, Ariz. Const. art. II, § 25. Article I, Section 10 of the United States Constitution and Article II, Section 25 of the Arizona Constitution protect against impairment of contract rights. *Phelps Dodge Corp. v. Ariz. Elec. Power Coop., Inc.*, 83 P.3d 573, 597 (Ct. App. Ariz. 2004) (Arizona Constitution provides same protections as the Contracts Clause of the United States Constitution).

98. A contractual relationship is impaired when a party is deprived of the benefit of a contract by the enactment of a law. *Robson Ranch Quail Creek, LLC v. Pima County*, 161 P.3d 588, 595 (Ct. App. Ariz. 2007); *Hawk v. PC Village Ass’n, Inc.*, 309 P.3d 918, 923 (Ct. App.

Ariz. 2013) (holding that an impairment exists when a statute changes the substantive rights of the parties to existing contracts).

99. LTCI policies are contracts, and in addition to their express contractual provisions, the laws and regulations in place at the time each LTCI policy is issued become a part of each LTCI policy. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 429-30 (1934) (The laws in place at the time of making a contract become part of the contract). *See, e.g., Ansley v. Banner Health Network*, 246 Ariz. 240, 255, 437 P.3d 899, 914 (Ct. App. 2019), *review granted in part* (Aug. 27, 2019) (“A contract incorporates the law in force at the time of its execution.”); *State ex rel. Romley v. Gaines*, 205 Ariz. 138, 142, ¶ 13, 67 P.3d 734, 738 (App. 2003) (“Regardless of the language of a contract, it is always to be construed in the light of the law then in force.”); *Ward v. Chevron U.S.A. Inc.*, 123 Ariz. 208, 209, 598 P.2d 1027, 1028 (App. 1979) (“The law in force at [the date of execution] form[s] a part of each contract.”). Therefore, a long term care insurer’s contractual right to raise premiums therefore must be read in conjunction with the laws and regulations in place at the time each LTCI policy was issued.

100. For every LTCI policy issued in Arizona, insurers had the contractual right to increase premiums and the Department was required to approve any rate increase that was actuarially justified under the insurance regulations in effect at the time the policies were issued to achieve premium adequacy. Thus, LTCI policies governed by Section 1013 incorporate the right to a rate increase to a level where “the expected loss ratio” of “[b]enefits . . . in relation to premiums” is “at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk.” (emphasis added). LTCI policies governed by 1014 incorporate the right to a rate increase pursuant to the formula set forth in Section 1014(C)(2).

101. By retroactively applying a Fictional Premium Approach to deny rate increases that conform to this standard on inforce contracts, the Department is impairing the contractual rights of long-term care insurers in violation of the Constitutions of the United States and Arizona. *See Robson Ranch Quail Creek, LLC v. Pima County*, 161 P.3d 588, 595 (Ct. App. Ariz. 2007) (quoting *Tower Plaza Invs. Ltd. v. DeWitt*, 508 P.2d 324, 328 (Ariz. 1973)) (“[A] contract is impaired when a party is deprived of the benefit of his contract by a law.”); *Hawk v. PC Village Ass’n, Inc.*, 309 P.3d 918, 923 (Ct. App. Ariz. 2013) (holding that an impairment exists when a statute changes the substantive rights of the parties to existing contracts); *Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Ass’n*, 159 N.H. 627, 658, 992 A.2d 624, 648–49 (2010) (retroactive law substantially impaired insurance policyholders’ contract rights in violation of the New Hampshire Constitution and was thus unenforceable).

IV. CONCLUSION

102. For all of the foregoing reasons, Genworth respectfully requests the following relief:

A. That the Department immediately cease and permanently discontinue its practice of using the Fictional Premium Approach to restrict or deny actuarially-justified rate increases.

B. That, to the extent that Subsection (C) of A.A.C. R20-6-1013 requires, or even permits, the application of the Fictional Premium Approach, the regulation be repealed. Genworth does not seek any amendment to Subsection (C) of A.A.C. R20-6-1013 because, to the extent that section requires or permits application of the Fictional Premium Approach, the regulation exceeds the scope of the rule making authority granted by the Legislature and the

failure to properly promulgate the regulation cannot be cured by amended language.

Respectfully submitted,

KUTAK ROCK LLP
S. David Childers, Esquire
8601 North Scottsdale Road
Suite 300
Scottsdale, AZ 85253-2738
480.429.4880
David.Childers@KutakRock.com

SAUL EWING ARNSTEIN & LEHR LLP
Paul M. Hummer, Esquire
Amy S. Kline, Esquire
1500 Market Street
Centre Square West, 38th Floor
Philadelphia, PA 19102
215.972.7788
paul.hummer@saul.com
amy.kline@saul.com

Dated: February 1, 2021

IN THE MATTER OF

GENWORTH LIFE INSURANCE COMPANY :
: No. _____
PETITIONER :

**PETITION FOR REVIEW AND REPEAL
PURSUANT TO ARIZONA REVISED STATUTES § 41-1033**

EXHIBITS

Exhibit 1

June 4, 2020

Christina Corieri, J.D.
Interim Director
Arizona Department of Insurance
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630

Via US mail and email to: ccorieri@az.gov

Re: LTC Rate Increase Methodology

Dear Interim Director Corieri:

The ACLI¹ and AHIP² are writing to express our thoughts regarding the methodology currently used by the Arizona Department of Insurance (Department) in reviewing and approving LTC rate increases.

Financial security is our members' core business. Maintaining a regulatory environment that supports consumers' access to a vibrant, robust, competitive market that offers a variety of products that are affordable and meet consumers' needs is one way we can ensure our customers' financial security. A key tenet of regulatory stability requires consistent application of the rules and standards that were in place when those products were sold.

We support the ongoing work of the NAIC Long-Term Care Insurance (EX) Task Force, which is charged with developing a consistent national approach for reviewing LTC insurance rates that results in actuarially-appropriate increases granted by states in a timely manner and eliminates cross-state rate subsidization. Actuarially-appropriate rates ensure that premiums along with investment income earned, are sufficient to cover benefits and expenses

Long-Term Care Insurance Premiums and the Need for Rate Increases

LTC insurance policies are priced as guaranteed-renewable level premium products. These products anticipate that, in the early years of the policy, the premium is more than what is needed to pay expected claims in those years. In the later years of the policy, the premium is less than

¹ The American Council of Life Insurers advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers' financial and retirement security. Ninety million American families depend on our members for life insurance, annuities, retirement plans, long-term care (LTC) insurance, disability income insurance, reinsurance, dental, vision, and other supplemental benefits. ACLI represents member companies in state, federal and international forums for public policy that supports the industry marketplace and the families that rely on life insurers' products for peace of mind. ACLI members represent 95 percent of industry assets in the United States.

² AHIP is the national association whose members provide coverage for health care and related services to hundreds of millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers.

what is needed to pay claims in those durations. In order to be sufficient over the life of the policy, any excess premiums in the early years must be held in a reserve fund, which earns interest, to build a fund that is sufficient to augment the premiums collected in later years when the premium is less than necessary to cover expected claims. The guaranteed renewability contractual provision found in LTC products guarantees that the insurer will not cancel the policies. The provision does not guarantee that premium rates will remain the same after the policy is issued. Instead, policies allow rates to be adjusted for a block of covered policyholders if the pricing assumptions on similarly situated policyholders do not bear out over time.

Rate increases reflect the actual need for long-term care policyholders as a group to pay premiums necessary to support the anticipated cost of benefits that will be payable to the group over time. These increases are necessary because policyholders typically buy policies many years (if not decades) before claims occur. Consequently, long-term care insurers must, at the time policies are initially priced, predict how claims and other experience (such as interest rates, morbidity, mortality, and lapse rates) will emerge over many years. These assumptions are also evaluated and approved by state insurance regulators, including regulators in Arizona and most other states, before policies are offered to consumers.

Given the long life of an LTC policy, actual experience following issue of the policy can prove different than initially anticipated. In this case, without adequate premium increases, insurers could be left with insufficient funds to pay claims. As a result, all states, including Arizona, have approved policy forms that allow for rate increases on guaranteed renewable LTC policies. States have also adopted regulations that expressly recognize the right of long-term care insurers to request increased premium rates on inforce business and have established the standards for such increases to be approved.

Arizona Department of Insurance Practice

While loss ratios have been and continue to be a valuable tool to evaluate the overall performance of a block of business, care must be taken in utilizing that tool in order to prevent conclusions from being drawn or actions taken that are incorrect or inappropriate, which can threaten the sustainability of the LTC market.

We are concerned that the methodology currently used by the Arizona Department of Insurance (Department) in reviewing and approving LTC rate increases is not grounded in actuarial science, and results in rates that are neither actuarially sound nor adequate to provide premiums necessary to fund anticipated claims.

The methodology used by the Department assumes that the requested increase in premiums, and all prior increases, have been charged and collected since the inception of the policy. The Department uses this artificially-inflated “If-knew” premium (also referred to as “fictional” premium) number to calculate the lifetime loss ratio and determine whether the loss ratio satisfies the State’s minimum lifetime loss ratio requirement (If-Knew Premium Approach). Calculating a lifetime loss ratio based on premiums that were never collected, as opposed to

actual, premiums is contrary to sound actuarial practice and contrary to the most basic principles underlying guaranteed renewability of LTC policies.

Applying this methodology to rate increase submissions significantly alters the rules under which these policies were offered and jeopardizes the ability of LTC insurers to make changes necessary to ensure premiums will be adequate to fund anticipated claims.

We are also concerned that the methodology used by the Department in determining an allowable rate increase lacks legal and regulatory authority. The Department cites Regulation 20-6-1013(B) and 1013(C) as authority. However, Section 1013 does not apply to Rate Stability Policies, and it does not provide any authority for the use of the If-Knew Premium Approach for any type of policy.³ Section 1013 references “expected loss ratio” and “benefits expected to be produced,” and directs that “earned premium” be used to calculate both.⁴

Subsection (C) was added to Section 1013 by amendment in November 2017. The Department gave no notice when Subsection (C) was enacted that it was intended to authorize the application of the If-Knew Premium Approach. Rather, in the notice of planned rulemaking for Subsection (C), the Department stated that the proposed rule would result in “greater uniformity for insurers operating in states with later versions of the NAIC Model Regulation resulting in reduced compliance costs.”⁵ However, Subsection (C) does not appear in the NAIC Model Regulation, and Arizona is an outlier by applying this methodology. This will neither lead to reduced compliance costs nor increased uniformity for insurers.

The Department is also applying the If-Knew Premium Approach retroactively to policies issued before Subsection (C) was adopted in November 2017. Retroactive application of a new rate increase standard to policies written prior to the adoption of that standard is contrary to the most fundamental principles of insurance rate regulation. The NAIC Model Regulation makes it clear in its Scope provision and repeatedly throughout that it applies only to new policies issued after the effective date of its implementation or of a revision.⁶ The exclusively prospective application of the Amended Regulations was also recognized by the NAIC LTC Pricing Subgroup, which stated that the 2014 updates to the Model Regulation “apply to LTC insurance policies issued on or after the date that the state where the policy is issued adopts the changes.”⁷

There are two other regulations applicable to rate increases on long-term care policies, neither of which authorize the If-Knew Premium Approach. Section 1014 provides requirements by which all premium rate schedule increases on policies issued on or after May 10, 2005 and prior to

³ A.A.C. R20-6-1013 (November 10, 2017).

⁴ *Id.*

⁵ A.A.C. R20-6 “Notices of Final Exempt Rulemaking” (May 12, 2017).

⁶ Long-Term Care Insurance Model Regulation, NAIC Model Laws, Regulations, Guidelines and Other Resources, Sections 3, 20(A) (2017).

⁷ NAIC LTC Pricing Subgroup, *Long-Term Care Insurance: Approaches to Approving Premium Rate Increases*, 1 (October 2018).

November 10, 2017 are to be determined.⁸ The requirements are comprised of a specific mathematical formula to be applied to calculate the increase, and the formula repeatedly requires the use of premiums on an “earned basis.”⁹ Section 1015 applies to rate increase requests on policies issued after November 10, 2017 and uses the same “earned” premium requirements in the calculations. Neither Section 1014 nor 1015 support the methodology used by the Department.

The Department’s practice is broadly affecting long-term care insurers with inforce policies in Arizona, as well as policyholders nationwide. Sustained denial of actuarially-justified rate increase requests creates the risk of insolvency. A liquidation that could otherwise be avoided by approval of actuarially-justified rate increases is bad policy and will negatively impact policyholders, insurers, and Arizona residents generally. In the context of liquidation, policyholders are exposed to the risk that the applicable guaranty fund limits are less than the benefit limits of their policies. Further, because any guaranty fund liabilities unfunded by the assets of the liquidating company are recouped via assessments on solvent life and health insurers, insolvencies burden other insurers and all citizens of the state who pay for life or health insurance.

The If-Knew Premium Approach is contrary to industry professional standards and the law that governs rate increase requests in Arizona. We strongly urge the Department to discontinue its use and encourages the use of one of the methodologies outlined in the 2018 NAIC Long-Term Care Pricing Subgroup’s Report on actuarially-sound approaches to reviewing premium rate increases for long-term care policies. We welcome the opportunity to discuss this further and should you have any questions please reach out to us.

Sincerely,



Amanda Herrington
AHIP



Chuck Piacentini
ACLI



Ray Nelson
AHIP Consulting Actuary



Jan M. Graeber
ACLI

⁸ A.A.C. R20-6-1014(C).

⁹ *Id.*

Exhibit 2

Draft: 7/24/14

Revisions to Model 641

Adopted by the Health Insurance and Managed Care (B) Committee, 6/10/14

Adopted by the Senior Issues (B) Task Force, 3/29/14

Underlining and overstrikes show the changes from the existing model.

LONG-TERM CARE INSURANCE MODEL REGULATION

Table of Contents

Section 4.	Definitions	*****
Section 10.	Initial Filing Requirements	*****
Section 15.	Reporting Requirements	*****
Section 19.	Loss Ratio	*****
Section 20.	Premium Rate Schedule Increases	*****
<u>Section 20.1</u>	<u>Premium Rate Schedule Increases for Policies Subject to Loss Ratio Limits Related to Original Filings</u>	*****
Section 27.	Right to Reduce Coverage and Lower Premiums	*****
Section 28.	Nonforfeiture Benefit Requirement	*****

Section 4. Definitions

For the purpose of this regulation, the terms “long-term care insurance,” “qualified long-term care insurance,” “group long-term care insurance,” “commissioner,” “applicant,” “policy” and “certificate” shall have the meanings set forth in section 4 of the NAIC Long-Term Care Insurance Model Act. In addition, the following definitions apply.

Drafting Note: Where the word “commissioner” appears in this regulation, the appropriate designation for the chief insurance supervisory official of the state should be substituted. To the extent that the model act is not adopted, the full definition of the above terms contained in that model act should be incorporated into this section.

- A. “Benefit trigger”, for the purposes of independent review, means a contractual provision in the insured’s policy of long-term care insurance conditioning the payment of benefits on a determination of the insured’s ability to perform activities of daily living and on cognitive impairment. For purposes of a tax-qualified long-term care insurance contract, as defined in ~~s~~Section 7702B of the Internal Revenue Code of 1986, as amended, “benefit trigger” shall include a determination by a licensed health care practitioner that an insured is a chronically ill individual.

Drafting Note: This definition is not intended to be a required definitional element of a long-term care insurance policy, but rather intended to clarify the scope and intent of ~~s~~Section 31. The requirement for a description of the benefit trigger in the policy or certificate is currently found in ~~s~~Section 8.

- B. (1) “Exceptional increase” means only those increases filed by an insurer as exceptional for which the commissioner determines the need for the premium rate increase is justified:
- (a) Due to changes in laws or regulations applicable to long-term care coverage in this state;
or
 - (b) Due to increased and unexpected utilization that affects the majority of insurers of similar products.

- (2) Except as provided in Sections 20 and 20.1, exceptional increases are subject to the same requirements as other premium rate schedule increases.
- (3) The commissioner may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.
- (4) The commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

Drafting Note: The commissioner may wish to review the request with other commissioners.

- C. “Incidental,” as used in Sections 20J and 20.1J, means that the value of the long-term care benefits provided is less than ten percent (10%) of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

Drafting Note: The phrase “value of the benefits” is used in defining “incidental” to make the definition more generally applicable. In simple cases where the base policy and the long-term care benefits have separately identifiable premiums, the premiums can be directly compared. In other cases, annual cost of insurance charges might be available for comparison. Some cases may involve comparison of present value of benefits.

- D. “Independent review organization” means an organization that conducts independent reviews of long-term care benefit trigger decisions.
- E. “Licensed health care professional” means an individual qualified by education and experience in an appropriate field, to determine, by record review, an insured’s actual functional or cognitive impairment.

Drafting Note: For purposes of Section 31, it may be appropriate for certain licensed health care professionals, such as physical therapists, occupational therapists, neurologists, physical medicine specialists, and rehabilitation medicine specialists, to review a benefit trigger determination. However, some of these health care professionals may not meet the definition of a licensed health care practitioner under Section 7702B(c)(4) of the Internal Revenue Code. For tax-qualified long-term care insurance contracts, only a licensed health care professional who meets the definition of a licensed health care practitioner may certify that an individual is a chronically ill individual.

- F. “Qualified actuary” means a member in good standing of the American Academy of Actuaries.
- G. “Similar policy forms” means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition in [insert reference to Section 4E(1) of the NAIC Long-Term Care Model Act] are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, non-institutional long-term care benefits only, or comprehensive long-term care benefits.

Section 10. Initial Filing Requirements

- A. This section applies to any long-term care policy issued in this state on or after [insert date that is 6 months after adoption of the amended regulation]- except that Subsection B(2)(d) and Subsection B(3) apply to any long-term care policy issued in this state on or after [insert date that is six (6) months after adoption of the amended regulation].
- B. An insurer shall provide the information listed in this subsection to the commissioner [30 days] prior to making a long-term care insurance form available for sale.

Drafting Note: States should consider whether a time period other than 30 days is desirable. An alternative time period would be the time period required for policy form approval in the applicable state regulation or law.

- (1) A copy of the disclosure documents required in Section 9; and
- (2) An actuarial certification consisting of at least the following:
 - (a) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;
 - (b) A statement that the policy design and coverage provided have been reviewed and taken into consideration;
 - (c) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;
 - (d) ~~A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:~~
A statement that the premiums contain at least the minimum margin for moderately adverse experience defined in (i) or the specification of and justification for a lower margin as required by (ii).
 - (i) ~~Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;~~
A composite margin shall not be less than 10% of lifetime claims.
 - (ii) ~~A statement that the assumptions used for reserves contain reasonable margins for adverse experience;~~
A composite margin that is less than 10% may be justified in uncommon circumstances. The proposed amount, full justification of the proposed amount and methods to monitor developing experience that would be the basis for withdrawal of approval for such lower margins must be submitted.
 - (iii) ~~A statement that the net valuation premium for renewal years does not increase (except for attained age rating where permitted); and~~
A composite margin lower than otherwise considered appropriate for the stand-alone long-term care policy may be justified for long-term care benefits provided through a life policy or an annuity contract. Such lower composite margin, if utilized, shall be justified by appropriate actuarial demonstration addressing margins and volatility when considering the entirety of the product.

Drafting Note: For the justification required in (iii) above, examples of such considerations, if applicable to the product and company, might be found in Society of Actuaries research studies entitled “Quantification of the Natural Hedge Characteristics of Combination Life or Annuity Products Linked to Long-Term Care Insurance” (2012) and “Understanding the Volatility of Experience and Pricing Assumptions in Long-Term Care Insurance Programs” (2014).

- (iv) ~~A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;~~
A greater margin may be appropriate in circumstances where the company has less credible experience to support its assumptions used to determine the premium rates.

Drafting Note: Actual margins may be included in several actuarial assumptions (e.g. mortality, lapse, underwriting selection wear-off, etc.) in addition to some of the margin in the morbidity assumption. The composite margin is the total of such margins over best-estimate assumptions.

~~**Drafting Note:** When the difference between the gross premium and the renewal net valuation premiums is not sufficient to cover expected renewal expenses, the description provided could demonstrate the type and level of change in the reserve assumptions that would be necessary for the difference to be sufficient.~~

~~(I) An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;~~

~~(II) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under Subsection C based on a standard age distribution; and~~

- (e) (i) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or
- (ii) A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

Drafting Note: In the event a series of increases is being applied to another policy form, intermediate premium levels are not to be used in this comparison.

Drafting Note: It is not expected that the insurer will need to provide a comparison of every age and set of benefits, period of payment or elimination period. A broad range of expected combinations is to be provided in a manner designed to provide a fair presentation for review by the commissioner.

~~(f) A statement that reserve requirements have been reviewed and considered. Support for this statement shall include:~~

~~(i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held; and~~

~~(ii) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship.~~

~~(3) An actuarial memorandum prepared, dated and signed by the member of the Academy of Actuaries shall be included and shall address and support each specific item required as part of the actuarial certification and provide at least the following information:~~

~~(a) An explanation of the review performed by the actuary prior to making the statements in Paragraph (2)(b) and (c),~~

~~(b) A complete description of pricing assumptions; and~~

~~(c) Sources and levels of margins incorporated into the gross premiums that are the basis for the statement in Paragraph (2)(a) of the actuarial certification and an explanation of the analysis and testing performed in determining the sufficiency of the margins. Deviations in margins between ages, sexes, plans or states shall be clearly described. Deviations in margins required to be described are other than those produced utilizing generally accepted actuarial methods for smoothing and interpolating gross premium scales.~~

~~(d) A demonstration that the gross premiums include the minimum composite margin specified in Paragraph (2)(d).~~

- C. ~~(1) — The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.~~

~~In any review of the actuarial certification and actuarial memorandum, the commissioner may request review by an actuary with experience in long-term care pricing who is independent of the company. In the event the commissioner asks for additional information as a result of any review, the period in Subsection B does not include the period during which the insurer is preparing the requested information.~~

~~**Drafting Note:** The commissioner may accept a review done for another state or states if such review is for the same policy form or where any differences in benefits and premiums are not material and such review was completed within eighteen months of the date of the actuarial certification in [Subsection B\(2\)](#) above.~~

- ~~(2) — In the event the commissioner asks for additional information under this provision, the period in Subsection B does not include the period during which the insurer is preparing the requested information.~~

~~**Drafting Note:** The commissioner may wish to have the actuarial demonstration reviewed by an independent actuary in those instances where the demonstration does not address fully the questions that triggered the request for the actuarial demonstration.~~

Section 15. Reporting Requirements

- A. Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.
- B. Every insurer shall report annually by June 30 the ten percent (10%) of its agents with the greatest percentages of lapses and replacements as measured by Subsection A above. (Appendix G)
- C. Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.
- D. Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year. (Appendix G)
- E. Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year. (Appendix G)
- F. Every insurer shall report annually by June 30, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied. (Appendix E)
- G. For purposes of this section:
- (1) "Policy" means only long-term care insurance;
 - (2) Subject to Paragraph (3), "claim" means a request for payment of benefits under an in force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;
 - (3) "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and
 - (4) "Report" means on a statewide basis.

H. Reports required under this section shall be filed with the commissioner.

I. Annual rate certification requirements.

(1) This Subsection applies to any long-term care policy issued in this state on or after [insert date that is six (6) months after adoption of the amended regulation].

(2) The following annual submission requirements apply subsequent to initial rate filings for individual long-term care insurance policies made under this section.

(a) An actuarial certification prepared, dated and signed by a member of the American Academy of Actuaries who provides the information shall be included and shall provide at least the following information:

(i) A statement of the sufficiency of the current premium rate schedule including:

(I) For the rate schedules currently marketed,

a. The premium rate schedule continues to be sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated; or

b. If the above statement cannot be made, a statement that margins for moderately adverse experience may no longer be sufficient. In this situation, the insurer shall provide to the commissioner, within sixty (60) days of the date the actuarial certification is submitted to the commissioner, a plan of action, including a time frame, for the re-establishment of adequate margins for moderately adverse experience so that the ultimate premium rate schedule would be reasonably expected to be sustainable over the future life of the form with no future premium increases anticipated. Failure to submit a plan of action to the commissioner within sixty (60) days or to comply with the time frame stated in the plan of action constitutes grounds for the commissioner to withdraw or modify its approval of the form for future sales pursuant to [Reference State form approval authority and administrative procedures rules].

Drafting Note: In accordance with the anticipated changes to Section 10, in situations where the premium rates have been approved with less than the normal minimum margin for moderately adverse experience, any adverse experience should be reviewed to determine if the lower margins can be continued for new business.

(II) For the rate schedules that are no longer marketed,

a. That the premium rate schedule continues to be sufficient to cover anticipated costs under best estimate assumptions; or

b. That the premium rate schedule may no longer be sufficient. In this situation, the insurer shall provide to the commissioner, within sixty (60) days of the date the actuarial certification is submitted to the commissioner, a plan of action, including a time frame, for the re-establishment of adequate margins for moderately adverse experience.

- (ii) A description of the review performed that led to the statement.
- (b) An actuarial memorandum dated and signed by a member of the American Academy of Actuaries who prepares the information shall be prepared to support the actuarial certification and provide at least the following information:
 - (i) A detailed explanation of the data sources and review performed by the actuary prior to making the statement in Paragraph (1)(a).
 - (ii) A complete description of experience assumptions and their relationship to the initial pricing assumptions.

Drafting Note: ASOP No. 18, the NAIC Guidance Manual for the Rating Aspects of the Long-Term Care Insurance Model Regulation and the Academy of Actuaries Practice Note “Long-Term Care Insurance, Compliance with the NAIC Long-Term Care Insurance Model Regulation Relating to Rate Stability” all provide details concerning the key pricing assumptions, underlying actuarial judgments and the manner in which experience should be monitored.

- (iii) A description of the credibility of the experience data.
- (iv) An explanation of the analysis and testing performed in determining the current presence of margins.
- (c) The actuarial certification required pursuant to Paragraph (2)(a) must be based on calendar year data and submitted annually no later than May 1st of each year starting in the second year following the year in which the initial rate schedules are first used. The actuarial memorandum required pursuant to Paragraph (2)(b) must be submitted at least once every three (3) years with the certification.

Drafting Note: The commissioner may wish to have the actuarial demonstration reviewed by an independent actuary in those instances where the demonstration does not certify to the maintenance of margins.

Section 19. Loss Ratio

- A. This section shall apply to all long-term care insurance policies or certificates except those covered under Sections 10, ~~and 20~~ and 20.1.
- B. Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent (60%), calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:
 - (1) Statistical credibility of incurred claims experience and earned premiums;
 - (2) The period for which rates are computed to provide coverage;
 - (3) Experienced and projected trends;
 - (4) Concentration of experience within early policy duration;
 - (5) Expected claim fluctuation;
 - (6) Experience refunds, adjustments or dividends;
 - (7) Renewability features;

- (8) All appropriate expense factors;
- (9) Interest;
- (10) Experimental nature of the coverage;
- (11) Policy reserves;
- (12) Mix of business by risk classification; and
- (13) Product features such as long elimination periods, high deductibles and high maximum limits.

C. Subsection B shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

- (1) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
- (2) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of [cite to state's standard nonforfeiture law similar to the NAIC's Standard Nonforfeiture Law for Life Insurance];
- (3) The policy meets the disclosure requirements of Sections 6I, 6J, and 6K of the NAIC Long-Term Care Insurance Model Act;
- (4) Any policy illustration that meets the applicable requirements of the NAIC Life Insurance Illustrations Model Regulation; and
- (5) An actuarial memorandum is filed with the insurance department that includes:
 - (a) A description of the basis on which the long-term care rates were determined;
 - (b) A description of the basis for the reserves;
 - (c) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
 - (d) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;
 - (e) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
 - (f) The estimated average annual premium per policy and the average issue age;
 - (g) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate

whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

- (h) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

Drafting Note: The loss ratio reporting form for long-term care policies that was adopted in 1990 provides for reporting of loss ratios on group as well as individual policies. The amendment to Section 19 above which removes the word “individual”: (1) reflects the fact that loss ratios should be reported on all policies, and (2) establishes a 60% loss ratio for both group and individual policies. States may wish to apply a higher standard than 60% to group policies.

Section 20. Premium Rate Schedule Increases

Drafting Note: Section 20 applies to policies issued for effective dates prior to the date that is six (6) months after adoption of the amended regulation incorporating Section 20.1 (as adopted by the NAIC on [insert NAIC adoption date]). Policies issued on or after that date should adhere to the requirements of Section 20.1 instead of Section 20. Section 20 and Section 20.1 are identical with the exceptions of Subsections A, C and G.

- A. This section shall apply as follows:
 - (1) Except as provided in Paragraph (2), this section applies to any long-term care policy or certificate issued in this state on or after [insert date that is 6 months after adoption of the amended regulation] and prior to [insert date that is six (6) months after adoption of the amended regulation incorporating Section 20.1].
 - (2) For certificates issued on or after the effective date of this amended regulation under a group long-term care insurance policy as defined in Section [insert reference to Section 4E(1) of the NAIC Long-Term Care Insurance Model Act], which policy was in force at the time this amended regulation became effective, the provisions of this section shall apply on the policy anniversary following [insert date that is 12 months after adoption of the amended regulation].
- B. An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least [30] days prior to the notice to the policyholders and shall include:

Drafting Note: In states where the commissioner is required to approve premium rate schedule increases, “shall provide notice” may be changed to “shall request approval.” States should consider whether a time period other than 30 days is desirable. An alternate time period would be the time period required for policy form approval in the applicable state regulation or law.

- (1) Information required by Section 9;
- (2) Certification by a qualified actuary that:
 - (a) If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
 - (b) The premium rate filing is in compliance with the provisions of this section;
 - (c) The insurer may request a premium rate schedule increase less than what is required under this section and the commissioner may approve such premium rate schedule increase, without submission of the certification in Subparagraph (a) of this paragraph, if the actuarial memorandum discloses the premium rate schedule increase necessary to make the certification required under Subparagraph (a) of this paragraph, the premium

rate schedule increase filing satisfies all other requirements of this section, and is, in the opinion of the commissioner, in the best interest of policyholders.

Drafting Note: In any comparison of premiums under Section 10.B(2)(e) or Section 20.B(4), such lower premium or any subsequent higher premium based on a series of increases should not be used.

- (3) An actuarial memorandum justifying the rate schedule change request that includes:
 - (a) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;
 - (i) Annual values for the five (5) years preceding and the three (3) years following the valuation date shall be provided separately;
 - (ii) The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;
 - (iii) The projections shall demonstrate compliance with Subsection C; and
 - (iv) For exceptional increases,
 - (I) The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
 - (II) In the event the commissioner determines as provided in Section 4A(4) that offsets may exist, the insurer shall use appropriate net projected experience;
 - (b) Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;
 - (c) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;
 - (d) A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; ~~and~~
 - (e) In the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates; and
 - (f) A demonstration that actual and projected costs exceed costs anticipated at the time of initial pricing under moderately adverse experience and that the composite margin specified in Section 10B(2)(d) is projected to be exhausted.
- (4) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and
- (5) Sufficient information for review [and approval] of the premium rate schedule increase by the commissioner.

C. All premium rate schedule increases shall be determined in accordance with the following requirements:

- (1) Exceptional increases shall provide that seventy percent (70%) of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;
 - (2) Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:
 - (a) The accumulated value of the initial earned premium times fifty-eight percent (58%);
 - (b) Eighty-five percent (85%) of the accumulated value of prior premium rate schedule increases on an earned basis;
 - (c) The present value of future projected initial earned premiums times fifty-eight percent (58%); and
 - (d) Eighty-five percent (85%) of the present value of future projected premiums not in Subparagraph (c) on an earned basis;
 - (3) In the event that a policy form has both exceptional and other increases, the values in Paragraph (2)(b) and (d) will also include seventy percent (70%) for exceptional rate increase amounts; and
 - (4) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in the [insert reference to state equivalent to the Health Reserves Model Regulation Appendix A, Section IIA]. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.
- D. For each rate increase that is implemented, the insurer shall file for review [approval] by the commissioner updated projections, as defined in Subsection B(3)(a), annually for the next three (3) years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three (3) years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in Subsection K, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.
- E. If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in Subsection B(3)(a), shall be filed for review [approval] by the commissioner every five (5) years following the end of the required period in Subsection D. For group insurance policies that meet the conditions in Subsection K, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.
- F. (1) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in Subsection C, the commissioner may require the insurer to implement any of the following:
- (a) Premium rate schedule adjustments; or
 - (b) Other measures to reduce the difference between the projected and actual experience.

Drafting Note: The terms “adequately match the projected experience” include more than a comparison between actual and projected incurred claims. Other assumptions should also be taken into consideration, including lapse rates (including mortality), interest rates, margins for moderately adverse conditions, or any other assumptions used in the pricing of the product. It is to be expected that the actual experience will not exactly match the insurer’s projections. During the period that projections are monitored as described in Subsections D and E, the commissioner should determine that there is not an adequate match if the differences in earned premiums and incurred claims are not in the same direction (both actual values higher or lower than projections) or the difference as a percentage of the projected is not of the same order.

- (2) In determining whether the actual experience adequately matches the projected experience, consideration should be given to Subsection B(3)(e), if applicable.
- G. If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:
- (1) A plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in Subsection H of this section; and
 - (2) The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to Subsection C had the greater of the original anticipated lifetime loss ratio or fifty-eight percent (58%) been used in the calculations described in Subsection C(2)(a) and (c).
- H. (1) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve (12) months following each increase to determine if significant adverse lapsation has occurred or is anticipated:
- (a) The rate increase is not the first rate increase requested for the specific policy form or forms;
 - (b) The rate increase is not an exceptional increase; and
 - (c) The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse
- (2) In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.
- (a) The offer shall:
 - (i) Be subject to the approval of the commissioner;
 - (ii) Be based on actuarially sound principles, but not be based on attained age; and
 - (iii) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.
 - (b) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:
 - (i) The maximum rate increase determined based on the combined experience; and
 - (ii) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten percent (10%).
- I. If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of Subsection H of this section, prohibit the insurer from either of the following:

Drafting Note: States may want to consider examining their statutes to determine whether a persistent practice of filing inadequate initial premium rates would be considered a violation of the state's unfair trade practice act and subject to the penalties under that act.

- (1) Filing and marketing comparable coverage for a period of up to five (5) years; or
- (2) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

J. Subsections A through I shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in Section 4BC, if the policy complies with all of the following provisions:

- (1) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
- (2) The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:
 - (a) [Cite state's standard nonforfeiture law similar to the NAIC's Standard Nonforfeiture Law for Life Insurance];
 - (b) [Cite state's standard nonforfeiture law similar to the NAIC's Standard Nonforfeiture Law for Individual Deferred Annuities], and
 - (c) [Cite state's section of the variable annuity regulation similar to Section 7 of the NAIC's Model Variable Annuity Regulation];
- (3) The policy meets the disclosure requirements of [cite appropriate sections in the state's long-term care insurance law similar to Section 6I, 6J, and 6K of the NAIC's Long-Term Care Insurance Model Act];
- (4) The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:
 - (a) Policy illustrations as required by [cite state's life insurance illustrations regulation similar to the NAIC's Life Insurance Illustrations Model Regulation];
 - (b) Disclosure requirements in [cite state's annuity disclosure regulation similar to the NAIC's Annuity Disclosure Model Regulation]; and
 - (c) Disclosure requirements in [cite state's variable annuity regulation similar to the NAIC's Model Variable Annuity Regulation].
- (5) An actuarial memorandum is filed with the insurance department that includes:
 - (a) A description of the basis on which the long-term care rates were determined;
 - (b) A description of the basis for the reserves;
 - (c) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
 - (d) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

- (e) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
 - (f) The estimated average annual premium per policy and the average issue age;
 - (g) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
 - (h) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.
- K. Subsections F and H shall not apply to group insurance policies as defined in Section [insert reference to Section 4E(1) of the NAIC Long-Term Care Insurance Model Act] where:
- (1) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or
 - (2) The policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than twenty percent (20%) of the total premium for the group in the calendar year prior to the year a rate increase is filed.

Section 20.1 Premium Rate Schedule Increases for Policies Subject to Loss Ratio Limits Related to Original Filings.

Drafting Note: Section 20.1 applies to policies issued for effective dates on or after the date that is six (6) months after adoption of the amended regulation incorporating Section 20.1 (as adopted by the NAIC on [insert NAIC adoption date]). Policies issued prior to the date that is six (6) months after adoption of the amended regulation should adhere to the requirements of Section 20 instead of Section 20.1. Section 20 and Section 20.1 are identical with the exception of Subsections A, C and G.

A. This section shall apply as follows:

- (1) Except as provided in Paragraph (2), this section applies to any long-term care policy or certificate issued in this state on or after [insert date that is six (6) months after adoption of the amended regulation incorporating Section 20.1].
- (2) For certificates issued on or after the effective date of this amended regulation under a group long-term care insurance policy as defined in Section [insert reference to Section 4E(1) of the NAIC Long-Term Care Insurance Model Act], which policy was in force at the time this amended regulation became effective, the provisions of this section shall apply on the policy anniversary following [insert date that is twelve (12) months after adoption of the amended regulation].

B. An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least [30] days prior to the notice to the policyholders and shall include:

Drafting Note: In states where the commissioner is required to approve premium rate schedule increases, “shall provide notice” may be changed to “shall request approval.” States should consider whether a time period other than 30 days is desirable. An alternate time period would be the time period required for policy form approval in the applicable state regulation or law.

- (1) Information required by Section 9:

(2) Certification by a qualified actuary that:

- (a) If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
- (b) The premium rate filing is in compliance with the provisions of this section;
- (c) The insurer may request a premium rate schedule increase less than what is required under this section and the commissioner may approve such premium rate schedule increase, without submission of the certification in Subparagraph (a) of this paragraph, if the actuarial memorandum discloses the premium rate schedule increase necessary to make the certification required under Subparagraph (a) of this paragraph, the premium rate schedule increase filing satisfies all other requirements of this section, and is, in the opinion of the commissioner, in the best interest of policyholders.

Drafting Note: In any comparison of premiums under Section 10.B(2)(e) or Section 20.B(4), such lower premium or any subsequent higher premium based on a series of increases should not be used.

(3) An actuarial memorandum justifying the rate schedule change request that includes:

- (a) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;
 - (i) Annual values for the five (5) years preceding and the three (3) years following the valuation date shall be provided separately;
 - (ii) The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;
 - (iii) The projections shall demonstrate compliance with Subsection C; and
 - (iv) For exceptional increases,
 - (I) The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
 - (II) In the event the commissioner determines as provided in Section 4A(4) that offsets may exist, the insurer shall use appropriate net projected experience;
- (b) Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;
- (c) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;
- (d) A statement that policy design, underwriting and claims adjudication practices have been taken into consideration;
- (e) In the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates; and

(f) A demonstration that actual and projected costs exceed costs anticipated at the time of initial pricing under moderately adverse experience and that the composite margin specified in Section 10B(2)(d) is projected to be exhausted.

(4) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(5) Sufficient information for review [and approval] of the premium rate schedule increase by the commissioner.

C. All premium rate schedule increases shall be determined in accordance with the following requirements:

(1) Exceptional increases shall provide that seventy percent (70%) of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(2) Premium rate schedule increases shall be calculated such that the sum of the lesser of (i) the accumulated value of actual incurred claims, without the inclusion of active life reserves, or (ii) the accumulated value of historic expected claims, without the inclusion of active life reserves, plus the present value of the future expected incurred claims, projected without the inclusion of active life reserves, will not be less than the sum of the following:

(a) The accumulated value of the initial earned premium times the greater of (i) fifty-eight percent (58%) and (ii) the lifetime loss ratio consistent with the original filing including margins for moderately adverse experience;

(b) Eighty-five percent (85%) of the accumulated value of prior premium rate schedule increases on an earned basis;

(c) The present value of future projected initial earned premiums times the greater of (i) fifty-eight percent (58%) and (ii) the lifetime loss ratio consistent with the original filing including margins for moderately adverse experience; and

(d) Eighty-five percent (85%) of the present value of future projected premiums not in Subparagraph (c) of this paragraph on an earned basis;

(3) Expected claims shall be calculated based on the original filing assumptions assumed until new assumptions are filed as part of a rate increase. New assumptions shall be used for all periods beyond each requested effective date of a rate increase. Expected claims are calculated for each calendar year based on the in-force at the beginning of the calendar year. Expected claims shall include margins for moderately adverse experience; either amounts included in the claims that were used to determine the lifetime loss ratio consistent with the original filing or as modified in any rate increase filing;

(4) In the event that a policy form has both exceptional and other increases, the values in Paragraph (2)(b) and (d) will also include seventy percent (70%) for exceptional rate increase amounts; and

(5) All present and accumulated values used to determine rate increases, including the lifetime loss ratio consistent with the original filing reflecting margins for moderately adverse experience, shall use the maximum valuation interest rate for contract reserves as specified in the [insert reference to state equivalent to the Health Reserves Model Regulation Appendix A, Section IIA]. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

D. For each rate increase that is implemented, the insurer shall file for review [approval] by the commissioner updated projections, as defined in Subsection B(3)(a), annually for the next three (3) years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three (3) years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in Subsection K, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

E. If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in Subsection B(3)(a), shall be filed for review [approval] by the commissioner every five (5) years following the end of the required period in Subsection D. For group insurance policies that meet the conditions in Subsection K, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

F. (1) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in Subsection C, the commissioner may require the insurer to implement any of the following:

(a) Premium rate schedule adjustments; or

(b) Other measures to reduce the difference between the projected and actual experience.

Drafting Note: The terms “adequately match the projected experience” include more than a comparison between actual and projected incurred claims. Other assumptions should also be taken into consideration, including lapse rates (including mortality), interest rates, margins for moderately adverse conditions, or any other assumptions used in the pricing of the product. It is to be expected that the actual experience will not exactly match the insurer’s projections. During the period that projections are monitored as described in Subsections D and E, the commissioner should determine that there is not an adequate match if the differences in earned premiums and incurred claims are not in the same direction (both actual values higher or lower than projections) or the difference as a percentage of the projected is not of the same order.

(2) In determining whether the actual experience adequately matches the projected experience, consideration should be given to Subsection B(3)(e), if applicable.

G. If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file a plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in Subsection H of this section.

H. (1) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve (12) months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

(a) The rate increase is not the first rate increase requested for the specific policy form or forms;

(b) The rate increase is not an exceptional increase; and

(c) The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(2) In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

(a) The offer shall:

(i) Be subject to the approval of the commissioner;

- (ii) Be based on actuarially sound principles, but not be based on attained age; and
- (iii) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.
- (b) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:
 - (i) The maximum rate increase determined based on the combined experience; and
 - (ii) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten percent (10%).

I. If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of Subsection H of this section, prohibit the insurer from either of the following:

Drafting Note: States may want to consider examining their statutes to determine whether a persistent practice of filing inadequate initial premium rates would be considered a violation of the state's unfair trade practice act and subject to the penalties under that act.

- (1) Filing and marketing comparable coverage for a period of up to five (5) years; or
- (2) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

J. Subsections A through I shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in Section 4C, if the policy complies with all of the following provisions:

- (1) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
- (2) The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:
 - (a) [Cite state's standard nonforfeiture law similar to the NAIC's Standard Nonforfeiture Law for Life Insurance];
 - (b) [Cite state's standard nonforfeiture law similar to the NAIC's Standard Nonforfeiture Law for Individual Deferred Annuities], and
 - (c) [Cite state's section of the variable annuity regulation similar to Section 7 of the NAIC's Model Variable Annuity Regulation];
- (3) The policy meets the disclosure requirements of [cite appropriate sections in the state's long-term care insurance law similar to Section 6I, 6J, and 6K of the NAIC's Long-Term Care Insurance Model Act];
- (4) The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:
 - (a) Policy illustrations as required by [cite state's life insurance illustrations regulation similar to the NAIC's Life Insurance Illustrations Model Regulation];

- (b) Disclosure requirements in [cite state's annuity disclosure regulation similar to the NAIC's Annuity Disclosure Model Regulation]; and
- (c) Disclosure requirements in [cite state's variable annuity regulation similar to the NAIC's Model Variable Annuity Regulation].
- (5) An actuarial memorandum is filed with the insurance department that includes:
 - (a) A description of the basis on which the long-term care rates were determined;
 - (b) A description of the basis for the reserves;
 - (c) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
 - (d) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;
 - (e) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
 - (f) The estimated average annual premium per policy and the average issue age;
 - (g) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
 - (h) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.
- K. Subsections F and H shall not apply to group insurance policies as defined in Section [insert reference to Section 4E(1) of the NAIC Long-Term Care Insurance Model Act] where:
 - (1) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or
 - (2) The policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than twenty percent (20%) of the total premium for the group in the calendar year prior to the year a rate increase is filed.

Section 27. Right to Reduce Coverage and Lower Premiums

- A. (1) Every long-term care insurance policy and certificate shall include a provision that allows the policyholder or certificateholder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:
 - (a) Reducing the maximum benefit; or
 - (b) Reducing the daily, weekly or monthly benefit amount.

- (2) The insurer may also offer other reduction options that are consistent with the policy or certificate design or the carrier's administrative processes.
- (3) In the event the reduction in coverage involves the reduction or elimination of the inflation protection provision, the insurer shall allow the policyholder to continue the benefit amount in effect at the time of the reduction.
- B. The provision shall include a description of the ~~ways in which coverage may be reduced and the~~ process for requesting and implementing a reduction in coverage.
- C. ~~The age to determine the premium for the reduced coverage shall be based on the age used to determine the premiums for the coverage currently in force.~~
The premium for the reduced coverage shall:
- (1) Be based on the same age and underwriting class used to determine the premium for the coverage currently in force; and
- (2) Be consistent with the approved rate table.
- D. The insurer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.
- E. If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificateholder of his or her right to reduce coverage and premiums in the notice required by Section 7A(3) of this regulation.
- F. This Section does not apply to life insurance policies or riders containing accelerated long-term care benefits.
- G. The requirements of ~~Subsections A through F this Section~~ shall apply to any long-term care policy issued in this state on or after [insert date that is twelve (12) months after adoption of the amended regulation].
- H. A premium increase notice required by Section 9E of this regulation shall include:
- (1) An offer to reduce policy benefits provided by the current coverage consistent with the requirements of this section;
- (2) A disclosure stating that all options available to the policyholder may not be of equal value; and
- (3) In the case of a partnership policy, a disclosure that some benefit reduction options may result in a loss in partnership status that may reduce policyholder protections.
- I. The requirements of Subsection H shall apply to any rate increase implemented in this state on or after [insert date that is twelve (12) months after adoption of the amended regulation].

Drafting Note: Compliance with this Section may be accomplished by policy replacement, exchange or by adding the required provision via amendment or endorsement to the policy.

Section 28. Nonforfeiture Benefit Requirement

- A. This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.
- B. To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of [insert reference to Section 8 of the NAIC Long-Term Care Insurance Model Act]:
- (1) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture

benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection E; and

- (2) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.
- C. If the offer required to be made under [insert reference to Section 8 of the NAIC Long-Term Care Insurance Model Act] is rejected, the insurer shall provide the contingent benefit upon lapse described in this Section. Even if this offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit on lapse in Subsection D(4) shall still apply.
- D. (1) After rejection of the offer required under [insert reference to Section 8 of the NAIC Long-Term Care Insurance Model Act], for individual and group policies without nonforfeiture benefits issued after the effective date of this section, the insurer shall provide a contingent benefit upon lapse.
- (2) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.
- (3) A contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

<u>Issue Age</u>	<u>Percent Increase Over Initial Premium</u>
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%

Triggers for a Substantial Premium Increase

<u>Issue Age</u>	<u>Percent Increase Over Initial Premium</u>
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%

79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

- (4) A contingent benefit on lapse shall also be triggered for policies with a fixed or limited premium paying period every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, the policy or certificate lapses within 120 days of the due date of the premium so increased, and the ratio in Paragraph (6)(b) is forty percent (40%) or more. Unless otherwise required, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase.

<u>Triggers for a Substantial Premium Increase</u>	
<u>Issue Age</u>	<u>Percent Increase Over Initial Premium</u>
Under 65	50%
65-80	30%
Over 80	10%

This provision shall be in addition to the contingent benefit provided by Paragraph (3) above and where both are triggered, the benefit provided shall be at the option of the insured.

- (5) On or before the effective date of a substantial premium increase as defined in Paragraph (3) above, the insurer shall:
- (a) Offer to reduce policy benefits provided by the current coverage ~~without the requirement of additional underwriting consistent with the requirements of Section 27~~ so that required premium payments are not increased;

Drafting Note: The insured's right to reduce policy benefits in the event of the premium increase does not affect any other right to elect a reduction in benefits provided under the policy.

- (b) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection E. This option may be elected at any time during the 120-day period referenced in Subsection D(3); and
- (c) Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in Subsection D(3) shall be deemed to be the election of the offer to convert in Subparagraph (b) above unless the automatic option in Paragraph (6)(c) applies.
- (6) On or before the effective date of a substantial premium increase as defined in Paragraph (4) above, the insurer shall:
- (a) Offer to reduce policy benefits provided by the current coverage ~~without the requirement of additional underwriting consistent with the requirements of Section 27~~ so that required premium payments are not increased;

Drafting Note: The insured's right to reduce policy benefits in the event of the premium increase does not affect any other right to elect a reduction in benefits provided under the policy.

- (b) Offer to convert the coverage to a paid-up status where the amount payable for each benefit is ninety percent (90%) of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. This option may be elected at any time during the 120-day period referenced in Subsection D(4); and
- (c) Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in Subsection D(4) shall be deemed to be the election of the offer to convert in Subparagraph (b) above if the ratio is forth percent (40%) or more.

(7) For any long-term care policy issued in this state on or after [insert date that is six (6) months after adoption of the amended regulation].

(a) In the event the policy or certificate was issued at least twenty (20) years prior to the effective date of the increase, a value of 0% shall be used in place of all values in the above table; and

(b) Values above 100% in the table in Paragraph (3) above shall be reduced to 100%.

E. Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with Subsection D(3) but not Subsection D(4), are described in this subsection:

- (1) For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least one percent per year prior to age fifty (50), and at least three percent (3%) per year beyond age fifty (50).
- (2) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Paragraph (3).
- (3) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection F.
- (4)
 - (a) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three (3) years as well as thereafter.
 - (b) Notwithstanding Subparagraph (a), for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:
 - (i) The end of the tenth year following the policy or certificate issue date; or
 - (ii) The end of the second year following the date the policy or certificate is no longer subject to attained age rating.
- (5) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

F. All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

- G. There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.
- H. The requirements set forth in this section shall become effective twelve (12) months after adoption of this provision and shall apply as follows:
- (1) Except as provided in Paragraph (2) and (3) below, the provisions of this section apply to any long-term care policy issued in this state on or after the effective date of this amended regulation.
 - (2) For certificates issued on or after the effective date of this section, under a group long-term care insurance policy as defined in Section [insert reference to Section 4E(1) of the NAIC Long-Term Care Insurance Model Act], which policy was in force at the time this amended regulation became effective, the provisions of this section shall not apply.
 - (3) The last sentence in Subsection C and Subsections D(4) and D(6) shall apply to any long-term care insurance policy or certificate issued in this state after six (6) months after their adoption, except new certificates on a group policy as defined in Subsection 4E(1) one year after adoption.
- I. Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section 19, ~~or Section 20~~ or Section 20.1, whichever is applicable, treating the policy as a whole.
- J. To determine whether contingent nonforfeiture upon lapse provisions are triggered under Subsection D(3) or D(4), a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.
- K. A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:
- (1) The nonforfeiture provision shall be appropriately captioned;
 - (2) The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and
 - (3) The nonforfeiture provision shall provide at least one of the following:
 - (a) Reduced paid-up insurance;
 - (b) Extended term insurance;
 - (c) Shortened benefit period; or
 - (d) Other similar offerings approved by the commissioner.

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IN THE MATTER OF

GENWORTH LIFE INSURANCE COMPANY :
: No. _____
PETITIONER :

**PETITION FOR REVIEW AND REPEAL
PURSUANT TO ARIZONA REVISED STATUTES § 41-1033**

APPENDIX A

EXPERT REPORT

Genworth Life Insurance Co. v. Arizona Department of Insurance

Prepared by: Ted Nickel

January 18, 2021

Theodore K. Nickel

Part I: Introduction and Qualifications

A. Qualifications

I am a former two term Wisconsin Commissioner of Insurance (2011-2018), and a past President (2017) of the National Association of Insurance Commissioners (“NAIC”).

1. Background and Service as Wisconsin Commissioner of Insurance

In January 2011, Wisconsin Governor Scott Walker appointed me to a four-year term as the state Department of Insurance’s (“DOI”) Commissioner of Insurance, and I was unanimously confirmed by the Wisconsin Senate. I was reappointed and again unanimously confirmed in January 2015, serving until January 2019, a total of eight years.

The Wisconsin insurance market is the fifth largest in the United States based on the number of domestic insurers in the state as of 2018. During my tenure as Commissioner, the DOI managed three state-run insurance companies. I was also a member of the Wisconsin Insurance Security Fund, which protects policyholders in the event of an insurer’s insolvency. No insurance carriers went into liquidation during my tenure. I also oversaw the successful rehabilitation of Ambac Assurance Corporation, which was threatened with insolvency. As Commissioner, I was a member of the Federal Advisory Committee on Insurance and the NAIC. Long-term care (“LTC”) insurance was a significant focus of each of these organizations.

2. Service as NAIC Officer and President

The NAIC is a national support organization bringing together each of the commissioners of each of the DOIs in the United States and its territories. NAIC provides a forum for regulators, consumers and consumer advocates, and insurance carriers to exchange information and address issues facing the insurance industry, share their experiences and ideas,

and coordinate regulatory action. Among other things, it forms working groups and promulgates model regulations that are adopted in whole or part by the states.

As Wisconsin Commissioner, I became a member of the NAIC in 2011. I was elected NAIC Midwest Zone Chair for 2013, and my DOI Commissioner peers throughout the country elected me NAIC Secretary-Treasurer for 2015, Vice President for 2016, President-Elect for 2016, and President for 2017. Each President serves a one-year term, and cannot be re-elected. My term ended in 2018.

3. Long-Term Care Insurance Experience and Expertise

For many years, including throughout my tenure with NAIC and as the Wisconsin DOI Commissioner, there has been a substantial nationwide regulatory focus on LTC insurance. In fact, LTC has been comparatively more of a focus of the NAIC and DOIs than other lines of insurance, in an already highly regulated industry.

For example, NAIC has maintained several working groups, task forces, and committees focused on LTC insurance, most notably its Long-Term Care Insurance Task Force, Senior Issues Taskforce, and Financial Committee. During my tenure, LTC Insurance was also regularly discussed by NAIC's Health Insurance Committee, Life Insurance Committee, Government Relations Leadership Committee, Life and Health Actuarial Taskforce, and Leadership Council, at all-Commissioner public meetings and hearings, and at private "roundtables" with insurance industry and consumer-group representatives. I personally participated in many of these meetings, hearings, roundtables, and other efforts focused on LTC insurance, and one of my key initiatives as NAIC President was to coordinate various LTC insurance work streams. During my tenure with NAIC and particularly as President-Elect and President, I was regularly traveling

throughout the United States meeting with fellow regulators, industry representatives, and consumer groups about insurance issues, including substantial time addressing LTC insurance.

While I served as an NAIC officer and as President, NAIC interfaced with a number of consumer groups about LTC insurance, including United Policy Holders, the Center for Economic Justice, California Health Advocates, and Families, USA, among others. The NAIC is highly responsive to the concerns of such consumer groups and during my tenure, we hosted roundtables with consumer groups at least four times a year, in addition to other meetings and contacts. In connection with this work, I chaired the NAIC's Consumer Board of Trustees, a joint board of regulators and consumer advocates that oversees NAIC's consumer participation program and chaired the Consumer Liaison Committee, a committee of NAIC regulators that regularly interacted with consumer groups who advocated on behalf of policyholders on insurance issues including long-term care. In 2017, I received the Excellence in Consumer Advocacy Award from the NAIC's Consumer Liaison Committee (consisting of consumer representatives), and in 2018, the Insured Retirement Institute Champion of Retirement Security Award, for my work in this area.

Throughout my tenure, the NAIC also maintained regular contact with LTC insurance carriers to ensure that DOIs and regulators were aware of conditions affecting the LTC industry as a whole, including the financial challenges posed by higher claims experience in turn caused by an aging population that is living longer, increased LTC costs, low interest rates, and other factors.

The NAIC also regularly interacted with federal officials to exchange information and discuss policy and regulatory issues concerning LTC and other insurance. During my tenure, the

NAIC regularly interacted in this capacity with the U.S. Department of Health and Human Services (“HHS”), the U.S. Centers for Medicare and Medicaid Services, the Federal Insurance Office, and the related Federal Advisory Committee on Insurance, including in quarterly advisory sessions.

The NAIC also maintains the Center for Insurance Policy and Research (“CIPR”) that conducts studies concerning LTC and other insurance for use by regulators, consumer advocates, consumers, and carriers. For example, in 2016, CIPR published The State of Long-Term Care Insurance: The Market, Challenges and Future Innovations.

Throughout the past decade, many States have held public hearings on LTC insurance issues to discuss pricing challenges to insurance companies and protecting policyholders, and specifically with regard to rate-increase requests. These hearings have included participation from both insurance companies and consumer groups, and testimony from policyholders themselves. I personally participated, in my capacity as Wisconsin DOI Commissioner, in such a hearing hosted by the Minnesota DOI in August 2015.

As Wisconsin DOI Commissioner, I oversaw the DOI’s review of and response to consumer complaints. I was the signatory on each such response.

4. Other Related Experience

My curriculum vitae is attached as **Appendix A**. Prior to my service as Wisconsin Commissioner of Insurance, I worked for 18 years as Director of Governmental and Regulatory Affairs for Church Mutual Insurance Company (“Church”), directing Church’s compliance efforts. Church is an insurance company that is national in scope, and in my role, I interacted with DOIs in all 50 states, the District of Columbia, and the federal government.

Currently, I am the owner and founder of my own consulting firm, Bodilac Strategies, LLC (“Bodilac Strategies”), which provides strategic, consulting, counseling, and compliance advice related to insurance in various jurisdictions throughout the United States. In this role, I participate in officer-level meetings with Departments of Insurance (“DOIs”), insurance companies, and trade associations. I take a leading role in advocacy projects including, most recently, a project focused on expanding flood insurance options for individual consumers.

B. Assignment

In this matter, I was asked to opine on the Arizona Department of Insurance’s (“ADOI” or “Department”) policy of assigning “If We Knew Premium,” also referred to as “phantom premium” and “fictional premium,” to insurers requesting a premium rate increase on long-term care insurance for purposes of calculating loss ratios on the product filing and analyzing the rate increase request.

The analysis utilized by the ADOI is purportedly rooted in AAC R20-6-1013(B) and R20-6-1013(C), which state, respectively:

Benefits under an individual long-term care insurance policy are deemed reasonable in relation to premiums if the expected loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk (R20-6-1013(B)), and

A premium rate schedule or proposed revision to a premium rate schedule that is expected to produce, over the lifetime of the long-term care insurance policy, benefits that are less than 60% of the proposed premium rate schedule is deemed to be unreasonable (R20-6-1013(C)).

As set forth in detail in this Report, rational public policy requires state Departments of Insurance to maintain the financial solvency of insurers, even to the extent premium rate

increases are necessary, as the strongest tenet of consumer protection. Arizona's use of the "If We Knew Premium" methodology artificially suppresses rates by utilizing a hypothetical calculation. In applying the "If We Knew Premium" methodology to rate filing requests, the Department is hypothetically imputing fictional premium receipts to the insurer, from the inception of the policy, to measure against the claims experience on the product. The result is a skewed loss ratio. To be clear, the insurer did not collect these fictional premium amounts to offset the claims experience and therefore the "If We Knew Premium" methodology assigns an entirely inappropriate, and never realized, loss ratio to the company's experience. The Department is using this inappropriate methodology as a result-oriented means of artificially suppressing the amount of the rate increase LTC insurers actuarially justify under Arizona law.

To artificially suppress rates through methodologies limiting insurers' rate need through hypothetical calculations is disastrous public policy, places Arizona consumers at risk and has been rejected by the NAIC as inappropriate. This policy provides for a short term relief for policymakers by artificially justifying a lower than needed approval for lower rate/premium increases, ultimately putting the financial health of the insurance companies at risk as well as jeopardizing the coverage consumers rely on and have paid premium for over many years precisely when they need it. Accordingly, the Department's reliance on the "If We Knew Premium," methodology should be completely invalidated as the basis for its long-term care rate review analysis.

Part II: Summary of Opinions

- Long-term care insurance rates have been challenging since the inception of the product.
- State regulators calculate loss ratios and premium rate need on earned premium. The NAIC and the model regulations only contemplate loss ratios on earned premium, without consideration for phantom premium.
- Arizona, along with a clear minority of states, has implemented the “If We Knew Premium” methodology, the effect of which is to artificially suppress rates by utilizing a hypothetical loss ratio. This is a practice, however, rejected by the NAIC as inappropriate.
- Because Arizona’s phantom premium methodology artificially suppresses justified rates, it threatens insurers’ financial stability and is harmful to consumers.
- Long-term care insurance is a valuable benefit to consumers, their families and caregivers. Artificial rate suppression through phantom premium methodology limits the participation of insurers in Arizona and challenges the financial stability of those insurers willing to write policies in the Arizona market.
- The Department’s reliance on the “If We Knew Premium” methodology should be completely invalidated as the basis for long-term care rate review analysis; ADOI should apply the regulation as intended and utilize earned premium to determine loss ratios for premium rate requests.

Part III: Discussion

A. A Regulator’s Perspective

Long-term care insurance is one of the most challenging issues for state regulators of insurance. While long-term care insurance was a popular product with a great deal of promise for families when introduced, certain assumptions in the initial pricing were misplaced, industry-wide. In fact, several assumptions proved wrong. Lapse rates and mortality were less than expected and claims were much higher than anticipated for the entirety of the market. No one would have predicted interest rates would head to near zero for more than a decade. As

a result, insurance companies were collecting far less premium revenue than needed to cover the universe of claims. Investing premiums over the long term for future claims became more challenging.

As a former state insurance regulator, two of my primary roles were to: 1) monitor the financial solvency of insurers; and 2) review and approve the rates and forms for insurance policies being sold in my state. The impact on consumers of a proposed rate increase is a sentinel concern when reviewing rate requests. However, if an insurer requires greater premium collections to ensure that it has the resources available to pay current and future claims, action on a rate increase request is a difficult decision.

Under my leadership at the Wisconsin Office of the Commissioner of Insurance (OCI), artificial caps on rate increases and phantom premium methodologies were never utilized. Doing so would be irresponsible and place consumers at a greater risk of an insurer leaving the state or becoming insolvent. Instead, in addition to actuarial need, rate requests were evaluated using factors including how recently the insurer filed for its last increase, whether a previously denied rate increase request impacted the current request, whether claims had deteriorated since the last time it requested a rate increase, and whether the company is still writing business in the state.

As a corollary, reviews of a rate increase requests further included discussions regarding consumer disclosures and alternatives. Because some long-term care policyholders can be extremely vulnerable to increases in rates, assisting consumers with understanding options for benefit conversion to lessen the amounts by which rates are increased, now and in the future,

is critical to prevent consumers from losing the policy on which premiums have been paid for many years.

Responsible regulation requires an honest review of actuarially-justified rate requests for insurers, assistance to consumers to understand both their current policy and their options at the time of increase, and a steadfast examination of the financial condition of the insurer. The greatest consumer protection a regulator can provide is ensuring a company exists to fulfill its promises to the consumers purchasing its policies.

Methodologies that assume fictional premiums were collected by the insurer for purposes of calculating a loss ratio for the company is the opposite approach. Department policies, such as the phantom premium approach result in de facto artificial caps on rate requests. These approaches do not adequately take into account the amount of premium left on the table – premiums not paid by policyholders, not invested by the companies – or the earnings those companies would have generated for future claims. Also, importantly, the “if knew” approach does not take into account the fact that many department reviews at the time may not have approved the “if knew” premiums had they been filed for review.

This methodology also unfairly suppresses premium rates, exposes consumers to a substantial risk of a future insurer insolvency and subject consumers to potentially limited recovery and claims payments available through state guaranty fund mechanisms.

State guaranty funds are not a viable solution for consumers, the insurance market or the state. At the time of an insurer insolvency, a guaranty fund is activated in each state to marshal assets and assess other insurers in the market to fund consumer claims. However, consumers’ recovery is generally limited to a statutory cap and in the case of long-term care

benefits, could be a fraction of the benefits available under the policy. (Ariz. Rev. Stat. 20-682(E); Nat'l Conf. of Ins. Guaranty Funds, <https://www.ncigf.org/resources/links-and-contacts/>). Additionally, the assessments paid by other insurers are often substantial, may affect their financial strength and may necessitate rate increases on their policyholders. Finally, many states allow an insurer to claim a state premium tax offset for all amounts paid as a guaranty fund assessment (Ariz. Rev. Stat. 20-692). Decreasing state revenue caused by insurer assessments is particularly problematic for long-term care benefits because state governments may additionally share the burden of citizens' elder care needs through social programs when private solutions fail.

For these reasons, rational public policy requires state Departments of Insurance to maintain the financial solvency of insurers, even to the extent premium rate increases are necessary, as the strongest tenet of consumer protection. To artificially suppress rates through methodologies limiting insurers' rate need through hypothetical calculations is disastrous public policy, places Arizona consumers at risk and is precisely the state practice the NAIC is currently addressing at the highest level of the association.

B. The NAIC's Efforts to Deal with LTCI Rate Increases

Long-term care insurance has historically been challenging for consumers, regulators and the market.

Long-term care insurance began in the 1970s but didn't become a widely purchased insurance product until the 1980s and 1990s. Only a few insurers offered long-term care coverage at that time. However, the market grew rapidly and by the end of the 1990s, more than 100 insurers were selling long-term care policies.

During this time of significant expansion in the long-term care insurance market, in the late 1980s the NAIC developed its first model regulation regarding long-term care rates, based on lifetime loss ratio. (NAIC Model 641). The model regulation was adopted widely, including in Arizona at R20-6-1013. By the plain language of the model regulation, loss ratios and premium rate need are based on earned premium. (NAIC Model 641 Section 20.1) The NAIC and the model regulations only contemplate loss ratios on earned premium, without consideration for phantom premium.

Under both the NAIC model regulation and state law adoption of that model, long-term care products are typically sold as “guaranteed renewable,” meaning a policy may not be cancelled by the insurer but the insurer has the legal and contractual right to increase premiums. This right is critically important because material claims experience typically does not emerge for many years, often decades, after a policy form is priced.

Initially, actuaries pricing long-term care policies certified a certain minimum lifetime loss ratio, based on a consumer’s age at policy issuance. Little data existed to predict claims experience of long-term care coverage at the inception of the product, and assumptions from comparable products were generally utilized for initial policy pricing. (AAA Issue Brief October 2018).

When claims experience required doing so, and consistent with the guaranteed-renewable nature of the policies, LTC insurers requested necessary rate increases to protect the viability of the product and the solvency of the company. In reviewing these requests for increased premium, state regulators compared the premium charged for the policy to the claims experience.

By the late 1990s and early 2000s, insurers were beginning to experience negative claims development, most notably from assumptions regarding lapse rates and other factors. The NAIC recognized the impact to consumers from substantial variations in premium rate increases and adopted a rate stability model regulation (the “Rate Stability Regulation”). The Rate Stability Regulation, which built additional conservatism into pricing, removed the minimum loss ratio test for initial rate filings. In its place, an actuarial certification was required for all initial rate filings, attesting that premiums over the life of the contract, even under moderately adverse conditions, were expected to be adequate. The Rate Stability Regulation was also adopted widely, including by Arizona at R20-6-1014. Like all NAIC model regulations, the Rate Stability Regulation was intended to affect only products filed and sold after the effective date of the regulation.

Long-term care insurers continued to experience significant losses year-over-year and by 2014, the NAIC reported that only 12 companies were selling a moderate number of individual long-term care policies. Regulators became concerned with the frequency and scope of insurers’ rate increase requests primarily on their older blocks of business not subject to the Rate Stability Regulation. Upon the recommendation of the NAIC Long-Term Care Pricing Subgroup, the NAIC again modified its model regulation for rate stability in 2014 to incorporate additional protections for new policies being sold after the effective date of the amendments (the “2014 Rate Stability Revision”).

The 2014 Rate Stability Revision required an insurer to include a margin for adverse claim development in its pricing certification, with the intent of reducing the insurer’s need for premium rate increase requests in the future. The 2014 Rate Stability Revision included

provisions for additional rate increases upon depletion of the margin, if future experience is anticipated to be less favorable than projected and the remainder of the requirements were satisfied. Again, the implementation of the 2014 Rate Stability Revision was designed to be prospective only.

C. Current Challenges

Since the 2014 Rate Stability Revision, regulators have remained concerned about the recurrence and extent of actuarially-justified premium rate increases requested by insurers. Industry wide, insurers were continuing to experience significant losses primarily on their older blocks of LTC business and needed increased premiums to ensure that all future claims could be paid.

Unfortunately, several states have implemented policies and procedures to limit actuarially-justified rate increases for long-term care insurers in an attempt to shield older consumers from substantial rate increases. Some states have implemented artificial rate increase caps by statute, rule or practice. Others have negotiated reductions from actuarially-justified rate filings and some have delayed action on rate filings altogether. Arizona, along with a clear minority of states, has implemented the “If We Knew Premium” methodology, the effect of which is to artificially suppress rates by utilizing a hypothetical loss ratio. All of this leads to further problems down the road. Not allowing actuarially justified rates now simply increases the probability of financial stress later.

This is a practice, however, which was rejected by the NAIC as inappropriate. Specifically, the NAIC Long-Term Care Pricing Subgroup issued a report in October 2018 clearly

rejecting the use of the phantom premium methodology as the sole basis upon which rate increase requests are analyzed.¹

D. NAIC Long-Term Care (EX) Task Force

During 2018, insurance Commissioners became increasingly concerned with the financial stability of insurers with long-term care blocks of business as well as the availability of long-term care products for consumers. Commissioners were additionally concerned with arbitrary rate caps and rules, similar to the Arizona methodology, which created a nationwide system of subsidization of premium increases by states which had historically granted needed premium rate increases to companies. As a result, all states, even those which had been approving justified rate increases, began to carefully consider and scrutinize premium increase requests to ensure consumers in states such as Arizona were not being subsidized -- and the financial position of the company sustained -- unfairly by premiums assessed on their consumers. Indeed, the ability of insurers to secure adequate rate increases was becoming so increasingly constrained, also recognizing the diversity of insurance companies who originally sold the product, that insurance companies and the NAIC worked together to modify its Life and Health Insurance Guaranty Fund Model Act. This combined effort resulted in expanding the number of companies that would contribute to the guaranty fund in the case of a long-term care insurer insolvency.

Unsurprisingly, the NAIC identified these issues with the long-term care market, including the problems caused by outlier rate increase methodologies, such as the use of the “If

¹ Exhibit 2 (“Long-Term Care Insurance: Approaches to Reviewing Premium Rate Increases,” NAIC Long-Term Care Pricing Subgroup, Oct. 2018).

We Knew” approach by Arizona, as its top priority for 2019. Building on work during my year as President of the NAIC 2017 where we organized all the different LTCI workstreams underway in the Health Insurance(B) and the Financial Condition(E) Committees, the NAIC created an executive-level Long-Term Care (EX) Task Force (“Task Force”) to address Arizona’s methodology as well as other state inconsistencies and inequities in long-term care rates.² To signify the importance of the work and ensure the involvement of Commissioners, Directors and Superintendents in the work stream, the Task Force was created under the Executive Committee of the NAIC, the highest level appointment of a committee.

The Task Force was given two charges: (1) to develop a consistent national approach for reviewing long-term care insurance rates that result in actuarially-appropriate increases being granted by the states in a timely manner; and (2) to focus on ensuring consumers are provided with meaningful options to reduce their benefits in situations where the premiums are no longer affordable. These charges reinforce the Commissioners’ intent that inconsistent state approaches to long-term care premium rate increase requests had been detrimental to the market and should not continue.

Since inception, the Task Force has met several times and developed numerous work streams, many intended to address state practices similar to the phantom premium methodology utilized in Arizona that resulted in inconsistent and inequitable treatment by states and unfair premium burdens shouldered by consumers in select states. One work stream is compiling actuarial methodologies for analysis of state variances, another is examining restructuring techniques to address the necessary “true up” for states that had artificially

² https://content.naic.org/cmte_ex_ltc_i_tf.htm

suppressed rate need, and a third is assessing non-actuarial variances used by states in approving rate increases.

The combined work of these projects and the Task Force identifies and addresses rejected methodologies, such as the phantom premium approach utilized by Arizona, and other policies implemented by states to prevent insurers from receiving actuarially-justified rates to support and reserve for long-term care insurance products.

Recognizing the emergent need for action on these matters, the Task Force was charged with presenting recommendations to address these issues by the Fall 2020 meeting of the NAIC. As recently as December 4, 2020, during its Fall meeting the NAIC's Long Term Care (EX) Taskforce discussed the work of one of its workstreams focusing on modernizing and creating a uniform multi-state rate review process focused on earned premiums and earnings as it reviews company filings while developing a framework for states to follow. A group of department actuaries from four states is working with a third party consultant currently analyzing filings from several companies to identify best practices and filing techniques to build out this framework. They expect to publicly reveal this framework in 2021.

Part IV: Conclusion

While the NAIC continues its work through the Task Force, the Arizona Department's reliance on the "If We Knew Premium" methodology should be immediately invalidated. It creates artificial projected loss ratios and without recognition of actual premiums earned. This methodology searches for and finds ways to disapprove actuarially justified rate requests and results in inadequate rate increases ultimately creates the potential for further solvency issues

for companies providing the benefits promised years and decades ago. This methodology was rejected by the NAIC, places Arizona consumers at risk and identifies Arizona as an outlier in the state regulation of insurance and the LTC market nationally.

Resources

Arizona Statutes 20-682 E 2 (ii)

Arizona Statutes 20-692

Arizona Regs 20-6-1013(B)

Arizona Regs 20-6-1013(C)

Arizona Regs 20-6-1014

Arizona Regs 20-6-1015

NAIC Model Reg 641, section 20.1

AAA Issue Brief on Recouping Past Losses from October 2018

NAIC Pricing Subgroup Approaches Document from October 2018

ACLI/AHIP letter to NAIC LTC Pricing Subgroup from August 2018

ACLI/AHIP letter to MT DOI on Recouping Past Losses from Dec 2018

EX Task Force Materials From Dec 2019 Meeting (that includes Minutes from Aug 2019 meeting)

EX Task Force Minutes from Dec 2019 Meeting

IN THE MATTER OF

GENWORTH LIFE INSURANCE COMPANY :
: No. _____
PETITIONER :

**PETITION FOR REVIEW AND REPEAL
PURSUANT TO ARIZONA REVISED STATUTES § 41-1033**

APPENDIX B

EXPERT REPORT OF ROBERT EATON

Genworth Life Insurance Company v. Arizona Department of Insurance

Dated January 18, 2021

INTRODUCTION AND QUALIFICATIONS

I am a long-term care insurance (LTC, LTCI) actuary and a consultant employed by Milliman, Inc. I have worked in the LTCI industry since 2009. I am a Fellow of the Society of Actuaries (FSA) and a Member of the American Academy of Actuaries (MAAA).

I joined Milliman in 2014. Prior to joining Milliman, I worked at a major LTCI company in a pricing and premium rate increase role from 2009 - 2012. Since then, I have worked as a consultant both at Towers Watson (now Willis Towers Watson) and now at Milliman. I have assisted LTCI clients with many projects including premium rate increases, valuation, Appointed Actuary opinions, mergers & acquisitions, and expert witness work.

Within Milliman, I work on a team that develops the Milliman Long-Term Care Insurance Guidelines (the Guidelines). The Guidelines are recognized by insurance companies and regulators as an industry-leading source of LTCI actuarial analysis and assumptions. The Guidelines are used by many companies filing premium rate increases as a reliable source of LTCI industry data.

I volunteer my time with the Society of Actuaries (the SOA) to develop education and research that expands the industry's understanding of LTCI risks. I was elected by my long-term care insurance professional peers to the SOA's LTC Section Council in 2015. I served from 2016 to 2017 as the editor of the SOA's LTC Newsletter. I served as Chairperson of the LTC Section Council from 2017 to 2018. I am the co-creator of the SOA's Long-Term Care Medical Symposium. I was selected to serve as Chairperson of the LTC Reputational Risk Task Force, created by the SOA's Board of Directors in 2018. For these volunteer efforts, I was awarded the 2018 Volunteer of the Year award by the SOA and the SOA President's Award in 2019.

I was elected to the SOA's Board of Directors in October 2019 to serve a 3-year term. An elected Board member of the SOA is "Responsible, in partnership with other Board members and staff, to lead the organization and the actuarial profession through implementation of the SOA strategic plan and by performing fiduciary, strategic and policy responsibilities." I was elected in the general election of over 20,000 actuarial peers based on my reputation, volunteerism, and leadership in the long-term care insurance and life insurance industries.

I have published many articles and papers on life and LTC insurance, including "Long Term Care Insurance: The SOA Pricing Project" (2016), "Recouping past LTC losses" (2017), "LTSS Services in Medicare Advantage Plans" (2019), "Long-Term Care Insurance Fraud, Waste, and Abuse Risk Management" (2019), and "Combination Products: An Accelerated Education" (2019).

I am a frequent speaker at insurance industry conferences, including the SOA's Health Meeting, Annual Meeting, Life & Annuity Symposium, and Valuation Actuary Symposium. I have been asked to speak internationally: I presented at the Geneva Association's 2018 meeting in Paris on the risks of LTCI in the US, and at the European Actuarial Association's Predictive Modeling workshop in 2018. I have spoken on LTC as part of South Carolina and Maryland state regulatory hearings on LTCI premium rate increases.

Both Maryland and South Carolina requested that the SOA send a qualified LTCI representative to speak at LTCI premium rate increase symposia. The SOA requested that I represent the Society and present educational materials on why LTCI premium rate increases may be necessary. I presented to an audience of LTCI policyholders as well as the insurance commissioners and industry representatives.

I speak regularly at the Intercompany Long-Term Care Insurance (ILTCI) conference on topics such as premium rate increases, predictive analytics, and the future of LTCI. I am on the Executive Committee and Board of Directors of the ILTCI Association, and I am the Chairperson of the 2020 ILTCI Conference.

TERMS OF ENGAGEMENT

I was engaged in this matter to provide background on long-term care insurance pricing, and to opine on the necessity of premium rate increases and how, as actuaries, we determine that necessity. I was also engaged to opine on the Arizona Department of Insurance's use of the Fictional, or "if-knew" Premium approach.

SUMMARY OF OPINIONS

1. Expected loss ratios for LTCI business are calculated using estimates of earned premium, not Fictional Premium.
2. From an actuarial perspective, the applicable Arizona regulations contemplate the use of earned premium in determining a loss ratio for LTCI business.
3. For LTCI policies, the "if-knew" method is inappropriate as a tool for determining a premium rate increase that maintains a reasonable relationship of benefits to premium.
4. The "if-knew" method is not anywhere considered standard actuarial practice. This method relies on Fictional Premiums that are not tied to actual or expected policy experience, and thus are not useful in evaluating the financial health of a book of business.
5. Applying the "if-knew" method in isolation was deemed "inappropriate" by the NAIC. The NAIC promulgated a different method of avoiding the recoupment of past claim losses.

BACKGROUND

Basic actuarial framework for long-term care insurance

Pricing LTCI

One of the key responsibilities of actuaries is in their role as risk managers tasked with maintaining the financial health of insurance products. Pricing, or determining the appropriate premium rates to charge to customers, is a key function of this risk management. Actuaries calculate insurance premium rates by making informed assumptions about unknown future events.

Long-term care insurance products provide benefits when policyholders need assistance with their activities of daily living or if they are severely cognitively impaired. These events happen mostly later in life, and LTC insurance is usually sold to people in their 50's and 60's. As a result, LTC insurance is a long-duration product: policyholders usually need long-term care many years after they purchased the policy. LTC insurance is a relatively new product line, with US insurance carriers first selling policies in the late 1970s. Most policies in-force today were sold in the 1990s and 2000s, which implies that the majority of LTCI claims are yet to come.

For LTCI products, premium is typically set at the policyholder's age of issue. This is known as "issue-age rating." Premium rates do not increase except in certain circumstances such as premium rate increases approved by state regulators.

Actuaries calculate premium rates for LTCI products using a model that projects cash flows under the following assumptions:

- Morbidity: how often and for how long people need benefits, and how much of their contractual benefit they use;

- Mortality: how frequently policyholders die;
- Lapse: voluntary non-renewal of the policy;
- Investment earnings on the assets supporting reserves and surplus: reserves and surplus are those amounts the company must hold in any year to pay future claims and to absorb annual fluctuations in financial results. Each state determines the minimum required level of reserves that a company must hold for an LTCI policy. Those reserves are intended to be conservative compared to the actuary's best estimate of future claims; and
- Expenses: costs and commissions required to sell and maintain the policy.

The actuary applies discounting to future cash flows to account for the time value of money, and determines a premium rate consistent with company business targets (such as a loss ratio).

Loss Ratio

When pricing a new insurance policy, the actuary calculates an expected (or "anticipated") loss ratio by dividing the present value of expected future incurred claims by the present value of expected future earned premium. This ratio of claims divided by premiums represents the actuary's expectation for the life of the insurance policy and is referred to as the lifetime loss ratio.

After the policy is issued, the components of the anticipated lifetime loss ratio are past and future claims as well as past and future premiums.

Past (or historical) claims in the lifetime loss ratio may be expressed on an incurred basis or a paid basis. Claims on an incurred basis reflect all the payments for a single claim (even if they span many years) in the calendar year in which the claim began, plus any expected payments beyond the valuation date (the date to which the premiums and claims are discounted). The payments made in subsequent years are discounted to the valuation date to reflect the time value of money. Claims shown on a paid basis will reflect claims in the calendar year in which the actual payment is made.

Past premiums in the lifetime loss ratio are presented as "earned" premiums, meaning for a given period of time the premiums covered the benefits that the company was obligated to pay. Earned premiums are defined in the Society of Actuary's (SOA) online Actuarial Toolkit¹:

Earned premium is the portion of an insurance premium that paid for a portion of time in which the insurance policy was in effect, but has now passed and expired. Since the insurance company covered the risk during that time, it can now consider the associated premium payments it took from the insured as "earned."

Future claims in the lifetime loss ratio are those that the actuary expects to incur in the periods following the valuation date, under a certain set of assumptions. Future premiums are those that the actuary expects to earn in the periods following the valuation date, under a certain set of assumptions.

The anticipated lifetime loss ratio is calculated to be the sum of lifetime incurred claims (actual and anticipated) divided by the sum of lifetime earned premiums (actual and anticipated), where past cash flows are accumulated to the valuation date and future cash flows are discounted to the valuation date.

For example, the actuary at a company that has incurred \$4,000,000 of past claims and earned \$8,000,000 of past premiums, and expects to incur \$3,000,000 of future claims and earn \$2,000,000 of future premium, all adjusted for the discount rate, will calculate an anticipated lifetime loss ratio as follows:

$$\text{Anticipated Lifetime Loss Ratio} = 70\% = \frac{\text{actual past} + \text{anticipated future incurred claims}}{\text{actual past} + \text{anticipated future earned premiums}} = \frac{\$4,000,000 + \$3,000,000}{\$8,000,000 + \$2,000,000}$$

¹ SOA Actuarial Toolkit, accessed February 4, 2020, <https://actuarialtoolkit.soa.org/tool/glossary/earned-premium>

The loss ratio represents the portion of the premium that policyholders pay that are received in benefits. For longer-duration contracts such as long-term care insurance or life insurance, the calculation takes into account (using discount rates) the earned premiums and paid benefits over the lifetime of the contract.

Health insurance products in the US are regulated by states, most of whom accept or adopt the guidance set by the National Association of Insurance Commissioners (NAIC). LTCI is a type of health insurance product, and the NAIC developed the Long-Term Care Insurance Model Regulation² (the Model Regulation) to govern insurance carriers as they offer LTCI policies. The initial LTCI Model Regulation, adopted in Arizona on August 10, 1992, directed insurance carriers to establish premium rates that were reasonable in relation to the policy benefits. That initial Model Regulation indicated that a reasonable relationship of benefits (claims) to premiums, referred to as the loss ratio, is 60%. In effect, this means that over the lifetime of the policy form, 60 cents of every premium dollar would be paid out as claim benefits, with the remaining 40 cents used to pay expenses and provide a reasonable rate of return.

Adverse claim development and the necessity of premium rate increases

After business is issued by an LTCI company, the actuarial risk manager must monitor the emerging cash flows to assess if the policies are still in good financial health. The actuary will review the actual claims, commissions, expenses, and earned premiums to understand how well the experience compares to the assumptions originally set when the policy was priced. Actuaries conduct experience studies to test these assumptions. One common method to assess if LTCI claims are higher or lower than expected is to re-calculate the lifetime loss ratio. In this calculation the actuary determines the present value of known historical claims and premiums, in combination with the expectation of the present value of future claims and premiums, and applies the anticipated lifetime loss ratio formula as described in the prior section.

The actuary may need to adjust future assumptions if actual policy experience is inconsistent with the original assumptions. This is common as emerging experience often deviates from original expectations. For LTCI policies, the most critical assumptions that actuaries make when developing a pricing or projection model are the morbidity, mortality, lapse, and investment income assumptions. The actuary will review the historical experience for a given block of business in isolation or in combination with other similar blocks of business. The actuary assigns more credibility to larger blocks of business using many well-established methods³.

Because LTCI is still a relatively young product, actual claims for the oldest ages (e.g., above 85) have taken decades to emerge in a credible manner. These are also the ages where LTCI is needed the most, and where LTCI companies expect the most claims. The mortality and lapse assumptions interact with the morbidity assumption. If there are fewer deaths or lapses than the actuary anticipated, then there will be more policyholders retaining their policies to the oldest ages. These more persistent policyholders can therefore lead to higher overall claims, and thus a higher loss ratio. This may be true even if the expected claims per person has not changed. The actuary calculates the initial LTCI premium rates with the expectation that a smaller portion of policyholders will remain into the oldest ages. If more policyholders survive or retain their products into those later (more expensive) ages, the original premium rates may be insufficient to pay future claims on the additional policyholders.

For an example of how an actuary re-assesses the lifetime loss ratio, take a hypothetical company that originally anticipated a lifetime loss ratio of 60%. After years of collecting premiums and paying claims, the actuary re-assesses the company's expected future claims. Based on the actuarial study of claims

² NAIC Model Laws, Regulations, Guidelines and Other Resources: Long-Term Care Insurance Model Regulation, accessed January 31, 2019 <https://www.naic.org/store/free/MDL-641.pdf>

³ American Academy of Actuaries, Long-Term Care Credibility Monograph, August 2016, accessed February 5, 2020, https://www.actuary.org/sites/default/files/files/publications/LTC_Credibility_Monograph_08172016.pdf

data, the actuary now expects more future claims, increasing the numerator, and raising the loss ratio to 90%.

$$90\% = \frac{\text{actual past} + \text{anticipated future incurred claims}}{\text{actual past} + \text{anticipated future earned premiums}} = \frac{\$4,000,000 + \$5,000,000}{\$6,000,000 + \$4,000,000}$$

In order to return the book of business to financial health, premium rates may be increased. Increasing premium rates increases the expected future premiums that the company collects. In this simplified example, increasing future premium rates by 50% (from \$4,000,000 to \$6,000,000) can lower the lifetime loss ratio to 75%:

$$75\% = \frac{\text{actual past} + \text{anticipated future incurred claims}}{\text{actual past} + \text{anticipated future earned premiums}} = \frac{\$4,000,000 + \$5,000,000}{\$6,000,000 + \$6,000,000}$$

When an LTCI actuary determines that assumptions have changed materially on a block of business, the actuary may recalculate the lifetime loss ratio to be higher than originally expected. The higher lifetime loss ratio is an indication that premium rates may be insufficient to cover claims and expenses, particularly if the lifetime loss ratio approaches 100%, thereby threatening the financial health of the block of business. In these cases, a premium rate increase may be warranted.

If the actuary determines that premium rate increases are required, it is important for the company to propose higher rates to the governing jurisdiction in a timely manner. The sooner a premium rate increase is implemented, the greater the impact of the higher rates, since there will be more premium-paying policies contributing to the rate shortfall. Seeking premium rate increases in a timely fashion, instead of delaying them, also produces a greater time value of the additional payments. In summary, charging a premium rate increase on a broader base of premium paying policyholders, and without unnecessary delays, allows the company to generate more revenue with a smaller rate increase, which lessens the burden on the policyholders.

Using the example above, if the company had waited longer to address the premium shortfall, there would be fewer future premiums on which to raise rates. For instance, imagine the same anticipated lifetime loss ratio of 90%, but calculated when there are only \$2,000,000 of future premiums left to be paid:

$$90\% = \frac{\text{actual past} + \text{anticipated future incurred claims}}{\text{actual past} + \text{anticipated future earned premiums}} = \frac{\$5,000,000 + \$4,000,000}{\$8,000,000 + \$2,000,000}$$

In this example, to reach the 75% loss ratio, a 100% rate increase (instead of a 50% rate increase) is required, because the rate increase is only effective on the anticipated earned premiums. The higher, 100% rate increase is applied to the \$2,000,000 of future premium to produce \$4,000,000 of future premium.

$$75\% = \frac{\text{actual past} + \text{anticipated future incurred claims}}{\text{actual past} + \text{anticipated future earned premiums}} = \frac{\$5,000,000 + \$4,000,000}{\$8,000,000 + \$4,000,000}$$

Arizona regulatory framework

Arizona Administrative Code (AAC) Title 20, Chapter 6 states that LTCI policies issued prior to May 10, 2005 are subject to minimum loss ratio standards (R20-6-1013). For those policies, "Benefits under an individual long-term care insurance policy are deemed reasonable in relation to premiums if the expected loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk." Accordingly, as set forth in R20-6-1013 C., a "premium rate schedule or proposed revision to a premium rate schedule that is expected to produce, over the lifetime of the long-term care insurance policy, benefits that are less than 60% of the proposed premium rate schedule is deemed to be

unreasonable.” A premium rate increase may be justified if the actuary’s expected lifetime loss ratio exceeds the original pricing loss ratio (or 60%, whichever is higher).

Arizona Administrative Code R20-6-1014 went into effect for policies issued after May 10, 2005. This regulation applies to LTCI policies and the determination of premium rate increases. This regulation is referred to in the LTCI industry as the ‘rate stability’ regulation. R20-6-1014 requires that the LTCI pricing actuary include a margin for adverse deviation in the expected future claims. The company may only increase premium rates under this regulation if that margin for adverse deviation has been eroded due to a revised expectation of higher future claims. The actuary must certify that “[i]f the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated.” Under this regulation there are additional limitations to the premium rate increase that the actuary can request. These restrictions include a limitation that the requested premium rates may not be higher than the company’s premium rates for new LTCI policies, and that the loss ratio expected for the future increased premium amounts must not be lower than 85%.

Effective for policies issued on November 10, 2017 and later, AAC R20-6-1015 applies. This regulation is similar in most ways to R20-6-1014 with some exceptions, such as:

1. The regulation prescribes a calculation of past claims that prohibits the insurance carrier from recouping past claim losses (section R20-6-1015 C.3) when seeking a premium rate increase.
2. The regulation prescribes a composite margin for adverse deviation to be included in the pricing, where the “composite margin shall not be less than 10% of lifetime claims.” (R20-6-1009 B.4.a).

Fictional premium approach

Description

In the “if-knew” method employed by regulators in Arizona’s long term care rate increase filings, the lifetime loss ratio for LTCI policies is calculated by assuming the proposed premium rate schedule was effective for the entire life of the policy, instead of only effective after the date of approval. This loss ratio is compared to the 60% loss ratio that R20-6-1013 defines as representing a reasonable relationship of benefits to premiums. If the lifetime loss ratio under the “if-knew” approach is lower than 60%, the proposed premium rates are considered unreasonable.

Origins and rationale for the Fictional Premium approach

LTCI actuaries have considered the possibility that premium rate increases could be used to recoup past losses for many years. In this context, “recouping past losses” indicates the scenario whereby a company might seek an increase in future premiums to account for the fact that historical claims were higher than originally expected. At the SOA Annual Meeting in 2002⁴, long-term care actuaries discussed the methods available to them at the time for changing premium rates, and how to avoid recouping past losses. One method, described in the SOA’s LTC News in December 2003⁵ was similar in nature to the Fictional Premium, or “if-knew” approach.

By 2014, many regulators and LTCI company actuaries recognized that the Fictional Premium approach was not an appropriate way to address the issue of recouping past losses. The NAIC then included within the 2014 Model Regulation a new section, 20.1, dedicated to demonstrating, via a new calculation of past claims, that a company justifying LTCI premium rate increases is not recouping past losses. In

⁴ Society of Actuaries, Record, Volume 28, No. 3, Session 6PD “Understanding the Guaranteed Renewable Aspect of Long-Term Care Insurance, accessed February 5, 2020, <https://www.soa.org/globalassets/assets/library/proceedings/record-of-the-society-of-actuaries/2000-09/2002/january/rsa02v28n36pd.pdf>

⁵ Society of Actuaries Long-Term Care News, December 2003, accessed February 5, 2020, <https://www.soa.org/globalassets/assets/library/newsletters/long-term-care/2003/december/LTC0312.pdf>

Arizona, this new provision from the 2014 Model Regulation (AAC R20-6-1015) applies only to policies issued following its effective date. A 2017 article published in the SOA's Long-Term Care News, discussing the 2014 LTC Model Regulation, noted that the NAIC task force agreed that the "if-knew" approach to review premium rate increases is not a "realistic" method to "define past losses." According to the Long-Term Care News, "[t]his line of reasoning greatly expands the risk in the product, injecting additional pricing risk by not allowing companies to seek the appropriate premium levels needed to maintain the future financial health of the policies. This risk is particularly germane as the bulk of LTC claims on today's inforce blocks will emerge in the coming decades."⁶

The American Academy of Actuaries (AAA) echoed this comment in its October 2018 Issue Brief "Long-Term Care Insurance: Considerations for Treatment of Past Losses in Rate Increase Requests," noting "serious solvency concerns" with using the "if-knew" premium approach to evaluating premium rate increase requests, especially on older blocks of business.⁷

Current view of the Fictional Premium approach

As discussed above, the NAIC has considered and subsequently rejected the Fictional Premium approach to reviewing LTC premium rate increases. While the original intent of the Fictional Premium approach may have been to prevent insurers from recouping past claim losses, the 2014 LTC Model Regulation provided a specific method for ensuring that companies do not recoup past claim losses.

Following the 2014 Model Regulation, the NAIC's LTC Pricing Subgroup observed that "regulators often treat the review and approval of [LTC premium] rate increases differently." As a result of the varying industry practices, the LTC Pricing Subgroup produced a guideline document "Long-term Care Insurance: Approaches to Reviewing Premium Rate Increases."⁸ The NAIC determined that it is inappropriate to use the "if-knew" method alone in evaluating LTC premium rate increases.

Arizona's use of the Fictional Premium approach

Arizona has instituted a practice of reviewing LTCL premium rate increase filings using the "if-knew" or Fictional Premium approach. In many cases, the actuaries who review LTC premium rate increase filings in Arizona make an explicit calculation that demonstrates the lifetime loss ratio as if Fictional Premiums were earned in historical years.

I reviewed over 300 LTCL rate increase filings that were filed since 2012. Of these, Arizona explicitly referred to the "if-knew" approach in over 70 filings since 2017. As an example of this, the actuary engaged by the Department to review the filing noted in a September 27, 2019 letter⁹ to the Arizona Department of Insurance:

"In order to give the Arizona Department of Insurance a view of the total cumulative rate increase, [the reviewer] ran projections assuming that all past premiums were paid at issue at the newly proposed rate level. This methodology could act as a secondary guideline for the Department in determining the merits of a proposed rate increase. It is also referred to as the 'If We Knew Premium' – the premium that should have been charged at issue so that no future increases would be needed at this time."

⁶ Society of Actuaries Long-Term Care News, April 2017, "Recouping Past Losses", accessed February 5, 2020, <https://www.soa.org/globalassets/assets/library/newsletters/long-term-care/2017/april/ltc-2017-iss44.pdf>

⁷ American Academy of Actuaries, October 2018, "Long-Term Care Insurance: Considerations for Treatment of Past Losses in Rate Increase Requests", accessed February 5, 2020, https://www.actuary.org/sites/default/files/files/publications/LTCL_Considerations_103118.pdf

⁸ NAIC, October 2018, "Long-term Care Insurance: Approaches to Reviewing Premium Rate Increases", https://content.naic.org/sites/default/files/inline-files/committees_b_ltc_wg_approaches_ltc_rate_increases_final.docx

⁹ Publicly available Arizona rate filings, SERFF tracking number ELCC-131938578, "Equitable 131938578 Memo 09-27-2019.pdf"

I also reviewed correspondence between Arizona and the filing insurance company, and I determined that over 60 additional rate increase filings since 2012 were reviewed with an implicit reference to the “if-knew” criteria, without explicitly using the words “if-knew.”

As an example of this implicit reference, the Department noted in a March 12, 2019 letter¹⁰:

“[T]he requested rates would have produced a loss ratio below 60% if charged from inception and do not represent a reasonable relationship between premiums and benefits as required by this standard. However, with smaller rate increases for each series, the lifetime loss ratio would have been 60% which barely complies with the loss ratio requirement.”

In addition, I observed that reviewers did not consistently apply Arizona’s regulation based on the issue dates of the policies. Arizona Administrative Code R20-6-1013 states that it applies to “policies and certificates issued any time prior to May 10, 2005.” It is this section (1013) that specifies that a loss ratio of at least 60% is “deemed reasonable” for LTCI policies.

As an example of the inconsistency of LTCI premium rate increase filing reviews, the actuarial memorandum for one filing specifically states that “[t]his memorandum is for Post-Rate Stabilized policies issued on and after May 10, 2005.¹¹” Arizona’s reviewers then conducted an analysis on the LTCI rate filing based on the “if-knew” premium methodology, and compared the results to a 60% loss ratio¹²:

“It is also referred to as the “If We Knew Premium” – the premium that should have been charged at issue so that no future increases would be needed at this time. The following analysis is based on [the reviewer’s] projection of future nationwide experience. ...

... Table 3B assumes the proposed increase occurred at issue in the original premium schedule with no future increases. These projections produced lifetime loss ratio of 73.5%, which is greater than the minimum 60% found in Section R20-6-1014. [sic]”

The attached Appendix includes a listing of LTCI premium rate increases that I reviewed, on which I base my comments.

OPINIONS

1. The industry standard for actuaries is to calculate expected loss ratios for LTCI business using estimates of earned premium, not Fictional Premium.

Earned premium is the portion of an insurance premium that paid for a portion of time in which the insurance policy was in effect, but has now passed and expired. As a matter of standard industry practice, actuaries use earned premiums to calculate expected (or anticipated) loss ratios for LTCI business. Actuaries do not use Fictional Premium to calculate loss ratios because loss ratios calculated using Fictional Premium are not meaningful when evaluating the financial health of a block of business.

¹⁰ Publicly available Arizona rate filings, SERFF tracking number CNAB-131282834, “CNAB-131282834 Continental Casualty 3-12-2019.pdf”

¹¹ Publicly available Arizona rate filings, SERFF tracking number LFCR-131768481, “LB-7000 Rate Filing Actuarial Memo with Attachments AZ Post-RS 02 12 19.pdf”

¹² Publicly available Arizona rate filings, SERFF tracking number LFCR-131768481, “Lincoln Benefit - 131768481 Memo 04-30-2019.pdf”

2. From an actuarial perspective, the applicable Arizona regulations contemplate the use of earned premium in determining a loss ratio for LTCI business.

Arizona Administrative Code R20-6-1013 states:

“Benefits under an individual long-term care insurance policy are deemed reasonable in relation to premiums if the expected loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, the director shall consider all relevant factors, including:

- 1. Statistical credibility of incurred claims experience and earned premiums;*
- 2. The period for which rates are computed to provide coverage;*
- 3. ...”*

Consistent with established actuarial principles, the regulation clearly indicates the use of earned premiums in the loss ratio calculation. At the same time, nowhere do the regulations suggest that the “if-knew” method should be used in evaluating the anticipated lifetime loss ratio of a block of LTCI policies. Indeed, its use is contrary to the language of the regulation

3. For LTCI policies, the “if-knew” method is inappropriate as a tool for determining a premium rate increase that maintains a reasonable relationship of benefits to premium.

From an actuary’s perspective, there are technical reasons why the “if-knew” method is inappropriate. The following two hypothetical examples illustrate these reasons. Example 1 shows that the “if-knew” method may restrict a company from seeking a justified rate increase even if it has not experienced past losses. Example 2 shows that the “if-knew” method may prevent a company from seeking a justified rate increase after an environmental change, in this case a new medical innovation.

Example 1

To demonstrate why the “if-knew” approach is inappropriate for LTCI policies, consider the case where an LTC insurer has no unfavorable past claim experience on Block A, i.e. no past losses, at a point in time 10 years following the issue of policies. The company monitors experience on other, similar LTC policies, and now believes that for the oldest policyholders LTC claim durations will be longer (i.e. higher claim amounts) than originally expected. This change in assumptions has not resulted in unfavorable historical claims in Block A, because the change affects only the oldest policyholders, but the actuary managing Block A should increase premium rates to account for the new expectation of higher future claims. In this case, all else equal, the company expects higher future claims, and should be able to charge appropriate premium rates to maintain the financial health of the business. If the “if-knew” restriction were imposed as a limit to the justified premium rate increase, rates would likely be insufficient to cover anticipated future losses.

Example 2

In another example, the actuary managing Block B of LTCI policies observes after 10 years that a new medical advancement (say, a blockbuster drug) may prolong the life of policyholders. While the actuary does not believe that LTC claims will happen more frequently (or will be more severe) at a given age than the original assumptions, the actuary nonetheless expects that more policyholders will survive to older ages on average. Though there have been no past losses on Block B, and the actuary doesn’t expect a higher future rate of claims at any given age, the actuary updates the assumption of future policyholder longevity. The actuary anticipates a higher lifetime loss ratio since they now expect more policyholders to survive to older ages where claims occur at greater rates. The actuary determines that a premium rate increase is required to

account for the greater longevity of policyholders: there will be higher claims overall than expected at pricing. The “if-knew” approach, which is intended to prevent insurers from recouping past losses, now restricts the actuary from charging appropriate premium rates, and thus jeopardizes the financial health of Block B.

In effect, the “if-knew” approach requires that the actuary assume that the insurer could have known about the breakthrough medical advancement. In reality, the insurer had no way to know such information at the time of original pricing. The “if-knew” line of reasoning is contrary to permitting insurers to issue LTC policies on a guaranteed renewable basis. The guaranteed renewable construct recognizes the long-tail nature of insurance like LTC, including particularly the fact that actual experience may not emerge until many years after the policy is initially priced.

By allowing an LTC insurer to issue policies on a guaranteed renewable basis, regulators acknowledge that the insurer cannot know (and should not be assumed to have known) how policyholder experience may emerge in the future. In this way, by restricting the ability of companies to fund additional claims with higher future premiums, the “if-knew” approach may force a company to lock in future losses.

These examples are illustrative but realistic; they have occurred in part or in whole on many existing blocks of LTCL policies nationwide.

There are also unhealthy consequences to applying the “if-knew” premiums.

First, limiting the premium rate increase request based on an “if-knew” methodology may require the actuary to hold additional reserves during their year-end assessment of asset and reserve adequacy. An actuarially justified premium adjustment is critical to the guaranteed renewable nature of the individual health insurance contract. E. Paul Barnhart¹³ indicates this in the Transactions of Society of Actuaries: “The Insurer should not be obliged to absorb a deficiency in prospective reserves.” If the insurer must hold higher reserves and surplus for the LTCL business because they cannot implement needed premium rate increases to fund future claims, the company must effectively take funds from the earnings or business of other stakeholders who are not benefitting from the coverage.

Second, pricing policies under an “if-knew” premium rate increase restriction may irreparably harm traditional LTCL markets altogether. The inability to obtain satisfactory LTCL premium rate increases has already had the effect of reducing the number of companies willing to sell LTCL policies. The use of the “if-knew” method further restricts the ability of carriers to increase premium rates, which may serve to incentivize more LTCL companies to exit the market.

4. The “if-knew” method is not anywhere considered standard actuarial practice. This method relies on Fictional Premiums that are not tied to actual or expected policy experience, and thus are not useful in evaluating the financial health of a book of business.

Because Fictional Premium was never collected from policyholders, it is an inappropriate means by which to judge the financial health of a block of LTCL policies.

¹³ Transactions of Society of Actuaries: 1960 Vol. 12 No. 34, Barnhart, accessed February 5, 2020, <https://www.soa.org/globalassets/assets/library/research/transactions-of-society-of-actuaries/1960/january/tsa60v12n3462.pdf>

5. Applying the “if-knew” method in isolation was deemed “inappropriate” by the NAIC. The NAIC promulgated a different method of avoiding the recoupment of past claim losses.

The NAIC’s LTC Pricing Subgroup determined that it is “inappropriate” to use the “if-knew method” in evaluating LTC premium rate increases. Members of the Society of Actuaries and the American Academy of Actuaries, the two leading actuarial industry organizations pertinent to LTCI, have authored articles in the SOA’s and AAA’s peer reviewed publications condemning the use of the “if-knew method” as actuarially inappropriate and financially unsound.

The NAIC’s LTC Model Regulation finalized in 2014 and adopted by Arizona in regulation R20-6-1015, applicable to policies issued after November 10, 2017, describes the specific method that is intended to ensure that LTCI companies do not recoup past claim losses (R20-6-1015, C.3.).

APPENDIX

Filing Year	Company	NAIC	SERFF Tracking #	Disposition Date	Filing Status
2012	The Prudential Insurance Company of America	68241	PRUD-127951419	1/25/12	Closed - Rejected-Substantive
2012	John Alden Life Insurance Company	65080	LFCR-128130287	3/1/12	Closed - Rejected
2012	John Alden Life Insurance Company	65080	LFCR-128134768	3/8/12	Closed - Rejected
2012	The Prudential Insurance Company of America	68241	PRUD-128024825	4/16/12	Closed - Approved
2012	Washington National Insurance Company	70319	CNLT-128315529	5/14/12	Closed - Rejected-Administrative
2012	John Alden Life Insurance Company	65080	LFCR-128173278	5/29/12	Closed - Approved
2012	Washington National Insurance Company	70319	CNLT-128520860	6/28/12	Closed - Rejected
2012	State Farm Mutual Automobile Insurance Company	25178	STLH-128539461	8/7/12	Closed - Rejected
2012	American Pioneer Life Insurance Company	60763	UNAM-128641910	8/16/12	Closed - Rejected
2012	Washington National Insurance Company	70319	CNLT-128555220	8/28/12	Closed - Rejected
2012	Reassure America Life Insurance Company	70211	LFCR-128667232	9/4/12	Closed - Rejected-Administrative
2012	Mutual of Omaha Insurance Company	71412	MUTA-128318960	9/11/12	Closed - Rejected-Substantive
2012	Transamerica Life Insurance Company	86231	AEGJ-128233915	9/11/12	Closed - Approved
2012	United of Omaha Life Insurance Company	69868	MUTA-128319012	9/11/12	Closed - Rejected-Substantive
2012	Transamerica Life Insurance Company	86231	AEGJ-128658134	9/20/12	Closed - Approved
2012	American Pioneer Life Insurance Company	60763	UNAM-128647385	10/3/12	Closed - Approved
2012	State Farm Mutual Automobile Insurance Company	25178	STLH-128622576	10/5/12	Closed - Disapproved
2012	Mutual of Omaha Insurance Company	71412	MUTA-128653501	10/12/12	Closed - Approved
2012	Pennsylvania Life Insurance Company	67660	UNAM-128641978	10/22/12	Closed - Disapproved
2012	Washington National Insurance Company	70319	CNLT-128683128	10/23/12	Closed - Approved
2012	Provident Life and Accident Insurance Company	68195	UNUM-128525588	11/5/12	Closed - Approved
2012	The State Life Insurance Company	69116	LFCR-128697836	11/5/12	Closed - Approved
2012	Bankers Life and Casualty Company	61263	BNLB-128714797	11/7/12	Closed - Disapproved
2012	Allianz Life Insurance Company of North America	90611	ALLB-128730670	11/13/12	Closed - Rejected
2012	Mutual of Omaha Insurance Company	71412	MUTA-128730268	11/20/12	Closed - Approved
2012	United of Omaha Life Insurance Company	69868	MUTA-128730253	11/20/12	Closed - Approved
2012	Allianz Life Insurance Company of North America	90611	ALLB-128770374	12/13/12	Closed - Disapproved
2012	Reassure America Life Insurance Company	70211	IASL-128769981	12/18/12	Closed - Approved
2012	American General Life Insurance Company of Delaware	66842	LTGC-128791585	12/20/12	Closed - Disapproved
2012	Metropolitan Life Insurance Company	65978	META-128800351	12/27/12	Closed - Rejected
2012	Metropolitan Life Insurance Company	65978	META-128800355	12/27/12	Closed - Rejected
2012	Metropolitan Life Insurance Company	65978	META-128800395	12/27/12	Closed - Rejected
2012	Metropolitan Life Insurance Company	65978	META-128800398	12/27/12	Closed - Rejected
2012	CMFG Life Insurance Company	62626	CUNA-128748379	1/8/13	Closed - Disapproved
2012	Genworth Life Insurance Company	70025	GEFA-128782338	2/4/13	Closed - Filed Informational
2012	Genworth Life Insurance Company	70025	GEFA-128782340	2/4/13	Closed - Approved
2012	Genworth Life Insurance Company	70025	GEFA-128782368	2/4/13	Closed - Approved
2012	Genworth Life Insurance Company	70025	GEFA-128782382	2/4/13	Closed - Approved
2012	John Hancock Life Insurance Company (USA)	65838	MULF-128363200	2/4/13	Closed - Approved
2012	Continental Casualty Company	20443	MILL-128755336	2/7/13	Closed - Approved
2012	Allianz Life Insurance Company of North America	90611	ALLB-128711987	5/21/13	Closed - Approved
2012	Allianz Life Insurance Company of North America	90611	ALLB-128730772	5/21/13	Closed - Approved
2013	MedAmerica Insurance Company	69515	MILL-128787634	3/1/13	Closed - Acknowledged Receipt
2013	Metropolitan Life Insurance Company	65978	META-128850966	3/4/13	Closed - Rejected
2013	Metropolitan Life Insurance Company	65978	META-128850999	3/4/13	Closed - Rejected
2013	Pennsylvania Life Insurance Company	67660	UNAM-128856330	3/12/13	Closed - Approved
2013	Metropolitan Life Insurance Company	65978	META-128851005	3/14/13	Closed - Rejected
2013	State Farm Mutual Automobile Insurance Company	25178	STLH-128875286	3/18/13	Closed - Rejected
2013	State Farm Mutual Automobile Insurance Company	25178	STLH-128902666	3/18/13	Closed - Approved
2013	Metropolitan Life Insurance Company	65978	META-128940139	3/21/13	Closed - Rejected
2013	State Farm Mutual Automobile Insurance Company	25178	STLH-128955117	3/22/13	Closed - Rejected
2013	Equitable Life & Casualty Insurance Company	62952	ELCC-128879890	3/25/13	Closed - Disapproved
2013	New York Life Insurance Company	66915	NWLT-128847370	3/25/13	Closed - Approved
2013	New York Life Insurance Company	66915	NWLT-128847408	3/25/13	Closed - Approved
2013	Allianz Life Insurance Company of North America	90611	ALLB-128863980	3/27/13	Closed - Approved
2013	Metropolitan Life Insurance Company	65978	META-128850958	4/9/13	Closed - Approved
2013	Metropolitan Life Insurance Company	65978	META-128940275	4/15/13	Closed - Approved
2013	Metropolitan Life Insurance Company	65978	META-128986394	4/15/13	Closed - Rejected-Administrative
2013	Bankers Life and Casualty Company	61263	BNLB-128938654	4/23/13	Closed - Approved
2013	Metropolitan Life Insurance Company	65978	META-128996434	4/25/13	Closed - Rejected-Substantive
2013	CMFG Life Insurance Company	62626	CUNA-128955415	4/30/13	Closed - Withdrawn
2013	State Farm Mutual Automobile Insurance Company	25178	STLH-128959497	5/6/13	Closed - Approved
2013	Metropolitan Life Insurance Company	65978	META-128954097	5/8/13	Closed - Withdrawn
2013	American Republic Insurance Company	60836	MULF-129001118	5/23/13	Closed - Approved
2013	Equitable Life & Casualty Insurance Company	62952	ELCC-128964044	6/3/13	Closed - Approved
2013	Physicians Mutual Insurance Company	80578	PHYS-129051137	6/6/13	Closed - Rejected-Administrative
2013	State Farm Mutual Automobile Insurance Company	25178	STLH-129038262	6/11/13	Closed - Rejected-Substantive
2013	Equitable Life & Casualty Insurance Company	62952	ELCC-129024948	6/17/13	Closed - Approved
2013	Bankers Life and Casualty Company	61263	BNLB-129092584	7/2/13	Closed - Rejected-Administrative
2013	Physicians Mutual Insurance Company	80578	PHYS-129064515	7/3/13	Closed - Approved
2013	CMFG Life Insurance Company	62626	CUNA-129060202	7/8/13	Closed - Withdrawn
2013	Equitable Life & Casualty Insurance Company	62952	ELCC-129025230	7/8/13	Closed - Approved
2013	The Prudential Insurance Company of America	68241	PRUD-129053480	7/8/13	Closed - Rejected-Substantive
2013	RiverSource Life Insurance Company	65005	AERS-128839018	7/23/13	Closed - Approved
2013	RiverSource Life Insurance Company	65005	AERS-128839021	7/23/13	Closed - Approved
2013	CMFG Life Insurance Company	62626	CUNA-129059918	8/5/13	Closed - Approved

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Filing Year	Company	NAIC	SERFF Tracking #	Disposition Date	Filing Status
2013	RiverSource Life Insurance Company	65005	AERS-128839019	8/5/13	Closed - Approved
2013	RiverSource Life Insurance Company	65005	AERS-128839020	8/7/13	Closed - Approved
2013	State Farm Mutual Automobile Insurance Company	25178	STLH-129064388	8/21/13	Closed - Withdrawn
2013	Bankers Life and Casualty Company	61263	BNLB-129161609	8/28/13	Closed - Rejected-Administrative
2013	Metropolitan Life Insurance Company	65978	META-129124115	8/28/13	Closed - Withdrawn
2013	The Prudential Insurance Company of America	68241	PRUD-129098161	8/28/13	Closed - Rejected-Substantive
2013	New Era Life Insurance Company	78743	NELI-129129637	8/29/13	Closed - Approved
2013	Ability Insurance Company	71471	MDTP-129139434	9/9/13	Closed - Disapproved
2013	Medico Insurance Company	31119	MDTP-129139433	9/9/13	Closed - Disapproved
2013	American Fidelity Assurance Company	60410	IASL-129208324	9/23/13	Closed - Rejected-Administrative
2013	United Teacher Associates Insurance Company	63479	GLTC-129176425	10/9/13	Closed - Rejected-Administrative
2013	American Fidelity Assurance Company	60410	IASL-129216721	10/29/13	Closed - Approved
2013	Metropolitan Life Insurance Company	65978	META-129214115	11/18/13	Closed - Approved
2013	Metropolitan Life Insurance Company	65978	META-129237626	11/18/13	Closed - Approved
2013	Metropolitan Life Insurance Company	65978	META-129237636	12/5/13	Closed - Disapproved
2013	MetLife Insurance Company of Connecticut	87726	MILL-129245787	12/20/13	Closed - Approved
2013	MetLife Insurance Company of Connecticut	87726	MILL-129245811	12/20/13	Closed - Approved
2013	MetLife Insurance Company of Connecticut	87726	MILL-129245848	12/20/13	Closed - Approved
2013	Bankers Life and Casualty Company	61263	BNLB-129344988	12/26/13	Closed - Rejected-Substantive
2013	Bankers Life and Casualty Company	61263	BNLB-129345000	12/26/13	Closed - Rejected-Substantive
2013	American General Life Insurance Company	60488	LTCG-129315716	1/2/14	Closed - Disapproved
2013	Genworth Life Insurance Company	70025	GEFA-129136806	1/2/14	Closed - Disapproved
2013	United Teacher Associates Insurance Company	63479	GLTC-129208306	1/7/14	Closed - Disapproved
2013	MetLife Insurance Company of Connecticut	87726	MILL-129245714	1/13/14	Closed - Disapproved
2013	MetLife Insurance Company of Connecticut	87726	MILL-129245766	1/13/14	Closed - Disapproved
2013	MetLife Insurance Company of Connecticut	87726	MILL-129245796	1/13/14	Closed - Disapproved
2013	MetLife Insurance Company of Connecticut	87726	MILL-129245819	1/13/14	Closed - Disapproved
2013	MetLife Insurance Company of Connecticut	87726	MILL-129245889	1/13/14	Closed - Approved
2013	United Teacher Associates Insurance Company	63479	GLTC-129308654	1/17/14	Closed - Rejected-Substantive
2013	Ability Insurance Company	71471	MDTP-129340309	1/23/14	Closed - Disapproved
2013	Medico Insurance Company	31119	MDTP-129340642	1/23/14	Closed - Disapproved
2014	American Family Life Assurance Company of Columbus	60380	AFLA-129344696	1/30/14	Closed - Approved
2014	MetLife Insurance Company of Connecticut	87726	MILL-129395272	4/8/14	Closed - Approved
2014	MetLife Insurance Company of Connecticut	87726	MILL-129395276	4/8/14	Closed - Approved
2014	MetLife Insurance Company of Connecticut	87726	MILL-129395293	4/8/14	Closed - Approved
2014	MetLife Insurance Company of Connecticut	87726	MILL-129395295	4/8/14	Closed - Approved
2014	John Hancock Life Insurance Company (USA)	65838	MULF-129384716	4/17/14	Closed - Disapproved
2014	John Hancock Life Insurance Company (USA)	65838	MULF-129512997	4/29/14	Closed - Approved
2014	Ability Insurance Company	71471	MDTP-129519284	5/8/14	Closed - Disapproved
2014	Medico Insurance Company	31119	MDTP-129519162	5/8/14	Closed - Disapproved
2014	John Hancock Life Insurance Company (USA)	65838	MULF-129513029	5/14/14	Closed - Withdrawn
2014	American Pioneer Life Insurance Company	60763	UNAM-129527082	5/23/14	Closed - Approved
2014	Provident Life and Accident Insurance Company	68195	UNUM-129534183	6/3/14	Closed - Withdrawn
2014	John Hancock Life Insurance Company (USA)	65838	MULF-129545274	6/4/14	Closed - Approved
2014	New Era Life Insurance Company	78743	NELI-129570546	6/11/14	Closed - Rejected-Administrative
2014	Pennsylvania Life Insurance Company	67660	UNAM-129527166	6/11/14	Closed - Approved
2014	Provident Life and Accident Insurance Company	68195	UNUM-129567587	6/16/14	Closed - Approved
2014	Provident Life and Accident Insurance Company	68195	UNUM-129614405	6/30/14	Closed - Rejected-Administrative
2014	Provident Life and Accident Insurance Company	68195	UNUM-129614652	7/1/14	Closed - Rejected-Administrative
2014	State Farm Mutual Automobile Insurance Company	25178	STLH-129504053	7/14/14	Closed - Approved
2014	Genworth Life Insurance Company	70025	GEFA-129603725	7/29/14	Closed - Withdrawn
2014	Ability Insurance Company	71471	MDTP-129625023	8/6/14	Closed - Approved
2014	Medico Insurance Company	31119	MDTP-129625022	8/6/14	Closed - Approved
2014	Provident Life and Accident Insurance Company	68195	UNUM-129621014	8/12/14	Closed - Approved
2014	Provident Life and Accident Insurance Company	68195	UNUM-129621294	8/12/14	Closed - Approved
2014	Berkshire Life Insurance Company of America	71714	LFCR-129629454	8/19/14	Closed - Approved
2014	Berkshire Life Insurance Company of America	71714	LFCR-129629463	9/8/14	Closed - Approved
2014	Unum Life Insurance Company of America	62235	UNUM-129701733	9/8/14	Closed - Rejected-Administrative
2014	Unum Life Insurance Company of America	62235	UNUM-129720884	9/15/14	Closed - Rejected-Administrative
2014	Unum Life Insurance Company of America	62235	UNUM-129730063	9/22/14	Closed - Rejected-Administrative
2014	Senior American Life Insurance Company	76759	AFLI-129727279	9/29/14	Closed - Approved
2014	Continental Casualty Company	20443	MILL-129700066	10/23/14	Closed - Approved
2014	Unum Life Insurance Company of America	62235	UNUM-129770352	10/30/14	Closed - Rejected-Administrative
2014	John Hancock Life Insurance Company (USA)	65838	MULF-129545239	11/4/14	Closed - Approved
2014	Equitable Life & Casualty Insurance Company	62952	ELCC-129743574	11/5/14	Closed - Rejected-Substantive
2014	Equitable Life & Casualty Insurance Company	62952	ELCC-129742840	11/19/14	Closed - Withdrawn
2014	Equitable Life & Casualty Insurance Company	62952	ELCC-129814365	11/19/14	Closed - Rejected-Administrative
2014	Genworth Life Insurance Company	70025	GEFA-129719827	12/4/14	Closed - Approved
2014	Genworth Life Insurance Company	70025	GEFA-129738138	12/4/14	Closed - Approved
2014	Genworth Life Insurance Company	70025	GEFA-129738141	12/4/14	Closed - Approved
2014	Genworth Life Insurance Company	70025	GEFA-129738143	12/4/14	Closed - Approved
2014	Equitable Life & Casualty Insurance Company	62952	ELCC-129817289	12/9/14	Closed - Approved
2014	Unum Life Insurance Company of America	62235	UNUM-129788392	12/12/14	Closed - Approved
2014	Time Insurance Company	69477	MULF-129555002	12/23/14	Closed - Rejected-Administrative
2014	Union Security Insurance Company	70408	MULF-129555078	12/23/14	Closed - Rejected-Administrative
2015	State Farm Mutual Automobile Insurance Company	25178	STLH-129806215	1/5/15	Closed - Rejected-Administrative

APPENDIX

Filing Year	Company	NAIC	SERFF Tracking #	Disposition Date	Filing Status
2015	American Pioneer Life Insurance Company	60763	UNAM-129881388	2/20/15	Closed - Approved
2015	Metropolitan Life Insurance Company	65978	META-129925870	2/23/15	Closed - Rejected-Administrative
2015	Teachers Insurance and Annuity Association of America	69345	META-129925871	2/23/15	Closed - Rejected-Administrative
2015	TIAA-CREF Life Insurance Company	60142	META-129925872	2/23/15	Closed - Rejected-Administrative
2015	Mutual of Omaha Insurance Company	71412	MUTA-129884277	2/24/15	Closed - Rejected-Administrative
2015	Jackson National Life Insurance Company	65056	IASL-129892558	3/3/15	Closed - Approved
2015	Mutual of Omaha Insurance Company	71412	MUTA-129942701	3/17/15	Closed - Approved
2015	United American Insurance Company	92916	AMLC-129964677	4/21/15	Closed - Disapproved
2015	The Prudential Insurance Company of America	68241	PRUD-129967053	4/22/15	Closed - Rejected-Administrative
2015	United American Insurance Company	92916	AMLC-129967371	5/8/15	Closed - Disapproved
2015	Metropolitan Life Insurance Company	65978	META-129979126	5/12/15	Closed - Approved
2015	Teachers Insurance and Annuity Association of America	69345	META-129979820	5/12/15	Closed - Approved
2015	TIAA-CREF Life Insurance Company	60142	META-129979821	5/12/15	Closed - Approved
2015	State Farm Mutual Automobile Insurance Company	25178	STLH-129984828	6/11/15	Closed - Approved
2015	The Prudential Insurance Company of America	68241	PRUD-130045189	6/22/15	Closed - Withdrawn
2015	Bankers Life and Casualty Company	61263	BNLB-130103749	7/2/15	Closed - Rejected-Administrative
2015	Physicians Mutual Insurance Company	80578	PHYS-130149976	7/9/15	Closed - Withdrawn
2015	Physicians Mutual Insurance Company	80578	PHYS-130151196	7/9/15	Closed - Withdrawn
2015	Physicians Mutual Insurance Company	80578	PHYS-130151365	7/9/15	Closed - Withdrawn
2015	MedAmerica Insurance Company	69515	TRIP-130158151	7/29/15	Closed - Approved
2015	Provident Life and Accident Insurance Company	68195	UNUM-130104630	8/3/15	Closed - Rejected-Administrative
2015	Ability Insurance Company	71471	MDTP-130128098	8/13/15	Closed - Filed
2015	Medico Insurance Company	31119	MDTP-130128097	8/13/15	Closed - Filed
2015	Genworth Life Insurance Company	70025	GEFA-130012025	8/20/15	Closed - Approved
2015	Thrivent Financial for Lutherans	56014	THRV-130182731	8/24/15	Closed - Rejected-Substantive
2015	RiverSource Life Insurance Company	65005	AERS-129644806	8/28/15	Closed - Approved
2015	RiverSource Life Insurance Company	65005	AERS-129989991	8/28/15	Closed - Approved
2015	RiverSource Life Insurance Company	65005	AERS-129990046	8/28/15	Closed - Approved
2015	RiverSource Life Insurance Company	65005	AERS-129990074	8/28/15	Closed - Approved
2015	RiverSource Life Insurance Company	65005	AERS-129990086	8/28/15	Closed - Approved
2015	Bankers Life and Casualty Company	61263	BNLB-130217966	9/24/15	Closed - Approved
2015	Bankers Life and Casualty Company	61263	BNLB-130233699	9/24/15	Closed - Rejected-Administrative
2015	CMFG Life Insurance Company	62626	CUNA-130224626	9/29/15	Closed - Rejected-Substantive
2015	CMFG Life Insurance Company	62626	CUNA-130224688	9/29/15	Closed - Rejected-Substantive
2015	Provident Life and Accident Insurance Company	68195	UNUM-130262741	10/8/15	Closed - Approved
2015	Bankers Life and Casualty Company	61263	BNLB-130299138	11/24/15	Closed - Rejected-Administrative
2015	United of Omaha Life Insurance Company	69868	MUTA-130114681	12/10/15	Closed - Disapproved
2015	Bankers Life and Casualty Company	61263	BNLB-130281945	12/23/15	Closed - Disapproved
2015	Provident Life and Accident Insurance Company	68195	UNUM-130305883	12/23/15	Closed - Approved
2015	Provident Life and Accident Insurance Company	68195	UNUM-130305914	12/23/15	Closed - Approved
2015	Bankers Life and Casualty Company	61263	BNLB-130351502	1/5/16	Closed - Rejected-Administrative
2015	Bankers Life and Casualty Company	61263	BNLB-130360156	2/29/16	Closed - Withdrawn
2015	American Fidelity Assurance Company	60410	WAKE-130294762	3/22/16	Closed - Disapproved
2015	CMFG Life Insurance Company	62626	CUNA-130321919	1/3/17	Closed - Approved
2015	CMFG Life Insurance Company	62626	CUNA-130321937	1/3/17	Closed - Approved
2015	Genworth Life Insurance Company	70025	GEFA-130251109	2/6/17	Closed - Approved
2015	Kanawha Insurance Company	65110	HUMA-130301171	3/7/17	Closed - Disapproved
2015	Kanawha Insurance Company	65110	HUMA-130255089	3/13/17	Closed - Approved
2015	Genworth Life Insurance Company	70025	GEFA-130372388	4/28/17	Closed - Approved
2015	Genworth Life Insurance Company	70025	GEFA-130372516	4/28/17	Closed - Approved
2015	Genworth Life Insurance Company	70025	GEFA-130372530	4/28/17	Closed - Filed
2015	Genworth Life Insurance Company	70025	GEFA-130372405	6/16/17	Closed - Approved
2015	Physicians Mutual Insurance Company	80578	PHYS-130312630	6/21/17	Closed - Approved
2015	Physicians Mutual Insurance Company	80578	PHYS-130313275	6/21/17	Closed - Approved
2015	Physicians Mutual Insurance Company	80578	PHYS-130313325	7/6/17	Closed - Approved
2015	Physicians Mutual Insurance Company	80578	PHYS-130313189	7/7/17	Closed - Approved
2015	Physicians Mutual Insurance Company	80578	PHYS-130313220	7/7/17	Closed - Approved
2016	New Era Life Insurance Company	78743	NELI-130321105	1/13/16	Closed - Rejected-Administrative
2016	Bankers Life and Casualty Company	61263	BNLB-130443328	2/29/16	Closed - Withdrawn
2016	John Hancock Life Insurance Company (USA)	65838	MULF-130416194	3/10/16	Closed - Withdrawn
2016	Bankers Life and Casualty Company	61263	BNLB-130443347	5/17/16	Closed - Withdrawn
2016	State Farm Mutual Automobile Insurance Company	25178	STLH-130439537	6/9/16	Closed - Disapproved
2016	American Fidelity Assurance Company	60410	IASL-130650339	7/21/16	Closed - Disapproved
2016	Bankers Life and Casualty Company	61263	BNLB-130426808	8/16/16	Closed - Rejected-Substantive
2016	Bankers Life and Casualty Company	61263	BNLB-130434455	8/16/16	Closed - Rejected-Substantive
2016	Catholic Order of Foresters	57487	UHAS-130647643	8/29/16	Closed - Rejected-Administrative
2016	Provident Life and Accident Insurance Company	68195	UNUM-130687666	9/6/16	Closed - Approved
2016	MedAmerica Insurance Company	69515	MILL-130491597	9/21/16	Closed - Disapproved
2016	Lincoln National Life Insurance Company	65676	TRST-130130419	9/22/16	Closed - Approved
2016	State Farm Mutual Automobile Insurance Company	25178	STLH-130570405	9/27/16	Closed - Disapproved
2016	Metropolitan Life Insurance Company	65978	META-130523270	1/11/17	Closed - Disapproved
2016	Mutual of Omaha Insurance Company	71412	MUTA-130415823	2/6/17	Closed - Disapproved
2016	Metropolitan Life Insurance Company	65978	META-130809810	4/4/17	Closed - Disapproved
2016	Metropolitan Life Insurance Company	65978	META-130809987	4/4/17	Closed - Disapproved
2016	Metropolitan Life Insurance Company	65978	META-130523295	5/9/17	Closed - Approved
2016	The Prudential Insurance Company of America	68241	PRUD-130472810	5/11/17	Closed - Disapproved

APPENDIX

Filing Year	Company	NAIC	SERFF Tracking #	Disposition Date	Filing Status
2016	The Prudential Insurance Company of America	68241	PRUD-130476134	5/11/17	Closed - Disapproved
2016	The Prudential Insurance Company of America	68241	PRUD-130476135	5/11/17	Closed - Disapproved
2016	The Prudential Insurance Company of America	68241	PRUD-130478184	5/11/17	Closed - Disapproved
2016	Principal Life Insurance Company	61271	TRIP-130682517	5/15/17	Closed - Approved
2016	Lincoln Benefit Life Company	65595	LFCR-130771919	5/26/17	Closed - Approved
2016	Catholic Order of Foresters	57487	UHAS-130734515	6/20/17	Closed - Approved
2016	Equitable Life & Casualty Insurance Company	62952	ELCC-130730691	1/23/18	Closed - Disapproved
2016	MetLife Insurance Company USA	87726	MILL-130755371	2/2/18	Closed - Disapproved
2016	MetLife Insurance Company USA	87726	MILL-130755406	2/2/18	Closed - Disapproved
2016	MetLife Insurance Company USA	87726	MILL-130755408	2/2/18	Closed - Disapproved
2016	MetLife Insurance Company USA	87726	MILL-130755436	2/2/18	Closed - Disapproved
2016	Equitable Life & Casualty Insurance Company	62952	ELCC-130730695	3/2/18	Closed - Approved
2016	MetLife Insurance Company USA	87726	MILL-130755433	3/16/18	Closed - Approved
2016	MetLife Insurance Company USA	87726	MILL-130755392	3/19/18	Closed - Withdrawn
2016	MetLife Insurance Company USA	87726	MILL-130755405	3/19/18	Closed - Withdrawn
2016	MetLife Insurance Company USA	87726	MILL-130755407	3/19/18	Closed - Withdrawn
2017	Lincoln Benefit Life Company	65595	LFCR-130947992	4/17/17	Closed - Disapproved
2017	Lincoln Benefit Life Company	65595	LFCR-130948072	4/17/17	Closed - Disapproved
2017	Lincoln National Life Insurance Company	65676	TRST-130891886	4/17/17	Closed - Rejected-Substantive
2017	Transamerica Life Insurance Company	86231	AEGB-131005866	6/5/17	Closed - Rejected-Administrative
2017	Transamerica Life Insurance Company	86231	AEGB-131019660	6/5/17	Closed - Rejected-Administrative
2017	COUNTRY Life Insurance Company	62553	CFLH-131073787	6/16/17	Closed - Withdrawn
2017	COUNTRY Life Insurance Company	62553	CFLH-131073860	6/16/17	Closed - Withdrawn
2017	Woodmen of the World Life Insurance Society	57320	CSGA-131277285	8/23/17	Closed - Approved
2017	Metropolitan Life Insurance Company	65978	META-131031440	9/22/17	Closed - Disapproved
2017	MedAmerica Insurance Company	69515	MILL-130992421	11/7/17	Closed - Approved
2017	Arizona Life & Disability Insurance Guaranty Fund	0	LTCG-131000998	11/21/17	Closed - Approved
2017	COUNTRY Life Insurance Company	62553	CFLH-131084901	11/30/17	Closed - Disapproved
2017	John Alden Life Insurance Company	65080	LFCR-130966731	1/25/18	Closed - Approved
2017	Mutual of Omaha Insurance Company	71412	MUTA-130983603	1/25/18	Closed - Approved
2017	Genworth Life Insurance Company	70025	GEFA-130998345	2/2/18	Closed - Approved
2017	COUNTRY Life Insurance Company	62553	CFLH-131084877	2/7/18	Closed - Approved
2017	Transamerica Life Insurance Company	86231	AEGB-131058022	2/27/18	Closed - Disapproved
2017	Transamerica Life Insurance Company	86231	AEGB-131114588	3/2/18	Closed - Approved
2017	Transamerica Premier Life Insurance Company	66281	AEGB-131114728	3/2/18	Closed - Approved
2017	Ability Insurance Company	71471	TRIP-131076849	3/6/18	Closed - Disapproved
2017	Medico Insurance Company	31119	TRIP-131076850	3/6/18	Closed - Disapproved
2017	American Fidelity Assurance Company	60410	IASL-131218526	3/28/18	Closed - Disapproved
2017	RiverSource Life Insurance Company	65005	AERS-130984903	4/9/18	Closed - Approved
2017	RiverSource Life Insurance Company	65005	AERS-130984911	4/9/18	Closed - Approved
2017	RiverSource Life Insurance Company	65005	AERS-130984885	5/22/18	Closed - Approved
2017	Genworth Life Insurance Company	70025	GEFA-130998436	8/9/18	Closed - Approved
2017	Genworth Life Insurance Company	70025	GEFA-130998471	8/9/18	Closed - Approved
2017	American Family Mutual Insurance Company, S.I.	19275	UHAS-131219205	8/10/18	Closed - Approved
2017	Jackson National Life Insurance Company	65056	IASL-131251986	8/10/18	Closed - Approved
2017	Genworth Life Insurance Company	70025	GEFA-131296100	8/16/18	Closed - Disapproved
2017	Genworth Life Insurance Company	70025	GEFA-131296127	8/16/18	Closed - Disapproved
2017	MedAmerica Insurance Company	69515	MILL-130987779	8/31/18	Closed - Exempt
2017	MedAmerica Insurance Company	69515	MILL-130992359	9/12/18	Closed - Approved
2017	Continental Casualty Company	20443	CNAB-130862357	9/24/18	Closed - Approved
2017	Genworth Life Insurance Company	70025	GEFA-131296070	9/25/18	Closed - Approved
2017	Genworth Life Insurance Company	70025	GEFA-131296108	9/25/18	Closed - Approved
2017	Kanawha Insurance Company	65110	HUMA-131269528	10/2/18	Closed - Approved
2017	United of Omaha Life Insurance Company	69868	MUTA-131005107	10/4/18	Closed - Disapproved
2017	John Hancock Life Insurance Company (USA)	65838	MULF-131221148	10/11/18	Closed - Approved
2017	SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA	76325	SHPT-130783893	10/12/18	Closed - Approved
2018	Transamerica Life Insurance Company	86231	AEGB-131436157	6/13/18	Closed - Approved
2018	Bankers Life and Casualty Company	61263	BNLB-131345082	9/16/18	Closed - Withdrawn
2018	Lincoln National Life Insurance Company	65676	TRST-131165712	11/27/18	Closed - Disapproved
2018	Physicians Mutual Insurance Company	80578	PHYS-131361540	11/27/18	Closed - Approved
2018	Physicians Mutual Insurance Company	80578	PHYS-131365579	11/27/18	Closed - Approved
2018	Physicians Mutual Insurance Company	80578	PHYS-131365623	11/27/18	Closed - Approved
2018	Physicians Mutual Insurance Company	80578	PHYS-131365565	11/29/18	Closed - Approved
2018	Physicians Mutual Insurance Company	80578	PHYS-131365615	11/29/18	Closed - Approved
2018	American Fidelity Assurance Company	60410	WAKE-131433510	12/4/18	Closed - Approved
2018	Transamerica Life Insurance Company	86231	AEGB-131544622	1/14/19	Closed - Approved
2018	Bankers Life and Casualty Company	61263	BNLB-131330633	1/15/19	Closed - Disapproved
2018	CMFG Life Insurance Company	62626	CUNA-131561242	1/15/19	Closed - Approved
2018	CMFG Life Insurance Company	62626	CUNA-131562188	1/15/19	Closed - Approved
2018	CMFG Life Insurance Company	62626	CUNA-131563150	1/15/19	Closed - Approved
2018	State Farm Mutual Automobile Insurance Company	25178	STLH-131591467	2/5/19	Closed - Approved
2018	Ability Insurance Company	71471	TRIP-131468875	2/26/19	Closed - Disapproved
2018	Equitable Life & Casualty Insurance Company	62952	ELCC-131469594	2/26/19	Closed - Approved
2018	Equitable Life & Casualty Insurance Company	62952	ELCC-131470051	2/26/19	Closed - Approved
2018	Medico Insurance Company	31119	TRIP-131468876	2/26/19	Closed - Disapproved
2018	Continental Casualty Company	20443	CNAB-131282834	3/27/19	Closed - Approved

APPENDIX

Filing Year	Company	NAIC	SERFF Tracking #	Disposition Date	Filing Status
2018	COUNTRY Life Insurance Company	62553	CFLH-131608317	4/16/19	Closed - Disapproved
2018	American Fidelity Assurance Company	60410	IASL-131699031	4/25/19	Closed - Approved
2018	COUNTRY Life Insurance Company	62553	CFLH-131607869	4/29/19	Closed - Approved
2018	Brighthouse Life Insurance Company	87726	MILL-131632442	4/30/19	Closed - Approved
2018	Brighthouse Life Insurance Company	87726	MILL-131632443	4/30/19	Closed - Approved
2018	Brighthouse Life Insurance Company	87726	MILL-131632459	4/30/19	Closed - Approved
2018	Brighthouse Life Insurance Company	87726	MILL-131632397	5/7/19	Closed - Approved
2018	Brighthouse Life Insurance Company	87726	MILL-131632427	5/7/19	Closed - Approved
2018	Brighthouse Life Insurance Company	87726	MILL-131632437	5/7/19	Closed - Approved
2018	Brighthouse Life Insurance Company	87726	MILL-131632438	5/7/19	Closed - Approved
2018	Continental General Insurance Company	71404	GLTC-131575046	5/23/19	Closed - Approved
2018	Lincoln Benefit Life Company	65595	LFCR-131768481	5/23/19	Closed - Approved
2018	Lincoln Benefit Life Company	65595	LFCR-131768495	5/23/19	Closed - Approved
2018	Lincoln Benefit Life Company	65595	LFCR-131761414	5/28/19	Closed - Approved
2018	Continental General Insurance Company	71404	GLTC-131387215	7/9/19	Closed - Approved
2018	Principal Life Insurance Company	61271	TRIP-131740726	7/18/19	Closed - Approved
2018	Genworth Life Insurance Company	70025	GEFA-131684524	7/25/19	Closed - Disapproved
2018	Genworth Life Insurance Company	70025	GEFA-131684525	7/25/19	Closed - Disapproved
2018	Massachusetts Mutual Life Insurance Company	65935	MILL-131517006	12/26/19	Closed - Approved
2019	Union Security Insurance Company	70408	MULF-131859739	3/27/19	Closed - Rejected-Administrative
2019	Transamerica Life Insurance Company	86231	AEGB-131879827	7/2/19	Closed - Approved
2019	American General Life Insurance Company of Delaware	66842	LTCG-131982374	7/8/19	Closed - Withdrawn
2019	Equitable Life & Casualty Insurance Company	62952	ELCC-131938578	11/25/19	Closed - Disapproved
2019	John Hancock Life Insurance Company (USA)	65838	MULF-131481788	12/5/19	Closed - Withdrawn
2019	Senior Health Insurance Company of Pennsylvania	73625	SHPT-131785915	1/23/20	Closed - Disapproved
2019	The State Life Insurance Company	69116	LFCR-132045806	2/24/20	Closed - Approved
2019	Equitable Life & Casualty Insurance Company	62952	ELCC-132123652	2/27/20	Closed - Approved
2019	Bankers Life and Casualty Company	61263	BNLB-131886053	3/19/20	Closed - Disapproved
2019	Senior Health Insurance Company of Pennsylvania	73625	SHPT-131785891	3/19/20	Closed - Disapproved
2019	Transamerica Life Insurance Company	86231	SHPT-131881276	3/23/20	Closed - Disapproved
2019	Unum Life Insurance Company of America	62235	UNUM-131835247	3/24/20	Closed - Approved
2019	United of Omaha Life Insurance Company	69868	MUTA-131766140	4/21/20	Closed - Approved
2019	MedAmerica Insurance Company	69515	TRIP-131961030	5/22/20	Closed - Disapproved
2019	State Farm Mutual Automobile Insurance Company	25178	STLH-131624490	5/22/20	Closed - Approved
2019	American Fidelity Assurance Company	60410	WAKE-132180471	5/29/20	Closed - Disapproved
2019	The Prudential Insurance Company of America	68241	PRUD-131959531	7/16/20	Closed - Disapproved
2019	LifeSecure Insurance Company	77720	LFSC-132135863	1/4/21	Closed - Approved
2019	RiverSource Life Insurance Company	65005	AERS-131968441	1/5/21	Closed - Disapproved
2019	RiverSource Life Insurance Company	65005	AERS-131968500	1/5/21	Closed - Approved
2020	AGL Individual Long Term Care Insurance	60488	LTCG-132002650	8/26/20	Closed - Approved
2020	American Family Mutual Insurance Company	19275	AMFM-132096649	9/1/20	Closed - Approved
2020	CMFG Life Insurance Company	62626	CUNA-131998771	9/2/20	Closed - Approved
2020	Genworth Life Insurance Company	70025	GEFA-131768480	9/8/20	Closed - Approved
2020	The Prudential Insurance Company of America	68241	PRUD-131959505	9/10/20	Closed - Approved
2020	The Prudential Insurance Company of America	68241	PRUD-131959513	9/10/20	Closed - Approved
2020	The Prudential Insurance Company of America	68241	PRUD-131959519	9/10/20	Closed - Approved
2020	The Prudential Insurance Company of America	68241	PRUD-131959524	9/10/20	Closed - Approved
2020	COUNTRY Life Insurance Company	62553	CFLH-132138267	9/17/20	Closed - Approved
2020	Lincoln National Life Insurance Company	65676	TRST-132035911	9/17/20	Closed - Approved
2020	Metropolitan Life Insurance Company	65978	META-132017617	9/21/20	Closed - Approved
2020	Teachers Insurance and Annuity Association of America	69345	META-132017903	9/21/20	Closed - Approved
2020	TIAA-CREF Life Insurance Company	60142	META-132017828	9/21/20	Closed - Approved

IN THE MATTER OF

GENWORTH LIFE INSURANCE COMPANY :
 : No. _____
PETITIONER :

**PETITION FOR REVIEW AND REPEAL
PURSUANT TO ARIZONA REVISED STATUTES § 41-1033**

APPENDIX C

APPENDIX C

Filings Impacting Pre-Rate Stability Policies

Appendix C sets forth those applications for rate increases on Pre-Rate Stability Policies (governed by R20-6-1013) to which the Department applied the "If We Knew" or Fictional Premium Approach and, based on the application of the Fictional Premium Approach, denied or limited rate increase requests

	Year	Company	NAIC	SERFF Tracking Number	Policies Affected [Pre-RS, RS]	Disposition Date	Department's Actuarial Conclusion	Disposition
2017 Dispositions								
C-1	2016	Metropolitan Life Insurance Company	65978	<u>META-130523270</u>	Pre-RS	1/11/2017	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-2	2015	Genworth Life Insurance Company	70025	<u>GEFA-130372388</u>	Pre-RS	4/28/2017	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
C-3	2015	Genworth Life Insurance Company	70025	<u>GEFA-130372516</u>	Pre-RS	4/28/2017	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-4	2015	Genworth Life Insurance Company	70025	<u>GEFA-130372530</u>	Pre-RS	4/28/2017	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-5	2015	Genworth Life Insurance Company	70025	<u>GEFA-130372405</u>	Pre-RS	6/16/2017	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-6	2015	Physicians Mutual Insurance Company	80578	<u>PHYS-130312630</u>	Pre-RS	6/21/2017	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-7	2015	Physicians Mutual Insurance Company	80578	<u>PHYS-130313275</u>	Pre-RS	6/21/2017	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-8	2015	Physicians Mutual Insurance Company	80578	<u>PHYS-130313189</u>	Pre-RS	7/7/2017	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved

	Year	Company	NAIC	SERFF Tracking Number	Policies Affected [Pre-RS, RS]	Disposition Date	Department's Actuarial Conclusion	Disposition
C-9	2015	Physicians Mutual Insurance Company	80578	PHYS-130313220	Pre-RS	7/7/2017	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-10	2017	Metropolitan Life Insurance Company	65978	META-131031440	Pre-RS	9/22/2017	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved in entirety.
2018 Dispositions								
C-11	2016	Equitable Life & Casualty Insurance Company	62952	ELCC-130730691	Pre-RS	1/23/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-12	2016	MetLife Insurance Company USA	87726	MILL-130755371	Pre-RS	2/2/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-13	2016	MetLife Insurance Company USA	87726	MILL-130755406	Pre-RS	2/2/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-14	2016	MetLife Insurance Company USA	87726	MILL-130755408	Pre-RS	2/2/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-15	2016	MetLife Insurance Company USA	87726	MILL-130755436	Pre-RS	2/2/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-16	2017	Genworth Life Insurance Company	70025	GEFA-130998345	Pre-RS	2/2/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-17	2017	Transamerica Life Insurance Company	86231	AEGB-131058022	Pre-RS	2/27/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-18	2017	Ability Insurance Company	71471	TRIP-131076849	Pre-RS	3/6/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-19	2017	Medico Insurance Company	31119	TRIP-131076850	Pre-RS	3/6/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.

	Year	Company	NAIC	SERFF Tracking Number	Policies Affected [Pre-RS, RS]	Disposition Date	Department's Actuarial Conclusion	Disposition
C-20	2016	MetLife Insurance Company USA	87726	MILL-130755392	Pre-RS	3/19/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-21	2016	MetLife Insurance Company USA	87726	MILL-130755405	Pre-RS	3/19/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-22	2016	MetLife Insurance Company USA	87726	MILL-130755407	Pre-RS	3/19/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-23	2017	American Fidelity Assurance Company	60410	IASL-131218526	Pre-RS	3/28/2018	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved in entirety.
C-24	2017	RiverSource Life Insurance Company	65005	AERS-130984885	Pre-RS	5/22/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-25	2014	American Family Mutual Insurance Company, S.I.	19275	UHAS-131219205	Pre-RS	8/10/2018	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved; lower increase approved
C-26	2014	Jackson National Life Insurance Company	65056	IASL-131251986	Pre-RS	8/10/2018	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved; lower increase approved
C-27	2017	Genworth Life Insurance Company	70025	GEFA-131296100	Pre-RS	8/16/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-28	2017	Genworth Life Insurance Company	70025	GEFA-131296127	Pre-RS	8/16/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-29	2017	MedAmerica Insurance Company	69515	MILL-130992359	Pre-RS	9/12/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-30	2017	Continental Casualty Company	20443	CNAB-130862357	Pre-RS	9/24/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved

	Year	Company	NAIC	SERFF Tracking Number	Policies Affected [Pre-RS, RS]	Disposition Date	Department's Actuarial Conclusion	Disposition
C-31	2017	Genworth Life Insurance Company	70025	GEFA-131296070	Pre-RS	9/25/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-32	2017	Genworth Life Insurance Company	70025	GEFA-131296108	Pre-RS	9/25/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-33	2017	Senior Health Insurance Company of Pennsylvania	76325	SHPT-130783893	Pre-RS	10/12/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-34	2018	Physicians Mutual Insurance Company	80578	PHYS-131361540	Pre-RS	11/27/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-35	2018	Physicians Mutual Insurance Company	80578	PHYS-131365623	Pre-RS	11/27/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-36	2018	Lincoln National Life Insurance Company	65676	TRST-131165712	Pre-RS	11/27/2018	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved in entirety.
C-37	2018	Physicians Mutual Insurance Company	80578	PHYS-131365565	Pre-RS	11/29/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-38	2018	Physicians Mutual Insurance Company	80578	PHYS-131365615	Pre-RS	11/29/2018	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
2019 Dispositions								
C-39	2014	Transamerica Life Insurance Company	86231	AEGB-131544622	Pre-RS	1/14/2019	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved; lower increase approved
C-40	2018	Bankers Life and Casualty Company	61263	BNLB-131330633	Pre-RS	1/15/2019	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-41	2014	Equitable Life & Casualty Insurance Company	62952	ELCC-131469594	Pre-RS	2/26/2019	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved; lower increase approved

	Year	Company	NAIC	SERFF Tracking Number	Policies Affected [Pre-RS, RS]	Disposition Date	Department's Actuarial Conclusion	Disposition
C-42	2014	Equitable Life & Casualty Insurance Company	62952	ELCC-131470051	Pre-RS	2/26/2019	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved; lower increase approved
C-43	2018	Ability Insurance Company	71471	TRIP-131468875	Pre-RS	2/26/2019	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved in entirety.
C-44	2018	Medico Insurance Company	31119	TRIP-131468876	Pre-RS	2/26/2019	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved in entirety.
C-45	2014	Continental Casualty Company	20443	CNAB-131282834	Pre-RS	3/27/2019	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved; lower increase approved
C-46	2018	Brighthouse Life Insurance Company	87726	MILL-131632397	Pre-RS	5/7/2019	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-47	2018	Brighthouse Life Insurance Company	87726	MILL-131632427	Pre-RS	5/7/2019	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-48	2018	Brighthouse Life Insurance Company	87726	MILL-131632437	Pre-RS	5/7/2019	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-49	2018	Brighthouse Life Insurance Company	87726	MILL-131632438	Pre-RS	5/7/2019	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-50	2018	Lincoln Benefit Life Company	65595	LFCR-131761414	Pre-RS	5/28/2019	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-51	2018	Genworth Life Insurance Company	70025	GEFA-131684524	Pre-RS	7/25/2019	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
C-52	2018	Genworth Life Insurance Company	70025	GEFA-131684525	Pre-RS	7/25/2019	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.

	Year	Company	NAIC	SERFF Tracking Number	Policies Affected [Pre-RS, RS]	Disposition Date	Department's Actuarial Conclusion	Disposition
C-53	2019	Equitable Life & Casualty Insurance Company	62952	<u>ELCC-131938578</u>	Pre-RS	11/25/2019	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved in entirety.
2020 Dispositions								
C-54	2019	Senior Health Insurance Company of Pennsylvania	73625	<u>SHPT-131785915</u>	Pre-RS	1/23/2020	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved in entirety.
C-55	2019	Bankers Life and Casualty Company	61263	<u>BNLB-131886053</u>	Pre-RS	3/19/2020	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved in entirety.
C-56	2020	AGL Individual Long Term Care Insurance	60488	<u>LTCG-132002650</u>	Pre-RS	8/26/2020	No actuarial memorandum available	Based on application of If Knew, requested increase disapproved; lower increase approved
C-57	2020	American Family Mutual Insurance Company	19275	<u>AMFM-132096649</u>	Pre-RS	9/1/2020	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-58	2020	The Prudential Insurance Company of America	68241	<u>PRUD-131959505</u>	Pre-RS	9/10/2020	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-59	2020	The Prudential Insurance Company of America	68241	<u>PRUD-131959513</u>	Pre-RS	9/10/2020	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved
C-60	2020	Lincoln National Life Insurance Company	65676	<u>TRST-132035911</u>	Pre-RS	9/17/2020	60% loss ratio requirement of Section R20-6-1013 is satisfied	Based on application of If Knew, requested increase disapproved; lower increase approved

IN THE MATTER OF

GENWORTH LIFE INSURANCE COMPANY :
: No. _____
PETITIONER :

**PETITION FOR REVIEW AND REPEAL
PURSUANT TO ARIZONA REVISED STATUTES § 41-1033**

APPENDIX D

APPENDIX D

Filings Impacting Rate Stability Policies

Appendix D sets forth those applications for rate increases on Rate Stability Policies (governed by R20-6-1014) where the Department relied on R20-6-1013(B) and (C) as support for the application of "If We Knew" or the Fictional Premium Approach and, based on the application of the Fictional Premium Approach, denied or limited rate increase requests.

	Year	Company	NAIC	SERFF Tracking Number	Policies Affected [Pre-RS, RS]	Disposition Date	Department's Actuarial Conclusion	Disposition
2017 Dispositions								
D-1	2015	CMFG Life Insurance Company	62626	CUNA-130321919	Post-RS	1/3/2017	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-2	2015	CMFG Life Insurance Company	62626	CUNA-130321937	Post-RS	1/3/2017	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-3	2015	Physicians Mutual Insurance Company	80578	PHYS-130313325	Post AND Pre-RS	7/6/2017	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
2018 Dispositions								
D-4	2016	Equitable Life & Casualty Insurance Company	62952	ELCC-130730695	Post-RS	3/2/2018	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-5	2017	Genworth Life Insurance Company	70025	GEFA-130998471	Post-RS	8/9/2018	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-6	2017	MedAmerica Insurance Company	69515	MILL-130987779	Post AND Pre-RS	8/31/2018	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-7	2017	John Hancock Life Insurance Company (USA)	65838	MULF-131221148	Post-RS	10/11/2018	60% loss ratio requirement of Section R20-6-1013 satisfied. According to memo, 1014 is not applicable (but memo also identifies Rate Stability policies as subject to increase request).	Based on application of If Knew, requested increase disapproved; lower increase approved
D-8	2018	Physicians Mutual Insurance Company	80578	PHYS-131365579	Post AND Pre-RS	11/27/2018	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-9	2014	American Fidelity Assurance Company	60410	WAKE-131433510	Post-RS	12/4/2018	No actuarial memorandum available.	Based on application of If Knew, requested increase disapproved; lower increase approved

	Year	Company	NAIC	SERFF Tracking Number	Policies Affected [Pre-RS, RS]	Disposition Date	Department's Actuarial Conclusion	Disposition
2019 Dispositions								
D-10	2018	Continental General Insurance Company	71404	<u>GLTC-131575046</u>	Post AND Pre-RS	5/23/2019	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-11	2018	Continental General Insurance Company	71404	<u>GLTC-131387215</u>	Post AND Pre-RS	7/9/2019	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-12	2018	Massachusetts Mutual Life Insurance Company	65935	<u>MILL-131517006</u>	Post AND Pre-RS	12/26/2019	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
2020 Dispositions								
D-13	2019	Senior Health Insurance Company of Pennsylvania	76325	<u>SHPT-131785891</u>	Post AND Pre-RS	3/19/2020	No actuarial memorandum available.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-14	2019	Transamerica Life Insurance Company	86231	<u>SHPT-131881276</u>	Post AND Pre-RS	3/23/2020	No actuarial memorandum available.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-15	2020	Genworth Life Insurance Company	70025	<u>GEFA-131768480</u>	Post-RS	9/8/2020	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-16	2020	The Prudential Insurance Company of America	68241	<u>PRUD-131959519</u>	Post-RS	9/10/2020	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved
D-17	2020	The Prudential Insurance Company of America	68241	<u>PRUD-131959524</u>	Post-RS	9/10/2020	60% loss ratio requirement of Section R20-6-1013 and the inequality test required by Section R20-6-1014 are satisfied.	Based on application of If Knew, requested increase disapproved; lower increase approved

ATTACHMENT 2

to

PETITION OF GENWORTH LIFE INSURANCE COMPANY

PURSUANT TO A.R.S. § 41-1033(E) AND A.R.S. § 1033(F)

1 **ARIZONA DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**

2 In the Matter of:

3 **GENWORTH LIFE INSURANCE**
4 **COMPANY**

5 **NAIC CoCode 70025**

6 Petitioner

REJECTION OF AMENDED
PETITION PURSUANT TO
A.R.S. § 41-1033

7

8 The Arizona Department of Insurance and Financial Institutions, Insurance Division
9 (“Department”) has received Genworth Life Insurance Company’s (“Petitioner” or “Genworth”)
10 Amended Petition for Review and Repeal Pursuant to A.R.S. § 41-1033. Accordingly, the
11 Department issues the following Rejection of Amended Petition pursuant to A.R.S. § 41-1033.
12 The Department rejects the petition because the Department properly promulgated the long-term
13 care insurance rules and fully complied with all rulemaking requirements.

14 **INTRODUCTION AND BACKGROUND**

15 1. Petitioner offers and sells long-term care insurance to consumers in the State of
16 Arizona.

17 2. On February 1, 2021, Petitioner, through legal counsel, filed an Amended Petition
18 pursuant to A.R.S. § 41-1033 (“Petition”). Exhibit 1.¹ Petitioner requests that the Department
19 immediately cease and permanently discontinue its practice of using what it calls the “Fictional
20 Premium Approach” and for Arizona Administrative Code (“A.A.C.”) R20-6-1013 to be repealed
21 in the event that subsection (C) of the rule requires or permits the application of the Fictional
22 Premium Approach. Petitioner did not offer any rule amendment language.

23

24 ¹ Petitioner amended its original Petition to comply with the Department’s rule R20-6-160 to
25 clarify that it is not offering any specific language for a proposed new rule or rule amendment.
26 R20-6-160(C)(3)(b).

1 B. For the purposes of implementing this section, the department of
2 insurance is exempt from the rulemaking requirements of title 41, chapter 6,
3 Arizona Revised Statutes, for one year after the effective date of this
4 section, except that the department shall provide public notice and an
5 opportunity for public comment on proposed rules at least sixty days before
6 the rules are amended or adopted.

7 C. This section is repealed from and after June 30, 2018.

8 Sec. 2. Emergency

9 This act is an emergency measure that is necessary to preserve the public
10 peace, health or safety and is operative immediately as provided by law.

11 7. In response, the Department opened a docket (22 A.A.R. 3708, December 30,
12 2016)³ which it followed with a Notice of Proposed Exempt Rulemaking (23 A.A.R. 151, January
13 20, 2017).⁴ The Notice of Proposed Exempt Rulemaking cited the Department's general authority
14 to promulgate the rule under A.R.S. § 20-143, and its specific authority under both A.R.S. § 20-
15 1691.02 and the 2016 Session Law. All the notices published by the Department contained the
16 exact same rule language being challenged by Petitioner.⁵

17 8. The Department published a separate Notice of Oral Proceedings on Proposed
18 Rulemaking setting a public hearing for March 3, 2017 (23 A.A.R. 234, January 27, 2017).⁶ This
19 notice also welcomed public comment submission to an e-mail address.⁷

20 9. On March 3, 2017, the Department conducted an Oral Proceeding on the Proposed
21 Exempt Rulemaking. No member of the public, including Petitioner or industry representatives,
22 made a comment, asked a question or raised any concerns about the inclusion or application of
23 subsection R20-6-1013(C) either by submitting a written public comment or at the Oral
24 Proceeding. The Petition itself acknowledges that the Department used the "Fictional Premium

25 either in whole or in part, the Model Laws and Model Regulations to promote regulatory
26 consistency across the various states in which insurance companies write policies. Model Laws
and Model Regulations may be found at: https://content.naic.org/prod_serv_model_laws.htm.

³ https://apps.azsos.gov/public_services/register/2016/53/contents.pdf

⁴ https://apps.azsos.gov/public_services/register/2017/3/contents.pdf

⁵ The rulemaking renumbered existing Section R20-6-1014 to R20-6-1013 and amended the
renumbered section by adding subsection (C) which the Department underlined as new language.

⁶ https://apps.azsos.gov/public_services/register/2017/4/contents.pdf

1 Approach” for years before the promulgation of A.A.C. R20-6-1013(C). Exhibit 1 p. 12, Para. 35.
2 The Department therefore concludes that Petitioner had prior constructive notice and was provided
3 multiple opportunities to comment on the Department’s rule.

4 10. The Department submitted the Notice of Final Exempt Rulemaking to the Secretary
5 of State and on May 12, 2017, the Arizona Secretary of State published it in the Arizona Register
6 with an effective date of November 10, 2017 (23 A.A.R. 1119, May 12, 2017).⁸

7 **B. Administrative Procedure Act’s Rulemaking requirements.**

8 11. Under A.R.S. § 41-1030(A), rules must be made and approved in substantial
9 compliance with Title 41 or as “otherwise provided by law” to be valid.

10 12. In this case, the 2016 Session Law exempted the Department from Title 41’s
11 procedural requirements and tasked the Department with promulgating rules that otherwise comply
12 with the law. The Legislature more specifically instructed the Department to “provide public
13 notice and an opportunity for public comment on proposed rules at least sixty days before the rules
14 are amended or adopted.”

15 13. The Department complied with the session law’s requirements and published the
16 Final Exempt Rule on May 12, 2017, well within a year of the 2016 Session Law’s effective date.
17 Additionally, the Department complied with the “public notice and opportunity for public
18 comment” directive of the 2016 Session Law by opening a docket and then publishing the
19 proposed rulemaking in the Arizona Register on January 20, 2017. Before publication in the
20 Register, the Department posted a notice on its website to alert the public of the upcoming
21 publication that also included the text of the proposed rule changes. Exhibit 2. Though not
22 required, the Department scheduled a public hearing and provided notice of the hearing in the
23 Arizona Register on January 27, 2017 and published it on its website. Exhibit 3. The Department
24 also complied with the Open Meeting Law by publishing an Agenda on the State’s Public
25

26 ⁷ public_comments@azinsurance.gov

⁸ https://apps.azsos.gov/public_services/register/2017/19/contents.pdf

1 Meetings website (<https://publicmeetings.az.gov/>). The Department provided both physical and
2 electronic addresses where the public could submit comments on the rulemaking. Finally, the
3 Department complied with insurers' request to delay the rule's effective date and set a delayed
4 effective date of November 10, 2017.

5 14. The Department promulgated A.A.C. R20-6-1013 by complying with 2016 Session
6 Law's grant of authority. Furthermore, the Department's rule is valid pursuant to A.R.S. § 41-
7 1030(A) because the rule was made and approved as "otherwise provided by law."

8 **C. The Department did not exceed its rulemaking authority.**

9 **1. The Department's rulemaking authority derived from three sources.**

10 15. In its Notice of Proposed Exempt Rulemaking, the Department cited one general
11 rulemaking authority and two specific rulemaking authorities. The Department cited A.R.S. § 20-
12 143 as its general rulemaking authority.⁹

13 16. The Department cited the 2016 Session Law as its first specific rulemaking
14 authority, which directed the Department as follows:

15 A. The department of insurance shall adopt rules relating to long-term care
16 insurance that substantially conform to those adopted in model regulations
17 adopted by the national association of insurance commissioners, including
the 2014 revisions.

18 17. The Department cited A.R.S. § 20-1691.02 as its second specific rulemaking
19 authority, which directed the Department as follows:

20 20-1691.02. Adoption of rules

21 The director may adopt reasonable rules to implement this article, including
rules that:

22 1. Establish specific standards for policy provisions of long-term care
23 insurance policies, including terms of renewability, initial and subsequent
24 conditions of eligibility, nonduplication of coverage, coverage of
dependents, preexisting conditions, termination of insurance, continuation,

25 ⁹ [20-143. Rule-making power](#)

26 A. The director may make reasonable rules necessary for effectuating any provision of this title. . .

1 conversion, probationary periods, limitations, exceptions, reductions,
2 elimination periods, replacement, recurrent conditions and definitions.

3 2. Establish loss ratio standards for long-term care insurance policies
4 provided that a specific reference to long-term care insurance policies is
5 contained in the rule.

6 **3. Promote premium adequacy and protect policyholders in the event of**
7 **substantial rate increases.**

8 4. Establish standards for the manner, content and required disclosure for
9 the sale of long-term care insurance policies, including disclosure of policy
10 provisions, conditions and limitations.

11 5. Prescribe a standard format, including style, arrangement and overall
12 appearance, and the content of an outline of coverage.

13 6. Establish minimum standards for marketing practices, insurance producer
14 testing and reporting practices relating to long-term care insurance and
15 penalties for violating the standards.

16 7. Specify the type or types of nonforfeiture benefits to be offered as part of
17 a long-term care insurance policy and certificate, the standards for
18 nonforfeiture benefits and the requirements for contingent benefit on lapse,
19 including a determination of the specified period of time during which a
20 contingent benefit on lapse will be available and the substantial premium
21 rate increase that triggers a contingent benefit on lapse as described in
22 section 20-1691.11. (Emphasis added.)

23 18. Both specific grants of authority relate to rules promulgation that govern long-term
24 care insurance.

25 **2. A.A.C. R20-6-1013 complies with the authorization requirements of A.R.S. § 41-**
26 **1030(C).**

19 19. A.R.S. § 41-1030(C) prohibits an agency from promulgating rules under a specific
20 grant of authority that exceeds the subject matter areas listed in the specific statute authorizing the
21 rule or under a general grant of rulemaking authority to supplement a more specific grant of
22 rulemaking authority.

23 20. The Department promulgated A.A.C. R20-6-1013 under both general and specific
24 rulemaking authority. The Department cited both a general grant of authority, A.R.S. § 20-143
25 and two separate specific grants of authority, the 2016 Session Law and A.R.S. § 20-1691.02.

26 21. The Department did not exceed the subject matter areas listed in the specific statute

1 authorizing the rule. Both the 2016 Session Law and A.R.S. § 20-1691.02 authorized the
2 Department to adopt rules relating to long-term care insurance. A.A.C. R20-6-1013 exclusively
3 relates to long-term care insurance.

4 **a. The Department did not exceed 2016 Session Law’s grant of authority**

5 22. The 2016 Session Law required the Department to adopt rules that “substantially
6 conform” to the 2014 version of the NAIC Model Regulation on Long-Term Care Insurance
7 (“Model Regulation”) “A. The department of insurance shall adopt rules relating to long-term care
8 insurance that substantially conform to those adopted in model regulations adopted by the national
9 association of insurance commissioners, including the 2014 revisions.”

10 23. The Department adopted the Model Regulation and added subsection A.A.C. R20-
11 6-1013(C).

12 24. The Department did not interpret the 2016 Session Law to require strict compliance
13 or a “word for word” adoption of the Model Regulation given the bill’s use of the phrase
14 “substantially conform.” In promulgating long-term care rules, the Department also had to
15 consider other relevant statutory directives, such as A.R.S. § 20-1691.02. The Department did in
16 fact substantially conform to the Model Regulations by adopting A.A.C. R20-6-1013. The
17 Department’s addition of A.A.C. R20-6-1013(C) further complied with A.R.S. § 20-1691.02,
18 while not exceeding the 2016 Session Law’s grant of authority.

19 25. The Legislature did not define “substantially conform” in the 2016 Session Law.
20 However, the Legislature chose to use those exact words instead of “strictly conform.” By
21 effectuating the words’ plain meaning, a reasonable conclusion is that the Legislature intended to
22 grant the Department discretion to amend the rule’s final language as long as it substantially
23 conformed to the Model Regulation.

24 26. A.A.C. R20-6-1013 substantially conforms to the Model Regulation. The
25 Department added subsection (C), which is not found in the Model Regulation, to address a
26 growing, public concern over significantly increasing premiums for Arizona’s long-term care

1 insurance policies that was the impetus for SB 1441, the bill that ultimately directed the
2 department to amend its long term care rule.¹⁰

3 **b. The Department did not exceed the specific grant of authority granted to it by**
4 **A.R.S. § 20-1691.02.**

5 27. The Department’s other specific authority stems from A.R.S. § 20-1691.02, which
6 requires the Department to “adopt reasonable rules . . . including rules that . . . promote premium
7 adequacy and protect policyholders in the event of substantial rate increases.” A.R.S. § 20-
8 1691.02(3).

9 28. The only policies to which A.A.C. R20-6-1013 applies are policies that were
10 written by long term care insurers before May 10, 2005. These policies are in a “closed block” of
11 their business which means they are no longer being sold by Petitioner. Policyholders owning
12 these policies are among their oldest customers and have been paying premium on these policies
13 for sixteen years or longer.

14 29. Petitioner states that it has two proposed premium rate increases filed with the
15 Department that would be subject to the rule in question. The two filings, for these closed blocks
16 of policies, are for overall average rate increases of 123% and 104%. (*See*, Exhibit 1 p. 14, para.
17 38).

18 30. The Department’s application of the formula of subsection R20-6-1013(C) does not
19 disapprove a premium rate increase. Instead, its application limits any requested increase to an
20 allowable increase under the formula. (*See*, Petitioner’s Exhibits B and C.)

21 31. Subsection R20-6-1013(C) protects Arizona’s oldest policyholders from substantial
22 premium rate increases while still promoting premium adequacy and is within the rulemaking

23 ¹⁰*See* legislative committee testimony and factsheets:
24 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=16878 – Link to Senate Committee testimony on
25 SB1441 (2016); http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=17347 – Link to House Committee
26 House Factsheet for SB1441: [https://www.azleg.gov/legtext/52leg/2r/summary/H.SB1441_03-14-
16_INSURANCE.pdf](https://www.azleg.gov/legtext/52leg/2r/summary/H.SB1441_03-14-16_INSURANCE.pdf).
Senate Factsheet for introduced bill: <https://www.azleg.gov/legtext/52leg/2r/summary/S.1441FI.pdf>

1 authority granted to the Department under A.R.S. § 20-1691.02.

2 **CONCLUSION**

3 32. Petitioner's Amended Petition is rejected for the reasons stated above.

4
5 By:  _____
6 Evan G. Daniels, Director
7 Arizona Department of Insurance and Financial Institutions
8
9
10 Date: 04-01-2021
11 _____

12 **NOTIFICATION OF RIGHTS**

13 Pursuant to A.R.S § 41-1033(E), Petitioner may appeal this Rejection to the Governor's
14 Regulatory Review Council within thirty days.
15
16
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25
26

1 **COPY** of the foregoing mailed by Certified Mail,
2 Electronic Return Receipt requested,
3 this **1st** day of **April**, 2021, to:

4 KUTAK ROCK LLP
5 S. David Childers, Esquire
6 8601 North Scottsdale Road, Suite 300
7 Scottsdale, AZ 85253-2738
8 Attorney for Petitioner

9 **COPY** of the foregoing electronically delivered
10 On the same date to:

11 KUTAK ROCK LLP
12 S. David Childers, Esquire
13 *David.Childers@KutakRock.com*

14 *Ana Starcevic* for
15 Francine Juarez

Exhibit 1

IN THE MATTER OF

GENWORTH LIFE INSURANCE COMPANY	:	
6610 West Broad Street	:	
Richmond, VA 23230	:	No. _____
(804) 281-6600,	:	
	:	
PETITIONER	:	

**AMENDED PETITION FOR REVIEW AND REPEAL
PURSUANT TO ARIZONA REVISED STATUTES § 41-1033**

I. INTRODUCTION

1. This is a petition for review by Genworth Life Insurance Company (“Genworth”) of the Arizona Department of Insurance’s (“Department”) practice of restricting rate increases on long-term care insurance (“LTC” and “LTCL”) by imputing to insurers fictional premiums that were never earned and will never be earned. The Department’s practice is contrary to law, bad public policy and so pervasive as to constitute an impermissible and invalid unwritten rule.

2. The Department is reviewing and rejecting actuarially-justified requests for rate increases by assuming that the requested increase in premiums, and all prior increases, have been charged since inception of the policy even though new rates are obviously only actually charged prospectively from their approval. The Department’s approach – the “Fictional Premium Approach” – thus entails the calculation of a lifetime loss ratio based on fictional premiums that were never, and will never, actually be, collected or earned. As explained below, the Department’s position that it is “required” to use the Fictional Premium Approach flies in the face of regulatory language regarding the use of “earned” premium in calculating the “expected” loss ratio. There is no such requirement (or even authority) expressly stated or fairly implied in the regulatory language, and to read one in is squarely at odds with basic actuarial and

grammatical principles. The Department's insistence that it must apply the Fictional Premium Approach is a ruse to avoid granting, or severely limiting, actuarially-justified rate increases to LTC carriers, many of whom are facing financial pressures on their older blocks of business. The Department's practice makes Arizona an extreme outlier in the regulatory community, and contravenes the Department's statutory obligation to ensure premium adequacy and thus the solvency of insurers doing business in its state.

3. There is no legal authority for the Department's use of the Fictional Premium Approach. The regulation cited by the Department as the source of its authority, A.A.C. R20-6-1013 ("Section 1013"), does not authorize, much less require, the Fictional Premium Approach. To the contrary, the plain language of Section 1013 requires the Department to evaluate and approve rate increases on the basis of "earned" premium – *i.e.*, not fictional premium that was never, and will never be, received – and an "expected loss ratio" which can only mean losses expected to be incurred in relation to premium expected to be earned. The Department's written guidance to insurers likewise directs insurers to use earned and expected premium in the calculation of "expected loss ratio" for purposes of rate increase applications under Section 1013.

4. To the extent the Department contends that Subsection 1013(C), which was added by amendment in 2017, provides authority for the use of the Fictional Premium Approach, then that amendment was improperly promulgated and is void. Section 1013(C) was enacted outside of the required rulemaking process pursuant to a grant of emergency rulemaking authority that was expressly limited to conforming Arizona regulations to the 2014 Amendments to the NAIC Model Regulation for rate increases on LTCI policies. As reflected in the NAIC's own black-line of the changes to the Model Regulation, the 2014 Amendments made no change to the loss ratio provisions embodied in Section 1013. *See* Exhibit 2. The language added by Section

1013(C) is not included in the 2014 Amendments to the NAIC Model Regulation. Nor is there any basis in the NAIC Model Regulation, whether in the 2014 Amendments or any other previous iteration of the Model, that authorizes – much less requires – the use of the Fictional Premium Approach. In fact, other than Arizona’s adoption of Section 1013(C) in 2017, Section 1013 is otherwise materially identical to the NAIC Model Regulation’s loss ratio provision, including its direction to consider “earned” premium as part of the calculation of the “expected loss ratio.”

5. No other Arizona regulation authorizes the Fictional Premium Approach. Arizona regulations applicable to policies issued after May 10, 2005 provide detailed formulas for review and approval of rate increases that expressly provide for consideration of “earned premiums.” The Department nonetheless has applied the Fictional Premium Approach to limit or deny rate increases under these regulations as well, further exposing the illegitimacy of the Department’s position that Section 1013(C) is the source of the supposed “requirement” that the Department apply the Fictional Premium Approach.

6. The Department’s use of the Fictional Premium Approach is also so pervasive as to constitute an unwritten rule not promulgated in accordance with required procedures or legislative authorization. Over the past four years, the Department has used the Fictional Premium Approach to artificially limit or deny more than 77 rate increase requests that the Department’s own consultant confirmed were actuarially justified and complied with applicable Arizona regulations.

7. As recognized by a former insurance commissioner and past President of the National Association of Insurance Commissioners (“NAIC”),¹ the Fictional Premium Approach is “disastrous public policy, places Arizona consumers at risk and has been rejected by the NAIC as inappropriate.”²

8. This view is shared by two leading industry organizations, the American Council of Life Insurers (“ACLI”) and America’s Health Insurance Plans (“AHIP”), which have previously raised its concerns with the Department regarding the Fictional Premium Approach. As they stated in a letter to the Department, “[s]ustained denial of actuarially-justified rate increase requests creates the risk of insolvency. A liquidation that could otherwise be avoided by approval of actuarially-justified rate increases is bad policy and will negatively impact policyholders, insurers, and Arizona residents generally.” Exhibit 1.

9. ACLI and AHIP also advised the Department that the Fictional Premium Approach “is not grounded in actuarial science, and results in rates that are neither actuarially sound nor adequate to provide premiums necessary to fund anticipated claims.”

10. The absence of actuarial underpinnings to the Fictional Premium Approach are widely recognized. A leading consultant at a nationwide actuarial firm observed that the Fictional Premium Approach “is not anywhere considered standard actuarial practice. This

¹ The NAIC is the standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. [https://content.naic.org/index_about.htm].

² The expert report of Ted Nickel, former President of the National Association of Insurance Commissioners and former Commissioner of the Wisconsin Department of Insurance, is attached hereto as Appendix A (the “Nickel Report”).

method relies on Fictional Premiums that are not tied to actual or expected policy experience, and thus are not useful in evaluating the financial health of a book of business.”³

11. For the reasons set forth in detail in this Petition, Genworth respectfully requests that its Petition be granted and the Department cease its practice of utilizing the Fictional Premium Approach.

II. BACKGROUND

A. LONG-TERM CARE INSURANCE AND THE NEED FOR RATE INCREASES

12. LTCI policies generally cover the costs associated with, among other things, nursing home stays, assisted living facility stays and home care services for insureds who are either severely cognitively impaired or need substantial assistance with certain activities of daily living.

13. Private health insurance and government programs such as Medicare provide only limited coverage for individuals who require care of the type covered by LTCI. In addition, although Medicaid provides broader coverage for long-term care services, individuals generally only qualify for Medicaid if they are virtually asset-less. LTCI, which will typically provide maximum benefits that are many multiples of premiums paid, thus helps protect against the substantial risk that expensive long-term care services may quickly deplete an individual’s retirement savings. LTCI also affords independence and greater choice in making quality-of-life decisions for individuals requiring long-term care services.

14. Because policyholders typically buy their policies when they are relatively young and healthy, most LTCI claims occur many years (if not decades) after policies are issued.

³ The report of actuarial expert Robert Eaton, a consultant with Milliman, is attached hereto as Appendix B (the “Eaton Report”).

Consequently, LTCI insurers must, at the time policies are initially priced, make certain assumptions about how claims and other experience (*i.e.*, interest rates, morbidity, mortality, lapse rates) will emerge over many years. *See* Eaton Report at 2-3; *see also* “Long-Term Care Insurance: The SOA Pricing Project,” *Society of Actuaries* at 9-16 (Nov. 2016).

15. Changes in economic and interest rate risk, socio-demographics, behavioral trends such as location of care and level of benefit use and medical advances are among the factors that may cause actual claim experience to be materially different from the claims experience expected at the time of original pricing.⁴ *See* Eaton Report at 2-4. These factors have changed significantly since LTCI policies were first sold in Arizona.

16. Arizona requires that LTCI be guaranteed renewable or guaranteed non-cancellable. *See* A.A.C. R20-6-1004(A). “Guaranteed renewable” means “the insured has the right to continue a long-term-care insurance policy in force by the timely payment of premiums and the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, **except that the insurer may revise rates on a class basis.**” *See* A.A.C. R20-6-1003(10) (emphasis added). This express right to change premiums is critical to the ability of an insurer to manage the long-tail risk inherent in LTCI. Non-cancellable policies do not provide the same right to change premiums, which is why virtually all LTCI is written on a guaranteed renewable basis.

17. When actual experience after issue proves to be different from pricing assumptions, insurers may be left with insufficient funds to pay claims if they are not able to

⁴ LTCI does not have the extensive claims-experience history of other, more established forms of insurance that have been sold around the world for centuries (*e.g.*, life and fire insurance). Thus, in addition to the difficulty of predicting future claims experience generally, LTCI insurers did not have the benefit of decades of actual claims experience to help inform their expectations at pricing. Eaton Report at 2, 4.

increase premiums to a level adequate to support anticipated claims based upon actual experience. As a result, actuarially-justified rate increases are a critical tool to ensure continued premium adequacy on LTCI policies.

18. Rate increases reflect the need for LTCI policyholders as a group to pay premiums necessary to support the anticipated cost of benefits that will be payable to them over time. The consequences of failing to allow actuarially-justified rate increases to long-term care insurers are both foreseeable and dire. Insurers who are not able to charge premiums necessary to support anticipated future claims experience must necessarily look to other assets to pay claims, impairing surplus levels. As such, comprehensive failure to permit insurers to charge adequate rates creates the risk of insolvency. *See, e.g., Consedine v. Penn Treaty Network Am. Ins. Co.*, 63 A.3d 368, 376, 378 (Pa. Commw. Ct. 2012), *aff'd sub nom., In re Penn Treaty Network Am. Ins. Co. in Rehab.*, 119 A.3d 313 (Pa. 2015) (finding, in the context of an insolvent long-term care insurer, that “[t]his situation arose because regulators in key states such as **Arizona**, California, Florida, Illinois, and Pennsylvania have denied, delayed, or limited needed premium rate increases for the [long-term care] policies.”) (emphasis added).

19. The NAIC has recognized the need for rate increases on inforce LTCI policies, the importance of approving rate increases sufficient to assure the ongoing claims-paying ability of LTC insurers, and the impropriety of unreasonably and improperly restricting needed rate increases by using artificial constraints and unwritten rules like the Fictional Premium Approach. The NAIC is currently working to address the problem of outlier states that, like Arizona, are improperly denying necessary rate increases, to the detriment of insurers, their policyholders and the public generally. *See Nickel Report at 14-17.*

B. RATE INCREASES UNDER ARIZONA LAW

20. Arizona law expressly contemplates that LTCI insurers are entitled to actuarially-justified rate increases on guaranteed renewable policies. Every guaranteed-renewable LTCI policy sold in Arizona is written on a form, approved by the Department, that expressly provides that rates may be increased on a class basis.

21. Similarly, the Department requires that applicants for LTCI receive a “Shopper’s Guide” that discusses the terms and conditions of LTCI policies. The form of shoppers guide approved by the Department provides as follows with respect to premium rate increases:

Insurance companies can increase the premiums on guaranteed renewable insurance but only if they increase the premiums on all policies that are the same in that state. Any such premium increase must be filed and/or approved by the state insurance department. An insurance company can’t single out an individual for a premium increase, no matter whether you have filed a claim or your health has gotten worse. If you buy coverage under a group policy and later leave the group, you may be able to keep your group coverage or convert it to an individual policy, but you may pay more.

“A Shopper’s Guide to Long-Term Care Insurance,” NAIC at 27, 29 (2019).

22. The Department has enacted three regulations that entitle LTCI insurers to actuarially-justified premium rate increases on guaranteed-renewable LTCI policies: Section 1013, 1014 and 1015.

23. Section 1013, as enacted in 1992 and amended in 2005, governs “Pre-Rate Stability Policies” and provides in relevant part:

- A. This Section applies to policies and certificates issued any time prior to May 10, 2005.
- B. Benefits under an individual long-term care insurance policy are deemed reasonable in relation to premiums if the expected loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care

insurance risk. In evaluating the expected loss ratio, the director shall consider all relevant factors, including:

1. Statistical credibility of incurred claims experience and earned premiums;
2. The period for which rates are computed to provide coverage;
3. Experienced and projected trends;
4. Concentration of experience within early policy duration;
5. Expected claim fluctuation;
6. Experience refunds, adjustments, or dividends;
7. Renewability factors;
8. All appropriate expense factors;
9. Interest;
10. Experimental nature of the coverage;
11. Policy reserves;
12. Mix of business by risk classification; and
13. Product features such as long elimination periods, high deductibles, and high maximum limits.

A.A.C. R20-6-1013.⁵

24. Section 1013 is materially identical to the “loss ratio” provision embodied in Section 19 of the NAIC Model Long Term Care Regulation.

25. Section 1013(C) became effective on November 10, 2017 and provides:

- C. A premium rate schedule or proposed revision to a premium rate schedule that is expected to produce, over the lifetime of the long-term care insurance policy, benefits that are less than 60% of the proposed premium rate schedule is deemed to be unreasonable.

A.A.C. R20-6-1013(C).

26. Section 1014 was enacted in 2005 and applies to “Rate Stability Policies.” It provides, in relevant part:

⁵ Prior to November 2017, Section 1013 was identified as Section 1014, and Section 1014 was identified as Section 2015. In November 2017, the Regulations were renumbered to 1013 and 1014 respectively, and Section 1015 was added.

A. This Section applies to any long-term care policy or certificate issued in this state on or after May 10, 2005 and prior to November 10, 2017;

...

C. All premium rate schedule increases shall be determined in accordance with the following requirements;

1. The insurer shall return 70% of the present value of projected additional premiums from an exceptional increase to policyholders in benefits;
2. The sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, shall not be less than the sum of the following:
 - a. The accumulated value of the initial earned premium times 58%;
 - b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;
 - c. The present value of future projected initial earned premiums times 58%; and
 - d. 85% of the present value of future projected premiums not in subsection (C)(2)(c) on an earned basis;
3. If a policy form has both exceptional and other increases, the values in subsections (C)(2)(b) and (C)(2)(d) shall also include 70% for exceptional rate increase amounts; and
4. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in the NAIC Accounting Practices and Procedures Manual to which insurers are subject under A.R.S. § 20-223. The actuary shall disclose the use of any appropriate averages in the actuarial memorandum required under subsection (B)(3).

A.A.C. R20-6-1014.

27. Section 1014 is materially identical to the “rate stability” provisions in Section 20 of the NAIC Model Long Term Care Regulation.

28. Section 1015 was enacted in 2017 and applies to LTCI policies issued on or after November 10, 2017. *See* A.A.C. R20-6-1015. No rate increase applications have been made on policies subject to Section 1015, and the Department has never cited to or relied upon Section 1015 in applying the Fictional Premium Approach.

29. As set forth below, none of these regulations authorize the Department’s use of the Fictional Premium Approach.

C. GENWORTH LIFE INSURANCE COMPANY

30. Genworth is one of the nation’s leading issuers of long-term care insurance. Genworth has been writing long-term care insurance in Arizona since 1988 and currently provides LTCI insurance to 15,333 Arizona residents.

31. As a pioneer in the field of LTCI and one of the largest writers of LTCI in the United States, Genworth bears a substantial share of the financial burden arising from the evolving industry understanding of the costs of various benefit structures offered to LTCI policyholders – particularly benefit structures offered under older, earlier policy forms.

32. In December 2018, Genworth filed requests with the Department for approval of rate increases on several policy forms. The Department applied the Fictional Premium Approach to each request and, on that basis, limited some of the requests and denied all of the others.

33. Genworth has made multiple efforts to discuss with the Department its use of the Fictional Premium Approach. Genworth has articulated to the Department, on a legal, actuarial, business and public policy level, the impropriety of its approach. The Department has clung to the view that Section 1013(C) requires the Department to apply the Fictional Premium

Approach. Genworth has been unable, however, to move the Department and therefore filed this Petition to resolve the dispute.

D. THE DEPARTMENT’S PRACTICE OF USING FICTIONAL IMPUTED PREMIUMS TO DENY ACTUARIALLY-JUSTIFIED RATE INCREASES MANDATED UNDER ARIZONA LAW AND REGULATIONS

34. In contrast to its current approach, the Department previously reviewed rate increase applications in accordance with governing law using expected loss ratios calculated using premiums that LTCI insurers had actually earned and were projected to actually earn. *See, e.g.,* SERFF-STLH-128902666, Correspondence from Department (Mar. 18, 2013) (“Upon review of the materials provided and based upon this information, it appears that the resulting premium scale will comply with the reasonable relationship required between benefits and premiums. Therefore, ADOI is approving the above rate increase as requested.”). Also unlike its current approach, the Department properly confined its analysis to the standard in the regulation applicable to policies based on date of issue. *See, e.g.,* SERFF-AEGJ-128233915.

35. Then, beginning in January 2017, without notice or any intervening change in the law,⁶ the Department began explicitly using the Fictional Premium Approach to review rate increase applications for Pre-Rate Stability and Rate Stability policies. The effect was a widespread and pervasive practice of limiting and denying requests.

36. Between 2017 and 2020, there were 77 requests made by 25 different insurers for increases on Pre-Rate Stability and Rate Stability Policies that the Department denied or limited due to the Fictional Premium Approach. *See* Appendix C (summary of rate increase requests on Pre-Rate Stability Policies to which the Department explicitly applied the Fictional Premium

⁶ Subsection (C) to 1013, on which the Department relies as its authority for the application of the Fictional Premium Approach, was not enacted until November 10, 2017, over ten months after the Department began using that methodology. A.A.C. R20-6-1013(C).

Approach); Appendix D (summary of rate increase requests on Rate Stability Policies to which the Department explicitly applied the Fictional Premium Approach).

37. For at least 60 of the 77 rate increase requests reviewed by the Department during the period between 2017 and 2020, the Department’s actuarial consultant, INS Consulting, Inc. (“INS”), “performed an independent projection” of experience for the subject policies using earned premium and confirmed, as to each requested increase, that “the loss ratio requirements of Section R20-6-101[3] of Article 10 of the Arizona Administrative Code are satisfied,” and, where the rate increase request involved Rate Stability Policies, that “[t]he inequality test of Section R20-6-101[4] . . . is satisfied.” The Department nevertheless materially limited or denied the requests solely on the basis of the Fictional Premium Approach. *See* Appendices C & D.

38. The effect of the Department’s application of the Fictional Premium Approach has been material. As set forth in the examples below, by applying the Fictional Premium Approach and judging the propriety of a rate increase against its terms rather than those of the controlling regulations, the Department has denied LTC insurers all or a significant portion of requested rate increases:

Insurer	Increase Requested	Increase Approved	Shortfall
Ability Ins. Co. [TRIP-131076849]	36.7%	none	(36.7%)
Brighthouse Life Ins. Co. [MILL-131632438]	40%	15%	(25%)
CMFG Life Ins. Co. [CUNA-130321919]	100%	34%	(66%)
Continental Gen. Ins. Co. [GLTC-131575046]	132.6%	48%	(84.6%)
Equitable Life & Cas. Ins. Co. [ELCC-130730691]	50%	none	(50%)

Insurer	Increase Requested	Increase Approved	Shortfall
Genworth Life Ins. Co. [GEFA-130372516]	123% / 104%	20% / 20%	(103%) / (84%)
Medico Ins. Co. [TRIP-131076850]	36.7%	none	(36.7%)
MetLife Ins. Co. [MILL-130755405]	68.2%	20%	(48.2%)
Physicians Mut. Ins. Co. [PHYS-131365565]	138%	33%	(105%)
Transamerica Life Ins. Co. [AEGB-131058022]	117%	none	(117%)

III. BASIS FOR RECONSIDERATION OR REPEAL

A. THERE IS NO STATUTE OR REGULATION THAT PERMITS THE FICTIONAL PREMIUM APPROACH

39. Under Arizona law, regulations are interpreted according to the plain meaning of the words used. *See Sunflower Adult Day Care Corp. v. AHCCCS Admin.*, No. 1 CA-CV 18-0162, 2019 WL 470716, at *3 (Ariz. Ct. App. Feb. 7, 2019) (“We interpret regulations according to their plain meaning”). An administrative agency must follow the rules that it promulgates. *See Cochise Cty. v. Arizona Health Care Cost Containment Sys.*, 170 Ariz. 443, 445, 825 P.2d 968, 970 (Ct. App. 1991).

1. Section 1013 Does Not Authorize the Use of the Fictional Premium Approach

40. Section 1013, the regulation cited by the Department as the source of its authority, does not authorize or permit application of the Fictional Premium Approach.

41. As a threshold matter, by its express terms, Section 1013 does not apply to Rate Stability policies. *See* A.A.C. R20-6-1013. Section 1013 “applies to policies and certificates issued any time prior to May 10, 2005,” but Rate Stability policies, by definition, are policies issued on or after May 10, 2005. Nonetheless, the Department has repeatedly cited Section 1013

as the source of its authority to limit or deny rate increase requests for Rate Stability policies on the basis of the Fictional Premium Approach. *See* Appendix D. The Department’s conduct thus establishes that the Department is applying an impermissible unwritten rule rather than acting pursuant to a valid regulation.

42. Similarly, although the Department now cites to 1013(C) as the source of its authority for the Fictional Premium Approach, the Department repeatedly applied the Fictional Premium Approach before Subsection (C) was promulgated. As reflected in Appendices C and D, in at least 13 separate instances prior to November 10, 2017, the date on which Subsection (C) was promulgated, the Department denied or limited rate increase requests based expressly on the Fictional Premium Approach. Subsection (C) could not have been the source of the Department’s authority in those instances and the Department’s conduct demonstrates that it is acting pursuant to an unwritten rule rather than pursuant to a valid regulation.

43. Furthermore, in all cases where memoranda from the Department’s actuarial consultant are available, the actuary concluded that “[b]ased on INS’s projections, we conclude that the 60% loss ratio requirements of Section R20-6-101[3] of Article 10 are satisfied.” Then, according to INS, “[i]n order to give the Arizona Department of Insurance a view of the total cumulative rate increase, INS ran projections assuming that all past premiums were paid at issue at the newly proposed rate level,” which is “also referred to as the ‘If We Knew Premium’ – the premium that should have been charged at issue such that no future increases would be needed at this time.” According to INS, “[t]his methodology could act as a secondary guideline for the

Department in determining the merits of a proposed rate increase.” SERFF-TRST-132035911, INS Consultants, Inc. Memorandum (Mar. 13, 2020).⁷

44. Notwithstanding INS’s conclusion that the 60% loss ratio requirements were satisfied, notwithstanding the fact that the Fictional Premium Approach was intended to be a “secondary guideline,” and notwithstanding the fact that INS’s stated purpose for using the Fictional Premium Approach was “to give the . . . Department a view of the total cumulative rate increase,” the Department nonetheless use the Fictional Premium calculation as the sole basis upon which to determine what, if any, increase would be approved. SERFF-TRST-132035911, INS Consultants, Inc. Memorandum (Mar. 13, 2020). In other words, the Fictional Premium Approach is being used by the Department to override controlling law.

45. Additionally, Section 1013(B) is based directly on the NAIC Model Regulation applicable to Pre-Rate Stability policies which has been in place for several years preceding the recent emergence of the Fictional Premium Approach, and has never been intended by the NAIC to allow for the use of fictional premiums. *See* Nickel Report at 12.

2. Section 1013(B) Does Not Authorize or Permit Use of the Fictional Premium Approach

46. Even putting these patently problematic issues aside, the language of Section 1013 does not permit the Department to calculate rate increases on any LTCI policy on the basis of fictional premiums.

47. Section 1013(B) provides, in relevant part, that “[b]enefits under an individual long-term care insurance policy are deemed reasonable in relation to premiums if the expected

⁷ INS has also offered as a rationale for the Fictional Premium Approach that the methodology “prevents companies from recouping past losses.” *See, e.g.*, SERFF-META-130523270, INS Consultants, Inc. Memorandum (Dec. 13, 2016).

loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk.” A.A.C. R20-6-1013(B).

48. The touchstone of the analysis under Subsection (B) is whether the “expected loss ratio” is at least 60%. As a fundamental actuarial principle, an expected loss ratio must be calculated using earned premium. In fact, Section 1013 requires it: “In evaluating the expected loss ratio, the director shall consider all relevant factors, including . . . [s]tatistical credibility of incurred claims experience and earned premiums.”⁸ A.A.C. R20-6-1013(B)(1).

49. The Department’s own published guidance confirms that the calculation of an expected loss ratio for purposes of review and approval of an LTCI rate increase must be based on earned premiums. The Department has issued an “LTCI Checklist” to be used by LTCI insurers in preparing a request for a rate increase. *See* Arizona Review Requirements Checklist Pre-Rate Stabilization Long Term Care Insurance Rate Filings. The LTCI Checklist provides that an insurer should include in its filing “Arizona and Nationwide specific loss experience since inception by issue year, including earned premium, losses paid and losses incurred.” The LTCI Checklist further requires, “for all Long Term Care Insurance Rate Filings:”

⁸ “Expected loss ratio” means lifetime loss ratio, the components of which are past and future claims and premiums. Past (or historical) claims in the lifetime loss ratio may be expressed on an incurred basis or a paid basis. Claims on an incurred basis reflect all the payments for a single claim (even if they span many years) in the year in which the claim began, plus any expected payments beyond the valuation date. Past premiums in the lifetime loss ratio are presented as “earned” premiums, meaning for a given period of time the premiums covered the benefits that the company was obligated to pay. Eaton Report at 3-4.

Future claims in the lifetime loss ratio are those that the actuary expects to incur in the periods following the valuation date, under a certain set of assumptions. Future premiums are those that the actuary expects to earn in the periods following the valuation date, under a certain set of assumptions.

The anticipated lifetime loss ratio is calculated to be the sum of lifetime incurred claims (actual and anticipated) divided by the sum of lifetime earned premiums (actual and anticipated), where past cash flows are accumulated to the valuation date and future cash flows are discounted to the valuation date. *Id.* at 4.

- “Arizona specific loss experience including earned premium, losses paid and losses incurred.”
- “Nationwide loss experience including earned premium, losses paid and losses incurred.”

50. By definition, “earned premium” does not include the fictional premium the Department is imputing to insurers. “Earned premium” means the “portion of a premium paid by an insured that has been allocated to the insurance company’s loss experience, expenses, and profit year to date.” Harvey W. Rubin, *Barron’s Dictionary of Insurance Terms*, “Earned Premium;” NAIC Annual Statement Instructions for LTCI Experience Forms at 1, 3 6.

51. Further, Section 1013(B) requires that that the expected loss ratio be calculated in a manner that “provides for adequate reserving.” Fictional premiums cannot be used to fund reserves.⁹ Limiting premium rate increase requests based on the Fictional Premium Approach may leave an insurer with insufficient reserves to pay all appropriate claims over the life of the block of business. *See* Eaton Report at 10. In circumstances where an insurer’s other business is insufficient to fund the required reserves, insolvency is the result. *See, e.g., Consedine v. Penn Treaty Network Am. Ins. Co.*, 63 A.3d 368, 376, 378 (Pa. Commw. Ct. 2012), *aff’d sub nom., In re Penn Treaty Network Am. Ins. Co. in Rehab.*, 119 A.3d 313 (Pa. 2015) (insolvency arose as a result of an inability to obtain regulatory approval for rate increases necessary to support claim obligations of LTCI insurer).

3. Section 1013(C) Does Not Authorize or Permit Use of the Fictional Premium Approach

52. Section 1013(C) states that “[a] premium rate schedule or proposed revision to a premium rate schedule that is expected to produce, over the lifetime of the long-term care

⁹ Reserves are those amounts the company must hold in any year to pay future claims and to absorb annual fluctuations in financial results. Each state determines the minimum required level of reserves that a company must hold for an LTCI policy. *See* Eaton Report at 3.

insurance policy, benefits that are less than 60% of the proposed premium rate schedule is deemed to be unreasonable.” A.A.C. R20-6-1013. This language does not justify the use of the Fictional Premium Approach.

53. By its plain terms, Subsection (C) merely expresses the converse of Subsection (B) – an expected loss ratio calculated using earned premium and actual or anticipated claims that is less than 60% is “deemed to be unreasonable.” Like Subsection (B), Subsection (C) does not permit – and certainly does not require – the Department to calculate rate increases by including premiums that were never received.

54. In explaining its denials of rate increase requests due to the Fictional Premium Approach, the Department has stated that “the requested rates would have produced a loss ratio below 60% if charged from inception and do not represent a reasonable relationship between premiums and benefits as required by this standard.” SERFF-GEFA-130998471, Correspondence from Department (July 2, 2018) (emphasis added).

55. The language of subsection (C), however, does not refer to rates that “would have produced” a loss ratio below 60%, nor does it reference rates “charged from inception.” To the contrary, by its plain language, 1013(C) conditions the loss-ratio calculation on benefits “expected to [be] produced” over the lifetime of a long-term care insurance policy. Section 1013(C) works in tandem with Section 1013(B), which makes clear that the premiums to be included in the “expected” lifetime loss ratio are “earned,” not fictional, premiums.

56. The only way that a premium rate schedule revision can be “expected to produce” a certain loss ratio over the lifetime of a long-term care insurance contract is if the rates proposed to be charged are those that are “expected to be received” by the insurer. By using the phrase

“expected to produce” instead of the words “would have produced,” the regulation only permits a calculation that includes premiums expected to actually be received.

57. Moreover, as a grammatical matter, Subsection (C) focuses on the “benefits” (i.e., losses) that are expected to be produced. Thus, the phrase “over the lifetime of the long-term care insurance policy” must be read to modify the word “benefits,” not the phrase “proposed revision to a premium rate schedule.” When reading Sections 1013(B) and 1013(C) together, there is no reasonable interpretation of Section 1013(C) that requires the lifetime loss ratio to assume the proposed revised rates were fictionally collected over the “lifetime” of the policy form.

58. Furthermore, interpreting Subsection (C) as permitting or requiring application of the Fictional Premium Approach to determine rate increases is contrary to the expressed purpose of the regulation. In the notice of planned rulemaking for Subsection (C), the Department stated that the proposed rule would result in “greater uniformity for insurers operating in states with later versions of the NAIC Model Regulation resulting in reduced compliance costs.” Arizona Administrative Register, “Notices of Final Exempt Rulemaking” ¶ 9 at 2 (May 12, 2017). As set forth in greater detail below, however, Arizona’s use of the Fictional Premium Approach makes it an outlier in the manner in which states are regulating LTCI premium rate increases. The NAIC has evaluated the Fictional Premium Approach and concluded it that it is not an appropriate methodology to determine rate increases. Further, more recently, the NAIC has created an executive-level task force to address state inconsistencies and inequities in long-term care rates, such as Arizona’s use of the Fictional Premium Approach. *See* Nickel Report at 15-17; Eaton Report at 7; “Approaches to Reviewing Premium Rate Increases,” NAIC LTC Pricing Subgroup at 10 (Oct. 2018).

B. IF 1013(C) AUTHORIZES THE FICTIONAL PREMIUM APPROACH, IT WAS INVALIDLY PROMULGATED AND MUST BE REPEALED

59. A regulation that exceeds the scope of the rulemaking authority granted for its promulgation or which does not comply with the Notice Doctrine is not valid and therefore not enforceable. If Section 1013(C) authorizes the Fictional Premium Approach, then it is invalid on both grounds.

1. If Section 1013(C) Authorizes Or Requires The Fictional Premium Approach, Then It Exceeds The Scope Of The Department's Delegated Rulemaking Authority

60. In order to be enforceable, a regulation must be authorized by and promulgated in accordance with the law. *See State v. C & H Nationwide, Inc.*, 179 Ariz. 164, 168, 876 P.2d 1199, 1203 (Ct. App. 1994) (Arizona Department of Transportation regulation was unenforceable because it was not authorized by or promulgated pursuant to statute).

61. Here, the legislative delegation of authority for Subsection (C) was Senate Bill 1441 (“S.B 1441”), which authorized the Department to update its regulations to “substantially conform” to the latest 2014 updates to the NAIC Model Regulation. S.B. 1441 provides, in relevant part:

- i. The department of insurance shall adopt rules relating to long-term care insurance that substantially conform to those adopted in model regulations adopted by the national association of insurance commissioners, including the 2014 revisions.
- ii. For the purposes of implementing this section, the department of insurance is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the date of this section, except that the department shall provide public notice and an opportunity for public comment on proposed rules at least sixty days before the rules are amended or adopted.

62. Subsection (C) was expressly promulgated pursuant to the rulemaking exemption in S.B. 1441.¹⁰ Arizona Administrative Register, “Notices of Final Exempt Rulemaking” (May 12, 2017) ¶ 9. Construing Subsection (C) to permit or require application of the Fictional Premium Approach takes that section outside the scope of the emergency rulemaking exemption in S.B. 1441 because the Fictional Premium Approach does not constitute substantial conformity with the NAIC’s Model Regulation.

63. First, the text of Subsection (C) is not in the NAIC Model Regulations. *See* NAIC Long-Term Care Insurance Model Regulation (2014) § 19. Many states have conformed their regulations to the Model Regulation but none, other than Arizona, have added the language of Subsection (C). *See, e.g.*, 18 Del. Admin. Code 1404 (1990/2010); Ga Comp. R. & Regs. 120-2-16 (1989/2009); K.A.R. 40-4-37 (1988/2015) (Kansas); COMAR 31.14.01.01 (1994/2017) (Maryland); 211 CMR 65 (1989/2005 (Massachusetts); N.J.A.C. 11:4-34 (1989/2010); OAC 3901-4 (1993/2018) (Ohio).

64. Second, applying Subsection 1013(C) to rate increases on policies in-force prior to the adoption of subsection (C) is contrary to the NAIC Model Regulation. The NAIC Model Regulation applies only to policies issued after the effective date of the regulation when implemented or amended by a state. *See* NAIC Long-Term Care Insurance Model Regulation (2014) §§ 9, 20; “Approaches to Reviewing Premium Rate Increases,” NAIC LTC Pricing Subgroup at 1 (Oct. 2018) (noting that 2014 updates to the Model Regulation “apply to LTC

¹⁰ The Department relied on the emergency exemption and did not follow normal rulemaking procedures in promulgating Subsection (C). As a result, the Department did not fulfill the requirements to (i) submit a rule package to the Governor’s Regulatory Review Council (the “Council”) for review; (ii) prepare an economic, small business, and consumer impact statement, Ariz. Rev. Stat. § 41-1055(B), and obtain approval from the Council of the rule and its preamble and the economic, small business and consumer impact statement. Ariz. Rev. Stat. § 41-1052(A).

insurance policies issued on or after the date that the state where the policy is issued adopts the changes.”); Nickel Report at 13, 14.

65. Pursuant to Arizona law, an agency shall not make a rule that exceeds the subject matter areas specified in the rulemaking authority – in this case, Senate Bill 1441. *See* Ariz. Rev. Stat. § 41-1030(C). Moreover, rules that are not exempted from or adopted pursuant to the requirements of the Arizona Administrative Procedures Act are invalid. Ariz. Rev. Stat. Ann. § 41-1030 (“A rule is invalid unless it is made and approved in substantial compliance with §§ 41-1021 through 41-1029 [Administrative Procedures Act rules for rulemaking] . . . unless otherwise provided by law.”); *U S W. Commc'ns, Inc. v. Arizona Corp. Comm'n*, 197 Ariz. 16, 25, 3 P.3d 936, 945 (Ct. App. 1999) (Corporation Commission rules were improperly promulgated because they were enacted through plenary powers rather than through review by attorney general, as required, and rules were therefore invalid); *Pac. Fire Rating Bureau v. Ins. Co. of N. Am.*, 83 Ariz. 369, 375, 321 P.2d 1030, 1034 (1958) (promulgation of insurance rule that conflicted with enabling statute is invalid).

66. Here, Section 1013(C), to the extent it requires or permits the application of the Fictional Premium Approach, is void because it exceeds the scope of the statutory rulemaking authority, was not exempted from the rulemaking requirements of the Administrative Procedures Act, and was not promulgated in compliance with the requirements of the Administrative Procedures Act. Any application of the Fictional Premium Approach pursuant to Subsection (C) is thus *ultra vires* and of no effect. *Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc.*, 207 Ariz. 95, 126, 83 P.3d 573, 604 (Ct. App. 2004), as amended on denial of reconsideration (Mar. 15, 2004) (agency actions taken pursuant to improperly promulgated regulations are void); *Carondelet Health Servs., Inc. v. Arizona Health Care Cost Containment Sys. Admin.*, 182 Ariz.

221, 228, 895 P.2d 133, 140 (Ct. App. 1994) (changes made by agency to manner in which health care charges were calculated were void because those changes were made pursuant to improperly promulgated regulation).

2. If 1013(C) Authorizes Or Requires The Fictional Premium Approach, That Amendment Is Invalid Pursuant To The Notice Doctrine

67. If Subsection (C) is interpreted to permit or require the use of the Fictional Premium Approach, then the regulation is also invalid under the Notice Doctrine.

68. Under Arizona law, the text of a regulation must give fair notice of its intended application. *Bird v. State*, 184 Ariz. 198, 203, 908 P.2d 12, 17 (Ct. App. 1995) (“[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process.”); *see also Circle M Const., Inc. v. City of Apache Junction*, 145 Ariz. 354, 354, 701 P.2d 850, 850 (Ct. App. 1985) (zoning ordinance was invalid because “[t]here was virtually no way an ordinary citizen could ascertain from the face of the notice itself how or if his property might be affected.”).

69. Here, neither the Notices of Final Exempt Rulemaking nor the text of Subsection (C) itself put insurers affected by the regulation or the public more generally on notice that rate increase requests will be calculated by including premiums that were never received. The Department’s interpretation of Subsection (C) was not expressly stated in any of the notices provided prior to official promulgation and could not reasonably be implied therefrom, especially where the stated purpose was to bring the regulation into conformity with the NAIC Model Regulation. The same is true of the changes described in the notices, and the public comments on the proposed regulation, none of which mentioned the Fictional Premium Approach.

70. As is apparent from the recent letter to the Department from the ACLI and AHIP, attached hereto as Exhibit 1, had the industry been advised or understood that the Department intended Subsection (C) to authorize use of the Fictional Premium Approach, there would have been vigorous opposition to the proposed regulation. The absence of such opposition is further evidence that Subsection (C) cannot and should not be read as permitting or requiring the use of the Fictional Premium Approach.

C. **NO OTHER REGULATION AUTHORIZES THE FICTIONAL PREMIUM APPROACH**

1. **Section 1014 Does Not Authorize Or Permit Application Of The Fictional Premium Approach**

71. Section 1014 does not authorize use of the Fictional Premium Approach. Section 1014 provides, in relevant part that “[a]ll premium rate schedule increases shall be determined in accordance with the following requirements,” which requirements are comprised of a specific mathematical formula to be applied to calculate the increase. Contrary to the Department’s use of fictional imputed premium, the formula in Section 1014 repeatedly requires the use of premiums on an “earned basis:”

2. The insurer shall calculate premium rate increases such that the sum of the lesser of either the accumulated value of the actual incurred claims . . . or the accumulated value of historic expected claims . . . plus the present value of the future expected incurred claims . . . will not be less than the sum of the following:

- a. The accumulated value of the initial earned premium times the greater of 58% . . . ;
- b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;
- c. The present value of future projected initial earned premiums times 58% . . . ; and

- d. 85% of the present value of future projected premiums not in subsection (C)(2)(c) on an earned basis.

A.A.C. R20-6-1014 (emphasis added). Notably, the Department’s many denial letters never cite to Section 1014 as the source of its authority to use the Fictional Premium Approach.

2. Section 1015 Does Not Authorize or Permit Application of the Fictional Premium Approach

72. Section 1015, enacted in 2017, is the only other regulation applicable to the Department’s review of applications for rate increases on LTCI policies.

73. Like Section 1014, Section 1015 provides, in relevant part that “[a]ll premium rate schedule increases shall be determined in accordance with the following requirements,” which requirements are comprised of a specific mathematical formula to be applied to calculate the increase. And like Section 1014, the formula in Section 1015(C) requires the use of premiums on an “earned basis.” *See* A.A.C. R20-6-1015.

74. Sections 1013, 1014 and 1015 do not permit the use of the Fictional Premium Approach. There is, therefore, no authority for the Department’s repeated and systemic use of that approach to deny LTCI insurers the actuarially justified rate increases to which they are entitled under Arizona law.

D. THE FICTIONAL PREMIUM APPROACH CONSTITUTES AN UNWRITTEN, AND THEREFORE INVALID, RULE

75. Since 2017, the Department has expressly used the Fictional Premium Approach to deny or limit at least 77 applications for premium rate increases by more than 25 different LTCI insurers without regard to whether the affected policies were Pre-Rate Stability Policies or Rate Stability Policies, and therefore without regard to whether or not the Department’s review of the rate increase application was controlled by Section 1013 or Section 1014. *See* Appendices

C & D. The Department's use of the Fictional Premium Approach is so pervasive as to constitute an unwritten rule.

76. A "rule" is "an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency." Ariz. Rev. Stat. § 41-1001(19). Whenever a regulatory order is promulgated that includes anything that is properly the subject of a rule, the rule-making process must be followed. *See Sw. Ambulance, Inc. v. Arizona Dep't of Health Servs.*, 183 Ariz. 258, 262, 902 P.2d 1362, 1366 (Ct. App. 1995) (promulgation of ambulance rate schedules "without following the rule-making procedures in the Administrative Procedures Act was beyond [Department's] statutory power."). "A rule is invalid unless adopted and approved in substantial compliance with . . . [the relevant sections of the APA]." Ariz. Rev. Stat. § 41-1030(A).

77. As set forth above, no properly promulgated Arizona regulation permits the use of the Fictional Premium Approach. Thus, the Department's use of the Fictional Premium Approach to deny actuarially justified rate increases constitutes the enforcement of a rule which was not promulgated in compliance with the Arizona Procedures Act and is thus invalid. *See Cochise Cty. v. Arizona Health Care Cost Containment Sys.*, 170 Ariz. 443, 445, 825 P.2d 968, 970 (Ct. App. 1991) ("In order for a rule to be effective, it must be enacted in accordance with the provisions of the APA."); *see also Canon Sch. Dist. No. 50 v. W.E.S. Const. Co.*, 177 Ariz. 526, 530, 869 P.2d 500, 504 (1994) (invalidating Board of Education's "exclusive remedy procedure" because it was adopted outside the statutory authority afforded to the Board).

E. THE FICTIONAL PREMIUM APPROACH AS USED BY THE DEPARTMENT IS NOT CONSISTENT WITH NAIC RECOMMENDATIONS OR ESTABLISHED INDUSTRY PRINCIPLES

78. The NAIC, the American Academy of Actuaries, the Society of Actuaries, ACLI and AHIP have each rejected the Fictional Premium Approach because the rates produced by that approach are inadequate.

79. As set forth above, Section 1013(B) adopts the language of the NAIC's Model Regulation. NAIC Long-Term Care Insurance Model Regulation § 19 (2014). The NAIC has never considered the Model Regulation as permitting, much less requiring, the application of the Fictional Premium Approach. *See* Nickel Report at 12. To the contrary, the NAIC has, on several occasions, rejected the use of the Fictional Premium Approach as the sole basis for review of a rate increase request. For example, the NAIC actuarial task force charged with promulgating the 2014 Model Regulation considered, but rejected, the Fictional Premium Approach. The NAIC reasoned "that it [wa]s not realistic to define past losses this way." "Recouping Past LTC Losses," David Plumb & Robert Eaton, *Long-Term Care News* at 1 (Apr. 2017). Thereafter, in 2018, the NAIC LTC Pricing Subgroup studied approaches used by different states to review LTC rate increases and concluded that it was "not appropriate" to use the Fictional Premium Approach as the sole basis to determine a rate increase. "Long-term Care Insurance Approaches to Reviewing Premium Rate Increases," *NAIC LTC Pricing Subgroup* at 10 (Oct. 2018).

80. The NAIC has also rejected the notion that the Model Regulation contemplates anything other than earned premium. To the contrary, the Model Regulations – by their express language – contemplate that loss ratios will only be calculated based on earned premium. *See* Nickel Report at 8, 12.

81. Further, application of Subsection (C) to in-force business, as the Department is doing, is not contemplated at all by the NAIC Model Regulation, which makes clear in its Scope provision and repeatedly throughout that it applies only to new policies issued after the effective date of its implementation or of a revision. NAIC Long-Term Care Insurance Model Regulation §§ 9, 20 (2014).

82. Indeed, not only was the Fictional Premium Approach rejected by the NAIC, but, more recently, the NAIC has undertaken an effort to address the consequences of outlier states that are limiting rate increases through arbitrary rate caps and rules, such as the methodology used by Arizona. A Long-Term Care (EX) Task Force, created by the NAIC in 2019, is charged to deliver a report this year that includes recommendations on how to address the problem of outlier states that are unreasonably limiting necessary rate increases. *See* Nickel Report at 15-17.

83. From an actuarial perspective, the Fictional Premium Approach is an inappropriate tool for determining a premium rate increase that maintains a reasonable relationship of benefits to premium. Using fictional premium to calculate loss ratios is inconsistent with fundamental actuarial principles and does not achieve any reasonable actuarial objective.¹¹ *See* Eaton Report at 10. The American Academy of Actuaries issued a white paper in October 2018 which stated that using the Fictional Premium Approach “can cause serious solvency concerns, especially when companies have older blocks of business,” and therefore it would be “inappropriate” to use this methodology to determine the amount of a rate increase. “Long-Term Care Insurance: Consideration for Treatment of Past Losses in Rate Increase

¹¹ When the Fictional Premium Approach was first conceived, it was discussed as a potential method for preventing LTC insurers from using rate increases to recoup past losses. This was briefly considered by the NAIC and then rejected as “not realistic” because it would significantly expand the risk in the product by “not allowing companies to seek the appropriate premium levels needed to maintain the future financial health of policies.” This would be particularly problematic in the LTC industry given that the bulk of claims on inforce blocks will emerge in the coming decades. Eaton Report at 6-7.

Requests,” *American Academy of Actuaries* at 18 (Oct. 2018). Similarly, the Society of Actuaries has rejected this methodology. According to the SOA, the Fictional Premium Approach would “greatly expand[] the risk in the product,” “inject[] additional pricing risk by not allowing companies to seek the appropriate premium levels needed to maintain the future financial health of the policies,” and cause insurers to “suffer extreme losses.” “Recouping Past LTC Losses,” David Plumb & Robert Eaton, *Long-Term Care News* at 1 (Apr. 2017).

84. ACLI and AHIP, two leading industry organizations, have expressed their concern that “the methodology currently used by the Arizona Department of Insurance (Department) in reviewing and approving LTC rate increases is not grounded in actuarial science, and results in rates that are neither actuarially sound nor adequate to provide premiums necessary to fund anticipated claims.” Exhibit 1 at 2-3.

85. In 2020, ACLI and AHIP expressly advised the Department that its use of the fictional premium approach was actuarially unsound and unwise public and regulatory policy. As stated by these organizations, “[c]alculating a lifetime loss ratio based on premiums that were never collected, as opposed to actual, premiums is contrary to sound actuarial practice and contrary to the most basic principles underlying guaranteed renewability of LTC policies.” They also warned that “[s]ustained denial of actuarially-justified rate increase requests creates the risk of insolvency.” Exhibit 1.

F. THE DEPARTMENT'S FICTIONAL PREMIUM APPROACH IS BAD PUBLIC POLICY AND HARMFUL TO POLICYHOLDERS AND THE PUBLIC

86. The Department's statutory mandate is to enact regulations that promote premium adequacy and also protect policyholders. *See* Ariz. Rev. Stat. § 20-1691.02. The Fictional Premium Approach is contrary to this mandate.

87. The Department's refusal to approve rate increases that are actuarially justified on the basis of imputed fictional premiums and without consideration of need for the rate increase or the impact of a denial on future solvency is bad public policy, contrary to the interests of insurers, their policyholders and the citizens of Arizona.

88. Fictional premiums do not earn investment income, cannot be used to create or strengthen reserves, and cannot be used to pay claims or expenses. They do not benefit insurers or enable insurers to meet their obligations to policyholders.

89. Utilizing the Fictional Premium Approach, which results in the denial of actuarially-justified rate increases, creates the possibility (and, indeed, the probability) that larger or additional rate increases will be necessary in the future to maintain solvency. This is necessarily so because the rate increases approved by the Department, if any, under the Fictional Premium Approach, are smaller than what was actuarially determined to be necessary at the time. This reduces the amount of premium available to the insurer in the future, which necessitates even higher premiums for a shrinking policyholder base. This runs counter to the Department's mandate to protect policyholders and, indeed, is unfair to both policyholders and insurers.¹²

¹² As explained in the Eaton Report, the sooner a premium rate increase is implemented, the greater the impact of the higher rates because there will be more premium-paying policies contributing to the rate shortfall. Allowing premium rate increases in a timely fashion, instead of delaying them, also produces a greater time value of the additional payments. In summary, charging a premium rate increase on a

90. Moreover, denying actuarially-justified rate increases jeopardizes the solvency of insurers issuing LTCI policies. If insurers are not permitted to charge the rates necessary to ensure their continuing solvency, insolvency is a foreseeable consequence. The well-publicized Penn Treaty insolvency evidences the consequences of failing to allow long-term care insurance companies to charge rates commensurate with actual claims experience. A liquidation that could otherwise be avoided by approval of actuarially-justified rate increases is bad public policy, and contrary to the interests of policyholders and Arizona residents generally. In the context of a liquidation, policyholders are exposed to the risk that the applicable guaranty fund limits are less than the benefit limits of their policies. Further, any guaranty fund liabilities unfunded by the assets of the liquidating company are recouped via assessments on solvent life and health insurers, thereby burdening all citizens of the state who pay for life or health insurance.¹³

91. In contrast to the inevitable negative consequences of a practice of denying actuarially-justified rate increases, a practice of approving such rate increases gives policyholders collectively the security of knowing that their insurer will be able to pay claims when the need arises. Individual policyholders, who have the option of paying premiums commensurate with their benefits, adjusting their benefits so that they actually pay less premium or receiving a paid up policy with benefits comparable to premiums they have paid previously,

broader base of premium paying policyholders, and without unnecessary delays, allows the company to generate more revenue with a smaller rate increase, which lessens the burden on the policyholders. Eaton Report at 5.

¹³ As explained in the Nickel Report, Arizona's Fictional Premium Approach artificially suppresses justified rates, threatens insurers' financial viability and is harmful to consumers because it exposes them to a substantial risk of an insurer insolvency and a corresponding limited recovery available through state guaranty fund mechanisms. Rational public policy requires state Departments of Insurance to maintain the financial solvency of insurers, even to the extent premium rate increases are necessary, as the strongest tenet of consumer protection. Nickel Report at 8-11.

net of prior claim payments, can determine what is best for their individual circumstances in the context of a particular rate increase.

92. Finally, there is no other place in insurance law or regulation where the Department imputes to insurers premiums that they have not and will not earn. Imputing premiums that insurance companies cannot and will not earn is fundamentally inconsistent with the conservatism that is the hallmark of insurance regulation and which is intended to ensure the ongoing and long-term solvency and claims paying ability of insurers. NAIC Financial Analysis Handbook at 18 (2013 Annual, 2014 Quarterly) (noting that financial reporting by insurers “is based on the concepts of conservatism, consistency and recognition”).

G. THE FICTIONAL PREMIUM APPROACH RAISES SERIOUS CONSTITUTIONAL CONCERNS

93. The Fifth and Fourteenth Amendments to the United State Constitution and Article 2, Section 17 of the Arizona Constitution preclude the Department from setting rates that constitute confiscatory takings. *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944) (the constitution requires that regulated entities be permitted to charge rates that are just and reasonable); *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310 (1989) (regulated entities are entitled to rates that produce a fair rate of return).

94. In promulgating rate regulations, a regulatory agency must engage in a rational process of balancing consumer and investor interests to produce a rate that is just and reasonable. *Federal Power*, 320 U.S. at 602, 603.

95. Applying this principle, courts have sustained challenges to regulations that allow for rates at which insurers will operate at a loss because such rates are confiscatory. *See, e.g., Guar. Nat'l Ins. Co. v. Gates*, 916 F.2d 508, 515 (9th Cir. 1990) (Nevada statute rolling back and freezing insurance rates was unconstitutional in part because it “guarantee[d] only that an insurer

will break even; it does not guarantee the constitutionally required ‘fair and reasonable return.’”) (quoting *Hope*, 320 U.S. at 603); *Med. Malpractice Joint Underwriting Ass’n of R.I. v. Paradis*, 756 F. Supp. 669 (D.R.I. 1991) (regulation freezing rates at level that results in underwriting losses was unconstitutional); *Aetna Cas. & Sur. Co. v. Comm’r of Ins.*, 263 N.E.2d 698 (Mass. 1970) (regulation that compelled rate reductions to levels at which insurers would sustain an underwriting loss was unconstitutional); *Travelers Indem. Co. v. Comm’r of Ins.*, 265 N.E.2d 90 (Mass. 1970) (regulation freezing premium rates at levels that resulted in underwriting losses was unconstitutional); *Scates v. Ariz. Corp. Comm’n*, 578 P.2d 612, 614-615 (Ct. App. Ariz. 1978) (rates should be sufficient to produce a fair rate of return).

96. Application of the Fictional Premium Approach is likely to result in rates that are so inadequate as to be confiscatory and an unconstitutional taking.

97. Application of a materially new ratemaking standard to policies in force prior to the adoption of the ratemaking standard is also likely to violate the Contracts Clauses of the United States Constitution, U.S. Const. art. I, § 10, cl. 1 and the Arizona Constitution, Ariz. Const. art. II, § 25. Article I, Section 10 of the United States Constitution and Article II, Section 25 of the Arizona Constitution protect against impairment of contract rights. *Phelps Dodge Corp. v. Ariz. Elec. Power Coop., Inc.*, 83 P.3d 573, 597 (Ct. App. Ariz. 2004) (Arizona Constitution provides same protections as the Contracts Clause of the United States Constitution).

98. A contractual relationship is impaired when a party is deprived of the benefit of a contract by the enactment of a law. *Robson Ranch Quail Creek, LLC v. Pima County*, 161 P.3d 588, 595 (Ct. App. Ariz. 2007); *Hawk v. PC Village Ass’n, Inc.*, 309 P.3d 918, 923 (Ct. App.

Ariz. 2013) (holding that an impairment exists when a statute changes the substantive rights of the parties to existing contracts).

99. LTCI policies are contracts, and in addition to their express contractual provisions, the laws and regulations in place at the time each LTCI policy is issued become a part of each LTCI policy. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 429-30 (1934) (The laws in place at the time of making a contract become part of the contract). *See, e.g., Ansley v. Banner Health Network*, 246 Ariz. 240, 255, 437 P.3d 899, 914 (Ct. App. 2019), *review granted in part* (Aug. 27, 2019) (“A contract incorporates the law in force at the time of its execution.”); *State ex rel. Romley v. Gaines*, 205 Ariz. 138, 142, ¶ 13, 67 P.3d 734, 738 (App. 2003) (“Regardless of the language of a contract, it is always to be construed in the light of the law then in force.”); *Ward v. Chevron U.S.A. Inc.*, 123 Ariz. 208, 209, 598 P.2d 1027, 1028 (App. 1979) (“The law in force at [the date of execution] form[s] a part of each contract.”). Therefore, a long term care insurer’s contractual right to raise premiums therefore must be read in conjunction with the laws and regulations in place at the time each LTCI policy was issued.

100. For every LTCI policy issued in Arizona, insurers had the contractual right to increase premiums and the Department was required to approve any rate increase that was actuarially justified under the insurance regulations in effect at the time the policies were issued to achieve premium adequacy. Thus, LTCI policies governed by Section 1013 incorporate the right to a rate increase to a level where “the expected loss ratio” of “[b]enefits . . . in relation to premiums” is “at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk.” (emphasis added). LTCI policies governed by 1014 incorporate the right to a rate increase pursuant to the formula set forth in Section 1014(C)(2).

101. By retroactively applying a Fictional Premium Approach to deny rate increases that conform to this standard on inforce contracts, the Department is impairing the contractual rights of long-term care insurers in violation of the Constitutions of the United States and Arizona. *See Robson Ranch Quail Creek, LLC v. Pima County*, 161 P.3d 588, 595 (Ct. App. Ariz. 2007) (quoting *Tower Plaza Invs. Ltd. v. DeWitt*, 508 P.2d 324, 328 (Ariz. 1973)) (“[A] contract is impaired when a party is deprived of the benefit of his contract by a law.”); *Hawk v. PC Village Ass’n, Inc.*, 309 P.3d 918, 923 (Ct. App. Ariz. 2013) (holding that an impairment exists when a statute changes the substantive rights of the parties to existing contracts); *Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Ass’n*, 159 N.H. 627, 658, 992 A.2d 624, 648–49 (2010) (retroactive law substantially impaired insurance policyholders’ contract rights in violation of the New Hampshire Constitution and was thus unenforceable).

IV. CONCLUSION

102. For all of the foregoing reasons, Genworth respectfully requests the following relief:

A. That the Department immediately cease and permanently discontinue its practice of using the Fictional Premium Approach to restrict or deny actuarially-justified rate increases.

B. That, to the extent that Subsection (C) of A.A.C. R20-6-1013 requires, or even permits, the application of the Fictional Premium Approach, the regulation be repealed. Genworth does not seek any amendment to Subsection (C) of A.A.C. R20-6-1013 because, to the extent that section requires or permits application of the Fictional Premium Approach, the regulation exceeds the scope of the rule making authority granted by the Legislature and the

failure to properly promulgate the regulation cannot be cured by amended language.

Respectfully submitted,

KUTAK ROCK LLP
S. David Childers, Esquire
8601 North Scottsdale Road
Suite 300
Scottsdale, AZ 85253-2738
480.429.4880
David.Childers@KutakRock.com

SAUL EWING ARNSTEIN & LEHR LLP
Paul M. Hummer, Esquire
Amy S. Kline, Esquire
1500 Market Street
Centre Square West, 38th Floor
Philadelphia, PA 19102
215.972.7788
paul.hummer@saul.com
amy.kline@saul.com

Dated: February 1, 2021

Exhibit 2

Long-term Care Insurance
Notice of Publication of Proposed Rulemaking
Notice of Comment Period
Notice of Hearing

On January 20, 2017, the Department anticipates publication of its Notice of Proposed Exempt Rulemaking in the [Arizona Register](#). The rulemaking proposes to amend Article 10 – Long-term Care Insurance, AAC R20-6-1001 through 1026, Appendices A through J (no changes are proposed for the following sections: R20-6-1016, R20-6-1022, and Appendix G).

The purpose of this rulemaking is to revise the existing regulation to incorporate changes made to the National Association of Insurance Commissioners' (NAIC) Long-Term Care Insurance Model Regulation, which the NAIC adopted in 2014.

SB 1441 (L. 2016, Ch. 280); Long-Term Care; Rates; Premiums, enacted into law under an emergency clause effective May 17, 2016, required the Department to adopt rules relating to long-term care insurance that substantially conform to those adopted by the NAIC in 2014. The bill exempted the Department from rulemaking requirements for one year from the effective date of the Act except that the Department is required to provide public notice and an opportunity for public comment on the proposed rules at least 60 days before rule adoption or amendment.

Therefore, the Department will accept comments on the proposed amendments from January 20, 2017 through March 21, 2017. Comments can be submitted to the Department at: public_comments@azinsurance.gov.

The Department also anticipates conducting a public hearing prior to the close of the

comment period on March 3, 2017 at 1:00 p.m. The Department will publish a Notice of the Oral Proceeding on Proposed Rulemaking in the [Arizona Register](#) thirty days prior to the public hearing.

If you have any questions about this rulemaking, the hearing or on how to submit a comment, please contact Mary Kosinski at (602) 364-3471 or at:

mkosinski@azinsurance.gov.

A copy of the proposed changes to the Long-Term Care Article as they will appear in the Register follows this Notice.

ARTICLE 10. LONG-TERM CARE INSURANCE

- R20-6-1001. Applicability and Scope.
- R20-6-1002. Definitions.
- R20-6-1003. Policy Terms
- R20-6-1004. Required Policy Provisions
- R20-6-1005. Unintentional Lapse
- R20-6-1006. Inflation Protection
- R20-6-1007. Required Disclosure Provisions
- R20-6-1008. Required Disclosure of Rating Practices to Consumers
- R20-6-1009. Initial Filing Requirements
- R20-6-1010. Requirements for Application Forms and Replacement Coverage, Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates; Reporting Requirements
- R20-6-1011. Prohibition Against Post-claims Underwriting
- R20-6-1012. Discretionary Powers of Director
- ~~R20-6-1013.~~ R20-6-1012. Reserve Standards
- R20-6-1013. Renumbered
- ~~R20-6-1014.~~ R20-6-1013. Loss Ratio
- R20-6-1014. Renumbered
- ~~R20-6-1015.~~ R20-6-1014. Premium Rate Schedule Increases
- R20-6-1015. Renumbered.
- R20-6-1015. ~~Premium Rate Schedule Increases~~ Increases for Policies Subject to Loss Ratio Limits Related to Original Filings
- R20-6-1017. Standards for Marketing
- R20-6-1018. Suitability
- R20-6-1019. Nonforfeiture Benefit Requirement
- R20-6-1020. Standards for Benefit Triggers
- R20-6-1021. Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts

R20-6-1023. Requirement to Deliver Shopper's Guide

R20-6-1024. ~~Instructions for Appendices~~ Availability of New Services or Providers

R20-6-1024. Renumbered.

R20-6-1025. Right to Reduce Coverage and Lower Premiums

R20-6-1026. Instructions for Appendices

Appendix A. Long-term Care Insurance Personal Worksheet

Appendix B. Long-term Care Insurance Potential Rate Increase Disclosure Form

Appendix C. Notice to Applicant Regarding Replacement of Individual Health or Long-Term Care Insurance

Appendix D. Notice to Applicant Regarding Replacement of Health or Long-Term Care Insurance

Appendix E. Long-term Care Insurance Replacement and Lapse Reporting Form

Appendix F. Long-term Care Insurance Claims Denial Reporting Form

Appendix H. Things You Should Know Before You Buy Long-term Care Insurance

Appendix I. Long-term Care Insurance Suitability Letter

Appendix J. Long-term Care Insurance Outline of Coverage

R20-6-1001. Applicability and Scope

~~Except as otherwise specifically provided, this Article applies to all long-term care insurance policies delivered or issued for delivery in this state.~~

Except as otherwise specifically provided, this Article applies to all long-term care insurance policies, including qualified long-term care contracts and life insurance policies that accelerate benefits for long-term care, delivered or issued for delivery in this state by

insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health care service organizations and all similar organizations.

R20-6-1002. Definitions

The definitions in A.R.S. § 20-1691 and the following definitions apply in this Article.

- A.** “Benefit trigger,” for purposes of a tax-qualified long-term care insurance contract, as defined in Section 7702B(b) of the Internal Revenue Code of 1968, as amended, “benefit trigger” shall include a determination by a licensed health care practitioner that an insured is a chronically ill individual.
- B.** “Exceptional increase” means only those rate increases that an insurer has filed as exceptional and that the Director determines the need for the premium rate increase is justified due to changes in laws or regulations applicable to long-term care coverage in this state; or due to increased and unexpected utilization that affects the majority of insurers of similar products.
1. Except as provided in Sections R20-6-1014 and R20-6-1015, exceptional increases are subject to the same requirements as other premium rate schedule increases.
 2. The Director may request independent actuarial review on the issue of whether an increase should be deemed an exceptional increase.
 3. The Director may also determine whether there are any potential offsets to higher claims costs.

- ~~1.C.~~ 1.C. ~~“Incidental”~~ “Incidental,” as used in R20-6-1014(L) and R20-6-1015(L), means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy, with value measured as of the date of issue.
- ~~4.D.~~ 4.D. “Licensed health care professional” means an individual qualified by education and experience in an appropriate field, to determine, by record review, an insured’s actual functional or cognitive impairment.
- ~~2.E.~~ 2.E. “Long-term care benefit classification” means one of the following:
- ~~a.1.~~ a.1. Institutional long-term care – benefits only;
 - ~~b.2.~~ b.2. Non-institutional long-term care – benefits only; or
 - ~~c.3.~~ c.3. Comprehensive long-term care benefits.
- ~~3.F.~~ 3.F. “Managed care plan” means a health care or assisted living ~~agreement~~ arrangement designed to coordinate patient care or control costs through utilization review, case management, use of specific provider networks, or a combination of these methods.
- ~~4.G.~~ 4.G. “Personal information” has the same meaning prescribed in A.R.S. § 20-2102(19).
- ~~5.H.~~ 5.H. “Privileged information” has the same meaning prescribed in A.R.S. § 20-2102(22).
- ~~6.I.~~ 6.I. “Qualified actuary” means a member in good standing of the American Academy of Actuaries.

~~7.J.~~ “Similar policy forms” means all long-term care insurance policies and certificates that are issued by a particular insurer and that have the same long-term care benefit classification as a policy form being reviewed.

R20-6-1003. Policy Terms

A. A long-term care insurance policy delivered or issued for delivery in this state shall not use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

1. “Activities of daily living” means eating, toileting, transferring, bathing, dressing, or continence.
2. “Acute condition” means that an individual is medically unstable and requires frequent monitoring by medical professionals, such as physicians and registered nurses, to maintain the individual’s health status.
3. “Adult day care” means a program of social and health-related services for six or more individuals, that is provided during the day in a community group setting, for the purpose of supporting frail, impaired, elderly, or other disabled adults who can benefit from the services and care in a setting outside the home.
4. “Agent” means an insurance producer as defined in A.R.S. § 20-281(5).
5. “Bathing” means washing oneself by sponge bath, or in a tub or shower, and includes the act of getting in and out of the tub or shower.
6. “Chronically ill individual” has the meaning prescribed for this term by A.R.S. § 20-1691(3) and Section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended.

- a. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:
 - i. Being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to loss of functional capacity; or
 - ii. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.
- b. The term “chronically ill individual” does not include an individual otherwise meeting these requirements unless within the preceding twelve-month period a license health care practitioner has certified that the individual meets these requirements.

6-7. “Cognitive impairment” means a deficiency in a person’s:

- a. Short or long-term memory;
- b. Orientation as to person, place, or time;
- c. Deductive or abstract reasoning; or
- d. Judgment as it relates to safety awareness.

7-8. “Continence” means the ability to maintain control of bowel and bladder function, or when unable to maintain control, the ability to perform associated personal hygiene, such as caring for a catheter or colostomy bag.

8-9. “Dressing” means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

9-10. “Eating” means feeding oneself by getting food into the body from a receptacle such as a plate, cup, or table, or by a feeding tube or intravenously.

~~40.~~11. “Guaranteed renewable” means the insured has the right to continue a long-term-care insurance policy in force by the timely payment of premiums and the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that the insurer may revise rates on a class basis.

~~41.~~12. “Hands-on assistance” means physical help to an individual who could not perform an activity of daily living without help from another individual, and includes minimal, moderate, or maximal help.

~~42.~~13. “Home health services” means the services described at A.R.S. § 36-151.

~~43.~~14. “Level premium” means that an insurer does not have any right to change the premium, even at renewal.

15. “Licensed health care practitioner” has the same meaning as A.R.S. § 20-1691(7).

16. “Maintenance or personal care services” has the same meaning as A.R.S. § 20-1691(10).

~~44.~~17. “Medicare” means “The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended,” or “Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof,” or words of similar import.

~~45.~~18. “Noncancellable” means the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the

insurer has no right to unilaterally cancel or make any change in any provision of the insurance or in the premium rate.

~~16-19.~~ 19. "Personal care" means the provision of hands-on assistance to help an individual with activities of daily living in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.

20. "Qualified long-term care services" has the meaning prescribed for this term under A.R.S. § 20-1691(14) and means services that meet the requirements of Section 7702B(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventative, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

~~17-21.~~ 21. "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing tasks associated with personal hygiene.

~~18-22.~~ 22. "Transferring" means moving into or out of a bed, chair, or wheelchair.

B. Any long-term care policy delivered or issued for delivery in this state shall include the following policy terms and provisions as specified in this subsection:

1. "Home care" shall be defined in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.
2. "Intermediate care" shall be defined in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.

3. "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.
4. "Skilled nursing care," "specialized care," "assisted living care" and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care is delivered.
5. Service providers, including "skilled nursing facility," "extended care facility," ~~"intermediate care facility,"~~ "convalescent nursing home," "personal care facility," "specialized care providers," "assisted living facility" and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration or degree status of those providing or supervising the services ~~and may require that the provider be appropriately licensed or certified.~~ When the definition requires that the provider be appropriately licensed, certified or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified or registered, or when the state licenses, certifies or registers the provider of services under another name.

R20-6-1004. Required Policy Provisions

A. Renewability

1. An individual long-term care insurance policy shall contain a renewability provision which shall be either "guaranteed renewable" or "noncancellable." The renewability

provision shall be appropriately captioned, shall appear on the first page of the policy, and shall state that the coverage is guaranteed renewable or noncancellable. This requirement does not apply to a long-term care insurance policy that is part of or combined with a life insurance policy that does not contain a renewability provision and that reserves the right not to renew solely to the policyholder.

2. An insurer shall not use the terms “guaranteed renewable” and “noncancellable” in any individual long-term care insurance policy without further explanatory language according to the disclosure requirements of this Article.
3. A qualified long-term care insurance policy shall have the guaranteed renewability provisions specified in Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended, in the policy.
4. A long-term care insurance policy or certificate shall include a statement that premium rates are subject to change, unless the policy does not afford the insurer the right to raise premiums.

B. Limitations and Exclusions

1. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as “Preexisting Condition Limitations.”
2. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility not prohibited by A.R.S. §§ 20-1691.03 and 20-1691.05 shall describe the limitations or conditions, including any required number of days

of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

3. A policy shall not be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:
 - a. Preexisting conditions or disease;
 - b. Mental or nervous disorders; however, this shall not permit exclusion or limitation of the benefits on the basis of Alzheimer's Disease;
 - c. Alcoholism and drug addiction;
 - d. Illness, treatment or medical condition arising out of:
 - i. War, declared or undeclared, or act of war;
 - ii. Participation in a felony, riot or insurrection;
 - iii. Service in the armed forces or auxiliary units;
 - iv. Suicide, attempted suicide, or intentionally self-inflicted injury; or
 - v. Aviation, if non-fare-paying passenger.
 - e. Treatment provided in a government facility, unless otherwise required by law;
 - f. Services for which benefits are available under Medicare or other governmental program, except Medicaid;
 - g. Any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law;
 - h. Services provided by a member of the covered person's immediate family subject to the provisions of A.R.S. § 20-1376.09 and services for which no charge is normally made in the absence of insurance;

- i. Expenses for services or items available or paid under another long-term care insurance or health insurance policy; or
 - j. In the case of a qualified long-term care insurance policy, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be reimbursable but for the application of a deductible or coinsurance amount;
4. Subsection ~~(B)(2)~~ (B) does not prohibit exclusions and limitations by type of provider or territorial limitations. No long-term care issuer may deny a claim because services are provided in a state other than the state of policy issued under the following conditions:
- a. When the state other than the state of policy issue does not have the provider licensing, certification or registration required in the policy, but where the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification or registration; or
 - b. When the state other than the state of policy issue licenses, certifies or registers the provider under another name.
5. “State of policy issue” means the state in which the insurer issued the individual policy or certificate.
- C.** Extension of benefits. A long-term care insurance policy shall provide that termination of long-term care insurance is without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. An insurer may limit this extension of benefits period to the duration of the benefit period, if any, or to

payment of the maximum benefits and the insurer may still apply any policy waiting period and all other applicable provisions of the policy.

D. Reinstatement

~~—~~A A long-term care insurance policy shall include a provision for reinstatement of coverage if a lapse occurs if the insurer receives proof that the insured was cognitively impaired or had a loss of functional capacity before expiration of the grace period in the policy. The option to reinstate shall be available to the insured for at least five months after the date of termination and shall allow for the collection of past due premiums, as appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria for these conditions set forth in the original long-term care policy.

E. Continuation or conversion

1. A group long-term care insurance policy shall provide covered individuals with a basis for continuation or conversion of coverage as specified in this subsection.
2. The policy shall include a provision that maintains coverage under the existing group policy when the coverage would otherwise terminate, subject only to the continued timely payment of premiums when due. A group policy that restricts provision of benefits and services to, or has incentives to use certain providers or facilities, may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The Director shall make a determination as to the substantial equivalency of benefits and, in doing so, shall take into consideration the differences between managed care and non-managed care

plans, including provider system arrangements, service availability, benefit levels and administrative complexity.

3. The policy shall include a provision that an individual, whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuation of the group policy in its entirety or with respect to an insured class, who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, is entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.
4. A converted policy shall be an individual policy of long-term care insurance providing benefits identical to or benefits that the Director determines to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the Director, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity, and other plan elements.
5. An insurer may require an individual seeking a conversion policy to make a written application for the converted policy and pay the first premium due, if any, as directed by the insurer not later than 31 days after termination of coverage under the group policy. The insurer shall issue the converted policy effective on the day

following the termination of coverage under the group policy. The converted policy shall be renewable annually.

6. Unless the group policy from which conversion is made replaced previous group coverage, the insurer shall calculate the premium for the converted policy on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. If the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.
7. An insurer is required to provide continuation of coverage or issuance of a converted policy as provided in this subsection, unless:
 - a. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or
 - b. The terminating coverage is replaced not later than 31 days after termination, by group coverage that
 - i. Is effective on the day following the termination of coverage;
 - ii. Provides benefits identical to or benefits the Director determines to be substantially equivalent to or in excess of those provided by the terminating coverage; and
 - iii. Has a premium calculated in a manner consistent with the requirements of subsection (E)(6).
8. Notwithstanding any other provision of this Section, a converted policy that an insurer issues to an individual who at the time of conversion is covered by another

long-term care insurance policy providing benefits on the basis of incurred expenses, may contain a provision that reduces benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. An insurer may include this provision in the converted policy only if the converted policy also provides for a premium decrease or refund that reflects the reduction in payable benefits.

9. The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

10. Notwithstanding any other provision of this Section, ~~any~~ an insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person, is entitled to continuation of coverage under the group policy ~~upon~~ if the qualifying relationship terminates by death or dissolution of marriage.

F. Discontinuance and replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

1. Shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

2. Shall not vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services.

G. Premium Increases.

1. An insurer shall not increase the premium charged to an insured because of:
 - a. ~~The insured aging beyond age 65;~~ The increasing age of the insured at ages beyond sixty-five (65); or
 - b. The duration of coverage under the policy.
2. Purchase of additional coverage is not considered a premium rate increase, however, for the calculation required under R20-6-1019, an insurer shall add to and consider the portion of the premium attributable to the additional coverage as part of the initial annual premium.
3. A reduction in benefits is not considered a premium change, however, for the calculation required under R20-6-1019, an insurer shall base the initial annual premium on the reduced benefits.

H. Electronic enrollment for group policies.

1. For coverage offered to a group defined in A.R.S. § 20-1691(5)(a), any requirement that an insurer or insurance producer obtain an insured's signature is satisfied if:
 - a. The group policyholder or insurer obtains the insured's consent by telephonic or electronic enrollment, and provides the enrollee with verification of enrollment information within five business days of enrollment; and
 - b. The telephonic or electronic enrollment process has necessary and reasonable safeguards to assure the accuracy, retention, and prompt retrieval of records,

and the confidentiality of ~~personal~~ individually identifiable and privileged information.

2. If the Director requests, the insurer shall make available records showing the insurer's ability to confirm enrollment and coverage amounts.

I. Minimum standards for home health and community care benefits.

1. If an insurer issues a long-term care insurance policy or certificate that provides benefits for home-health or community care, the policy or certificate shall not, limit or exclude benefits by any of the following:

a. Requiring that the insured would need skilled care in a skilled nursing facility if home health services are not provided;

b. Requiring that the insured first or simultaneously receive nursing or therapeutic services, or both, in a home, ~~or~~ community or institutional setting before home health services are covered;

c. Requiring that eligible services be provided by a registered nurse or licensed practical nurse;

d. Requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of licensure or certification;

e. Requiring that the insured or claimant have an acute condition before home health services are covered;

f. Limiting benefits to services provided by Medicare-certified agencies or providers;

g. Excluding coverage for personal care services provided by a home health aide;

- h. Requiring that home health care services be provided at a level of certification or licensure greater than that required by the eligible service; or
 - i. Excluding coverage for adult day care services.
 - 2. If a long-term care insurance policy provides benefits for home health or community care services, it shall provide home health or community care coverage that equals a dollar amount equivalent to at least one-half of one year's missing home benefit coverage available at the time covered home health or community care services are being received. This requirement does not apply to policies or certificates issued to residents of continuing care retirement communities.
- 2.3. An insurer may apply home health care coverage to non-home health care benefits in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.
- J. Appeals. Policy shall include a clear description of the process for appealing and resolving benefit determinations.

R20-6-1005. Unintentional Lapse

- A. An insured may designate in writing at least one person to receive notice of lapse ~~and~~ or termination of a long-term care insurance policy for nonpayment of premium, in addition to the insured. Designation shall not constitute acceptance of any liability by the third-party notice recipient for services provided to the insured.
- B. An insurer shall not issue a an individual long-term care insurance policy or certificate until the applicant has provided either a written designation of at least one person, in addition to the applicant, who shall receive notice of lapse or termination, of the policy

or certificate for nonpayment of premium, with the person's full name and home address, or the applicant's written waiver, dated and signed, indicating that the applicant chooses not to designate a notice recipient.

- C.** The insurer shall use a form for written designation or waiver that provides space clearly delineated for the designation. The insurer shall include the following language on the form for waiver of the right to name a designated recipient: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that this notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."
- D.** At least once every two years, an insurer shall notify the insured of the right to change the person designated to receive notice in subsection (A). An insured may add, delete, or change a designated recipient or change a designated recipient at any time by notifying the insurer in writing, and providing the name and home address for the new designated recipient or the designated recipient to be deleted.
- E.** If the insured pays premiums for the long-term care insurance policy or certificate through a payroll or pension deduction plan, the insurer is not required to comply with the requirements in subsections (A) through (D) until 60 days after the insured is no longer on the payment plan.
- F.** An individual long-term care insurance policy shall not lapse or be terminated for nonpayment of premium unless the insurer gives the insured and any recipient designated under subsections (A) through (D) written notice at least 30 days before

the effective date of termination or lapse, by first class mail, postage prepaid, at the address provided by the insured for purposes of receiving notice of lapse or termination. An insurer shall not give notice until 30 days after the date on which a premium is due and unpaid. Notice is deemed given five days after the date of mailing.

G. Reinstatement. In addition to the requirement in subsections (A) through (D), a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of a lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five (5) months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy or certificate. Reinstatement after termination for other than unintentional lapse shall be governed by A.R.S. § 20-1348.

R20-6-1006. Inflation Protection

A. An insurer shall not offer a long-term care insurance policy unless the insurer offers to the policyholder, at the time of purchase, in addition to any other inflation protection, the option to purchase a policy with an inflation protection provision ~~to address the reduction or limitation on the value of benefits that may result from inflation over time.~~ that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the

costs of long-term care services covered by the policy. The terms of the required provision shall be no less favorable than one of the following:

1. A provision that provides for annual increases in benefit levels compounding annually at a rate of ~~no~~ not less than 5%; or
 2. A provision that ~~allows~~ guarantees an insured the right to periodically increase benefit levels without providing evidence of insurability or health status, if the insured did not decline the option for the previous period. The increased benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of ~~no less than~~ at least 5% for the period beginning from the purchase of the existing benefit and extending until the year in which the offer is made; or
 3. A provision for coverage of a specified percentage of actual or reasonable charges that is not subject to a maximum specified indemnity amount or limit.
- B.** If the policy is issued to a group, the insurer shall extend the offer required by subsection (A) to the group policyholder; except, if the policy is issued under A.R.S. § 20-1691.04(C) to a group, other than to a continuing care retirement community, the insurer shall make the offer to each proposed certificateholder.
- C.** An insurer is not required to make the offer in subsection (A) for life insurance policies or riders with accelerated long-term care benefits.
- D.** An insurer shall include the information listed in this subsection in or with the outline of coverage.

1. A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period.
 2. Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. If premium increases or additional premiums will be based on the attained age of the applicant at the time of the increase, the insurer shall provide a revised schedule of attained-age premiums. An insurer may use a reasonable hypothetical or a graphic demonstration for this disclosure.
- E.** Inflation-protection benefit increases shall continue without regard to an insured's age, claim status, claim history, or length of time the person has been insured under the policy.
- F.** An insurer's offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant. The insurer shall disclose in the offer in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.
- G.** An insurer shall include in a long-term care insurance policy inflation protection as provided in subsection (A)(1) unless ~~an~~ the insurer obtains a rejection of inflation protection signed by the insured as required in subsection (H). The rejection may be either on the application form or on a separate form.
- H.** A rejection of inflation protection is deemed part of an application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I reviewed Plans [insert description of plans], and I reject inflation protection."

R20-6-1007. Required Disclosure Provisions

- A.** Riders and endorsements. Except for riders or endorsements by which an insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, if an insurer adds a rider or endorsement to an individual long-term care insurance policy after date of issue or at reinstatement or renewal that reduces or eliminates benefits or coverage in the policy, the insurer shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall require the signed written agreement of the insured unless the increased benefits or coverage are required by law. If the insurer charges a separate additional premium for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.
- B.** Payment of Benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as “usual and customary,” “reasonable and customary” or words of similar import shall define the terms and explain them in its accompanying outline of coverage.
- C.** Disclosure of tax consequences. For life insurance policies that provide an accelerated benefit for long-term care, an insurer shall provide a disclosure statement at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted, that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax adviser. The

disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This subsection shall not apply to qualified long-term care insurance contracts.

D. Benefit triggers. A long-term care insurance policy shall use activities of daily living and cognitive impairment to measure an insured's need for long-term care. The long-term care insurance policy ~~or certificate~~ shall describe these terms and provisions in a separate paragraph in the policy ~~or certificate~~ labeled "Eligibility for the Payment of Benefits" that includes and explains:

1. Any additional benefit triggers;
2. Benefit triggers that result in payment of different benefit levels;
3. Any requirement that an attending physician or other specified person certify a certain level of functional dependency for the insured to be eligible for benefits.

E. A long-term care insurance ~~policy or certificate~~ contract shall contain a disclosure statement in the policy and in the outline of coverage indicating whether it is intended to be a qualified long-term care insurance contract as specified in the outline of coverage in Appendix J, paragraph 3. The contract shall also include a Specification Page which shall include the benefits, amounts, durations, the applicable rate schedule, including all premium rates that vary by duration, and any other benefit data applicable to the insured.

R20-6-1008. Required Disclosure of Rating Practices to Consumers

A. This Section applies as follows:

1. Except as provided in subsection (A)(2), this Section applies to any long-term care policy or certificate issued in this state on or after May 10, 2005.
2. For certificates issued under an in-force, long-term care insurance policy issued to a group as defined in A.R.S. § 20-1691(5)(a), the provisions of this Section apply on the first policy anniversary that occurs on or after November 10, 2005.

B. Unless a policy is one for which an insurer ~~can not~~ cannot increase the applicable premium rate or rate schedule, the insurer shall provide the information listed in this subsection to the applicant at the time of application or enrollment. If the method of application does not allow for delivery at that time, the insurer shall provide the information to the applicant no later than at the time of delivery of the policy or certificate.

1. A statement that the policy may be subject to rate increases in the future.
2. An explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option if a premium rate revision occurs.
3. The premium rate or rate schedules applicable to the applicant that will be in effect until the insurer makes a request for an increase.
4. A general explanation for applying premium rate or rate schedule adjustments that includes:
 - a. A description of when premium rate or rate-schedule adjustments will be effective (e.g., next anniversary date, next billing date); and
 - b. The insurer's right to a revised premium rate or rate schedule as provided in subsection (B)(3) if the premium rate or rate schedule is changed.

5. Information regarding each premium rate increase on this policy form or similar policy form over the past 10 years for this state or any other state, that, at a minimum, identifies:
 - a. The policy forms for which premium rates have been increased;
 - b. The calendar years when the form was available for purchase; and
 - c. The amount or percent of each increase, which may be expressed as a percentage of the premium rate before the increase, or as minimum and maximum percentages if the rate increase is variable by rating characteristics.
 6. The insurer may, in a fair manner, provide explanatory information related to the rate increases in addition to the information required under subsection (B)(5).
- C.** An insurer may exclude from the disclosure required under subsection (B)(5), premium rate increases applicable to:
1. Blocks of business acquired from other nonaffiliated insurers; and
 2. Policies acquired from other nonaffiliated insurers if the increases occurred before the acquisition.
- D.** If an acquiring insurer files for a rate increase on a long-term care insurance policy form or a block of policy forms acquired from a nonaffiliated insurer on or before the later of the January 10, 2005, or the end of a 24-month period following the acquisition of the policies or block of policies, the acquiring insurer may exclude that rate increase from the disclosure required under subsection (B)(5). However, the nonaffiliated insurer that sells the policy form or a block of policy forms shall include that rate increase in the disclosure required under subsection (B)(5). If the acquiring insurer files for a subsequent rate increase, even within the 24-month period, on the same

policy form acquired from a nonaffiliated insurer or block of policy forms acquired from nonaffiliated insurers, the acquiring insurer shall make all disclosures required by subsection (B)(5), including disclosure of the earlier rate increase.

- E.** Unless the method of application does not allow an insured to sign an acknowledgement that the insurer made the disclosures required under subsection (B) at the time of application, the applicant shall sign an acknowledgement of disclosure at that time. Otherwise, the applicant shall sign a disclosure acknowledgement no later than at the time of delivery of the policy or certificate.
- F.** An insurer shall use the forms in Appendix A and Appendix B to comply with the requirements of subsections (B) through (E). The text and format of an insurer's forms shall be substantially similar to the text and format of Appendices A and B.
- G.** An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days before the effective date of the increase. The notice shall include the information required by subsection (B).

R20-6-1009. Initial Filing Requirements

- A.** This Section applies to any long-term care policy issued in this state on or after May 10, 2005.
- B.** At the time of making a filing under A.R.S. § 20-1691.08, an insurer shall provide the Director a copy of the disclosure documents required under R20-6-1008 and an actuarial certification that includes the following:

1. The initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;
2. The policy design and coverage provided have been reviewed and taken into consideration;
3. The underwriting and claims adjudication processes have been reviewed and taken into consideration;
4. ~~A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:~~
 - a. ~~Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;~~
 - b. ~~A statement that the assumptions used for reserves contain reasonable margins for adverse experience;~~
 - c. ~~A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and~~
 - d. ~~A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;~~
 - i. ~~An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;~~

- ~~ii. If the gross premiums for certain age groups appear to be inconsistent with this requirement, the Director may request a demonstration under subsection (C) based on a standard age distribution; and~~
- 4. The premiums contain at least the minimum margin for moderately adverse experience as defined in subsection (4)(a) or the specification of and justification for a lower margin as required by subsection (4)(b).
 - a. A composite margin shall not be less than ten percent (10%) of lifetime claims.
 - b. A composite margin that is less than ten percent (10%) may be justified in uncommon circumstances. The proposed amount, full justification of the proposed amount and methods to monitor developing experience that would be the basis for withdrawal of approval for such lower margins must be submitted.
 - c. A composite margin lower than otherwise considered appropriate for the stand-alone long-term care policy may be justified for long-term care benefits provided through a life policy or an annuity contract. Such lower composite margin, if utilized, shall be justified by appropriate actuarial demonstration addressing margins and volatility when considering the entirety of the product.
 - d. A greater margin may be appropriate in circumstances where the company has less credible experience to support its assumptions used to determine the premium rates.
- 5. A statement that the premium rate schedule:

- a. Is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or
 - b. A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.
6. A statement that reserve requirements have been reviewed and considered.

Support for this statement shall include:

- a. Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held; and
- b. A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship.

~~C. The Director may require an insurer to provide an actuarial demonstration that benefits provided under a long-term care policy are reasonable in relation to premiums charged. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.~~

An actuarial memorandum shall be included that is signed by a member of the Academy of Actuaries and that addresses and supports each specific item required as part of the actuarial certification and provides as least the following:

1. An explanation of the review performed by the actuary prior to making the statements in subsections (B)(2) and (B)(3);
2. A complete description of pricing assumptions;
3. Sources and levels of margins incorporated into the gross premiums that are the basis for the statement in subsection (B)(1) of the actuarial certification and an explanation of the analysis and testing performed in determining the sufficiency of the margins. The actuary shall clearly describe deviations in margins between ages, sexes, plans or states. Deviations in margins required to be described are other than those produced utilizing generally accepted actuarial methods for smoothing and interpolating gross premium scales; and
4. A demonstration that the gross premiums include the minimum composite margin specified in subsection (B)(4).

D. In any review of the actuarial certification and actuarial memorandum, the Director may request review by the an actuary with experience in long-term care pricing who is independent of the insurer. In the event the Director asks for additional information as a result of any review, the period in A.R.S. § 20-1691.08 does not include the period during which the insurer is preparing the requested information.

R20-6-1010. Requirements for Application Forms and Replacement Coverage, Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates; Reporting Requirements

A. An insurer's application form for a long-term care insurance policy shall include the questions listed in this Section to elicit information as to whether, as of the date of the

application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other health or long-term care policy or certificate presently in force. An insurer may include the questions in a supplementary application or other form to be signed by the applicant and insurance producer, except where the coverage is sold without an insurance producer. For a replacement policy issued to a group as defined in A.R.S. § 20-1691(5)(a), the insurer may modify the questions only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced if the ~~certificate holder~~ certificateholder has been notified of the replacement.

1. Do you have another long-term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?
 2. Did you have another long-term care insurance policy or certificate in force during the last 12 months?
 - a. If so, with which company?
 - b. If that policy lapsed, when did it lapse?
 3. Are you covered by Medicaid?
 4. Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?
- B.** The application or enrollment form for such policies or certificates shall clearly indicate the payment plan the applicant selects.
- C.** An insurance producer shall list any other health insurance policies the insurance producer has sold to the applicant, including:

1. Policies that are still in force.
2. Policies sold in the past five years that are no longer in force.

D. Solicitations Other than Direct Response. On determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its insurance producer; shall furnish the applicant, before issuing or delivering of the individual long-term care insurance policy, a notice that substantially conforms to the form prescribed in Appendix C or D regarding replacement of health or long-term care coverage. The insurer shall:

1. Give one copy of the notice to the applicant; and
2. Keep an additional copy signed by the applicant.

E. Direct Response Solicitations. Insurers using direct response solicitation methods as defined in A.R.S. § 20-1661 shall deliver a notice that substantially conforms to the form prescribed in Appendix C or D regarding replacement of health or long-term care coverage to the applicant upon issuance of the policy.

F. If replacement is intended, the replacing insurer shall send the existing insurer written notice of the proposed replacement within five working days from the date the replacing insurer receives the application or issues the policy, whichever is sooner. The notice shall identify the existing policy by name of the insurer and the insured, and policy number or insured's address including zip code.

G. A life insurance policy that accelerate benefits for long-term care shall comply with this Section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of Title 20, Chapter 6, Article 1.1. If a life insurance policy that

accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with the requirements of this Section and with Title 20, Chapter 6, Article 1.1.

H. Prohibition against preexisting conditions and probationary periods in replacement

policies or certificates. If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits if similar exclusions are satisfied under the original policy.

I. Reporting requirements

1. An insurer shall maintain the following records for each insurance producer:

- a. The amount of the insurance producer's replacement sales as a percent of the insurance producer's total annual sales; and
- b. The amount of lapses of long-term care insurance policies sold by the insurance producer as a percent of the insurance producer's total annual sales.

2. No later than June 30 of each year, on the forms specified in Appendix E and Appendix F, an insurer shall report the following information for the preceding calendar year to the Department:

- a. The 10% of its insurance producers licensed in Arizona with the greatest percentages of lapses and replacements as measured by subsection ~~(H)(1)~~; (I)(1); and

- b. The number of lapsed policies as a percent of the total annual sales and as a percent of the insurer's total number of policies in force as of the end of the preceding calendar year.
- c. The number of replacement policies sold as a percent of the insurer's total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year; and
- d. For qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied.

J. In subsection (I),

- 1. "Claim" means a request for payment of benefits under an in-force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;
- 2. "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition;
- 3. "Policy" means only long-term care insurance; and
- 4. "Report" means on a statewide basis.

K. Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance. Reports required under this Section shall be filed with the Director.

L. Annual rate certification requirements. This subsection applies to any long-term care policy issued in Arizona on or after April 15, 2017. The following annual submission

requirements apply subsequent to initial rate filings for individual long-term care insurance policies made under this Section:

1. An actuarial certification prepared, dated and signed by a member of the American Academy of Actuaries which contains a statement of the sufficiency of the current premium rate schedule, including:
 - a. For the rate schedules currently marketed, that the premium rate schedule continues to be sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated or a statement that margins for moderately adverse experience may no longer be sufficient. For a statement that margins for moderately adverse experience may no longer be sufficient, the insurer shall provide to the Director, within sixty days of the date the actuarial certification is submitted to the Director, a plan of action, including a time frame, for the re-establishment of adequate margins for moderately adverse experience so that the ultimate premium rate schedule would be reasonably expected to be sustainable over the future life of the form with no future premium increases anticipated. Failure to submit a plan of action to the Director within sixty days or to comply with the time frame stated in the plan of action constitutes grounds for the Director to withdraw or modify approval of the form for future sales pursuant to A.R.S. § 20-1691.08.
 - b. For the rate schedules that are no longer marketed, that the premium rate schedule continues to be sufficient to cover anticipated costs under best

estimate assumptions or that the premium rate schedule may no longer be sufficient. If the premium rate schedule is no longer sufficient, the insurer shall provide to the Director, within sixty days of the date the actuarial certification is submitted to the Director, a plan of action, including time frame, for the re-establishment of adequate margins for moderately adverse experience.

2. A description of the review performed that led to the statement.
3. An actuarial memorandum dated and signed by a member of the American Academy of Actuaries who prepares the information shall be prepared to support the actuarial certification and provide at least the following information:
 - a. A detailed explanation of the data sources and review performed by the actuary prior to making the statement in subsection (L)(1).
 - b. A complete description of experience assumptions and their relationship to the initial pricing assumptions.
 - c. A description of the credibility of the experience data.
 - d. An explanation of the analysis and testing performed in determining the current presence of margins.
4. The actuarial certification required pursuant to subsection (L)(1) must be based on calendar year data and submitted annually starting in the second year following the year in which the initial rate schedules are first used. The actuarial memorandum required pursuant to subsection (L)(3) must be submitted at least once every three years with the certification.

R20-6-1011. Prohibition Against Post-claims Underwriting

A. An application for a long-term care insurance policy or certificate that is not guaranteed issue shall meet the requirements of this Section.

1. The application shall contain clear and unambiguous questions designed to ascertain the applicant's health condition.

a. If the application has a question asking whether the applicant has had medication prescribed by a physician, the application shall also ask the applicant to list the prescribed medication.

b. If the insurer knew or reasonably should have known that the medications listed in the application are related to a medical condition for which coverage would otherwise be denied, the insurer shall not rescind the policy or certificate for that condition.

2. The application shall include the following language which shall be set out conspicuously and in close conjunction with the applicant's signature block:

"Caution: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy."

3. The policy or certificate shall contain, at the time of delivery, the following language, or language substantially similar to the following, set out conspicuously:

"Caution: The issuance of this long-term care insurance [policy] [certificate] is based on your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any

questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].”

- B.** Before issuing a long-term care insurance policy or certificate that is not guaranteed issue to an applicant age 80 or older, the insurer shall obtain one of the following:
- ~~a.~~1. A report of a physical examination;
 - ~~b.~~2. An assessment of functional capacity;
 - ~~c.~~3. An attending physician’s statement; or
 - ~~d.~~4. Copies of medical records.
- C.** The insurer or ~~it’s~~ its insurance producer shall deliver a copy of the completed application or enrollment form, as applicable, to the insured no later than at the time of delivery of the policy or certificate unless the insurer gave a copy to the applicant it at the time of application.
- D.** An insurer selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state- and country-wide, except those which the insured voluntarily effectuated.
- E.** On or before March 31 of each year, an insurer shall report the following information to the Director for the preceding calendar year, using the form prescribed in Appendix G:
- 1. Insurer name, address, phone number;
 - 2. As to each rescission except those voluntarily effectuated by the insured:
 - a. Policy form number;
 - b. Policy and certificate number;

- c. Name of the insured;
 - d. Date of policy issuance;
 - e. Date claim submitted;
 - f. Date of rescission; and
 - g. Detailed reason for rescission.
3. Signature, name and title of the preparer, and date prepared.

R20-6-1012. Discretionary Powers of Director Reserve Standards

~~The Director may, on written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provision of this Article with respect to a specific long-term care insurance policy or certificate upon a written finding that:~~

- ~~1. The modification or suspension would be in the best interest of the insureds; and~~
- ~~2. The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and~~
 - ~~a. The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or~~
 - ~~b. The policy or certificate is to be issued to residents of a life-care or continuing-care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or~~
 - ~~c. The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.~~

- A.** If long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders, an insurer shall determine, policy reserves for long-time care benefits under A.R.S. § 20-510. An insurer shall also establish claim reserves for a policy or rider in claim status.
- B.** An insurer shall base reserves for policies and riders under subsection (A) on the multiple decrement model using all relevant decrements except for voluntary termination rates. An insurer may use single decrement approximations if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The insurer, when calculating reserves, may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. The insurer shall not set the reserves for the long-term care benefit and the life insurance benefit to be less than the reserves for the life insurance benefit assuming no long-term care benefit.
- C.** In the development and calculation of reserves for policies and riders subject to this Section, an insurer shall give due regard to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which impact projected claim costs including the following:
1. Definition of insured events;
 2. Covered long-term care facilities;
 3. Existence of home convalescence care coverage;
 4. Definition of facilities;
 5. Existence or absence of barriers to eligibility;
 6. Premium waiver provision;

7. Renewability;
8. Ability to raise premiums;
9. Marketing method;
10. Underwriting procedures;
11. Claims adjustment procedures;
12. Waiting period;
13. Maximum benefit;
14. Availability of eligible facilities;
15. Margins in claim costs;
16. Optional nature of benefit;
17. Delay in eligibility for benefit;
18. Inflation protection provisions;
19. Guaranteed insurability option; and
20. Other similar or comparable factors affecting risk.

D. A member of the American Academy of Actuaries shall certify an insurer's use of any applicable valuation morbidity table as appropriate as a statutory valuation table.

E. When long-term care benefits are provided other than as described in subsection (A), an insurer shall determine reserves under A.R.S. § 20-508.

R20-6-1013. Reserve Standards Loss Ratio

~~**A.** If long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders, an insurer shall determine, policy reserves~~

~~for long-time care benefits are determined under A.R.S. § 20-510. An insurer shall establish claim reserves shall be established for a policy or rider in claim status.~~

~~**B.** An insurer shall base reserves for policies and riders under subsection (A) on the multiple decrement model using all relevant decrements except for voluntary termination rates. An insurer may use single decrement approximations if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The insurer, when calculating reserves, may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. The insurer shall not set the reserves for the long-term care benefit and the life insurance benefit to be less than the reserves for the life insurance benefit assuming no long-term care benefit.~~

~~**C.** In the development and calculation of reserves for policies and riders subject to this Section, an insurer shall give due regard to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which impact projected claim costs including the following:~~

- ~~1. Definition of insured events;~~
- ~~2. Covered long-term care facilities;~~
- ~~3. Existence of home convalescence care coverage;~~
- ~~4. Definition of facilities;~~
- ~~5. Existence or absence of barriers to eligibility;~~
- ~~6. Premium waiver provision;~~
- ~~7. Renewability;~~
- ~~8. Ability to raise premiums;~~

- ~~9. Marketing method;~~
- ~~10. Underwriting procedures;~~
- ~~11. Claims adjustment procedures;~~
- ~~12. Waiting period;~~
- ~~13. Maximum benefit;~~
- ~~14. Availability of eligible facilities;~~
- ~~15. Margins in claim costs;~~
- ~~16. Optional nature of benefit;~~
- ~~17. Delay in eligibility for benefit;~~
- ~~18. Inflation protection provisions;~~
- ~~19. Guaranteed insurability option; and~~
- ~~20. Other similar or comparable factors affecting risk.~~

~~D. A member of the American Academy of Actuaries shall certify an insurer's use of any applicable valuation morbidity table as appropriate as a statutory valuation table.~~

~~E. When long-term care benefits are provided other than as described in subsection (A), an insurer shall determine reserves under A.R.S. § 20-508.~~

A. This Section applies to policies and certificates issued any time prior to May 10, 2005.

B. Benefits under an individual long-term care insurance policy is deemed reasonable in relation to premiums if the expected loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, the director shall consider to all relevant factors, including:

1. Statistical credibility of incurred claims experience and earned premiums;
2. The period for which rates are computed to provide coverage;

3. Experienced and projected trends;
4. Concentration of experience within early policy duration;
5. Expected claim fluctuation;
6. Experience refunds, adjustments, or dividends;
7. Renewability features;
8. All appropriate expense factors;
9. Interest;
10. Experimental nature of the coverage;
11. Policy reserves;
12. Mix of business by risk classification; and
13. Product features such as long elimination periods, high deductibles, and high maximum limits.

C. A premium rate schedule or proposed revision to a premium rate schedule that is expected to produce, over the lifetime of the long-term care insurance policy, benefits that are less than 60% of the proposed premium rate schedule is deemed to be unreasonable.

C.D. ~~Subsection (B) does~~ Subsections (B) and (C) do not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is deemed to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following:

1. The interest credited internally to determine cash value accumulations, including long-term care, if any, is guaranteed not to be less than the minimum guaranteed

interest rate for cash value accumulations without long-term care set forth in the policy;

2. The portion of the policy that provides life insurance benefits complies with the nonforfeiture requirements of A.R.S. § 20-1231;
3. The policy complies with the disclosure requirements of A.R.S. § 20-1691.06(A) through (E);
4. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes the following information:
 - a. A description of the basis on which the long-term care rates were determined;
 - b. A description of the basis for the reserves;
 - c. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
 - d. A description and a table of each actuarial assumption used; for expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;
 - e. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
 - f. The estimated average annual premium per policy and the average issue age;
 - g. A statement as to whether underwriting is performed, including:
 - i. Time of underwriting;
 - ii. A description of the type of underwriting used, such as medical underwriting or functional assessment underwriting; and

- iii. For a group policy, whether an enrollee's dependents are subject to underwriting; and
- h. A description of the effect of the long-term care policy provisions on the required premiums, nonforfeiture values, and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

R20-6-1014. Loss-Ratio Premium Rate Schedule Increases

~~A. This Section applies to policies and certificates issued any time prior to May 10, 2005.~~

~~B. Benefits under an individual long-term care insurance policy is deemed reasonable in relation to premiums if the expected loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, the director shall consider to all relevant factors, including:~~

- ~~1. Statistical credibility of incurred claims experience and earned premiums;~~
- ~~2. The period for which rates are computed to provide coverage;~~
- ~~3. Experienced and projected trends;~~
- ~~4. Concentration of experience within early policy duration;~~
- ~~5. Expected claim fluctuation;~~
- ~~6. Experience refunds, adjustments, or dividends;~~
- ~~7. Renewability features;~~
- ~~8. All appropriate expense factors;~~
- ~~9. Interest;~~
- ~~10. Experimental nature of the coverage;~~
- ~~11. Policy reserves;~~

~~12. Mix of business by risk classification; and~~

~~13. Product features such as long elimination periods, high deductibles, and high maximum limits.~~

~~C. Subsection (B) does not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is deemed to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following:~~

~~1. The interest credited internally to determine cash value accumulations, including long-term care, if any, is guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy.;~~

~~2. The portion of the policy that provides life insurance benefits complies with the nonforfeiture requirements of A.R.S. § 20-1231;~~

~~3. The policy complies with the disclosure requirements of A.R.S. § 20-1691.06(A) through (E);~~

~~4. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes the following information:~~

~~a. A description of the basis on which the long-term care rates were determined;~~

~~b. A description of the basis for the reserves; _____~~

~~c. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;~~

- d. ~~A description and a table of each actuarial assumption used; for expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;~~
- e. ~~A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;~~
- f. ~~The estimated average annual premium per policy and the average issue age;~~
- g. ~~A statement as to whether underwriting is performed, including:
 - i. ~~Time of underwriting;~~
 - ii. ~~A description of the type of underwriting used, such as medical underwriting or functional assessment underwriting; and~~
 - iii. ~~For a group policy, whether an enrollee's dependents are subject to underwriting; and~~~~
- h. ~~A description of the effect of the long-term care policy provisions on the required premiums, nonforfeiture values, and reserves on the underlying life insurance policy, both for active lives and those in long-term care status.~~

~~**A.** In this Section, "exceptional increase" means a rate increase that an insurer has filed and that the Director has determined is justified because of changes in laws applicable to long-term care insurance, or increased and unexpected utilization that affects the majority of insurers of similar products. The Director may request independent actuarial review on the issue of whether an increase should be deemed an exceptional increase. The Director may also determine whether there are any potential offsets to higher claim costs.~~

B.A. This Section applies to any long-term care policy or certificate issued in this state on or after May 10, 2005 and prior to April 15, 2017.

C.B. An insurer shall notify the Director of a proposed premium rate schedule increase, including an exceptional increase, at least ~~30~~ 60 days before issuing notice to its policyholders. The notice to the Director shall include:

1. Information required by R20-6-1008;
2. Certification by a qualified actuary that:
 - a. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
 - b. The premium rate filing complies with the provisions of this Section;
 - c. The insurer may request a premium rate schedule increase less than what is required under this Section and the Director may approve the premium rate schedule increase, without submission of the certification required by subsection (B)(2)(a), if the actuarial memorandum discloses the premium rate schedule increase necessary to make the certification required by subsection (B)(2)(a), the premium rate schedule increase filing satisfies all other requirements of this Section, and is, in the opinion of the Director, in the best interest of the policyholders.
3. An actuarial memorandum justifying the rate schedule change request that includes:

- a. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including the following:
 - i. Any assumptions that deviate from those used for pricing other forms currently available for sale;
 - ii. Annual values for the five years preceding and the three years following the valuation date, provided separately,
 - iii. Development of the lifetime loss ratio, unless the rate increase is an exceptional increase;
 - iv. A demonstration of compliance with subsection ~~(D)~~; and (C).
- b. For exceptional increases, the actuarial memorandum shall also include:
 - i. The projected experience that is limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
 - ii. If the Director determines under ~~subsection (A)~~ Section R20-6-1002(B)(3) that offsets may exist, the insurer shall use appropriate net projected experience;
- c. Disclosure of how reserves have been incorporated in this rate increase when the rate increase will trigger contingent benefit upon lapse;
- d. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and any other actions of the insurer on which the actuary has relied;
- e. A statement that the actuary has considered policy design, underwriting, and claims adjudication practices; and

f. Composite rates reflecting projections of new certificates in the event it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase; and

g. A demonstration that actual and projected costs exceed costs anticipated at the time of the initial pricing under moderately adverse experience and that the composite margin specified in R20-6-1009(B)(4) is projected to be exhausted.

4. A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless the insurer provides the Director with documentation justifying the greater rate; and

5. Upon the Director's request, other similar and related information the Director may require to evaluate the premium rate schedule increase.

D.C. ~~The following requirements apply to all~~ All premium rate schedule increases: shall be determined in accordance with the following requirements:

1. The insurer shall return 70% of the present value of projected additional premiums from an exceptional increase to policyholders in benefits;

2. The sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, shall not be less than the sum of the following:

a. The accumulated value of the initial earned premium times 58%;

b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;

- c. The present value of future projected initial earned premiums times 58%; and
 - d. 85% of the present value of future projected premiums not in subsection ~~(D)(2)(e)~~ (C)(2)(c) on an earned basis;
3. If a policy form has both exceptional and other increases, the values in subsection ~~(D)(2)(b)~~ and ~~(D)(2)(d)~~ (C)(2)(b) and (C)(2)(d) shall also include 70% for exceptional rate increase amounts; and
 4. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in the NAIC Accounting Practices and Procedures Manual to which insurers are subject under A.R.S. § 20-223. The actuary shall disclose the use of any appropriate averages in the actuarial memorandum required under subsection (B)(3).

E.D. For each rate increase that is implemented, the insurer shall file for approval by the Director updated projections, as defined in ~~Subsection (C)(3)(a)~~, subsection (B)(3)(a), annually for the next three years and shall include a comparison of actual results to projected values. The Director may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in ~~Subsection (K)~~, subsection (M), the projections required by this ~~Subsection~~ subsection shall be provided to the policyholder ~~instead~~ in lieu of filing with the Director.

F.E. If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, the insurer shall file lifetime projections, as defined in ~~Subsection (C)(3)(a)~~, subsection (B)(3)(a), for the Director's approval every five years following the end of the required period in

~~Subsection (E).~~ subsection (D). For group insurance policies that meet the conditions in subsection ~~(L),~~ (M), the insurer shall provide the projections required by this ~~Subsection~~ subsection to the policyholder instead of filing with the Director.

G.F. If the Director finds that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection ~~(D),~~ (C), the Director may require the insurer to implement premium rate schedule adjustments or other measures to reduce the difference between the projected and actual experience. In determining whether the actual experience matches the projected experience, the Director shall consider subsection ~~(C)(3)(f),~~ (B)(3)(f), if applicable.

H.G. If the majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse, the insurer shall file:

1. A plan, subject to Director approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form experience requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the Director may impose the ~~condition in subsection (I) through (K);~~ conditions in subsections (H) through (J); and
2. The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to subsection ~~(D)~~ (C) had the greater of the original anticipated lifetime loss ratio or 58% has been used in the

calculations described in ~~Subsections (D)(2)(a) and (D)(2)(c).~~ subsections (C)(2)(a) and (C)(2)(c).

I.H. For a rate increase filing that meets the criteria listed in this subsection, the Director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if lapsation in excess of projected lapsation has occurred or is anticipated:

1. The rate increase is not the first rate increase requested for the specific policy form or forms;
2. The rate increase is not an exceptional increase; and
3. The majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse.

J.I. If the Director finds excess lapsation under subsection ~~(I)~~, (H) has occurred, is anticipated in the filing or is evidenced in the actual results as presenting in the updated projections provided by the insurer following the requested rate increase, the Director may find that a rate spiral exists and may require the insurer to offer, without underwriting, to all in-force insureds subject to the rate increase, the option to replace existing ~~information~~ coverage with one or more reasonably comparable products being offered by the insurer or its affiliates. The information communicating the offer ~~are~~ is subject to the Director's approval. The offer shall:

1. Be based on actuarially sound principles, but not on attained age; and
2. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy; and
3. Allow the insured the option of retaining the existing coverage.

K.J. The insurer shall maintain the experience of the insureds whose coverage was replaced under subsection ~~(J)~~ (I) separate from the experience of insureds originally issued the policy forms. If the insurer requests a rate increase on the policy form, the rate increase shall be limited to the lesser of:

1. The maximum rate increase determined based on the combined experience; and
2. The maximum rate increase determined based only on the experience of the insureds originally issued the form, plus ten percent.

L.K. If the Director finds that an insurer has exhibited a history or pattern of filing inadequate initial premium rates for long-term care insurance, after considering the total number of policies filed over a period of time and the percentage of policies with inadequate rates, the Director may, in addition to remedies available under ~~Subsections (I) through (K)~~, subsections (H) through (J), prohibit the insurer from the following:

1. Filing and marketing comparable coverage for a period of up to five years; and
2. Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

M.L. ~~Subsections (B) through (L)~~ (A) through (K) shall not apply to a policy for which long-term care benefits provided by the policy are incidental, ~~as provided under subsection (A)~~, as defined under R20-6-1002(C), if the policy complies with all of the following provisions:

1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed

interest rate for cash value accumulations without long-term care set forth in the policy;

2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the applicable nonforfeiture requirements under state law, including A.R.S. §§ 20-1231, 20-1232 and 20-2636;
3. The policy meets the disclosure requirements of A.R.S. § 20-1691.06;
4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the disclosure requirements as applicable in the following:
 - a. Title 20, Chapter 6, Article 1.2; and
 - b. Title 20, Chapter 16, Article 2.
5. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes:
 - a. Description of the bases on which the actuary determined the long-term care rates and the reserves;
 - b. A summary of the type of policy, benefits, renewability provisions, general marketing method, and limits on ages of issuance;
 - c. A description and a table of each actuarial assumption used, with the percent of premium dollars per policy and dollars per unit of benefits, if any, for expenses;
 - d. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
 - e. The estimated average annual premium per policy and the average issue age;

- f. A statement as to whether the insurer performs underwriting at the time of application with an explanation of the following:
 - i. Whether underwriting is used, and, if used, a description of the type of underwriting, such as medical underwriting or functional assessment underwriting; and
 - ii. For a group policy, whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
- g. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

M. Subsections (F) and (H) through (J) shall not apply to group insurance as defined in

A.R.S. § 20-1691(6) where:

- 1. The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or**
- 2. The policyholder, and not the certificateholder, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.**

R20-6-1015. Premium Rate Schedule Increase Premium Rate Schedule Increases for Policies Subject to Loss Ratio Limits Related to Original Filings

A. In this Section, “exceptional increase” means a rate increase that an insurer has filed and that the Director has determined is justified because of changes in laws applicable to long-term care insurance, or increased and unexpected utilization that affects the

~~majority of insurers of similar products. The Director may request independent actuarial review on the issue of whether an increase should be deemed an exceptional increase. The Director may also determine whether there are any potential offsets to higher claims costs.~~

~~**B.** This Section applies to any individual long term care policy or certificate issued in this state on or after May 10, 2005.~~

~~**C.** An insurer shall notify the Director of a proposed premium rate schedule increase, including an exceptional increase, at least 30 days before issuing notice to its policyholders. The notice to the Director shall include:~~

~~1. Information required by R20-6-1008;~~

~~2. Certification by a qualified actuary that:~~

~~a. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;~~

~~b. The premium rate filing complies with the provisions of this Section;~~

~~3. An actuarial memorandum justifying the rate schedule change request that includes:~~

~~a. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase and the method and assumptions used in determining the projected values, including the following:~~

~~i. Any assumptions that deviate from those used for pricing other forms currently available for sale;~~

~~D. The following requirements apply to all premium rate schedule increases:~~

- ~~1. The insurer shall return 70% of the present value of projected additional premiums from an exceptional increase to policyholders in benefits;~~
- ~~2. The sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, shall not be less than the sum of the following:
 - ~~a. The accumulated value of the initial earned premium times 58%;~~
 - ~~b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;~~
 - ~~c. The present value of future projected initial earned premiums times 58%; and~~
 - ~~d. 85% of the present value of future projected premiums not in subsection(D)(2)(c) on an earned basis;~~~~
- ~~3. If a policy form has both exceptional and other increases, the values in subsection (D)(2)(b) and (D)(2)(d) shall also include 70% for exceptional rate increase amounts; and~~
- ~~4. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in the NAIG Accounting Practices and Procedures Manual to which insurers are subject under A.R.S. § 20-223. The actuary shall disclose the use of any appropriate averages in the actuarial memorandum required under subsection (B)(3).~~

~~E. For each rate increase that is implemented, the insurer shall file for approval by the Director updated projections, as defined in subsection (C)(3)(a), annually for the next~~

~~three years and shall include a comparison of actual results to projected values. The Director may extend the reporting period beyond three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in subsection (K), the insurer shall provide the projections required by this subsection to the policyholder instead of filing with the Director.~~

~~**F.** If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, the insurer shall file lifetime projections, as defined in subsection (C)(3)(a), for the Director's approval every five years following the end of the required period in subsection (E). For group insurance policies that meet the conditions in subsection (L), the insurer shall provide the projections required by this subsection to the policyholder instead of filing with the Director.~~

~~**G.** If the Director finds that the actual experience following a rate increase does not match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (D), the Director may require the insurer to implement premium rate schedule adjustments or other measures to reduce the difference between the projected and actual experience. In determining whether the actual experience matches the projected experience, the Director shall consider subsection (C)(3)(e), if applicable.~~

~~**H.** If the majority of the policies to which the increase applies are eligible for the contingent benefit upon lapse, the insurer shall file:~~

- ~~1. A plan, subject to Director approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form experience requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the Director may impose the condition in subsections (I) through (K); and~~
 - ~~2. The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to subsection (D) had the greater of the original anticipated lifetime loss ratio or 58% has been used in the calculations described in subsection (D)(2)(a) and (D)(2)(c).~~
- ~~I. For a rate increase filing that meets the criteria listed in this subsection, the Director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if lapsation in excess of projected lapsation has occurred or is anticipated:~~
- ~~1. The rate increase is not the first rate increase requested for the specific policy form or forms;~~
 - ~~2. The rate increase is not an exceptional increase; and~~
 - ~~3. The majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse.~~
- ~~J. If the Director finds excess lapsation under subsection (I), the Director may find that a rate spiral exists and may require the insurer to offer, without underwriting, to all in-force insureds subject to the rate increase, the option to replace existing information communicating the offer are subject to the Director's approval. The offer shall:~~

- ~~1. Be based on actuarially sound principles, but not on attained age; and~~
- ~~2. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy; and~~
- ~~3. Allow the insured the option of retaining the existing coverage.~~

~~**K.** The insurer shall maintain the experience of the insureds whose coverage was replaced under subsection (J) separate from the experience of insureds originally issued the policy forms. If the insurer requests a rate increase on the policy form, the rate increase shall be limited to the lesser of:~~

- ~~1. The maximum rate increase determined based on the combined experience; and~~
- ~~2. The maximum rate increase determined based only on the experience of the insureds originally issued the form, plus ten percent.~~

~~**L.** If the Director finds that an insurer has exhibited a history or pattern of filing inadequate initial premium rates for long-term care insurance, after considering the total number of policies filed over a period of time and the percentage of policies with inadequate rates, the Director may, in addition to remedies available under subsections (I) through (K), prohibit the insurer from the following:~~

- ~~1. Filing and marketing comparable coverage for a period of up to five years; and~~
- ~~2. Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.~~

~~**M.** Subsections (B) through (L) shall not apply to a policy for which long-term care benefits provided by the policy are incidental, as provided under subsection (A), if the policy complies with all of the following provisions:~~

- ~~1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;~~
- ~~2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the applicable nonforfeiture requirements under state law, including A.R.S. §§ 20-1231, 20-1232 and 20-2636;~~
- ~~3. The policy meets the disclosure requirements of A.R.S. § 20-1691.06;~~
- ~~4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the disclosure requirements as applicable in the following:
 - ~~a. Title 20, Chapter 6, Article 1.2; and~~
 - ~~b. Title 20, Chapter 16, Article 2.~~~~
- ~~5. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes:
 - ~~a. Description of the bases on which the actuary determined the long-term care rates and the reserves;~~
 - ~~b. A summary of the type of policy, benefits, renewability provisions, general marketing method, and limits on ages of issuance;~~
 - ~~c. A description and a table of each actuarial assumption used, with the percent of premium dollars per policy and dollars per unit of benefits, if any, for expenses;~~
 - ~~d. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;~~~~

- ~~e. The estimated average annual premium per policy and the average issue age;~~
- ~~f. A statement as to whether the insurer performs underwriting at the time of application with an explanation of the following:
 - ~~i. Whether underwriting is used, and, if used, a description of the type of underwriting, such as medical underwriting or functional assessment underwriting; and~~
 - ~~ii. For a group policy, whether the enrollee or any dependent will be underwritten and when underwriting occurs; and~~~~
- ~~g. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.~~

A. This Section applies to any long-term care policy or certificate issued in this state on or after April 15, 2017.

B. An insurer shall notify the Director of a proposed premium rate schedule increase, including an exceptional increase, at least 60 days before issuing notice to its policyholders. The notice to the Director shall include:

1. Information required by R20-6-1008;
2. Certification by a qualified actuary that:
 - a. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
 - b. The premium rate filing complies with the provisions of this Section;

c. The insurer may request a premium rate schedule increase less than what is required under this Section and the Director may approve the premium rate schedule increase, without submission of the certification required by subsection (B)(2)(a), if the actuarial memorandum discloses the premium rate schedule increase necessary to make the certification required by subsection (B)(2)(a), the premium rate schedule increase filing satisfies all other requirements of this Section, and is, in the opinion of the Director, in the best interest of the policyholders.

3. An actuarial memorandum justifying the rate schedule change request that includes:

a. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including the following:

i. Any assumptions that deviate from those used for pricing other forms currently available for sale;

ii. Annual values for the five years preceding and the three years following the valuation date, provided separately,

iii. Development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

iv. A demonstration of compliance with subsection (C).

b. For exceptional increases, the actuarial memorandum shall also include:

i. The projected experience that is limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

1. Exceptional increases shall provide that 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;
2. The insurer shall calculate premium rate increases such that the sum of the lesser of either the accumulated value of the actual incurred claims (without the inclusion of active life reserves) or the accumulated value of historic expected claims (without the inclusion of active life reserves) plus the present value of the future expected incurred claims (projected without the inclusion of active life reserves) will not be less than the sum of the following:
 - a. The accumulated value of the initial earned premium times the greater of 58% or the lifetime loss ratio consistent with the original filing including margins for moderately adverse experience;
 - b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;
 - c. The present value of future projected initial earned premiums times the greater of 58% or the lifetime loss ratio consistent with the original filing including margins for moderately adverse experience; and
 - d. 85% of the present value of future projected premiums not in subsection (C)(2)(c) on an earned basis;
3. Historic expected claims shall be calculated based on the original filing assumptions assumed until new assumptions are filed as part of a rate increase. New assumptions shall be used for all periods beyond each requested effective date of a rate increase. Historic expected claims are calculated for each

calendar year based on the in-force at the beginning of the calendar year.

Historic expected claims shall include margins for moderately adverse experience; either amounts included in the claims that were used to determine the lifetime loss ratio consistent with the original filing or as modified in any rate increase filing;

4. In the event that a policy form has both exceptional and other increases, the values in subsections (C)(2)(b) and (C)(2)(d) will also include 70% for exceptional rate increase amounts; and

5. All present and accumulated values used to determine rate increases, including the lifetime loss ration consistent with the original filing reflecting margins for moderately adverse experience, shall use the maximum valuation interest rate for contract reserves as specified in A.R.S. § 20-508. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

D. For each rate increase that is implemented, the insurer shall file for approval by the Director updated projections, as defined in subsection (B)(3)(a), annually for the next three years and shall include a comparison of actual results to projected values. The Director may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in subsection (M), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the Director.

E. If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, the insurer shall file lifetime projections, as defined in subsection (B)(3)(a), for the Director's approval every five

years following the end of the required period in subsection (D). For group insurance policies that meet the conditions in subsection (M), the insurer shall provide the projections required by this subsection to the policyholder instead of filing with the Director.

F. If the Director finds that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (C), the Director may require the insurer to implement premium rate schedule adjustments or other measures to reduce the difference between the projected and actual experience. In determining whether the actual experience matches the projected experience, the Director shall consider subsection (B)(3)(f), if applicable.

G. If the majority of policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file a plan, subject to approval by the Director, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form experience requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect. Otherwise, the Director may impose the conditions in subsections (H) through (J).

H. For a rate increase filing that meets the criteria listed in this subsection, the Director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if lapsation in excess of projected lapsation has occurred or is anticipated:

1. The rate increase is not the first rate increase requested for the specific policy form or forms;

2. The rate increase is not an exceptional increase; and

3. The majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse.

I. If the Director finds excess lapsation under subsection (H) has occurred, is anticipated in the filing or is evidenced in the actual results as presenting in the updated projections provided by the insurer following the requested rate increase, the Director may find that a rate spiral exists and may require the insurer to offer, without underwriting, to all in-force insureds subject to the rate increase, the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates. The information communicating the offer is subject to the Director's approval. The offer shall:

1. Be based on actuarially sound principles, but not on attained age; and

2. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy; and

3. Allow the insured the option of retaining the existing coverage.

J. The insurer shall maintain the experience of the insureds whose coverage was replaced under subsection (I) separate from the experience of insureds originally issued the policy forms. If the insurer requests a rate increase on the policy form, the rate increase shall be limited to the lesser of:

1. The maximum rate increase determined based on the combined experience; and

2. The maximum rate increase determined based only on the experience of the insureds originally issued the form, plus ten percent.

K. If the Director finds that an insurer has exhibited a history or pattern of filing inadequate initial premium rates for long-term care insurance, after considering the total number of policies filed over a period of time and the percentage of policies with inadequate rates, the Director may, in addition to remedies available under subsections (H) through (J), prohibit the insurer from the following:

1. Filing and marketing comparable coverage for a period of up to five years; and
2. Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

L. Subsections (A) through (K) shall not apply to a policy for which long-term care benefits provided by the policy are incidental, as defined under R20-6-1002(C), if the policy complies with all of the following provisions:

1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the applicable nonforfeiture requirements under state law, including A.R.S. §§ 20-1231, 20-1232 and 20-2636;
3. The policy meets the disclosure requirements of A.R.S. § 20-1691.06;
4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the disclosure requirements as applicable in the following:

- a. Title 20, Chapter 6, Article 1.2; and
 - b. Title 20, Chapter 16, Article 2.
5. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes:
- a. Description of the bases on which the actuary determined the long-term care rates and the reserves;
 - b. A summary of the type of policy, benefits, renewability provisions, general marketing method, and limits on ages of issuance;
 - c. A description and a table of each actuarial assumption used, with the percent of premium dollars per policy and dollars per unit of benefits, if any, for expenses;
 - d. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
 - e. The estimated average annual premium per policy and the average issue age;
 - f. A statement as to whether the insurer performs underwriting at the time of application with an explanation of the following:
 - i. Whether underwriting is used, and, if used, a description of the type of underwriting, such as medical underwriting or functional assessment underwriting; and
 - ii. For a group policy, whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

g. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

M. Subsections (F) and (H) through (J) shall not apply to group insurance as defined in A.R.S. § 20-1691(6) where:

1. The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or
2. The policyholder, and not the certificateholder, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

R20-6-1017. Standards for Marketing

- A.** Every insurer marketing long-term care insurance coverage in this state, directly or through an insurance producer shall:
1. Establish marketing procedures to assure that any comparison of policies by its insurance producers is fair and accurate, and that excessive insurance is not sold or issued.
 2. Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy, the following language: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."
 3. Provide the applicant with copies of the disclosure forms in Appendices A and B.

4. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has health or long-term care insurance and the types and amounts of any such insurance.
5. Provide an explanation of contingent benefit upon lapse as provided for in ~~R20-6-1019(E)~~. R20-6-1019(D)(2).
6. Provide written notice to an applicant or prospective policyholder or certificateholder advising of this state's senior insurance counseling program (SHIP), and the name, address, and phone number for the SHIP, at the time of solicitation.
7. Establish auditable procedures for verifying compliance with this ~~Section~~ subsection (A).

B. In addition to the practices prohibited in A.R.S. § 20-441 et seq., the following acts and practices are prohibited:

1. Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
2. High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

3. Cold lead advertising. Making use directly or indirectly or any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.
 4. Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.
- C.** An insurer shall not market or issue a long-term care policy or certificate to an association unless the insurer files the information required under R20-6-1016(B) and annually certifies that the association has complied with the requirements of this Section.

R20-6-1018. Suitability

- A.** This Section does not apply to life insurance policies that accelerate benefits for long-term care.
- B.** Every insurer or other person marketing long-term care insurance, including an insurance producer or managing general agent, (the “issuer”) shall:
1. Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;
 2. Train its insurance producers in the use of its suitability standards; and
 3. Maintain a copy of its suitability standards and make them available for inspection upon the Director’s request.

- C.** To determine whether an applicant meets an issuer's suitability standards, the insurance producer and issuer shall develop procedures that take the following into consideration:
1. The applicant's ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;
 2. The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and
 3. The values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.
- D.** The issuer shall make reasonable efforts to obtain the information set out in subsection ~~(C)(1)~~, (C), including giving the applicant the "Long-Term Care Insurance Personal Worksheet" prescribed in Appendix A, to complete before or at the time of application. The issuer shall use a personal worksheet that contains, at a minimum, the information contained in Appendix A, in substantially the same text and format, in not less than 12 point type. The issuer may ask the applicant to provide additional information to comply with its suitability standards. An issuer shall file a copy of its personal worksheet with the Director.
- E.** An issuer shall not consider an applicant for coverage until the issuer has received the applicant's completed personal worksheet, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

- F.** No one shall sell or disseminate information obtained through the personal worksheet outside the issuer that obtains the worksheet.
- G.** The issuer shall use its suitability standards to determine whether issuance of long-term care insurance coverage to a particular applicant is appropriate.
- H.** An insurance producer shall use the suitability standards developed by the issuer in marketing long-term care insurance.
- I.** When giving an applicant a personal worksheet, the issuer shall also provide the applicant with a disclosure form entitled “Things You Should Know Before You Buy Long-Term Care Insurance.” The form shall be in substantially the same format and text contained in Appendix H, in not less than 12 point type.
- J.** If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter that is substantially similar to Appendix I. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant’s intent to purchase the long-term care policy. The issuer shall have either the applicant’s returned Appendix I letter or a record of the alternative method of verification as part of the applicant’s file.
- K.** The issuer shall report annually to the Director the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter as prescribed in subsection (J).

R20-6-1019. Nonforfeiture Benefit Requirement

- A.** This Section does not apply to life insurance policies or riders containing accelerated long-term care benefits.
- B.** To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of A.R.S. § 20-1691.11, an insurer shall meet the following requirements:
1. A policy or certificate offered with nonforfeiture benefits shall have the same coverage elements, eligibility, benefit triggers and benefit length as a policy or certificate issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection (E).
 2. The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.
- C.** If the offer required to be made under A.R.S. § 20-1691.11 is rejected, the insurer shall provide the contingent benefit upon lapse described in this Section. Even if the non-forfeiture benefit offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit on lapse in subsection (D)(4) shall still apply.
- D.** Contingent Benefit Upon Lapse.
1. If a prospective policyholder rejects the offer of a nonforfeiture benefit, the insurer shall provide the contingent benefit upon lapse described in this Section for individual and group policies without the nonforfeiture benefit, issued after January 10, 2005.
 - ~~E.~~ 2. If a group policyholder elects to make the nonforfeiture benefit an option to a certificateholder, the certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

F. 3. The contingent benefit on lapse is triggered when:

4. a. An insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in the chart below, based on the insured's issue age; and
2. b. The policy or certificate lapses within 120 days of the due date of the increased premium.
- c. Unless otherwise required, an insurer shall notify policyholders at least 30 days before the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase		
Issue Age		Percent Increase Over Initial Premium
29 and under		200%
30-34		190%
35-39		170%
40-44		150%
45-49		130%
50-54		110%
55-59		90%
60		70%

61		66%
62		62%
63		58%
64		54%
65		50%
66		48%
67		46%
68		44%
69		42%
70		40%
71		38%
72		36%
73		34%
74		32%
75		30%
76		28%
77		26%
78		24%
79		22%
80		20%

81		19%
82		18%
83		17%
84		16%
85		15%
86		14%
87		13%
88		12%
89		11%
90 and over		10%

~~G. Unless otherwise required, an insurer shall notify policyholders at least 30 days before the due date of the premium reflecting the rate increase.~~

4. A contingent benefit on lapse is also triggered for policies with a fixed or limited premium paying period when:

a. An insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in the chart below, based on the insured's issue age; and

b. The policy or certificate lapses within 120 days of the due date of the increased premium; and

c. The ratio in subsection (D)(6)(b) is 40% or more.

d. Unless otherwise required, an insurer shall notify policyholders at least 30 days before the due date of the premium reflecting the rate increase.

<u>Triggers for a Substantial Premium Increase</u> <u>on policies with a fixed or limited premium</u> <u>paying period</u>		
<u>Issue Age</u>		<u>Percent Increase Over</u> <u>Initial Premium</u>
<u>Under 65</u>		<u>50%</u>
<u>65-80</u>		<u>30%</u>
<u>Over 80</u>		<u>10%</u>

e. This provision shall be in addition to the contingent benefit provided by subsection (D)(3) and where both are triggered, the benefit provided shall be at the option of the insured.

H.5. On or before the effective date of a substantial premium increase as defined in subsection (F), (D)(3), an insurer shall:

~~1.~~a. Offer the insured the option of reducing policy benefits under the current coverage ~~without additional underwriting~~ consistent with the requirements of R20-6-1025 so that required premium payments are not increased;

~~2.~~b. Offer to convert the coverage to a paid-up status with a shortened benefit period according to the terms of subsection (I), (E), which the insured may elect at any time during the 120-day period referenced in subsection (F)(2); (D)(3); and

- 3.c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subsection ~~(F)(2)~~ (D)(3) is deemed to be the election of the offer to convert under subsection ~~(H)(2)~~. (5)(b) unless the automatic option in subsection (D)(6)(c) applies.
6. On or before the effective date of a substantial premium increase on policies with a fixed or limited premium paying period as defined in subsection (D)(4), an insurer shall:
- a. Offer the insured the option of reducing policy benefits under the current coverage consistent with the requirements of R20-6-1025 so that required premium payments are not increased;
 - b. Offer to convert the coverage to paid-up status where the amount payable for each benefit is 90% of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. The insured may elect this option at any time during the 120-day period referenced in subsection (D)(4); and
 - c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subsection (D)(4) is deemed to be the election of the offer to convert under subsection (D)(6)(b) if the ratio is 40% or more.
7. For any long-term care policy issued on or after April 15, 2017, that an insurer issued at least 20 years prior to the effective date of a substantial premium

increase, the insurer shall use a rate increase value of 0% in place of all values in the above tables.

I.E. In this Section, “benefits Benefits continued as nonforfeiture benefits,” including contingent benefits upon lapse, ~~in accordance with subsection (D)(3) but not subsection (D)(4),~~ mean any of the following:

1. Attained age rating is defined as a schedule of premiums starting from the issue date that increases age at least one percent per year before age 50, and at least three percent per year beyond age 50.
2. ~~The~~ For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subsection ~~(I)(3).~~ (E)(3).
3. The standard nonforfeiture credit equals 100% of the sum of all premiums paid, including the premiums paid before any change in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. The minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subsection ~~(J).~~ (F).
4. When the nonforfeiture benefit begins.

a. The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years, and thereafter.

5. ~~b.~~ Notwithstanding subsection ~~(I)(4)~~, (E)(4)(a), for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

a. i. The end of the tenth year following the policy or certificate issue date; or

b. ii. The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

6-5. Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

J.F. All benefits paid by the insurer while the policy or certificate is in premium-paying status and in the ~~paid-up~~ paid-up status shall not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium-paying status.

K.G. There shall be no difference in the minimum nonforfeiture benefits for group and individual policies.

L.H. The requirements in this Section are effective on or after November 10, 2005 and shall apply as follows:

1. Except as provided in subsection ~~(L)(2)~~, (H)(2) and (H)(3), this Section applies to any long-term care policy issued in this state on or after January 10, 2005.

2. The provisions of this Section do not apply to certificates issued on or after January 10, 2005, under a group long-term care insurance policy as defined in A.R.S. § 20-1691(5)(a), that was in force on January 10, 2005.

3. The provisions of this Section that apply to fixed or limited premium paying period policies shall only apply to policies issued on or after April 15, 2017.

M.I. Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of R20-6-1013, R20-6-1014, or R20-6-1015, whichever is applicable, treating the policy as a whole.

N.J. To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection ~~(F)~~, (D)(3) or (D)(4), a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium the insured paid when first buying the policy from the original insurer.

O.K. An insurer shall offer a nonforfeiture benefit for a qualified long-term care insurance contract that is a level premium contract and the benefit shall meet the following requirements:

1. The nonforfeiture provision shall be separately captioned using the term “nonforfeiture benefit” or a substantially similar caption.
2. The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the insurer may adjust the amount of the benefit initially granted only as needed to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the Director under to A.R.S. § 20-1691.08 for the same contract form; and
3. The nonforfeiture provision shall provide at least one of the following:

- a. Reduced paid-up premiums,
- b. Extended term insurance,
- c. Shortened benefit period; or
- d. Other similar offerings that the Director has approved.

R20-6-1020. Standards for Benefit Triggers

- A.** A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Except as otherwise provided in R20-6-1021, eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.
- B.** Activities of daily living shall include at least the following as defined in R20-6-1003 and in the policy:
- 1. Bathing;
 - 2. Continence;
 - 3. Dressing;
 - 4. Eating;
 - 5. Toileting; and
 - 6. Transferring;
- C.** An insurer may use additional activities of daily living to trigger covered benefits if the activities are defined in the policy.

- D.** An insurer may use additional provisions to determine when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements in subsections ~~(A) and (B)~~. (A), (B) and (C).
- E.** For purposes of this Section the determination of a deficiency shall not be more restrictive than:
1. Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or
 2. If the deficiency is due to the presence of a cognitive impairment, requiring supervision or verbal cueing by another person to protect the insured or others.
- F.** Licensed or certified professionals, such as physicians, nurses or social workers, shall perform assessments of activities of daily living and cognitive impairment.
- G.** The requirements in this Section are effective on and after November 10, 2005 and shall apply as follows:
1. Except as provided in subsection (G)(2), the provisions of this Section apply to a long-term care policy issued in this state on or after January 10, 2005.
 2. The provisions of this Section do not apply to certificates issued on or after January 10, 2005, under a long-term care insurance policy issued to a group as defined in A.R.S. § 20-1691(5)(a), which policy was in force on January 10, 2005.

R20-6-1021. Additional Standards for Benefit Triggers for Qualified Long-term Care Insurance Contracts

- A.** A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided under a plan of care

prescribed by a licensed health care practitioner, which is not subject to approval or modification by the insurer.

- B. A qualified long-term care insurance contract shall condition the payment of benefits on a certified determination of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.
- C. ~~Licensed or certified professionals, including physicians, registered professional nurses, and licensed social workers,~~ health care practitioners shall perform the certified determinations regarding activities of daily living and cognitive impairment required under subsection (B).
- D. Certified determinations required under ~~to~~ subsection (B) may be performed at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certified determination may not be rescinded and additional certified determinations may not be performed until after the expiration of the 90-day period.

R20-6-1023. Requirement to Deliver Shopper's Guide

- A. All prospective applicants of a long-term care insurance policy or certificate shall receive a long-term care insurance shopper's guide approved by the Director. This requirement may be satisfied by delivery of the current edition of the long-term care

insurance shopper's guide in the format developed by the National Association of Insurance Commissioners.

1. In the case of insurance producer solicitation, an insurance producer shall deliver the shopper's guide before presenting an application or enrollment form.
2. In the case of direct response solicitations, the insurer shall provide the shopper's guide with any application or enrollment form.

B. A prospective applicant for a life insurance policy or rider containing accelerated long-term care benefits is not required to receive the guide described in subsection ~~A~~, (A), but shall receive the policy summary required under A.R.S. § 20-1691.06.

R20-6-1024. ~~Instructions for Appendices~~ Availability of New Health Care Services or Providers

~~Information that is designated as a "Drafting Instruction" in a form appended to this Article is not required to be included as part of the form. Any person using the form shall abide by the instructions when drafting, preparing, or completing the form.~~

- A. An insurer shall notify policyholders of the availability of a new long-term policy series that provides coverage for new long-term care services or health care providers material in nature and not previously available through the insurer to the general public. The notice shall be provided within 12 months of the date the new policy series is made available for sale in this state.
- B. Notwithstanding subsection (A), notification is not required for any policy issued prior to the effective date of this Section or to any policyholder or certificateholder who is currently eligible for benefits, within an elimination period or on a claim, or

who previously had been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

C. The insurer shall make the new coverage available in one of the following ways:

1. By adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age:

2. By exchanging the existing policy or certificate for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate.

The premium credits shall be based on premiums paid or reserves held for the prior policy or certificate;

3. By exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; or

4. By an alternative program developed by the insurer that meets the intent of this Section if the program is filed with and approved by the Director.

D. An insurer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited distribution channel. For purposes of this subsection, "limited distribution channel" means through a discrete entity, such as

a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders who purchased such a new proprietary policy shall be notified when a new long-term care policy series that provides coverage for new long-term care services or providers material in nature is made available to that limited distribution channel.

E. Policies issued pursuant to this Section shall be considered exchanges and not replacements. These exchanges shall not be subject to R20-6-1010(A), (C) through (G) and R20-6-1018 and are not subject to the reporting requirements of R20-6-1010(I)(1), (I)(2)(a) through (I)(2)(c).

F. Where an employer, labor organization, professional, trade or occupational association offers the policy, the required notification in subsection (A) shall be made to the offering entity. However, if the policy is issued to a group defined in A.R.S. 20-1691(5), the notification shall be to each certificateholder.

G. Nothing in this Section shall prohibit an insurer from offering any policy, rider, certificate or coverage change to any policyholder or certificateholder. However, upon request, any policyholder may apply for currently available coverage that includes the new services or providers. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium, to add such new services or providers.

H. This Section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

I. This Section shall become effective on or after April 15, 2017.

R20-6-1025. Right to Reduce Coverage and Lower Premiums

- A.** Every long-term care insurance policy and certificate shall include a provision that allows the policyholder or certificateholder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:
1. Reducing the maximum benefit; or
 2. Reducing the daily, weekly or monthly benefit amount.
- B.** The insurer may also offer other reduction options that are consistent with the policy or certificate design or the carrier's administrative processes.
- C.** In the event the reduction in coverage involves the reduction or elimination of the inflation protection provision, the insurer shall allow the policyholder to continue the benefit amount in effect at the time of the reduction.
- D.** The provision in subsection (A) shall include a description of the process for requesting and implementing a reduction in coverage.
- E.** The premium for the reduced coverage shall:
1. Be based on the same age and underwriting class used to determine the premium for the coverage currently in force; and
 2. Be consistent with the approved rate table.
- F.** The issuer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.
- G.** If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificateholder of his or her right to reduce coverage and premiums in the notice required by R20-6-1005(F).

- H. This Section does not apply to life insurance policies or riders containing accelerated long-term benefits.
- I. The requirements of subsections (A) through (H) shall apply to any long-term care policy issued in this state on or after April 15, 2017.
- J. A premium increase notice required by R20-6-1008(G) shall include:
 - 1. An offer to reduce policy benefits provided by the current coverage consistent with the requirements of this Section;
 - 2. A disclosure stating that all options available to the policyholder may not be of equal value; and
 - 3. In the case of a partnership policy, a disclosure that some benefit reduction options may result in a loss in partnership status that may reduce policyholder protections.
- K. The requirements of subsection (J) shall apply to any rate increase implemented in this state on or after April 15, 2017.

R20-6-1026. Instructions for Appendices

Information that is designated as a “Drafting Instruction” in a form appended to this Article is not required to be included as part of the form. Any person using the form shall abide by the instructions when drafting, preparing, or completing the form.

APPENDIX A

Long-term Care Insurance

Personal Worksheet

People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long-term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

Premium Information

Policy Form Numbers _____

The premium for the coverage you are considering will be [\$_____ per month, or \$_____ per year,] [a one-time single premium of \$_____.]

Type of Policy (noncancellable/guaranteed renewable): _____

The Company's Right to Increase Premiums: _____

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

Rate Increase History

The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]

(Drafting Instruction: A company may use the first bracketed sentence above only if it has never increased rates under any prior policy forms in this state or any other state. The issuer shall list each premium increase it has instituted on this or similar policy forms in this state or any other state during the last 10 years. The list shall provide the policy form, the calendar years the form was available for sale, and the calendar year and the amount (percentage) of each increase. The insurer shall provide minimum and maximum percentages if the rate increase is variable by rating characteristics. The insurer may provide, in a fair manner, additional explanatory information as appropriate.)

Questions Related to Your Income

How will you pay each year's premium?

From my Income From my Savings/Investments My Family will Pay

From my Income From my Savings/Investments My Family will Pay

Have you considered whether you could afford to keep this policy if the premiums went up, for example, by ~~20%~~ 50%?

(Drafting Instruction: The issuer is not required to use the bracketed sentence if the policy is fully paid up or is a noncancellable policy.)

What is your annual income? (check one) Under \$10,000 \$[10-20,000] \$[20-30,000] \$[30-50,000] Over \$50,000

(Drafting Instruction: The issuer may choose the numbers to put in the brackets to fit its suitability standards.)

How do you expect your income to change over the next 10 years? (check one)

No change Increase Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.

Will you buy inflation protection? (check one) Yes No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?

From my Income _____ From my Savings/Investments _____
_____ My Family will Pay

From my Income _____ From my Savings/Investments _____ My Family will Pay

The national average annual cost of care in [insert year] was [insert \$ amount], but this figure varies across the country.

In ten years the national average annual cost would be about [insert \$ amount] if costs increase 5% annually.

(Drafting Instruction: The projected cost can be based on federal estimates in a current year. In the above statement, the second figure equals 163% of the first figure.)

What elimination period are you considering? Number of days _____ Approximate cost \$ _____ for that period of care.

How are you planning to pay for your care during the elimination period? (check one)

From my Income From my Savings/Investments My Family will Pay

~~Questions Related to Your Savings and Investments~~

Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth? (check one)

Under \$20,000 \$20,000-\$30,000 \$30,000-\$50,000 Over \$50,000

How do you expect your assets to change over the next ten years? (check one)

Stay about the same

Increase

Decrease

If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care.

Disclosure Statement

The answers to the questions above describe my financial situation.

or

I choose not to complete this information.

◆ (Check one.)

I acknowledge that the carrier and/or its ~~agent~~ insurance producer (below) has reviewed this form with me including the premium, premium rate increase history and potential for premium increases in the future. [For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate increase history and potential for premium increases in the future.] **I understand the above disclosures. I understand that the rates for this policy may increase in the future.** (This box must be checked).

Signed: _____

(Applicant)

(Date)

Signed: _____

(Applicant)

(Date)

I explained to the applicant the importance of completing this information.

Signed: _____

_____ (Insurance Producer) _____ (Date)

Signed: _____

(Insurance Producer)

(Date)

Insurance Producer's Printed Name: _____]

[In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My ~~agent~~ insurance producer has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.]

Signed: _____

_____ (Applicant) _____ (Date)

Signed: _____

(Applicant)

(Date)

(Drafting Instruction: Choose the appropriate sentences depending on whether this is a direct mail or insurance producer sale.)

The company may contact you to verify your answers.

(Drafting Instruction: When the Long-term Care Insurance Personal Worksheet is furnished to employees and their spouses under employer group policies, the text from the heading “Disclosure Statement” to the end of the ~~page~~ document may be removed.)

APPENDIX B

~~Long-term Care Insurance~~

~~Potential Rate Increase Disclosure Form~~

Instructions:

This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

Insurers shall provide all of the following information to the applicant:

Long-term Care Insurance

Potential Rate Increase Disclosure Form

1. **[Premium Rate] [Premium Rate Schedules]:** [Premium rate] [Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and [approved] for an increase [is][are] [on the application][\$(_____)]
2. **The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy.**
3. **Rate Schedule Adjustments:**

The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): _____.

4. **Potential Rate Revisions:**

This policy is Guaranteed Renewable. This means that the rates for this product may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

~~If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:~~

- ~~• Pay the increased premium and continue your policy in force as is.~~
- ~~• Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)~~
- ~~• Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)~~
- ~~• Exercise your contingent nonforfeiture rights.* (This option may be available if you do not purchase a separate nonforfeiture option.)~~

If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:

- Pay the increased premium and continue your policy in force as is.
- Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)
- Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)
- Exercise you contingent nonforfeiture rights.* (This option may be available if you do not purchase a separate nonforfeiture option.)

***Contingent Nonforfeiture**

If the premium rate for your policy goes up in the future and you didn't buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:

You will keep some long-term care insurance coverage, if:

- Your premium after the increase exceeds your original premium by the percentage shown (or more) in the following table;
and
- You lapse (not pay more premiums) within 120 days of the increase.

Turn the Page

◆ The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you have paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining

maximum benefit amount is less than the total amount of premiums you've paid, the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.

Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered "paid-up" with no further premiums due.

Example:

- You bought the policy at age 65 and paid the \$1,000 annual premium for 10 years, so you have paid a total of \$10,000 in premium.
- In the eleventh year, you receive a rate increase of 50%, or \$500 for a new annual premium of \$1,500, and you decide to lapse the policy (not pay any more premiums).
- Your "paid-up" policy benefits are \$10,000 (provided you have a least \$10,000 of benefits remaining under your policy.)

Turn the Page

Contingent Nonforfeiture	
<u>Cumulative Premium Increase over Initial Premium</u>	
That qualifies for Contingent Nonforfeiture	
(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)	
Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%

45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%

83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

APPENDIX C

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL HEALTH OR LONG-TERM CARE
INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

~~According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing health or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides [thirty (30)] days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.~~

~~You should review this new coverage carefully, comparing it with all health or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.~~

~~STATEMENT TO APPLICANT BY [INSURANCE PRODUCER OR OTHER REPRESENTATIVE]:~~

~~— Use additional sheets, as necessary.)~~

~~— I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations which I call to your attention:~~

~~— 1. Health conditions that you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, even though a similar claim might have been payable under your present policy.~~

~~— 2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probation periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.~~

~~— 3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its insurance producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.~~

~~— 4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to~~

refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing health or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all health or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY [INSURANCE PRODUCER OR OTHER REPRESENTATIVE]:

Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations which I call to your attention:

1. Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under your new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all of the relevant factors involved in replacing your present coverage.

APPENDIX D

NOTICE TO APPLICANT REGARDING REPLACEMENT OF HEALTH OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE

~~—— According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing health or long-term care insurance and replace it with the long-term care insurance policy being delivered and issued by [company name] Insurance Company. Your new policy gives you thirty (30) days to decide, without cost, whether you want to keep the policy. For your own information and protection, you should be aware of and seriously consider certain facts which may affect the insurance protection available to you under the new policy.~~

~~—— You should review this new coverage carefully, comparing it with all health coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.~~

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing health or long-term care insurance and replace it with the long-term care insurance policy being delivered and issued by [company name] Insurance Company. Your new policy gives you thirty (30) days to decide, without cost, whether you want to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all health or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, even though a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its ~~agent~~ insurance producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly, Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

~~[COMPANY NAME]~~

◆APPENDIX E

Long-term Care Insurance Replacement and Lapse Reporting Form

For the State of _____

For the Reporting Year of _____

Company Name: _____ Due: June 30 annually

Company Address: _____ Company NAIC Number: _____

Contact Person: _____ Phone Number: (____) _____

Instructions

The purpose of this form is to report on a statewide basis information regarding long-term care insurance policy replacements and lapses. Every insurer shall maintain the following records for each insurance producer: (1) the amount of long-term care insurance replacement sales as a percent of the insurance producer's total annual sales and (2) the amount of lapses of long-term care insurance policies sold by the insurance producer as a percent of the insurance producer's total annual sales. The tables below should be used to report the ten percent (10%) of the insurer's insurance producers with the greatest percentages of replacements and lapses.

Listing of the 10% of Insurance Producers with the Greatest Percentage of Replacements

Insurance Producer's Name	Number of Policies Sold By This Insurance Producer	Number of Policies Replaced By This Insurance Producer	Number of Replacements as % of Number of Policies Sold By This Insurance Producer

Listing of the 10% of Insurance Producers with the Greatest Percentage of Lapses

Insurance Producer's Name	Number of Policies Sold By This Insurance Producer	Number of Policies Lapsed By This Insurance Producer	Number of Lapses As % of Number Sold By This Insurance Producer

Company Totals

Percentage of Replacement Policies Sold to Total Annual Sales ____%

Percentage of Replacement Policies Sold to Policies In Force (as of the end of the preceding calendar year) ____%

Percentage of Lapsed Policies to Total Annual Sales ____%

Percentage of Lapsed Policies to Policies In Force (as of the end of the preceding calendar year) ____%

APPENDIX F

Long-term Care Insurance

Claims Denial Reporting Form

For the State of _____

For the Reporting Year of _____

For the Reporting Year of _____

Company Name: _____ Due: June 30 annually

Company Address: _____

Company NAIC Number: _____

Contact Person: _____ Phone Number: _____

Line of Business: Individual Group

Instructions

~~The purpose of this form is to report all long-term care claim denials under in force long-term care insurance policies. "Denied" means a claim that is not paid for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition.~~

The purpose of this form is to report all long-term care claim denials under in force long-term care insurance policies. Indicate the manner of reporting by checking one of the boxes below.

Per Claimant – counts each individual who makes one or a series of claim requests.

Per Transaction – counts each claim payment request.

“Denied” means a claim that is not paid for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition. It does not include a request for payment that is in excess of the applicable contractual limits.

Inforce Data

	<u>State Data</u>	<u>Nationwide Data¹</u>
<u>Total Number of Inforce Policies [Certificates] as of December 31st</u>		

Claims & Denial Data

		<u>State Data</u>	<u>Nationwide Data¹</u>
1	Total Number of Long-Term Care Claims Reported		
2	Total Number of Long-Term Care Claims Denied/Not Paid		
3	Number of Claims Not Paid due to Preexisting Condition Exclusion		
4	Number of Claims Not Paid due to Waiting (Elimination) Period Not Met		
5	Net Number of Long-Term Care Claims Denied for Reporting Purposes (Line 2 Minus Line 3 Minus Line 4)		
6	Percentage of Long-Term Care Claims Denied of Those Reported (Line 5 Divided By Line 1)		
7	Number of Long-Term Care Claim Denied due to:		
8	• Long-Term Care Services Not Covered under the Policy ²		
9	• Provider/Facility Not Qualified under the Policy ³		
10	• Benefit Eligibility Criteria Not Met ⁴		
11	• Other		

1. The nationwide data may be viewed as a more representative and credible indicator where the data for claims reported and denied for your state are small in number.
2. Example—home health care claim filed under a nursing home only policy.
3. Example—a facility that does not meet the minimum level of care requirements or the licensing requirements as outlined in the policy.
4. Examples—a benefit trigger not met, certification by a licensed health care practitioner not provided, no plan of care.

APPENDIX H

Things You Should Know Before You Buy

Long-term Care Insurance

Long-Term Care Insurance

- A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.

- **[WARNING!]** You should **not** buy this insurance policy unless you can afford to pay the premiums every year. You are making a multi-year financial commitment. [Remember that the company can increase premiums in the future.]

(Drafting Instruction: For single premium policies, delete this bullet; for noncancellable policies, delete the second sentence only.)

- The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

Medicare

- Medicare does **not** pay for most long-term care.

Medicaid

- Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.

- Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.

- When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.

- Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

**Shopper's
Guide**

- Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

Counseling

- Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

Facilities

- Some long-term care insurance contracts provide for benefit payments in certain facilities only if they are licensed or certified, such as in assisted living centers. However, not all states regulate these facilities in the same way. Also, many people move into a different state from where they purchased their long-term care insurance policy. Read the policy carefully to determine what types of facilities qualify for benefit payments, and to determine that payment for a covered service will be made if you move to a state that has a different licensing scheme for facilities than the one in which you purchased the policy.

APPENDIX I

Long-term Care Insurance Suitability Letter

Dear [Applicant]:

Your recent application for long-term care insurance included a “personal worksheet,” which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet “Shopper’s Guide to Long-Term Care Insurance” and the page titled “Things You Should Know Before Buying Long-Term Care Insurance.” Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

(Drafting Instruction: Choose the paragraph that applies.)

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

~~Yes, [although my worksheet indicates that long-term care insurance may not be a suitable purchase.] I wish to purchase this coverage. Please resume review of my application.~~

Yes, [although my worksheet indicates that long-term care insurance may not be a suitable purchase.] I wish to purchase this

coverage.

Please resume review of my application.

Drafting Instruction: Delete the phrase in brackets if the applicant did not answer the questions about income.

~~No. I have decided not to buy a policy at this time.~~

No. I have decided not to buy a policy at this time.

APPLICANT'S SIGNATURE

DATE

Please return to [issuer] at [address] by [date].

APPENDIX J

[COMPANY NAME]

[ADDRESS - CITY & STATE]

[TELEPHONE NUMBER]

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

~~[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, shall appear as follows in the outline of coverage.]~~

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, shall appear as follows in the outline of coverage.]

~~Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]~~

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] [a group policy] which was issued in the [indicate jurisdiction in which group policy was issued].
2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you

and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. FEDERAL TAX CONSEQUENCES

~~This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702(B)(b) of the Internal Revenue Code of 1986, as amended.~~

This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702(B)(b) of the Internal Revenue Code of 1986, as amended.

OR

~~Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702(B)(b) of the Internal Revenue Code of 1986, as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.~~

Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702(B)(b) of the Internal Revenue Code of 1986, as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

4. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED

(a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:

- (1) Policies and certificates that are guaranteed renewable shall contain the following statement:] RENEWABILITY:
THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

(2) [Policies and certificates that are noncancellable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;]

(c) [Describe waiver of premium provisions or state that there are not such provisions;]

5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) [Provide a brief description of the right to return - “free look” provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer’s Guide available from the insurance company.

(a) [For insurance producers] Neither [insert company name] nor its [agents or insurance producers] represent Medicare, the federal government or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

8. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute-care unit of a hospital, such as in a nursing home, in the community or in the home.

~~This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]~~

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

9. BENEFITS PROVIDED BY THIS POLICY₂

(a) [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]

(b) [Institutional benefits, by skill level.]

(c) [Non-institutional benefits, by skill level.]

(d) Eligibility for Payment of Benefits

~~[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be defined and described as part of the outline of coverage.]~~

[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.]

~~_____ [Any additional benefit triggers shall be explained in this Section. If these triggers differ for different benefits, explanation of the triggers shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]~~

[Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

10. LIMITATIONS AND EXCLUSIONS.

[Describe:

- (a) Preexisting conditions;
- (b) Non-eligible facilities and providers;
- (c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions and exceptions;
- (e) Limitations.]

~~[This Section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph 6 above.]~~

[This Section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph 6 above.]

~~**THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.**~~

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) Describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

~~[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]~~

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

13. PREMIUM.

[(a) State the total annual premium for the policy;

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

14. ADDITIONAL FEATURES.

[(a) Indicate if medical underwriting is used;

(b) Describe other important features.]

15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

Exhibit 3



Office of the Director

Arizona Department of Insurance

2910 North 44th Street, Suite 210, Phoenix, Arizona 85018-7269

Phone: (602) 364-3100 | Web: <https://insurance.az.gov>

Douglas A. Ducey, Governor

Leslie R. Hess, Interim Director

LONG-TERM CARE INSURANCE

Notice of Publication of Proposed Rulemaking;

Notice of Comment Period; Notice of Hearing

The Department is currently taking comments on its proposed amendments to Arizona Administrative Code Title 20, Chapter 6, Article 10 ([Long-Term Care Insurance rules](#)).

The proposed rule changes can be found in the [Arizona Register](#) and on the [Department's website](#).

Comments can be submitted to: public_comments@azinsurance.gov.

A public hearing is scheduled for [March 3, 2017, at 1:00 p.m.](#), at the State of Arizona building, 2910 N. 44th Street, Phoenix, Arizona (the four-story brown building on the northwest corner of 44th Street and Thomas Road – immediately west of the Bank of America on the corner) in the 3rd Floor Training Room. Free parking is available on the west side of the building (between the State of Arizona building and the Bank of America) as well as on the roof of the garage on the east side of the building.

May 4, 2021

Via Email to grrc@azdoa.gov

Ms. Nicole Sornsins, Chairwoman
Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007

RE: GRRC REVIEW OF AN UNWRITTEN OR IMPROPERLY ENACTED DIFI RULE PURSUANT TO ARS § 41-1033 (E), (F)

Dear Ms. Sornsins and Members of the Governor's Regulatory Review Council ("GRRC"):

ACLI supports the petition filed by Genworth Life Insurance Company (Genworth) seeking GRRC review of the Arizona Department of Insurance and Financial Institutions' (Department or DIFI) implementation of A.A.C. R20-6-1013. The Department's practice of restricting actuarially-justified rate increases on long-term care (LTC) insurance policies is contrary to law, bad public policy and applies standards to policies that are in conflict with the rules that are currently in place as well as rules that were in place when those policies were sold.

DIFI is applying an unwritten rule, the "If Knew" approach, that limits LTC rate adjustments based on premiums that were never, and will never be, collected by insurers. The "If Knew" approach is systematically underfunding LTC insurers through a policy that has not been formalized in a statute or rule, but instead through an unwritten practice that DIFI applies as though it was a rule. ACLI recommends that the GRRC determine that DIFI's practice is an unwritten rule and we request that you use your authority to void this agency practice.

ACLI advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers' financial and retirement security. Indeed, financial security is our members' core business. Maintaining a regulatory environment that supports consumers' access to a vibrant, robust, competitive market that offers a variety of products that are affordable and meet consumers' needs is one way we can ensure our customers' financial security. A key tenet of regulatory stability requires consistent application of the rules and standards that were in place when those products were sold.

The methodology currently used by DIFI in reviewing and approving LTC rate increase requests is not generally considered to be grounded in actuarial science, and results in rates that are neither actuarially sound nor adequate to provide premiums necessary to fund anticipated claims.

American Council of Life Insurers | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 95 percent of industry assets in the United States.

Actuarially-justified rates reflect the actual need for long-term care policyholders as a group to pay premiums necessary to support the anticipated cost of benefits that will be payable to the group over time.

Methodologies that limit actuarially-justified rate increases are a threat to the solvency and sustainability of the LTC market. This suppresses the number of companies that are willing to write this business in Arizona, and impacts the solvency of current carriers. Sustained denial of actuarially-justified rate increase requests creates the risk of insolvency, which will negatively impact policyholders, insurers, and Arizona residents generally. In the context of an insolvency, policyholders are exposed to the risk that the applicable guaranty fund limits are less than the benefit limits of their policies. Further, because any guaranty fund liabilities unfunded by the assets of the liquidating company are recouped via assessments on solvent life and health insurers, insolvencies burden other insurers and all citizens of the state who pay for life or health insurance.

On June 4, 2020, ACLI sent a letter to Interim DIFI Director Christina Corieri, expressing our concerns regarding the methodology currently used by DIFI in reviewing LTC rate increases. We offered the Department the opportunity to discuss this further; however, the Department did not respond to our letter or invitation.

The Department cites A.A.C. R20-6-1013(B) and 1013(C) as authority for the “If Knew” approach. However, DIFI is applying the “If Knew” approach to policies that are not subject to Section 1013 at all, and Section 1013 does not provide authority for the use of the “If Knew” approach for any type of policy. Section 1013 references “expected loss ratio” and “benefits expected to be produced,” and directs that “earned premium” be used to calculate both.

Subsection (C) was added to Section 1013 by amendment in November 2017. The Department gave no notice when Subsection (C) was enacted that it was intended to authorize the application of the “If Knew” approach. Had that been the case, ACLI and others in the LTC industry would have opposed the new regulation. The industry did not object, though, because in the notice of planned rulemaking for Subsection (C), the Department stated that the proposed rule was intended to result in “greater uniformity for insurers operating in states with later versions of the NAIC Long-Term Care Model Regulation resulting in reduced compliance costs.” In fact, Arizona is an outlier among the states by applying this methodology. This will neither lead to reduced compliance costs nor increased uniformity for insurers.

In addition, DIFI is retroactively applying this unwritten rule to policies written before Subsection (C) was adopted. Retroactive application of a new rate increase standard to policies written prior to the adoption of that standard is contrary to the most fundamental principles of insurance rate regulation. The NAIC Model Regulation makes it clear in its Scope provision and repeatedly throughout that it applies only to new policies issued after the effective date of its implementation or of a revision. The exclusively prospective application of the Amended Regulations was also recognized by the NAIC LTC Pricing Subgroup, which stated that the 2014 updates to the Model Regulation “apply to LTC insurance policies issued on or after the date that the state where the policy is issued adopts the changes.”¹

¹

Companies need to have some level of predictability in their ability to effectively manage business over time. Application of a practice that is not supported by Arizona regulations, and is applied retroactively creates a barrier to carriers currently in the market to effectively manage their block of business and suppresses the number of companies that want to write this business in the State of Arizona.

We support the ongoing work of the NAIC Long-Term Care Insurance (EX) Task Force, which is charged with developing a consistent national approach for reviewing LTC insurance rates that results in actuarially-appropriate increases granted by states in a timely manner and eliminates cross-state rate subsidization. We also support adoption of the most recent version of the NAIC Long-Term Care Rate Stability Model Regulation. While Arizona regulations are facially consistent with the model regulation, its application of the if-knew methodology is inconsistent with the language of the regulation and makes Arizona an outlier from other states.

Thank you for your consideration and we strongly encourage the GRRRC to support the petition filed by Genworth.

Sincerely,

Jan Graeber

Jan M. Graeber, ASA, MAAA
Senior Actuary
American Council of Life Insurers

MEMORANDUM

TO: Governor's Regulatory Review Council (GRRC)
FROM: Stephanie Berry, Regional Director, America's Health Insurance Plans
Ray Nelson, Consulting Actuary to America's Health Insurance Plans
DATE: May 4, 2021
SUBJECT: Genworth Petition for GRRC Review of an Unpromulgated DIFI Rule

America's Health Insurance Plans (AHIP) supports the petition filed by Genworth seeking GRRC Review of DIFI's practice of limiting or denying Long Term Care Insurance (LTCI) rate increases on the basis of an unwritten premium rule. This unwritten rule calculates the permissible lifetime loss ratio, not based on premiums actually received, but based on a higher (and artificial) amount that assumes amounts requested for rates going forward (but which were never received) had in fact been charged from the inception of the policy. In so doing, it departs from the practice of other states and the principles of actuarial science, resulting in the rejection or reduction of appropriate rate increases. This leads to premium rates that are neither actuarially sound nor sufficient to provide premiums necessary to fund anticipated claims. AHIP previously raised, with DIFI, concerns with this approach in a joint letter with the American Council of Life Insurers (ACLI) dated June 2, 2020 (attached) once it was clear that the unwritten rule was being consistently and repeatedly applied. To date we have received no response from the agency nor have there been, to our knowledge, any stakeholder meetings to discuss the issue.

To briefly elaborate, our three greatest concerns with DIFI's unwritten premium rule requiring carriers to use fictional premium figures when determining whether rate requests would exceed the loss ratio are:

- 1. The unwritten premium rule is inconsistent with the goal of maintaining a strong LTCI market for consumers, as denying or delaying actuarially appropriate rate increase requests results in more significant problems later.**
- 2. The unwritten premium rule is inconsistent with the goal of promoting a stable marketplace through predictable and transparent rules that have been developed based upon careful thought and stakeholder feedback.**
- 3. The unwritten premium rule is inconsistent with the policy that rules should be only prospective in application, as retroactive application of rules should be the exception and is not warranted here.**

Point 1: The approach of using never collected amounts as a basis to determine the appropriateness of requested rate increases is inconsistent with good policy, actuarial principles, and general practice. LTCI rate increase requests reflect the actual need for premiums to support the anticipated cost of benefits that will be payable to the group over time. All states allow for rate increases on guaranteed renewable LTC policies. Arizona's use of an approach that artificially inflates past premiums as the sole test to determine approval of an LTCI rate increase request is outside national norms and is an approach that the NAIC has rejected. Denying or reducing actuarially appropriate rate increase requests means that LTCI policies will become underfunded, resulting in the need for larger rate increases later or insolvency. Neither is in the interest of Arizona consumers.

Point 2: Such a drastic alteration to the regulation of LTCI should only be done through rulemaking, informed by stakeholder feedback. Unwritten rules are generally prohibited with good reason. The notice and comment process allows regulators to consider the perspectives of various stakeholders, learn about unanticipated consequences of certain approaches, and make modifications as appropriate. Similarly, the promulgation of rules gives all stakeholders increased clarity and certainty, which benefit regulated companies and consumers alike.

Point 3: Retroactive rulemaking is disfavored and is particularly inappropriate in an industry such as LTCI. Retroactive rulemaking is generally disfavored with good reason. Entities made plans, designed products, and entered into commitments based on an understanding of the rules that would govern their activities. It would severely disrupt such plans to change the rules after the fact and, over time, this would make business activity more difficult and less robust. The certainty that the governing rules won't be changed is particularly appropriate in an industry such as LTCI in which companies are asked to deal with many future uncertainties in designing their products, such as morbidity, mortality, and interest rates. The ability to mitigate such uncertainty with the solid expectation that the regulatory rules that applied to them won't be changed after the fact is an essential foundation amidst so much surrounding uncertainty. The retroactive application of the unwritten premium rule is inappropriate as a matter of rulemaking and policy.

We greatly appreciate your consideration of our comments.

June 4, 2020

Christina Corieri, J.D.
Interim Director
Arizona Department of Insurance
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630

Via US mail and email to: ccorieri@az.gov

Re: LTC Rate Increase Methodology

Dear Interim Director Corieri:

The ACLI¹ and AHIP² are writing to express our thoughts regarding the methodology currently used by the Arizona Department of Insurance (Department) in reviewing and approving LTC rate increases.

Financial security is our members' core business. Maintaining a regulatory environment that supports consumers' access to a vibrant, robust, competitive market that offers a variety of products that are affordable and meet consumers' needs is one way we can ensure our customers' financial security. A key tenet of regulatory stability requires consistent application of the rules and standards that were in place when those products were sold.

We support the ongoing work of the NAIC Long-Term Care Insurance (EX) Task Force, which is charged with developing a consistent national approach for reviewing LTC insurance rates that results in actuarially-appropriate increases granted by states in a timely manner and eliminates cross-state rate subsidization. Actuarially-appropriate rates ensure that premiums along with investment income earned, are sufficient to cover benefits and expenses

Long-Term Care Insurance Premiums and the Need for Rate Increases

LTC insurance policies are priced as guaranteed-renewable level premium products. These products anticipate that, in the early years of the policy, the premium is more than what is needed to pay expected claims in those years. In the later years of the policy, the premium is less than

¹ The American Council of Life Insurers advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers' financial and retirement security. Ninety million American families depend on our members for life insurance, annuities, retirement plans, long-term care (LTC) insurance, disability income insurance, reinsurance, dental, vision, and other supplemental benefits. ACLI represents member companies in state, federal and international forums for public policy that supports the industry marketplace and the families that rely on life insurers' products for peace of mind. ACLI members represent 95 percent of industry assets in the United States.

² AHIP is the national association whose members provide coverage for health care and related services to hundreds of millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers.

what is needed to pay claims in those durations. In order to be sufficient over the life of the policy, any excess premiums in the early years must be held in a reserve fund, which earns interest, to build a fund that is sufficient to augment the premiums collected in later years when the premium is less than necessary to cover expected claims. The guaranteed renewability contractual provision found in LTC products guarantees that the insurer will not cancel the policies. The provision does not guarantee that premium rates will remain the same after the policy is issued. Instead, policies allow rates to be adjusted for a block of covered policyholders if the pricing assumptions on similarly situated policyholders do not bear out over time.

Rate increases reflect the actual need for long-term care policyholders as a group to pay premiums necessary to support the anticipated cost of benefits that will be payable to the group over time. These increases are necessary because policyholders typically buy policies many years (if not decades) before claims occur. Consequently, long-term care insurers must, at the time policies are initially priced, predict how claims and other experience (such as interest rates, morbidity, mortality, and lapse rates) will emerge over many years. These assumptions are also evaluated and approved by state insurance regulators, including regulators in Arizona and most other states, before policies are offered to consumers.

Given the long life of an LTC policy, actual experience following issue of the policy can prove different than initially anticipated. In this case, without adequate premium increases, insurers could be left with insufficient funds to pay claims. As a result, all states, including Arizona, have approved policy forms that allow for rate increases on guaranteed renewable LTC policies. States have also adopted regulations that expressly recognize the right of long-term care insurers to request increased premium rates on inforce business and have established the standards for such increases to be approved.

Arizona Department of Insurance Practice

While loss ratios have been and continue to be a valuable tool to evaluate the overall performance of a block of business, care must be taken in utilizing that tool in order to prevent conclusions from being drawn or actions taken that are incorrect or inappropriate, which can threaten the sustainability of the LTC market.

We are concerned that the methodology currently used by the Arizona Department of Insurance (Department) in reviewing and approving LTC rate increases is not grounded in actuarial science, and results in rates that are neither actuarially sound nor adequate to provide premiums necessary to fund anticipated claims.

The methodology used by the Department assumes that the requested increase in premiums, and all prior increases, have been charged and collected since the inception of the policy. The Department uses this artificially-inflated “If-knew” premium (also referred to as “fictional” premium) number to calculate the lifetime loss ratio and determine whether the loss ratio satisfies the State’s minimum lifetime loss ratio requirement (If-Knew Premium Approach). Calculating a lifetime loss ratio based on premiums that were never collected, as opposed to

actual, premiums is contrary to sound actuarial practice and contrary to the most basic principles underlying guaranteed renewability of LTC policies.

Applying this methodology to rate increase submissions significantly alters the rules under which these policies were offered and jeopardizes the ability of LTC insurers to make changes necessary to ensure premiums will be adequate to fund anticipated claims.

We are also concerned that the methodology used by the Department in determining an allowable rate increase lacks legal and regulatory authority. The Department cites Regulation 20-6-1013(B) and 1013(C) as authority. However, Section 1013 does not apply to Rate Stability Policies, and it does not provide any authority for the use of the If-Knew Premium Approach for any type of policy.³ Section 1013 references “expected loss ratio” and “benefits expected to be produced,” and directs that “earned premium” be used to calculate both.⁴

Subsection (C) was added to Section 1013 by amendment in November 2017. The Department gave no notice when Subsection (C) was enacted that it was intended to authorize the application of the If-Knew Premium Approach. Rather, in the notice of planned rulemaking for Subsection (C), the Department stated that the proposed rule would result in “greater uniformity for insurers operating in states with later versions of the NAIC Model Regulation resulting in reduced compliance costs.”⁵ However, Subsection (C) does not appear in the NAIC Model Regulation, and Arizona is an outlier by applying this methodology. This will neither lead to reduced compliance costs nor increased uniformity for insurers.

The Department is also applying the If-Knew Premium Approach retroactively to policies issued before Subsection (C) was adopted in November 2017. Retroactive application of a new rate increase standard to policies written prior to the adoption of that standard is contrary to the most fundamental principles of insurance rate regulation. The NAIC Model Regulation makes it clear in its Scope provision and repeatedly throughout that it applies only to new policies issued after the effective date of its implementation or of a revision.⁶ The exclusively prospective application of the Amended Regulations was also recognized by the NAIC LTC Pricing Subgroup, which stated that the 2014 updates to the Model Regulation “apply to LTC insurance policies issued on or after the date that the state where the policy is issued adopts the changes.”⁷

There are two other regulations applicable to rate increases on long-term care policies, neither of which authorize the If-Knew Premium Approach. Section 1014 provides requirements by which all premium rate schedule increases on policies issued on or after May 10, 2005 and prior to

³ A.A.C. R20-6-1013 (November 10, 2017).

⁴ *Id.*

⁵ A.A.C. R20-6 “Notices of Final Exempt Rulemaking” (May 12, 2017).

⁶ Long-Term Care Insurance Model Regulation, NAIC Model Laws, Regulations, Guidelines and Other Resources, Sections 3, 20(A) (2017).

⁷ NAIC LTC Pricing Subgroup, *Long-Term Care Insurance: Approaches to Approving Premium Rate Increases*, 1 (October 2018).

November 10, 2017 are to be determined.⁸ The requirements are comprised of a specific mathematical formula to be applied to calculate the increase, and the formula repeatedly requires the use of premiums on an “earned basis.”⁹ Section 1015 applies to rate increase requests on policies issued after November 10, 2017 and uses the same “earned” premium requirements in the calculations. Neither Section 1014 nor 1015 support the methodology used by the Department.

The Department’s practice is broadly affecting long-term care insurers with inforce policies in Arizona, as well as policyholders nationwide. Sustained denial of actuarially-justified rate increase requests creates the risk of insolvency. A liquidation that could otherwise be avoided by approval of actuarially-justified rate increases is bad policy and will negatively impact policyholders, insurers, and Arizona residents generally. In the context of liquidation, policyholders are exposed to the risk that the applicable guaranty fund limits are less than the benefit limits of their policies. Further, because any guaranty fund liabilities unfunded by the assets of the liquidating company are recouped via assessments on solvent life and health insurers, insolvencies burden other insurers and all citizens of the state who pay for life or health insurance.

The If-Knew Premium Approach is contrary to industry professional standards and the law that governs rate increase requests in Arizona. We strongly urge the Department to discontinue its use and encourages the use of one of the methodologies outlined in the 2018 NAIC Long-Term Care Pricing Subgroup’s Report on actuarially-sound approaches to reviewing premium rate increases for long-term care policies. We welcome the opportunity to discuss this further and should you have any questions please reach out to us.

Sincerely,



Amanda Herrington
AHIP



Chuck Piacentini
ACLI



Ray Nelson
AHIP Consulting Actuary



Jan M. Graeber
ACLI

⁸ A.A.C. R20-6-1014(C).

⁹ *Id.*





Michael S. Gugig
Vice President, Sr. Dir. State Government
Relations & Assoc. General Counsel
100 Light Street
Baltimore, MD 21202-2559
Tel. (443) 475-3143
Email: Michael.gugig@transamerica.com

May 5, 2021

**VIA EMAIL TO GRRC@ACDOA.GOV AND
SIMON.LARSCHEIDT@ACDOA.GOV**

Ms. Nicole Sornsin
Chair – Governor’s Regulatory Review Council
Governor’s Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

**RE: LETTER OF SUPPORT -- GRRC REVIEW OF AN UNWRITTEN OR
IMPROPERLY ENACTED DIFI RULE PURSUANT TO ARS § 41-1033 (E), (F)**

Dear Chair Sornsin and Members of the Governor’s Regulatory Review Council
 (“GRRC”):

We respectfully submit this Letter of Support on behalf of Transamerica Life Insurance Company (“Transamerica”) in connection with the Petition filed by Genworth Life Insurance Company (Genworth) seeking GRRC review of the Arizona Department of Insurance and Financial Institutions’ (Department) implementation of A.A.C. R20-6-1013. Transamerica provides long-term care insurance to Arizonans, and has had actuarially-justified requests for rate increases denied or limited by the Department pursuant to the fictional “if-knew” analysis that is the subject of this action.

We fully align ourselves with the May 4, 2021 Letter of Support from the American Council of Life Insurers (ACLI) to the GRRC in this matter. For the sake of brevity, rather than reiterating those arguments again here, Transamerica incorporates the ACLI’s arguments in this letter as if fully set forth herein. In short, the Department’s practice of limiting actuarially-justified long term care insurance rate increases is both contrary to law and bad public policy.



Michael S. Gugig
Vice President, Sr. Dir. State Government
Relations & Assoc. General Counsel
100 Light Street
Baltimore, MD 21202-2559
Tel. (443) 475-3143
Email: Michael.gugig@transamerica.com

Thank you for your consideration and we strongly encourage the GRRC to support the petition filed by Genworth.

Sincerely,

/s/ Michael S. Gugig

Michael S. Gugig
Vice President, Sr. Dir. of State Government Relations & Associate General Counsel

May 7, 2021

Via Email to grrc@azdoa.gov

Ms. Nicole Sornsins, Chairwoman
Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007

RE: GRRC REVIEW OF AN UNWRITTEN OR IMPROPERLY ENACTED DIFI RULE PURSUANT TO ARS § 41-1033 (E), (F)

Dear Ms. Sornsins and Members of the Governor's Regulatory Review Council ("GRRC"):

The Northwestern Mutual Life Insurance Company (NM) supports the petition filed by Genworth Life Insurance Company (Genworth) seeking GRRC review of the Arizona Department of Insurance and Financial Institutions' (Department or DIFI) implementation of A.A.C. R20-6-1013. The Department's practice of restricting actuarially-justified rate increases on long-term care (LTC) insurance policies may lead to unintended consequences, like more limited LTC insurance policy availability in Arizona and higher costs for other Arizona LTC insurance policyholders.

The "If Knew" approach limits LTC rate adjustments based on premiums that were never, and will never be, collected by insurers. One can present this approach as encouraging insurers to continually monitor their business and make smaller, more regular changes to premiums as the need is recognized. But claim experience may be exactly as expected for 10-15 years before societal or technological trends cause benefit costs to dramatically increase. At that time, over half of the present value of premiums may have already been realized even though 95% of the present value of claims may still be to come. Any method that assumes insurers have been collecting premiums greater than those supported by the data or experience available at that time will leave insurers in an untenable financial situation. NM recommends that the GRRC uses its authority to void the agency practice of using the "If Knew" approach.

Maintaining a regulatory environment that supports consumers' access to a vibrant, robust, competitive market that offers a variety of products that are affordable and meet consumers' needs is one way we can ensure our customers' financial security. The methodology currently used by DIFI in reviewing and approving LTC rate increase requests is not actuarially sound in that it does not allow a level of future premiums that, combined with reserves funded from past premiums, will be sufficient to cover future anticipated claims if experience develops worse than anticipated in pricing. This situation creates a greater risk that one group of policyowners will have to subsidize the costs for another group of policyowners, which makes it less likely that some companies will be willing to market these products.

Ms. Nicole Sornsin

RE: GRRC REVIEW OF AN UNWRITTEN OR IMPROPERLY ENACTED DIFI RULE PURSUANT TO ARS § 41-1033 (E), (F)

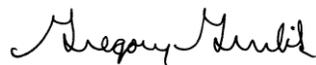
Page 2

As for existing business that was issued and managed before these new practices were put in place, limiting actuarially-justified rate increases on one block of Arizona business may lead companies to have other blocks of Arizona business subsidize the under-performing block. In some cases, this might mean lower potential policyowner dividends for Arizona policyowners. In other cases, this might mean potentially less affordable premiums for new Arizona residents.

We support the ongoing work of the NAIC Long-Term Care Insurance (EX) Task Force, which is charged with developing a consistent national approach for reviewing LTC insurance rates that results in actuarially-appropriate increases granted by states in a timely manner. We also support adoption of the most recent version of the NAIC Long-Term Care Rate Stability Model Regulation. While Arizona regulations are facially consistent with the model regulation, its application of the If-Knew approach is inconsistent with the language of the regulation and makes Arizona an outlier from other states.

Thank you for your consideration and we strongly encourage the GRRC to support the petition filed by Genworth.

Sincerely,

A handwritten signature in cursive script that reads "Gregory Gurlik".

Gregory Gurlik
VP and Actuary

Cc: simon.larscheidt@azdoa.gov