

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

[R08-60]

PREAMBLE

- | | |
|-----------------------------------|---------------------------------|
| 1. <u>Section Affected</u> | <u>Rulemaking Action</u> |
| R4-1-453 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statutes: A.R.S. § 32-703(B)(13)
Implementing statutes: A.R.S. §§ 32-703(B)(4) and 32-730(D)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 845, March 21, 2008 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rules:**

Name:	Valerie M. Elliott, Executive Director
Address:	Board of Accountancy 100 N. 15th Ave., Suite 165 Phoenix, AZ 85007
Telephone:	(602) 364-0804
Fax:	(602) 364-0903
E-mail:	velliott@azaccountancy.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

Changes to continuing professional education requirements which would require all certified public accountants to complete 80 hours, not just those in public accounting, require 16 hours to be live or interactive, and require 16 hours in accounting, auditing or taxation. These changes ensure that all CPAs are held to the same standards. In addition, members of the accounting, taxation and peer review oversight advisory committees would be allowed to earn continuing professional education hours for their service.
- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:**

Not applicable
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The summary of the economic, small business, and consumer impact:**

The rule is being amended to change the continuing professional education requirements to require all certified public accountants, not just those in public accounting, to complete 80 hours and of those hours 16 hours must be live or interactive, and 16 hours must be in accounting, auditing or taxation. The costs to the Board will be minimal. The costs to the certified public accountants will be moderate. Certified public accountants not in public accounting who

Notices of Proposed Rulemaking

take less than 80 hours will bear the burden of the costs for the additional continuing education courses. Any certified public accountants who take all self-study courses would bear the burden of any cost difference for taking the interactive 16 hours proposed in the rule. Any certified public accountants who take less than 16 hours in the accounting, auditing or taxation would bear the burden of any cost difference between those courses and management advisory or business law courses. The benefit to the public is that all active certified public accountants in Arizona would qualify to engage in public accounting and have the same qualifications for maintaining their certificates.

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

Name: Valerie M. Elliott, Executive Director
Address: Board of Accountancy
100 N. 15th Ave., Suite 165
Phoenix, AZ 85007
Telephone: (602) 364-0804
Fax: (602) 364-0903
E-mail: velliott@azaccountancy.gov

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

The Board will hold an oral proceeding on April 22, 2008 at 8:30 a.m. in the Board offices at 100 N. 15th Ave., Suite 165, Phoenix, AZ 85007. The Board will accept written comments submitted to Valerie M. Elliott, Executive Director, 100 N. 15th Ave., Suite 165, Phoenix, AZ 85007 until the close of business at 5:00 p.m. April 22, 2008.

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

Not applicable

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

Not applicable

13. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

ARTICLE 4. REGULATION

Section

R4-1-453. Continuing Professional Education

ARTICLE 4. REGULATION

R4-1-453. Continuing Professional Education

A. No change

B. No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. No change

7. No change

8. Registrant may report eight hours of continuing education for service as an accounting, taxation or peer review advisory committee member. The registrant must attend 50% or more of the committee meetings per cycle to claim the hours.

C. No change

1. No change

2. No change

D. Hour Requirement. A registrant shall complete the hour requirements as specified under subsections (D)(1) through (9) below. ~~The registrant shall ensure that a minimum of 50% of any required credit hours are in the subject areas of account-~~

~~ing, auditing, taxation, business law, or management advisory services, including the following credit hours required under subsections (D)(1) through (9):~~

1. Registrants ~~in public practice~~ whose last renewal period was for two years shall complete 80 credit hours of CPE during the two-year period immediately preceding biennial registration renewal.
 2. Registrants for registration renewal who have been certified less than two years shall complete 10 credit hours of CPE for every three months registered before registration renewal.
 3. Registrants who neither reside nor practice accounting in Arizona are required to fulfill Arizona's CPE requirement before renewing their registrations.
 4. ~~Registrants not engaged in public accounting practice, who do not perform public accounting services for compensation, shall complete 60 hours of CPE during the two-year period immediately preceding registration renewal.~~
 4. A registrant shall ensure that a minimum of 50% of any required credit hours are in the subject areas of accounting, auditing, taxation, business law, or management advisory services. Of those hours a minimum of 16 hours must be in the subject areas of accounting, auditing or taxation. Those registered for less than two years the credit hours will be prorated.
 5. A registrant shall ensure that a minimum 16 credit hours of the required hours are taken in a classroom setting or via an interactive webinar during the two-year period immediately preceding the registration renewal period. Those registered for less than two years the credit hours will be prorated.
 - 5-6. A registrant shall complete four hours of CPE in ethics during the two-year period immediately preceding registration renewal. The four-hour requirement shall include a minimum of one hour of each of the following:
 - a. Ethics related to the practice of accounting including the American Institute of Certified Public Accountants Professional Code of Conduct; and
 - b. Board statutes and administrative rules.
 6. ~~Registrants entering public accounting practice shall notify the Board. The registrant shall complete a total of 80 credit hours of CPE before practicing public accounting. CPE hours taken to satisfy the registrant's current biennial registration may be used toward meeting this requirement. The additional CPE hours submitted in support of this requirement may not be used to meet the CPE credit hour requirement for the next biennial registration. Once entered, the registrant shall complete the applicable hours required for registration.~~
 7. A registrant who is retired, is age 60 or more, and does not perform any accounting services, whether or not participating in the profits of a public accounting entity, does not need to complete any CPE for registration renewal.
 8. Applicants for reinstatement following the suspension of a certificate pursuant to A.R.S. § 32-741(C) shall complete any deficiency in CPE not to exceed 80 credit hours. CPE hours used to meet the reinstatement requirement may not be used to meet the CPE credit hour requirement for the next biennial registration. An applicant whose suspension has extended beyond the next biennial registration period shall complete the deficiency which resulted in the suspension as well as the 80 credit hours required for re-registration.
 9. Applicants for reinstatement following the suspension of a certificate, other than that described in subsection (D)(8), shall complete the applicable credit hour requirement for registration. The CPE hours used to meet the reinstatement requirement may not be used to meet the CPE credit hour requirement for the next biennial registration. For purposes of this subsection, an applicant whose suspension was for reasons other than nonregistration and whose suspension has extended beyond two registration periods (four years) is not required to report more than 160 hours of CPE.
 10. The Board may grant a partial or complete exemption from the CPE requirement to an individual registrant who makes a written request in which good cause is shown. Good cause includes permanent or partial disability, illness or other physical or mental condition, military service, or financial hardship which prevented the individual registrant from completing the CPE requirement.
 11. A registrant shall report total CPE credit hours completed during the renewal period. Credit hours in excess of the number required for the current registration may not be carried forward to a subsequent registration period.
- E. No change
- F. CPE Record Retention: Applicants and registrants shall maintain for three years and provide the Board upon request the following documents: course outlines, proof of attendance or participation, and written proof of completion. Committee members allowed to claim hours must maintain a certificate of completion issued by the Board and the front page of the Open Session minutes for each meeting attended.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

[R08-63]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R20-6-303 | Repeal |
| R20-6-303 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 20-143

Implementing statutes: A.R.S. §§ 20-213, 20-217, 20-581, 20-585, 20-586, 20-587, 20-588, 20-731, 20-790, 20-828, 20-873, 20-886, 20-1055, 20-1070, 20-1087, 20-1096.06, 20-1097.03, 20-1563 and 20-1576
- 3. The list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 13 A.A.R. 2453, July 6, 2007
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Margaret McClelland

Address: Department of Insurance
2910 N. 44th St., Suite 210
Phoenix, AZ 85018

Telephone: (602) 364-3471

Fax: (602) 364-3470

E-mail: mmclelland@azinsurance.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

In response to a five-year review of this rule, this rulemaking will repeal an obsolete Section R20-6-303 and propose a new Section R20-6-303 that is clear, concise and understandable. The proposed R20-6-303 eliminates the hearing requirement associated with the termination of an insurer's certificate of authority and release of statutory deposit and simplifies the requirements for termination of a certificate of authority and release of statutory deposit. The rule also specifies requirements for domestic insurers and for foreign/alien insurers.

Elimination of the hearing simplifies the termination process by reducing the time and resources needed for an insurer to withdraw from the insurance business in Arizona and to receive a refund of its deposit from the Department. The rule requires the Department to ensure that policyholder and claimant liabilities are extinguished prior to accepting a termination of a certificate of authority and release of deposit. The plan of extinguishment is worked out in detail by the insurer and the Department before the hearing is held. Requirements in the current rule that are included in sub-section (C) of the proposed rule provide for extensive due diligence procedures for the extinguishment of insurance liabilities and, hence, protection of policy holders and claimants prior to the Department's acceptance of an insurer's termination of its certificate of authority. With the extensive due diligence procedures, the hearing is unnecessary.

Over the past two years, approximately 30 hearings have been held as required under the current R20-6-303. No insurer, policyholder, claimant or creditor has made an objection to termination of any of these 30 certificates of authority or release of deposit, all of which underwent the extensive due diligence procedures. Based on this data, the Department determined that the hearing requirement unnecessarily adds costs for the Department, Office of Administrative Hearings (OAH), and insurers, but adds no meaningful layer of protection for policyholders or claimants.
- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

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

The portions of this rulemaking that repeal or amend existing rules will have intangible benefits for the regulated community by repealing obsolete provisions and provisions that were not clear, concise and understandable. The businesses that will be directly impacted by this rulemaking are insurers seeking to terminate a certificate and the release of a statutory deposit in Arizona. There are approximately 450 insurers currently licensed in Arizona with deposits posted that are subject to regulation under this Section. Over the past two years, the Department has received 30 requests for termination of a certificate of authority and release of statutory deposit. The elimination of the hearing requirement will result in cost savings to the Department, OAH, and to insurers who seek termination of their certificate of authority.

The Department will have savings from not incurring costs for preparing notices of hearing, reviewing waivers of notice of hearing and other hearing-related documents, coordinating hearing dates, mailing notices of hearing, reviewing hearing orders, tracking information related to hearings, or conducting tasks as follow-up to hearings.

OAH will have savings from not incurring costs for coordinating and scheduling hearings, using an administrative law judge time to conduct the hearings, reviewing hearing notices and hearing-related documents, conducting hearings, preparing and reviewing orders, or conducting tasks as follow-up to hearings.

Insurers will have savings from not incurring hearing-related costs which could include paying attorney fees, costs associated with publication of the Notice of Hearing, staff time used to provide information and conduct activities in preparation for a hearing, copying, mailing, courier fees, hearing-related travel time, time spent at the hearing and conducting tasks as follow-up to hearings.

The local newspaper industry will be impacted by a loss of revenue from not publishing Notices of Hearing as is currently required. This loss of revenue will be insignificant for any individual newspaper as there is an average of only 15 notices published per year spread out among many newspapers that publish in this local industry.

The Department does not expect this rulemaking to have a direct economic impact on consumers or any other public agencies.

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

Name: Margaret McClelland
Address: Department of Insurance
2910 N. 44th St., Suite 210
Phoenix, AZ 85018
Telephone: (602) 364-3471
Fax: (602) 364-3470
E-mail: mmclelland@azinsurance.gov

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

ADOI will hold an oral proceeding to receive public comments in accordance with A.R.S. § 41-1023 on April 22, 2008 at 10:00 a.m. at the Arizona Department of Insurance, 2910 N. 44th St., Phoenix, AZ, 3rd floor training room. ADOI will accept oral or written comments that are received by 5:00 p.m. on April 25, 2008 or that are postmarked by that date. The comment period will end and the record will close at 5:00 p.m. on April 27, 2008.

ADOI is committed to complying with the Americans with Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADOI at least 72 hours before the hearing.

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

Not applicable

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

Not applicable

13. The full text of the rule follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 3. FINANCIAL PROVISIONS AND PROCEDURES

Section

R20-6-303. ~~Withdrawal of Insurers from the Insurance Business and Release of Statutory Deposit~~ Termination of Certificate of Authority and Release of Deposit

ARTICLE 3. FINANCIAL PROVISIONS AND PROCEDURES

R20-6-303. ~~Withdrawal of Insurers from the Insurance Business and Release of Statutory Deposit~~ Termination of Certificate of Authority and Release of Deposit

- A.** WHEREAS, A.R.S. § 20-143 confers upon the Director of Insurance the power and discretion to make reasonable rules and regulations necessary for effectuating any provisions of Title 20, such rules and regulations being subject to the provisions of A.R.S. §§ 41-1001 through 41-1008, and
- B.** WHEREAS, it appears that the regulations hereafter proposed in this General Rule are required to assure preservation of the public peace, health and safety, and
- C.** WHEREAS, the regulations embodied in this rule shall be construed as severable, so that should one or more Sections of the rule be held invalid, the remaining Sections shall not be adversely affected, and
- D.** WHEREAS, A.R.S. § 20-588(D), relating to the release of deposits under Title 20, requires application to, and the written order of, the Director, and
- E.** WHEREAS, in order to establish an orderly procedure whereby insurers desiring to withdraw from the insurance business, and thereafter to secure the release of their deposits made under A.R.S. § 20-581, may do so without placing their policyholders or former policyholders and creditors in jeopardy, the Director of Insurance (hereafter called "the Director") adopts the following rule:
1. ~~Reinsurance—An insurer in seeking to withdraw from the insurance business (hereafter called "the insurer") shall first reinsure all of its business in force with another insurer by entering into an agreement of bulk reinsurance which shall become effective only when filed with and approved in writing by the Director pursuant to A.R.S. §§ 20-732 or 20-734, as may be applicable. The agreement of bulk reinsurance shall provide for the assumption by the reinsurer of all the insurer's liability as to policyholder claims incurred but unreported as of the effective date of the agreement and it may also include recapture provisions exercisable by the insurer in the event its withdrawal from the insurance business as contemplated by this rule is not completed.~~
 2. ~~Withdrawal from the insurance business~~
 - a. ~~With the approval of the Director, an insurer may withdraw from the insurance business either:~~
 - i. ~~By amending its articles of incorporation pursuant to A.R.S. § 20-707, so as to eliminate its insuring powers and to adopt a new corporate name which shall not include the word "insurance," or~~
 - ii. ~~By dissolution pursuant to A.R.S. §§ 10-361 to 10-363 inclusive. The insurer shall not seek from the Arizona Corporation Commission the issuance of a certificate of dissolution or of withdrawal until authorized by the Director, as hereinafter provided. The insurer shall not file with the Arizona Corporation Commission a certificate of amendment of its articles of incorporation without first obtaining the written approval of the Director to such amendment and filing. The Director may authorize or approve any such filing if it is a part of a program for withdrawal from the insurance business and release of statutory deposit calculated to protect policyholders and creditors in accordance with the further provisions of this rule.~~
 - b. ~~Prior to the filing with the Arizona Corporation Commission of either a certificate of amendment to its articles of incorporation or a resolution of dissolution, the insurer shall file with the Director a certified copy of a resolution passed at a meeting of stockholders or members, as may be applicable, adopting the amendment to the articles of incorporation or the resolution of dissolution.~~
 - e. ~~At the time of filing the certified copy of resolution specified in subparagraph (b) of this paragraph, the insurer shall surrender to the Director its certificate of authority issued pursuant to A.R.S. § 20-216. If no such surrender is made within 10 days of completion of the filing specified in subparagraph (b) of this paragraph, the Director may revoke or suspend the certificate of authority as provided by A.R.S. § 20-219, or take any other appropriate action to compel surrender of said certificate.~~
 3. ~~Release of statutory deposit~~
 - a. ~~The Director may approve the amendment of the articles of incorporation of the insurer to eliminate its insuring powers and its change of name or the resolution of dissolution, and may, pursuant to A.R.S. § 20-588, approve the release to the insurer of deposited funds in accordance with the following procedure:~~
 - i. ~~The insurer shall file with the Director an application for release of deposited funds together with a statement of its financial condition verified by its president and secretary. The statement shall include a schedule of all assets and liabilities, with itemization and adequate detail with respect to all outstanding liabilities, if any. The statement shall reflect the condition of the insurer as of a date not more than 60 days prior to the day the insurer files with the Director its application for release of its statutory deposit.~~
 - ii. ~~If there are any outstanding liabilities, actual or contingent, set forth in the schedule required to be filed under subdivision (i) of this subparagraph, there shall also be filed with the Director a plan of extinguish-~~

- ment of substantially all liability for the security of which the deposit is held, together with such documents or assurances as may be reasonably necessary to insure such extinguishment. For the purpose of this rule, the term "substantially all liability" is defined as all known or reasonably ascertainable direct obligations, whether or not liquidated in amount and shall include any former policyholder who may have a claim, or a right to a refund under a policy of insurance. The Director may require an agreement from a person whose financial responsibility is demonstrated to the Director guaranteeing all obligations of the insurer of any kind, other than policyholder claims covered by the agreement of bulk reinsurance.
- iii. The Director shall thereupon appoint a time and place for hearing the application for release of deposit, which shall be not less than 10 days after notice is given to creditors as provided in subdivision (iv) of this subparagraph, and notice thereof shall be given in accordance with A.R.S. § 20-163.
 - iv. The insurer shall thereupon give notice to all known creditors of the date, place, nature and purpose of the hearing. The notice shall be published in a newspaper of general circulation published in the county in which the insurer has its principal place of business and as may be approved by the Director, and by mailing a copy of said notice by first class mail, postage prepaid, to the last known address of all known or reasonably ascertainable creditors, and such other persons designated by the Director. The notice shall inform such creditors that a verified statement of financial condition, together with a copy of the plan for extinguishment of remaining liabilities, if applicable, has been filed with the Director and is available for their inspection and shall advise such creditors to present to the Director prior to the hearing any objections or additional claims. A copy of such notice, in a form approved by the Director, together with an affidavit of publication and mailing, shall be filed with the Director prior to the hearing.
 - v. Unless there is an assumption by reinsurance substantially all the insurer's policy liability, including liability on claims incurred but unreported as of the effective date of the agreement of bulk reinsurance referred to in paragraph (1), subsection (E) hereof, the notice required by subdivision (iv) of this subparagraph shall also be given to all former policyholders who may or could have outstanding claims not barred by statute or by policy limitations.
 - vi. Prior to the hearing, the Director may cause to be conducted an examination of the affairs, transactions, accounts, records and assets of the insurer pursuant to Chapter 1, Article 2, Title 20, A.R.S. The cost of any such examination shall be taxed to the insurer.
 - vii. At the hearing, the Director shall review evidence presented by the insurer as to its compliance with A.R.S. § 20-588, and any other evidence available to the Director, together with any objections or additional claims presented by creditors whose claims have not been reinsured or otherwise secured. On his own motion, or on request of the insurer, or of any such creditors, policyholders, or former policyholders, but only for good cause shown, the Director may adjourn the hearing from time to time.
 - viii. A plan for extinguishment of substantially all liability for the security of which the deposit is held may provide for the use of the deposit for the payment of claims of creditors, policyholders and former policyholders whose claims have not been reinsured or otherwise secured. If the proposed plan contains such a provision, the Director shall exercise his discretion in approving the plan so as to provide the maximum reasonable security to creditors, policyholders and former policyholders whose claims are unsatisfied by such payment, or he may condition his approval upon an amendment of the plan by providing for partial withdrawals of deposits as claims are extinguished and by providing for the establishment of an escrow to insure extinguishment of substantially all liability for the security of which the deposit is held, or such other method of protecting such creditors and former policyholders as shall appear to be reasonable.
 - ix. At such time as the Director has determined that all creditors, former policyholders and policyholders of the insurer are adequately secured and the insurer has demonstrated that it has complied with A.R.S. § 20-588 and this rule, the Director shall issue a written order directing release of the deposit and authorizing the filing with the Arizona Corporation Commission of the amendment of the articles of incorporation eliminating insuring powers and changing name or the filing of the resolution of dissolution of the insurer; said release to be conditioned upon filing with the Director proof of filing with the Arizona Corporation Commission the amendment of the articles of incorporation or the resolution of dissolution as approved by the Director.
 - x. Should the Director find that the insurer is unable to extinguish substantially all of its liability for the security of which the deposit is held, or otherwise has not complied with this rule, he shall decline the application by written notice to the insurer setting forth his reasons therefor. The insurer thereafter may reapply for release of its deposit when it extinguishes, or is able to submit an acceptable plan for the extinguishment of, substantially all of its liability for the security of which the deposit is held, which application shall be acted upon as in the case of an original application.
 - xi. The Director may, in his discretion, decline to approve any application for release of a deposit, or any part thereof, until such time as the statute of limitations has run as to any disclosed or undisclosed liability of the insurer.

4. Qualification of reinsurance carrier. The contract of reinsurance, as above provided, may be entered into only with a

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reinsurer approved by the Director. If the withdrawing insurer has policies of insurance in force within the State of Arizona, or has creditors within the State of Arizona, the Director may, as a prerequisite to the approval of any plan for the extinguishment of liability of the withdrawing company, require that the reinsurer be licensed to do business within the State of Arizona.

- 5- Applicability of rule to foreign and alien insurers. The provisions of this rule shall apply with equal force and effect, to the extent permissible, to any deposits required by the Director and made by any foreign or alien insurer, including any deposit made pursuant to the retaliatory provisions of A.R.S. § 20-230.
- 6- Exemptions – The provisions of this rule shall not be applicable to:
 - a- Exchange and substitution of cash or eligible securities by an insurer as authorized by A.R.S. § 20-586.
 - b- Withdrawal of excess deposits by an insurer, either cash or eligible securities, as authorized by A.R.S. §§ 20-587 and 20-588(A)(2).
 - c- Release of the deposit of any insurer as directed by the order of a court of competent jurisdiction, as provided by A.R.S. § 20-588(A)(3).

A. Domestic Insurers. To request termination of its certificate of authority and, if applicable, release of its statutory deposit, a domestic insurer shall file all of the following with the director:

1. A written request for termination of its certificate of authority and release of its deposit;
2. The insurer's original certificate of authority or an affidavit of lost certificate of authority;
3. A statement of the insurer's financial condition that:
 - a. Reflects the condition of the insurer as of a date not more than 60 days prior to the day the insurer files its request for termination with the director; and
 - b. Contains a written statement signed by two authorized officers of the insurer verifying that the financial statement reflects the insurer's financial position as of the date signed.
4. A plan of extinguishment for its outstanding liabilities that satisfies the requirements of subsection (C) or a sworn affidavit stating that the insurer has no outstanding liabilities under subsection (C);
5. A certified copy of its Board resolution or other evidence of the insurer's official action taken in accordance with its organizational documents approving the insurer's:
 - a. Withdrawal from the insurance business,
 - b. Dissolution,
 - c. Merger into an insurer authorized in Arizona to transact the insurer's previously written and active lines of business, or
 - d. Redomestication to another state or country.
6. A copy of the insurer's Articles of Dissolution, Articles of Merger, Articles of Amendment, Articles of Redomestication, or other documentation that insurer intends to file with the Arizona Corporation Commission after issuance of the Director's order as provided in subsection (D)(2);
7. If requested by the director, a specific plan and/or written agreement from a person who has the financial resources to guarantee, and does guarantee, payment of all obligations of the domestic insurer, other than obligations extinguished under subsection (C); and
8. Other documentation as may be required by the director in the exercise of the director's discretion to satisfy the requirements of this Section.

B. Foreign and Alien Insurers. To request termination of its certificate of authority and, if applicable, release of its deposit, a foreign or alien insurer shall file all of the following with the director:

1. A written request for termination of its certificate of authority and release of its deposit;
2. The insurer's original certificate of authority or an affidavit of lost certificate of authority;
3. A statement of the insurer's financial condition that:
 - a. Reflects the condition of the insurer as of a date not more than 60 days prior to the day the insurer files its request for termination with the director, and
 - b. Contains a written statement signed by two authorized officers of the insurer verifying that the financial statement reflects the insurer's financial position as of the date signed.
4. A plan of extinguishment for its Arizona liabilities that satisfies the requirements of subsection (C) or a sworn affidavit stating that the insurer has no Arizona liabilities under subsection (C);
5. A copy of an order issued by the insurance authority or other appropriate regulatory authority in the insurer's state or county of domicile that approves or authorizes either the insurer's:
 - a. Withdrawal from the insurance business,
 - b. Dissolution,
 - c. Merger (approval from the states of domicile of the non-surviving and surviving insurers), or
 - d. Redomestication, if applicable.
6. A copy of the insurer's Articles of Dissolution, Articles of Merger, Articles of Amendment, Articles of Redomestication or other required documentation that the insurer filed in its state of domicile; and
7. If requested by the director, a specific plan or written agreement from a person who has the financial resources to

guarantee, and does guarantee, payment of all Arizona obligations of the insurer, other than obligations extinguished under subsection (C).

C. Insurer's Plan for Extinguishment of Liabilities.

1. To extinguish substantially all liabilities under subsection (A)(4) or subsection (B)(4) as applicable, an insurer may:
 - a. Reinsure its business in force with another insurer by entering into an agreement of bulk reinsurance that shall be effective only when filed with and approved in writing by the director.
 - i. The agreement shall provide for assumption of all policyholder claims by the reinsurer including claims incurred but unreported as of the effective date of the agreement.
 - ii. The agreement may include recapture provisions exercisable by the insurer in the event the termination of its certificate of authority is not completed.
 - iii. Unless the director otherwise approves, the agreement shall provide that the reinsurer be licensed in Arizona for the particular lines of business reinsured.
 - b. Merge with another insurer that:
 - i. Assumes the liabilities of the non-surviving insurer; and
 - ii. Is authorized in Arizona for the previously written and active lines of business assumed, unless otherwise approved by the director.
 - c. Use its deposit, any additional security deposit or both to secure payment of former policyholder, policyholder, or claimant liabilities that are not reinsured or otherwise secured.
2. For purposes of this Section, "substantially all liabilities" means all known or reasonably ascertainable direct policyholder and claimant obligations, whether or not liquidated in amount, and shall include former policyholder claims and rights to refunds.

D. Consideration of the Request for Termination of Certificate of Authority and Release of Deposit.

1. If the director determines that the insurer has extinguished substantially all liabilities as required under this Section and has otherwise demonstrated compliance with this Section and A.R.S. Title 20, the director shall issue a written order terminating the certificate of authority and, if appropriate, releasing the insurer's deposit, provided:
 - a. The insurer has no fees, taxes, assessments or filings outstanding to the Department; and
 - b. The insurer is not subject of any pending investigation or examination by the Department.
2. The director's order shall condition the release of a domestic insurer's deposit upon receipt by the director of evidence of the official filing with the Arizona Corporation Commission of the documentation described in subsection (A)(6).
3. If the director determines that the insurer is unable to extinguish substantially all liabilities as required under this Section, or otherwise has not complied with this Section or with A.R.S. Title 20, the director shall notify the insured in writing that the request has been denied and the reasons for the denial.

E. Exclusions. This Section does not apply to:

1. An insurer's exchange and substitution of cash or eligible securities under A.R.S. § 20-586;
2. An insurer's withdrawal of excess deposits, either cash or eligible securities, under A.R.S. §§ 20-587 and 20-588(A)(2); or
3. Releases of deposits made under A.R.S. § 20-588(A)(3).