

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

[R07-120]

PREAMBLE

1. Sections Affected

R4-46-101
R4-46-201
R4-46-202
R4-46-203
R4-46-204
R4-46-205
R4-46-206
R4-46-207
R4-46-208
R4-46-209
R4-46-210

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Repeal
Amend
Repeal

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

Authorizing statutes: A.R.S. §§ 32-3605(A), 32-3605(B), 32-3612, 32-3613, 32-3614, 32-3615, 32-3619, 32-3621, and 32-3625

Implementing statutes: A.R.S. §§ 32-3605(B)(2), 32-3605(B)(3), 32-3605(B)(4), 32-3605(B)(5), 32-3605(B)(6), 32-3605(B)(8), 32-3625(D), and 32-3625(E)

3. The effective date of the rules:

June 4, 2007

However, pursuant to A.R.S. § 41-1032(B), a delayed effective date of January 1, 2008, is being requested for the definition of "supervising appraiser," for R4-46-201(D)(2)(f), and for R4-46-201(D)(4). The Board has determined that good cause exists for and the public interest will not be harmed by the later date. The delayed effective date is necessary to allow licensed appraisers the opportunity to act as supervising appraisers as long as possible before the 2008 Criteria must be adopted as required by Board statute and Title XI. The 2008 Criteria requires that a supervising appraiser must be a certified appraiser.

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 12 A.A.R. 4246, November 17, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 4223, November 17, 2006

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

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6. An explanation of the rules, including the agency’s reason for initiating the rules:

The amendments are to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires state licensing boards to recognize and ensure that state licensed and certified appraisers meet the minimum criteria issued by the Appraiser Qualifications Board of The Appraisal Foundation, and A.R.S. § 32-3605(B)(2) and A.R.S. § 32-3605(B)(3), which require the Board to adopt criteria for licensing and certification of appraisers that at a minimum are equal to the minimum criteria for licensing adopted by the Appraiser Qualifications Board. The amendments will define and incorporate by reference the minimum criteria for the licensed real property appraiser classification, the certified residential real property appraiser classification, and the certified general real property appraiser classification established by either *The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria adopted February 16, 1994 effective January 1, 1998, All Interpretations and Supplementary Information as of January 1, 2001, and Appendix I, Criteria Revisions effective January 1, 2003* (“1998 Criteria”) or *The Real Property Appraiser Qualification Criteria adopted January 1, 2003, All Interpretations and Supplementary Information as of November 1, 2005, and Appendix, Real Property Qualifications Effective January 1, 2008* (“2008 Criteria”) based on when a particular component is completed. The components of the 1998 Criteria and the 2008 Criteria are education, experience and examination. The major changes between the 1998 Criteria and the 2008 Criteria are:

- A. The Appraiser Qualifications Board (AQB) is developing new Uniform State Appraiser Examinations, which will be implemented concurrently with the effective date of the 2008 Criteria.
- B. Although the 2008 Criteria experience for Licensed Residential Appraisers will be changed to require 2000 hours in no fewer than 12 months, the Board will not be modifying its more stringent rule requiring 2000 hours in no fewer than 18 months.
- C. The most significant changes in the 2008 Criteria relate to qualifying education. The changes fall into the following categories:
 - (1) There are college-level course requirements for the Certified Residential and Certified General classifications;
 - (2) The required number of classroom hours in appraisal education has increased significantly in all three classifications; and
 - (3) There are minimum classroom hours of coverage requirements for specific topic areas, which are known as modules.

The following chart summarizes the qualifying education changes:

<u>Classification</u>	<u>1998 Hours Requirement</u>	<u>2008 Hours Requirement</u>	<u>College-Level Course Requirements</u>
Licensed Residential	90	150	None
Certified Residential	120	200	Associate degree or higher. In lieu of the required degree 21 semester credit hours covering the following subject matter courses: English Composition; Principles of Economics (Micro or Macro); Finance; Algebra, Geometry or higher mathematics; Statistics; Introduction to Computers–Word Processing/Spreadsheets; and Business or Real Estate Law
Certified General	180	300	Bachelors degree or higher. In lieu of the required degree 30 semester credit hours covering the following subject matter courses: English Composition; Micro Economics; Macro Economics; higher mathematics; Statistics; Introduction to Computers–Word Processing/Spreadsheets; Business or Real Estate Law; and 2 elective courses in accounting, geography; ag-economics; business management; or real estate

The amendments propose a “Segmented” Scenario as the implementation option pursuant to the 2008 Criteria as follows: An applicant shall meet the Criteria in effect at the time the applicant completes a particular component through and including October 31, 2008. An applicant shall meet either the 1998 Criteria or the 2008 Criteria for any com-

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pleted component prior to January 1, 2008. An applicant shall meet the 2008 Criteria for any component completed on or after January 1, 2008, through and including October 31, 2008. On and after November 1, 2008, an applicant shall meet the 2008 Criteria for all components regardless of when the component was completed.

The amendments propose to delete duplicative language in the rules that appear in the Board's statutes or in the 2008 Criteria.

The amendments propose to delete the requirement that an applicant complete at least three hours of course work covering the Board's rules and statutes.

The amendments propose to add a requirement that the 15-hour National USPAP course must be taken within two years preceding the date of application.

Pursuant to the 2008 Criteria the amendments propose to revise the definition of "Supervising Appraiser" to delete licensed residential appraiser.

The amendments propose to clean up unnecessary language.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, 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

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:

The rules are being amended to incorporate by reference the minimum criteria for the licensed real property appraiser classification, the certified residential real property appraiser classification, and the certified general real property appraiser classification established by either *The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria adopted February 16, 1994 effective January 1, 1998, All Interpretations and Supplementary Information as of January 1, 2001, and Appendix I, Criteria Revisions effective January 1, 2003* ("1998 Criteria") or *The Real Property Appraiser Qualification Criteria adopted January 1, 2003, All Interpretations and Supplementary Information as of November 1, 2005, and Appendix, Real Property Qualifications Effective January 1, 2008* ("2008 Criteria") based on when a particular component (education, experience or examination) is completed. Consistent with the incorporated material, the proposed amendments revise the definition of "Supervising Appraiser" to eliminate licensed real estate appraiser. The rules establish more stringent criteria limiting the time in which an applicant may take the qualifying 15-hour National USPAP course. The amendments propose to clean up duplicative and unnecessary language. The major economic impact of the rules will be the indirect beneficial effect for the public and regulated community due to specific interpretation of the criteria. The cost, if any, to the regulated community, trainees and course providers will be minimal, except the costs of a college degree, which could be moderate-substantial. However, the benefits far outweigh the costs. There will be no cost to the public. The Board will bear the cost of incorporating and enforcing the rules.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

R4-46-201(D)(2)(f) was corrected to eliminate "licensed" consistent with the proposed revision to the definition of "supervising appraiser", so that subsection would read: "f. The signature and state license or certificate number of the supervising appraiser." Also, R4-46-201(D)(4) was corrected to eliminate "licensed" consistent with the proposed revision to the definition of "supervising appraiser", so that the subsection would read: "A supervising appraiser shall provide to the Board in writing the name and address of each trainee within 10 days of engagement, and notify the Board in writing immediately upon termination of the engagement. A state licensed or certified appraiser is not eligible to be a supervising appraiser unless the appraiser's license or certificate is in good standing and the appraiser has not been subject to license or certificate suspension, probation or mentorship within the last two years."

11. A summary of the comments made regarding the rules and the agency response to them:

Ann Susko, appraiser, and Elaine Arena, lobbyist for the Phoenix Chapter of the Appraisal Institute, appeared at the public hearing held on January 18, 2007, and spoke in favor of the rulemaking package. At that time the Board voted to close the record, adopt the proposed rule changes, and to proceed with the Notice of Final Rulemaking.

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

Not applicable

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

The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria adopted February 16, 1994 effective January 1, 1998, All Interpretations and Supplementary Information as of January 1, 2001, and Appendix I, Criteria Revisions effective January 1, 2003, ("1998 Criteria") and *The Real Property Appraiser Qualification Crite-*

ria adopted January 1, 2003, All Interpretations and Supplementary Information as of November, 2005, and Appendix, Real Property Qualifications Effective January 1, 2008 ("2008" Criteria") issued by the Appraiser Qualification Board of The Appraisal Foundation. The locations in the rules are R4-46-201, R4-46-202, R4-46-205, and R4-46-207.

14. Were these rules previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 1. GENERAL PROVISIONS

Section

R4-46-101. Definitions

ARTICLE 2. LICENSING AND CERTIFICATION

Section

R4-46-201. Appraiser Qualification Criteria
R4-46-202. Application for License or Certificate
R4-46-203. Procedures for Processing Applications
R4-46-204. Appraiser Examinations
R4-46-205. Issuance of a License or Certificate
R4-46-206. Hearing on Denial of a License or Certificate
R4-46-207. Renewal of a License or Certificate
R4-46-208. ~~Renewal of an Expired License or Certificate~~ Repealed
R4-46-209. Replacement License or Certificate
R4-46-210. ~~Change of Address~~ Repealed

ARTICLE 1. GENERAL PROVISIONS

R4-46-101. Definitions

In these rules, unless the context otherwise requires:

- "Arizona or State Certified General Appraiser" No change
- "Arizona or State Certified Residential Appraiser" No change
- "Arizona or State Licensed Appraiser" No change
- "Appraisal Foundation" No change
- "Appraiser" No change
- "Board" No change
- "Board counsel" No change
- "Board staff" No change
- "Complaint" No change
- "Consent agreement" No change
- "Consulting assignment" No change
- "Conviction" No change
- "Course provider" No change
- "Direct supervision" means that a supervising appraiser is physically present to direct and oversee the production of each appraisal assignment. ~~This definition is effective January 1, 2007, consistent with R4-46-201(G).~~
- "Disciplinary action" No change
- "Dismissal" No change
- "Distance education" No change
- "Due diligence" No change
- "Formal complaint" No change

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- “Formal hearing” No change
- “Informal hearing” No change
- “Informational interview” No change
- “Initial review” No change
- “Investigation” No change
- “Investigator” No change
- “Jurisdictional criteria” No change
- “Letter of concern” No change
- “Letter of due diligence” No change
- “Letter of remedial action” No change
- “Mentor” No change
- “Order” No change
- “Party” No change
- “Practicing appraiser” means a state licensed or certified appraiser who is actively engaged in performing appraisal assignments. ~~This definition is effective January 1, 2007, consistent with R4-46-201(G).~~
- “Probation” No change
- “Property tax agent” No change
- “Remedial action” No change
- “Respondent” No change
- “Rules” No change
- “Summary suspension” No change
- “Supervising appraiser” means a state ~~licensed or~~ certified appraiser in good standing with a minimum of four years of experience within the last four years as a practicing appraiser who engages in direct supervision of a trainee pursuing a state license or certificate and provides training for work included within the supervising appraiser’s classification. ~~This definition is effective January 1, 2007, consistent with R4-46-201(G).~~ 2008.
- “Trainee” means an individual who is being taught to become a state licensed or certified appraiser under the direct supervision of a supervising appraiser. ~~This definition is effective January 1, 2007, consistent with R4-46-201(G).~~
- “USPAP” No change
- “Workfile” No change

ARTICLE 2. LICENSING AND CERTIFICATION

R4-46-201. Appraiser Qualification Criteria

- A. Except as provided in subsections (B), (C), ~~and (D), (E), and (F)~~, an applicant for the applicable classification of license or certificate ~~should~~ shall meet that classification’s criteria, established by the Appraiser Qualifications Board (AQB); in either The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria adopted February 16, 1994 effective January 1, 1998, All Interpretations and Supplementary Information as of January 1, 2002, and Appendix I, Criteria Revisions effective January 1, 2003, (“1998 Criteria”), or The Real Property Appraiser Qualification Criteria Adopted January 1, 2003, All Interpretations And Supplementary Information As Of November 1, 2005, And Appendix, Real Property Qualifications Effective January 1, 2008 (“2008 Criteria”), ~~which are incorporated by reference and on file with the Board.~~ as follows:
1. The requirements are divided into three components: education, experience and examination. An applicant shall meet the criteria in effect at the time the applicant completes a particular component.
 2. The Board shall give credit for completion of a component if the applicant meets either the 1998 Criteria or the 2008 Criteria for any component completed prior to January 1, 2008.
 3. The Board shall give credit for completion of a component only if the applicant meets the 2008 Criteria for any component completed on or after January 1, 2008.
 4. On and after November 1, 2008, an applicant shall meet the 2008 Criteria for all components, regardless of when the component was completed. Both the 1998 Criteria and the 2008 Criteria are incorporated by reference and are on file with the Board. ~~These~~ These incorporated ~~material~~ criteria include no future additions or amendments. A copy of the incorporated ~~material~~ criteria may be obtained from the Board or The Appraisal Foundation.
- B. ~~The incorporated material in subsection (A) does not govern an appraiser’s scope of practice. The scope of practice for each classification of license or certificate is provided in A.R.S. § 32-3612(A). The incorporated material in subsection (A) does not govern the minimum amount of experience, measured in hours or years, necessary for certification. The min-~~

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~~imum experience required for certification is provided in A.R.S. § 32-3615(A).~~

~~C.~~ An applicant for any classification of a license or certificate shall complete at least three hours of course work covering A.R.S. Title 32, Chapter 36 and these rules.

~~D.B.~~ Regardless of whether a transaction is federally related:

1. A State Licensed Residential Appraiser is limited to the scope of practice in A.R.S. § 32-3612(A)(3), and
2. A State Certified Residential Appraiser is limited to the scope of practice in A.R.S. § 32-3612(A)(2).

~~E.C.~~ Notwithstanding the criteria incorporated by reference in subsection (A),

~~1.~~ The American Council on Education's Program on Noncollegiate Sponsored Instruction (ACE/Credit Program) is not an approved organization for distance education course reviews;

~~2.1.~~ An applicant shall not obtain more than 75% of required qualifying education through distance education, ~~and~~

~~3.2.~~ An applicant shall not obtain the 15-hour National USPAP Course, or its equivalent, approved through the AQB Course Approval Program, through distance education, ~~and~~

3. Qualifying education credit may be obtained at any time before the date of application, except the 15-hour National USPAP Course or its AQB approved equivalent must be obtained within two years preceding the date of application.

~~F.D.~~ Notwithstanding the criteria incorporated by reference in subsection (A), there is no Trainee Real Property Appraiser Classification.

1. A supervising appraiser shall instruct and directly supervise a trainee for any classification of license or certificate in the entire preparation of each appraisal. The supervising appraiser shall approve and sign all final appraisal documents. To demonstrate responsibility for the instruction, guidance, and direct supervision of the trainee, the supervising appraiser shall:

- a. Sign the appraisal report and certify the report is in compliance with the Uniform Standards of Professional Appraisal Practice,
- b. Personally supervise the entire physical inspection of each appraised property with the trainee, and
- c. Review and sign each trainee appraisal report.

2. A trainee may have more than one supervising appraiser, but a supervising appraiser shall not supervise more than three trainees at any one time. A trainee shall maintain an appraisal log for each supervising appraiser and, at a minimum, include the following in the log for each appraisal:

- a. Type of property,
- b. Date of report,
- c. Property description,
- d. Description of work performed by the trainee and scope of review and supervision by the supervising appraiser,
- e. Number of actual work hours by the trainee on the assignment, and
- f. The signature and state license or certificate number of the supervising appraiser. This subsection (D)(2)(f) is effective January 1, 2008.

3. A supervising appraiser and trainee shall work in the same geographic area, and in no event shall the supervising appraiser and trainee work in different states.

4. A supervising appraiser shall provide to the Board in writing the name and address of each trainee within 10 days of engagement, and notify the Board in writing immediately upon termination of the engagement. A state licensed or certified appraiser is not eligible to be a supervising appraiser unless the appraiser's license or certificate is in good standing and the appraiser has not been subject to license or certificate suspension, probation, or mentorship within the last two years. This subsection (D)(4) is effective January 1, 2008.

~~G.~~ Subsection (F) is effective January 1, 2007.

R4-46-202. Application for License or Certificate

A. An applicant for a state certificate or license shall submit a completed application accompanied by the required application fee. Once the application has been filed, fees are ~~non-refundable~~ nonrefundable, unless A.R.S. § 41-1077 is applicable.

B. To be eligible for a license or certificate, an applicant shall:

1. Meet the qualification criteria contained in A.R.S. Title 32, Chapter 36, Article 2 and these rules;
2. Achieve a passing score on the applicable examination required by ~~R4-46-204(D)~~, R4-46-204(B), unless exempted under A.R.S. § 32-3626;
3. Pay all required application and examination fees; and
4. Pay the biennial federal national registry fee; and
- ~~5. Comply with the requirements of A.R.S. § 32-3611.~~

C. In addition to the requirements listed in subsection (B), an applicant for licensure shall demonstrate 2,000 hours of experience earned in not less than 18 months.

D. An applicant shall meet all requirements for a license or certificate within one year of filing the application or the applicant's file will be closed and the applicant shall reapply, meeting the requirements of R4-46-202(B). The Board shall notify an applicant whose application has been closed by certified mail or personal service at the applicant's last known address of record. Notice is complete upon deposit in the U.S. mail or by service as permitted under the Arizona Rules of

Civil Procedure.

R4-46-203. Procedures for Processing Applications

- A. To comply with A.R.S. Title 41, Chapter 6, Article 7.1, the Board establishes the following time-frames for processing license and certificate applications, including renewal applications:
1. The Board shall notify the applicant within 45 days of receipt of the application that it is either administratively complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
 2. The Board shall not substantively review an application until the applicant has fully complied with the requirements of ~~R4-46-202~~ R4-46-202(A). The Board shall render a final decision not later than 45 days after the applicant successfully completes all requirements of ~~R4-46-202~~ R4-46-202(A).
 3. Although the applicant may have up to one year to comply with requirements of R4-46-202, the overall time-frame for Board action is 90 days, 45 days for administrative completeness review and 45 days for substantive review.
- B. If the Board denies a license, 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 hearing to challenge the denial; and
 3. The time periods for appealing the denial.

R4-46-204. Appraiser Examinations

- A. ~~The Board shall not allow an applicant to schedule an examination until the applicant has completed all of the prerequisite education requirements. An applicant may schedule an examination once the applicant has completed the experience and education components specified in R4-46-201.~~
- ~~B. If the test provider does not allow for a test on demand, an applicant shall file an application to take an examination at least 45 days before the examination date.~~
- ~~C. Rescheduling; excused absence; forfeiture~~
1. ~~Except as provided in subsections (C)(2) and (3), the Board shall not provide an applicant scheduled for an examination date with a later examination date unless the applicant files a new application and pays a reexamination fee.~~
 2. ~~The Board may grant an excused absence from a scheduled examination if the applicant provides evidence satisfactory to the Board that the absence was the direct result of an emergency situation or condition that was beyond the applicant's control and that could not have been reasonably foreseen by the applicant. An applicant shall promptly make a request for an excused absence in writing and support the request with documentation verifying the reason for the absence. The Board shall deny a request for an excused absence received more than 15 days after the examination date unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from taking the examination.~~
 3. ~~An applicant may request that the applicant's examination date be rescheduled if the request is made at least 15 days before the originally scheduled examination date.~~
- ~~D.B. Subject Matter: An applicant shall take an examination for the applicable classification of license or certificate that covers the subject matter in the real property appraiser examination for the applicable classification endorsed by the Appraiser Qualifications Board. successfully complete the Appraiser Qualifications Board endorsed uniform state appraiser examination or its equivalent for the applicable classification approved by the Board.~~
- ~~E.C. Reexamination: An applicant for a license or certificate who fails to pass an examination or fails to appear for a scheduled examination may schedule another examination by filing a new examination application and paying the ~~reexamination~~ examination fee.~~

R4-46-205. Issuance of a License or Certificate

An applicant who has met the appraiser qualification criteria prescribed in ~~R4-46-202(B)~~, ~~achieved a passing score on the applicable examination, and paid the application and biennial federal registry fees~~ R4-46-202, shall be issued a license or certificate which entitles the applicant to practice as an Appraiser ~~appraiser~~ for the term of the license or certificate.

R4-46-206. Hearing on Denial of a License or Certificate

~~Pursuant to A.R.S. § 41-1092.03, any~~ Any applicant denied a license or certificate by the Board may file a written request for hearing, ~~within 30 days after issuance of the notice of denial; pursuant to A.R.S. § 41-1092.03.~~ Any hearing shall be conducted under the formal hearing procedures prescribed in Article 3 of these rules; A.R.S. Title 41, Chapter 6, Article 10; and 2 A.A.C. 19.

R4-46-207. Renewal of a License or Certificate

- A. ~~Not later than 30 days before expiration of an appraiser's license or certificate, an~~ An appraiser seeking to renew ~~the a~~ license or certificate shall submit a completed application accompanied by the required renewal application fees pursuant to A.R.S. § 32-3619 and R4-46-106. Once the application has been filed, fees are nonrefundable, unless A.R.S. § 41-1077 is applicable. To be eligible for renewal of a license or certificate, an applicant shall:
1. Meet the requirements of A.R.S. Title 32, Chapter 36, and these rules;
 2. Meet the continuing education requirements in The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria ~~adopted February 16, 1994, effective January 1, 1998, All Interpretations and Supplementary Informa-~~

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tion as of January 1, 2002, and Appendix I, Criteria Revisions effective January 1, 2003, which is incorporated by reference in R4-46-201(A), except:

- a. The Board shall not grant credit toward the classroom hour requirement unless the length of the educational offering is at least three hours,
 - b. ~~The American Council on Education's Program on Noncollegiate Sponsored Instruction (ACE/Credit Program) is not an approved organization for distance education course reviews, and A renewal applicant shall not obtain the seven-hour National USPAP Update Course, or its equivalent, approved through the AQB course approval program, through distance education; and~~
 - c. A renewal applicant shall not obtain more than ~~75 percent~~ 75% of required continuing education through distance education; and
3. Pay the renewal and biennial ~~federal~~ national registry fees.

- ~~B. A renewal applicant shall demonstrate completion of a minimum of 14 hours of course work consisting of two 7 hour National USPAP Update Courses, or their equivalent, approved through the AQB Course Approval Program, within four years before expiration of the license or certificate. A course used to satisfy this requirement cannot be used to satisfy the continuing education requirements in subsection (A)(2) unless the course was completed within the two years before the expiration of the license or certificate. Each appraiser shall successfully complete the 7 hour National USPAP Update Course, or its equivalent, approved through the AQB Course Approval Program, at least every two years. A renewal applicant shall not substitute the 15 hour National USPAP Course, or its equivalent, approved through the AQB Course Approval Program, for the 7 hour National USPAP Update Course, or its equivalent, approved through the AQB Course Approval Program.~~
- B. The same course cannot be repeated for use as continuing education within a renewal period, with the exception of USPAP.
- C. Appraisers may receive up to 50% of continuing education credit for course instruction of Board approved course(s) per renewal period.
- ~~C.D.~~ If the last day for filing falls on a Saturday, Sunday, or legal holiday, an appraiser may file the renewal form on the next business day.
- E. An appraiser who fails to seek renewal within the time periods specified in A.R.S. § 32-3619 shall reapply and meet the requirements of R4-46-202.

R4-46-208. Renewal of an Expired License or Certificate Repealed

- ~~A. An appraiser may renew a license or certificate that has expired within 90 days of expiration. If the last day falls on a Saturday, Sunday, or legal holiday, the appraiser may file a renewal on the next business day.~~
- ~~B. To apply for renewal of an expired license within the 90-day period, an appraiser shall comply with the requirements of R4 46 207 and submit the delinquent renewal fee prescribed by R4 46 106. Once an application for renewal of an expired license or certificate has been filed, fees are nonrefundable, unless A.R.S. § 41-1077 is applicable.~~
- ~~C. An appraiser who fails to seek renewal within the time prescribed by this rule shall re-apply and meet the requirements of R4 46 202(B).~~

R4-46-209. Replacement License or Certificate

If an original license or certificate has been lost, damaged, or destroyed, or if the name of a licensee or certificate holder has been legally changed, the ~~Appraiser~~ appraiser may obtain a replacement license or certificate by filing the applicable form and paying ~~a copying~~ the applicable fee to the Board.

R4-46-210. Change of Address Repealed

~~Appraisers and applicants for a license or certificate shall notify the Board in writing of any change in permanent business or residence address within 10 business days of the change.~~

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

[R07-119]

PREAMBLE

- 1. Sections Affected**
- R4-46-104
- R4-46-105

- Rulemaking Action**
- Repeal
- Repeal

Notices of Final Rulemaking

R4-46-301	Amend
R4-46-302	Amend
R4-46-304	Amend
R4-46-305	Amend
R4-46-306	Amend
R4-46-601	Amend
R4-46-602	Amend

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

Authorizing statutes: A.R.S. §§ 32-3605(A), 32-3605(B), 32-3631, and 32-3655

Implementing statutes: A.R.S. §§ 32-3605(A), 32-3605(B)(10), 32-3605(B)(11), 32-3631 and 32-3655

3. The effective date of the rules:

June 4, 2007

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 12 A.A.R. 4246, November 17, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 4231, November 17, 2006

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

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E-mail: deborah.pearson@appraisal.state.az.us

6. An explanation of the rules, including the agency's reason for initiating the rules:

The amendments propose to clean up duplicative and unnecessary language contained in the Board's current rules. The rules will repeal R4-46-104 and R4-46-105, which appear in the Board's statutes. The Board spent several years revising its hearings and disciplinary proceeding rules in 2005. Once adopted and implemented, the Board determined that several minor revisions to R4-46-301 through R4-36-302, and R4-46-304 through R4-46-306 were necessary to be consistent with the Board's intent. The amendments propose to clarify the Board's intent. The amendments propose to make the proper reference to "property tax agent" in R4-46-601 through R4-46-602.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, 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

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:

The amendments propose to clean up duplicative and unnecessary language. The major economic impact of the rules will be the indirect beneficial effect for the public and regulated community due to specific interpretation of the criteria. The cost, if any, to the regulated community, trainees and course providers will be minimal. There will be no cost to the public. The Board will bear the cost of incorporating and enforcing the rules.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

None

11. A summary of the comments made regarding the rules and the agency response to them:

Ann Susko, appraiser, and Elaine Arena, lobbyist for the Phoenix Chapter of the Appraisal Institute, appeared at the public hearing held on January 18, 2007, and spoke in favor of the rulemaking package. At that time the Board voted to close the record, adopt the proposed rule changes, and to proceed with the Notice of Final Rulemaking.

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

Not applicable

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

None

14. Were these rules previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 1. GENERAL PROVISIONS

Section

R4-46-104. ~~Confidential Records~~ Repealed

R4-46-105. ~~Meetings~~ Repealed

ARTICLE 3. HEARINGS AND DISCIPLINARY PROCEEDINGS

Section

R4-46-301. Complaints; Investigations; Informal Proceedings; Summary Suspensions; Refusal to Appear

R4-46-302. Formal Hearing Procedures

R4-46-304. Conviction and Judgment Disclosure

R4-46-305. Terms and Conditions of Reapplication after Revocation

R4-46-306. Complaint Information Availability

ARTICLE 6. PROPERTY TAX AGENTS

Section

R4-46-601. Standards of Practice

R4-46-602. Disciplinary Proceedings; Board Action; Notice Requirements

ARTICLE 1. GENERAL PROVISIONS

R4-46-104. ~~Confidential Records~~ Repealed

~~Except as otherwise provided by law, the Board shall not disclose:~~

- ~~1. Questions contained in any examination administered by or for the Board or in any examination submitted to the Board for course approval;~~
- ~~2. Questions asked and the answers of individual examinees. However, the Board shall provide the grades of each examinee for public inspection and copying, on and after the date set by the Board for the release of examination results;~~
- ~~3. Minutes of the Board's executive sessions; and~~
- ~~4. Appraisal reports or appraisal reviews and supporting documentation deemed confidential under USPAP and adopted by the Board.~~

R4-46-105. ~~Meetings~~ Repealed

~~Pursuant to A.R.S. § 32-3604(F), the Board shall meet at least once each calendar quarter to conduct general business. Special meetings of the Board may be held at any time subject to the call of the chairman or a majority of the Board members.~~

ARTICLE 3. HEARINGS AND DISCIPLINARY PROCEEDINGS

R4-46-301. Complaints; Investigations; Informal Proceedings; Summary Suspensions; Refusal to Appear

A. Complaints

1. The Board shall investigate a written complaint, including an anonymous complaint or a complaint made on the Board's own motion, alleging violations of A.R.S. Title 32, Chapter 36, or this Chapter, if the complaint provides information that meets the minimum criteria. Minimum criteria for a complaint include but are not limited to:
 - a. The name of the respondent against whom allegations are being made;
 - b. The action that is the basis of the complaint;
 - c. The time-frame in which the action occurred;
 - d. Each violation alleged to have been committed by the respondent; and
 - e. A copy of the report, if the complaint includes allegations concerning an appraisal, consulting assignment, or property tax appeal.
2. Upon receipt of a complaint:
 - a. Board staff shall review the complaint and determine, in consultation with Board counsel if necessary, whether

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the complaint meets jurisdictional criteria and if so, which edition of USPAP is applicable.

- b. Within 14 days after receipt of a complaint the Board shall notify the respondent, as prescribed in A.R.S. § 41-1092.04, of the complaint and the requirement that the respondent file a written response within 30 days from the date on the notice. The Board shall provide a copy of the complaint with the notice and request that the respondent address the issues in the complaint. In the notice, the Board shall require that the respondent additionally provide all of the following to the Board: the appraisal report, appraisal review, consulting assignment, or property tax appeal at issue; and the workfile.
- c. If the respondent requests more time to respond, the Board shall grant a single extension of time that does not exceed 30 days.

B. Initial Review and Investigation

1. Within 75 days after receipt of a response or expiration of the time for response, the Board shall conduct an initial review of the matter to determine whether further investigation is necessary. If the Board determines further investigation is necessary, the Board may employ an investigator or investigators and shall notify the respondent of the pending investigation.
2. If a respondent's name is placed on a public meeting agenda, the Board shall mail a letter to the respondent not less than seven days before the scheduled meeting, providing the respondent with a copy of the posted notice of the public meeting.
3. If the respondent is present at the initial review, the Board may request that the respondent participate in an informational interview. A respondent may refuse to participate in an informational interview. The Board may use any information presented at the informational interview in other proceedings related to the complaint.
4. At the initial review, the Board shall consider the complaint, any response; the appraisal report, appraisal review, consulting assignment, or property tax appeal; and the workfile. The Board may dismiss the matter, request or subpoena additional information, order a limited or full investigation, or invite the respondent to an informal hearing, based on the information reviewed.
5. Board staff shall assign each investigator according to the investigator's experience, expertise, contract terms, and availability. Board staff shall select an investigator who ~~is not associated~~ does not have a business or familial relationship with the respondent. Each investigative report shall contain the signed certification specified in subsection (B)(6). An investigator's draft report is considered work product and is, therefore, confidential. The Board may ask for clarification or additional information after review of a draft report. Upon acceptance by the Board, an investigative report is considered final. The Board may adopt any or all of the findings in the final report at a public meeting and may consider any additional, relevant information that is discovered before the matter is resolved. The investigative report becomes nonconfidential upon resolution of the complaint involved.
6. The following certification shall be included in every investigative report prepared for the Board and signed by the investigator; I certify that, to the best of my knowledge and belief:
 - a. The statements of fact contained in this report are true and correct.
 - b. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and they are my personal, impartial and unbiased professional analyses, opinions, conclusions, and recommendations.
 - c. I have no present or prospective interest in the property that is the subject of this investigation, and I have no personal interest with respect to the parties involved in this investigation.
 - d. I have no bias with respect to any property that is the subject of this investigation or to the parties involved in this investigation.
 - e. My engagement for this investigation was not contingent upon developing or reporting any predetermined result or outcome.
 - f. My compensation for this investigation is not contingent upon developing or reporting any predetermined result or outcome, nor have I been instructed as to any predetermined result or outcome by the Board, the Board staff, or other parties.
 - g. I have (or have not) made a personal inspection of the property that is the subject of this investigation.

C. Settlement. Any time after a complaint has been filed against a respondent, the matter may be resolved by a settlement in which the respondent agrees to accept disciplinary or remedial action by consent ~~in lieu of a disciplinary order~~. If the Board determines that the proposed settlement will adequately protect the public, the Board may ~~accept the offer, and enter into a consent agreement with the respondent, incorporating the proposed settlement into the agreement~~. A statement made for the purpose of settlement is not admissible in a formal hearing.

D. Informal Hearing; Disciplinary Action

1. If, based on the initial review or its review of the investigative report, the Board determines that the respondent is or may be in violation of the Board's statutes or rules, the Board may request a voluntary informal hearing with the respondent. The Board shall provide the respondent with a copy of any final investigative report in the matter, any supporting documentation, and notice of the date, time, and location of the informal hearing, as prescribed in A.R.S. § 41-1092.04, at least 30 days before the informal hearing. The notice of informal hearing shall include all of the fol-

lowing:

- a. A statement of the matters asserted and issues involved;
 - b. Any request for additional information needed by the Board to prepare for the hearing;
 - c. An explanation of the respondent's right to appear voluntarily with or without legal counsel; and
 - d. An explanation of the respondent's right to a formal hearing under R4-46-302.
2. The Board shall provide a copy of the informational material "Introduction to Informal Hearing," which explains the rights and responsibilities of the Board and respondent during the informal hearing. (A copy is also available at the Board office).
 3. The respondent may request and the Board may grant a continuance ~~that does not exceed 30 days~~ upon a showing of good cause. During the informal hearing the Board shall swear witnesses, question the respondent and witnesses, and deliberate. The respondent may respond to the Board's questions, present witnesses, and ask questions of the Board and all witnesses regarding the matter before it.
 4. If the Board finds a violation of the statutes or rules, but the violation is not of sufficient seriousness to merit suspension or revocation, it may take one or more of the following actions:
 - a. Issue a letter of concern;
 - b. Issue a letter of remedial action;
 - c. ~~Issue Offer~~ a letter of due diligence, which may or may not include remedial action;
 - d. ~~Set Offer~~ a consent agreement including an order of discipline that sets a time period and terms of probation sufficient to protect the public welfare and safety and educate the respondent. The Board may require one or more of the following as terms of probation:
 - i. Training or education;
 - ii. Supervision or mentor review;
 - iii. Restriction on the nature and scope of the respondent's practice; or
 - iv. Other reasonable measures designed to protect the public and educate the respondent.
 5. For any Board action other than a letter of concern or a letter of remedial action, the Board shall request that the respondent sign a consent agreement, which may include findings of fact and conclusions of law, depending on the severity of the violation, but shall identify and explain each violation found. If the respondent is aggrieved by the ~~outcome of the informal hearing~~ Board's decision to issue a letter of concern or letter of remedial action, the respondent may request a formal hearing in writing, within 30 days from the date the written notice of the outcome of the informal hearing is received.
 6. In resolving a complaint, the Board shall consider mitigating and aggravating circumstances, including but not limited to:
 - a. Whether a violation is intentional;
 - b. Whether the respondent has a prior disciplinary history;
 - c. The time that has elapsed since the violation, and any prior violation;
 - d. Whether any prior violation is similar to the present violation;
 - e. The complexity of the assignment;
 - f. Whether the assignment was outside the respondent's competence; and
 - g. Whether the respondent has taken courses after a violation to prevent future violations.
- E. Summary Suspension.** If the Board finds that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the Board may order a summary suspension pending proceedings for revocation or other action. If an order of summary suspension is issued, the Board shall serve the respondent with a written notice of summary suspension and formal hearing, listing the charges against the respondent and setting the date for the formal hearing as soon as is reasonably possible, but in no event more than 60 days from service of the written notice.
- F. Refusal to Appear.** A respondent may refuse a request to appear at an informal hearing. If the respondent refuses to appear or does not appear, the Board may schedule the matter for a formal hearing.
- G. 12-Month Review.** If a matter is not resolved within 12 months from receipt of the response, the Board shall schedule the matter for review at each regularly scheduled Board meeting to determine whether good cause exists to continue the investigation. If, after completing its investigation, the Board finds that further action against the respondent is not warranted, the Board shall dismiss the matter.

R4-46-302. Formal Hearing Procedures

- A.** The Board shall issue a notice of hearing and formal complaint for formal disciplinary proceedings if:
1. After an informal hearing, the Board determines that suspension or revocation may be warranted;
 2. After an informal hearing, the respondent refuses to sign a letter of due diligence or consent agreement offered by the Board;
 - 2-3. The respondent is aggrieved by the Board's decision in an informal hearing; or
 - 3-4. After completing its investigation, the Board finds that suspension or revocation may be warranted.
- B.** Except as provided in R4-46-301(E), the Board shall provide notice of a formal hearing to a respondent at least 30 days before the date set for the hearing. The Board shall notify the respondent by certified mail or personal service at the

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respondent's last known address of record. Unless otherwise specified, any notice provided for in these rules is complete upon deposit in the U.S. mail or by service as permitted under A.R.S. § 41-1092.04.

- C. On its own motion or the motion of a party, the Board may hear a case or have the case heard by an administrative law judge. The Board may accept, reject, or modify the administrative law judge's recommended decision as prescribed by A.R.S. § 41-1092.08, and shall issue a final order.
- D. Board Hearings
 - 1. The Board may conduct a hearing without adherence to the rules of evidence used in civil proceedings. The Board shall include the respondent's application and disciplinary records as evidence in the hearing record.
 - 2. In all hearings required or permitted by statute, order of the Board, or these rules, the party seeking relief has the burden of proof and will present evidence first.
 - 3. The Board shall conduct each formal hearing according to A.R.S. Title 41, Chapter 6, Article 10.
- E. ~~Failure to Appear.~~ If a party fails to appear for a formal hearing without good cause, the Board shall act upon the evidence without further notice.
- F. The Board shall make and keep a record of the hearing and, in the case of disciplinary hearings or if requested by a party or ordered by the Board, a transcript shall be prepared and filed with the Board. If the transcript is prepared at the request of a party, the party making the request shall pay for the cost of the transcript, unless the Board, for good cause shown waives assessment of this cost.
- G. A party may request and the Board may grant a continuance of a hearing date or any other deadline imposed by R4-46-302 upon a showing of good cause.

R4-46-304. Conviction and Judgment Disclosure

- A. When an ~~Appraiser, Property Tax Agent, or Course Provider~~ appraiser or property tax agent is convicted of any act which is or would be punishable as a felony, crime involving moral turpitude ~~in this state~~, or any crime which is substantially related to the respective qualifications, functions, and duties of an ~~Appraiser, Property Tax Agent, or Course Provider~~ appraiser or property tax agent, the convicted person shall notify the Board within 20 days of entry of a plea of guilty or conviction.
- B. When a civil judgment based on fraud, misrepresentation, or deceit in the making of any appraisal ~~or mass appraisal~~ is entered against an ~~Appraiser, Property Tax Agent, or Course Provider~~ appraiser or property tax agent, the person against whom the ~~judgment~~ judgment entered shall notify the board within 20 days of entry of ~~judgment~~ judgment.

R4-46-305. Terms and Conditions of Reapplication ~~after~~ After Revocation

- A. An applicant who ~~re-applies~~ reapplies after revocation of a license, certificate, or course approval, shall submit an application for license, certificate, or course approval consistent with these rules. The applicant shall attach substantial evidence to the application that the issuance of a license, certificate, or course approval will no longer constitute a threat to the public welfare and safety.
- B. The Board shall make a determination of each application that is consistent with the public safety and welfare.

R4-46-306. Complaint Information Availability

- A. Every six months, the Board shall generate a report for publication on the Board's web site or in a newsletter that indicates for that period the number of:
 - 1. Complaints received,
 - 2. Complaints dismissed,
 - 3. Complaints referred for investigation, and
 - 4. Complaints referred for informal or formal hearing.
- B. In preparing the report, the Board shall include the severity level of violations ~~found; the suggested complaint resolution~~ according with reference to the Board Complaint Resolution Chart (a copy is available at the Board office); the actual complaint resolution implemented by the Board; and any other information that the Board deems useful to appraisers, property tax agents, and the public.

ARTICLE 6. PROPERTY TAX AGENTS

R4-46-601. Standards of Practice

The Board may revoke or suspend an agent's registration or otherwise discipline a ~~Property Tax Agent~~ property tax agent to the extent permitted by A.R.S. § 32-3654 for any of the following acts or omissions:

- 1. Engaging in an activity that leads to a conviction for a crime involving the tax profession;
- 2. Operating beyond the boundaries of an agreed relationship with an employer or a client;
- 3. Inferring or implying representation of a person or firm that the agent does not represent, or filing a document on behalf of a taxpayer without specific authorization of the taxpayer;
- 4. Violating the confidential nature of the ~~Property Tax Agent-client relationship~~ property tax agent-client relationship, except as required by law;
- 5. Inappropriately offering or accepting anything of value with the intent of inducing or in return for a specific action;
- 6. Assigning, accepting, or performing a tax assignment that is contingent upon producing a predetermined analysis or

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- conclusion;
7. Issuing an appraisal analysis or opinion, in the performance of a tax assignment, that fails to disclose bias or the accommodation of a personal interest;
 8. Willfully furnishing inaccurate, deceitful, or misleading information, or willfully concealing material information in the performance of a tax assignment;
 9. Preparing or using, in any manner, a ~~resume~~ resumé or statement of professional qualifications that is misleading or false;
 10. Promoting a tax agent practice and soliciting assignments by using misleading or false advertising;
 11. Soliciting a tax assignment by assuring a specific result or by stating a conclusion regarding that assignment without prior analysis of the facts;
 12. Performing an appraisal as defined by A.R.S. § 32-3601 unless licensed or certified by the Board as an appraiser.

R4-46-602. Disciplinary Proceedings; Board Action; Notice Requirements

The Board shall process all hearings and disciplinary matters involving ~~Property Tax Agents~~ property tax agents in a manner consistent with the formal hearing procedures prescribed by Article 3 and consistent with A.R.S. § 32-3654.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

[R07-118]

PREAMBLE

1. Sections Affected

R12-15-704
R12-15-722
R12-15-723
R12-15-725
R12-15-725

Rulemaking Action

Amend
Amend
Amend
Repeal
New Section

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

Authorizing statutes: A.R.S. §§ 45-105(B)(1) and 45-576(H)
Implementing statute: A.R.S. § 45-576

3. The effective date of the rules:

This rule becomes effective October 1, 2007. The Department has determined that although the rulemaking is necessary to prevent an overdraft condition in the Pinal Active Management Area (“AMA”), the public interest will not be harmed by the later effective date and that allowing the regulated community a reasonable period of time to make the necessary adjustments to come into compliance with the new rules constitutes good cause for the later effective date. See A.R.S. § 45-1032(B).

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 12 A.A.R. 837, March 17, 2006
Notice of Proposed Rulemaking: 12 A.A.R. 4590, December 15, 2006

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

Name: Doug Dunham
Address: Arizona Department of Water Resources
3550 N. Central Ave.
Phoenix, AZ 85012
Telephone: (602) 771-8590
Fax: (602) 771-8689
E-mail: dwdunham@azwater.gov

6. An explanation of the rules, including the agency’s reasons for initiating the rules:

Background

The assured water supply program (“AWS Program”) was created as part of the 1980 Groundwater Management Act (“Groundwater Code”), and operates within Arizona’s five AMAs. Within the five AMAs, the AWS Program requires developers of subdivisions to demonstrate a 100-year assured water supply prior to recordation and sale of the lots. This assured supply can be demonstrated in one of the following two ways: (1) the developer can obtain a written commitment of service for the development from a water provider that the Director of the Department of Water Resources (“Director”) has designated as having assured water supply for its entire system; or (2) the developer can demonstrate to the Director that the specific subdivision has an assured water supply, in which case the director will issue a certificate of assured water supply for the subdivision plat.

The AWS Program has two primary purposes. First, the program facilitates the achievement of the AMA’s water management goal by requiring an applicant for a designation or certificate to demonstrate that its projected groundwater use is consistent with the achievement of the AMA’s management goal and management plan. The Phoenix, Prescott and Tucson AMAs have a management goal of safe-yield by 2025 or earlier. A.R.S. § 45-562(A). The management goal of the Santa Cruz AMA is to maintain a safe-yield condition and to prevent local water tables from experiencing long-term declines. A.R.S. § 45-562(C). 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 uses. A.R.S. § 45-562(B).

The second purpose of the AWS Program is to protect consumers purchasing homes by requiring demonstration of a 100-year water supply for all new subdivisions. The water supply must be physically, continuously and legally available for 100 years and must be of adequate quality. Also, the applicant must have the financial capability to construct any water facilities necessary to make the water supply available for the proposed use.

In 1995, the Department of Water Resources (“Department”) adopted assured water supply rules (“AWS rules”). These rules set forth specific requirements that applicants for certificates and designations must meet to demonstrate an assured water supply. Among other things, the AWS rules contain criteria for demonstrating that the projected groundwater use of a water provider or development will be consistent with achieving the AMA’s management goal. The AWS rules were amended in 2006, primarily to improve the efficiency of the AWS Program. No substantive changes were made to the criteria for demonstrating consistency with achieving an AMA’s management goal.

Consistency with Management Goal Requirement for the Pinal AMA

It is important to recognize the role of the AWS Program in supporting the management goal of the Pinal AMA, specifically the requirement to preserve future water supplies for non-irrigation uses. The AWS Program requirements apply to new subdivisions. The program requirements do not apply to the division of parcels into five or fewer lots, nor do they apply to most industrial water uses. Existing municipal uses, including undeveloped lots platted prior to 1995, are subject to the program requirements only if a municipal water provider has voluntarily subjected itself to the standard for its entire service area through the assured water supply designation process. If substantial subdivision development continues as expected in the Pinal AMA, the AWS Program could play a significant role in supporting the management goal requirement to preserve future water supplies for non-irrigation uses. While the AWS Program does not afford complete assurances that the management goal will be met, it can ensure that water use by new subdivisions does not hinder the AMA’s ability to achieve the management goal.

Under the current AWS rules, the consistency with management goal requirement for the Pinal AMA is the most lenient of all of the AMAs in terms of allowable groundwater use. For example, the AWS rules for the Phoenix and Tucson AMAs allocate groundwater use based on a small percentage of estimated demand (for certificates) or historical demand (for designations). The rules for the Pinal AMA allocate groundwater based on the build-out population of the development (for certificates) or the annual service area population of the municipal provider (for designations). In the other AMAs, the allocation of allowable groundwater use decreases over time, while in the Pinal AMA, the allocation does not decrease over time.

In the Phoenix and Tucson AMAs, the groundwater allowance (a volume of groundwater that is consistent with the management goal of the AMA) for designated providers that served water prior to February 7, 1995 is calculated by determining the volume of water served by the provider in 1994. That volume is then multiplied by a factor of 15 in the Tucson AMA and 7.5 in the Phoenix AMA. R12-15-724(A)(2) and R12-15-727(A)(2). For a provider established after February 7, 1995, the groundwater allowance is zero. R12-15-724(A)(3) and R12-15-727(A)(3). The groundwater allowance for certificates in the Phoenix and Tucson AMAs is calculated by multiplying the annual estimated water demand for the proposed subdivision by an allocation factor based on the management period during which the application is submitted. For the second management period in the Phoenix AMA, the allocation factor was 7.5, while the current allocation factor is 4.0. The allocation factor decreases to 2.0 in the fourth management period, 1.0 in the fifth management period, and zero beginning in 2025. R12-15-724(A)(1).

In contrast, the current Pinal AMA rules allocate an annual volume of 125 Gallons Per Capita Per Day (“GPCD”) for most certificates and designations. This allocation is made regardless of when the application is received. Furthermore, for designated providers, instead of decreasing over time, the groundwater allowance actually increases as the provider’s service area population grows. Additionally, if any portion of the groundwater allowance is not used in a year, the unused portion carries forward (or “rolls over”) for use in subsequent years.

In the other AMAs, extinguishment credits (credits earned for the extinguishment of a grandfathered groundwater right) are allocated as a lump sum volume of groundwater that may be used without replenishment. The volume of groundwater allocated for extinguishment credits decreases each year, depending on the year in which the grandfathered right ("GFR") is extinguished, until 2025 when the allocation reaches zero. In the Pinal AMA, by contrast, the allocation for extinguishment credits does not decrease. Also, instead of a lump sum volume, the allocation is an annual allotment of allowable groundwater use that continues in perpetuity. Furthermore, once the extinguishment credit is created and pledged to a certificate or designation, any unused portion of the allocation for any particular year rolls over for use in subsequent years.

In 2000, in conjunction with the 20th anniversary of the Groundwater Code, Governor Jane Dee Hull established the Governor's Water Management Commission. This Commission was tasked to review the effectiveness of the Groundwater Code and make recommendations for any potential statutory or rule modifications. As part of this process, the Commission recognized that the Pinal AMA presented unique challenges due to the dual nature of the AMA's management goal of preserving the agricultural economy while preserving future water supplies for non-irrigation uses. It was further recognized that the current AWS rules are insufficient to allow the AMA to meet its management goal. The Water Management Commission recommended that the Department work with the Pinal AMA Groundwater Users Advisory Council ("GUAC") and water users in the AMA to find a solution to this issue.

As part of this continuing effort, in October 2001, after a lengthy public process, water users in the Pinal AMA reached an understanding that the AMA's management goal requirement to "preserve future water supplies for non-irrigation uses" should be interpreted as ensuring a long-term, reliable supply of water for municipal and industrial uses, and that this interpretation would allow for the appropriate use of groundwater supplies by the municipal and industrial sectors. The water users also committed to develop a comprehensive water management program for the AMA by January 1, 2005 through a public process. An integral part of the development of this water management program was to evaluate water supplies as they relate to the AWS rules for the AMA in order to ensure a sustainable water supply for municipal and industrial demand, taking into account conversion of agricultural uses to municipal uses. In addition, the water users called for local interests to work together with the Department to work out the specifics for the rule modifications, including a transition period.

Since January 2002, the Department has cooperated closely with the Pinal AMA GUAC as the GUAC considered the necessary changes to the AWS rules. To help facilitate its review of the existing AWS Program, the GUAC established a Water Management Subcommittee, consisting of representatives from the GUAC, local water interests, and technical advisors from the Pinal AMA staff. The efforts of the subcommittee, with the Department's assistance, provided the basis for the recommended modifications to the AWS rules for the Pinal AMA.

As a culmination of the community-based efforts, on February 23, 2006 the Pinal AMA GUAC recommended changes to the AWS rules to facilitate the achievement of the management goal of the AMA. The Department closely followed the recommendations of the Pinal AMA GUAC in drafting the proposed rule amendments, taking into account comments received during the four months the Department sought public input.

Issues Raised

While there are a number of issues with the existing AWS rules for the Pinal AMA, the biggest concern is that the allowable volume of groundwater that may be used consistent with the management goal pursuant to the AWS rules is, in reality, not at all consistent with the achievement of the AMA's management goal to preserve future water supplies for non-irrigation uses. Given the AMA's rapid subdivision development, it would be impossible to preserve a long-term, reliable supply of water for municipal uses when the rules so over-allocate groundwater supplies that little or no groundwater replenishment is required for new subdivisions and minimal renewable water supplies are being brought into the AMA. While several sources of renewable supplies are available, one significant source is replenishment provided through the Central Arizona Groundwater Replenishment District ("CAGRDR"), as in the Phoenix and Tucson AMAs. However, due to the large volume of allowable groundwater use permitted under the existing Pinal AWS rules, nearly all the CAGRDR's supplies are used in the Phoenix and Tucson AMAs. Through 2003, the replenishment obligation for the Pinal AMA totaled just 212 acre-feet ("AF"), and the CAGRDR satisfied this obligation by purchasing and extinguishing long-term storage credits within the AMA from the Central Arizona Water Conservation District.

The replenishment obligation for a subdivision is determined by subtracting the groundwater allowance and extinguishment credits available to the subdivision from the volume of groundwater delivered to the subdivision. The remaining volume, if any, must be replenished. For a subdivision located on land without a GFR, the Pinal AMA's groundwater allowance, which in most cases is based on a water use rate of 125 GPCD for the subdivision's projected build-out population, is typically sufficient to meet most, if not all, of the subdivision's 100-year water demand.

For example, according to a recent study conducted by the CAGRDR, lots constructed since 1995 within the replenishment district have used 0.4 AF of water on an average annual basis, which includes water used for turf and other landscaping in subdivision common areas. Thus, for a typical new subdivision of 3.5 houses per acre ("AC"), the projected annual demand would be 1.4 AF/AC. Assuming a typical density of three persons per household, the 125 GPCD groundwater allowance would allow such a subdivision to annually use 1.47 AF/AC of groundwater supplies. Because the allowable volume of groundwater supplies in this case is greater than the projected annual demand, the replenishment obligation would be zero. Thus under the existing AWS rules, the subdivision would be allowed to

develop on 100% unreplenished groundwater.

For a subdivision located on land to which an irrigation GFR or a type 1 non-irrigation GFR is appurtenant, the amount of groundwater that may be used consistent with the management goal is even greater. After the GFR is extinguished, the extinguishment credits, which are calculated at the rate of 1.5 AF/AC, are added to the groundwater allowance. Under the existing AWS rules, both the groundwater allowance and extinguishment credits are permanent, in that they are allocated on an annual basis in perpetuity. Together, the groundwater allowance and the extinguishment credits allocate a volume of groundwater that is, in almost all cases, far in excess of the subdivision's 100-year water demand, thereby requiring no replenishment. In fact, excess extinguishment credits are often sold to offset potential replenishment obligations that might exist for subdivisions located on lands without GFRs. The GUAC found that, based on the average subdivision water use, the allowable groundwater use and the generous extinguishment credits in the Pinal AMA, an acre of land with GFRs could support two additional acres of development without incurring any additional replenishment obligation.

This lack of replenishment means that once existing and approved municipal groundwater demands in the Pinal AMA exceed the AMA's renewable groundwater supplies (i.e., net natural recharge), groundwater will be mined to meet those demands. Currently, the Pinal AMA is not in an over-draft condition in which groundwater withdrawals exceed net natural recharge. Because of rapid subdivision development; however, such an over-draft condition is expected to occur in the next two to three years under the existing AWS rules. Hydrologic studies completed in December 2004 as part of an evaluation of the AMA's groundwater budget determined that the AMA's renewable groundwater supplies total 82,500 AF on a long-term average annual basis. Since 1999, existing and approved municipal groundwater demands in the AMA have increased over 250%, from approximately 17,000 AF per year to over 60,000 AF per year. Pinal County planning and development officials estimated in March 2005 that about 300,000 lots have been zoned but not yet platted for subdivision development in that portion of the county located within the Pinal AMA, including the five incorporated communities of Casa Grande, Coolidge, Eloy, Florence, and Maricopa. Assuming the CAGR's average annual use rate of 0.4 AF/AC for each lot, these 300,000 zoned but unplatted lots would have an annual demand of 120,000 AF at build-out. This volume far exceeds the estimated renewable groundwater supply of 82,500 AF per year.

Absent a change in the Pinal AWS rules, allocation of mined groundwater supplies could conceivably continue until the Pinal AMA's aquifers would be fully allocated to 1,100 feet below land surface ("BLS"), which is the maximum 100-year depth-to-static water level allowed by the AWS rules. R12-15-716(B)(2). At this point, no further AWS applications based on groundwater could be approved due to a lack of physical availability. Prior to that point, AWS applicants would have increasing difficulty demonstrating physical availability of groundwater supplies. Applications would likely be denied first in dewatered areas overlying cones of depression or in areas where bedrock or other non-water bearing strata limit the depth of the aquifer to less than 1,100 feet BLS. It is expected that applications would also be denied in high-growth areas where demand for groundwater is already high. In addition, demonstrating physical availability would be more difficult within the AMA's extensive agricultural areas. Pursuant to the Department's interpretation of the AMA's management goal in the second and third management plans, groundwater in storage to a depth of 1,000 feet BLS is available for all water uses. Consequently, the Department must assume when analyzing physical availability that all remaining farmland with an irrigation GFR will continue to be irrigated using groundwater supplies to 1,000 feet BLS unless otherwise prevented from doing so by shallow bedrock or other limiting conditions. While it is difficult to know with any certainty what the economic consequences would be if the Department denied AWS applications due to lack of physical availability of groundwater, the consequences would likely be dire if those in the development and business communities perceived the AMA to be running out of groundwater.

Another problem caused by the Pinal AMA's generous groundwater allowance is that it helps to encourage subdivision development on land without a GFR by greatly minimizing or eliminating entirely the replenishment obligation on such land. As a consequence, large tracts of desert land are being developed, while nearby farmland continues to be irrigated. Failure to convert agricultural uses to municipal uses under such circumstances is resulting in an additional burden being placed on the AMA's aquifers, hastening their depletion. Farmers in the AMA are particularly concerned with this problem, as they strongly believe that the Groundwater Code intended that irrigation uses be converted to non-irrigation uses as farming areas urbanized.

In addition to the adverse economic consequences that are likely to occur in the Pinal AMA if the rules are not changed, it is likely that the groundwater mining allowed under the current rules will eventually result in significant health and safety problems for existing residents of the AMA. When the aquifer is depleted, the AMA will likely experience shortages of water supplies for such essential activities as drinking, sanitation and fire fighting.

Several other issues were raised during the rule evaluation process. One issue raised by farmers in the Pinal AMA is that if the AWS rules are modified and the CAGR is unable to enroll new members at some point in the future, there might be an insufficient volume of groundwater supplies allocated through extinguishment credits to allow at least some level of subdivision development to take place.

An issue for those in the regulated community is the need to ensure a transition period to allow the Pinal AMA's designated providers sufficient time to plan and obtain renewable supplies to serve future subdivisions, and to allow the designated providers to use a limited volume of groundwater supplies to meet the water demands of their existing service area populations, as well as their committed demand.

A final concern is the need to give designated providers in the Pinal AMA credit for annual incidental recharge within their service areas, as is currently allowed for designated providers in the Phoenix and Tucson AMAs. An incidental recharge credit was not included under the existing AWS rules for the Pinal AMA because the AMA's generous groundwater allowance was considered sufficient.

Stakeholders' Process

On July 26, 2006, the Department began the stakeholders' process for the modification of the Pinal AMA AWS rules. This consisted of four public meetings to discuss issues and proposed rule language, with the last meeting held on September 29, 2006. The Department also solicited written comments during an informal comment period from July 26 through October 20, 2006. This rulemaking incorporates revisions the Department made in response to comments from the Pinal AMA GUAC, stakeholders and the public.

Explanation of Rules

Under this rulemaking, the groundwater allowance for new certificates in the Pinal AMA will be a "lump sum" that may be used in any year, instead of an annual allocation. In addition, the groundwater allowance will be calculated by multiplying the build-out population of the subdivision by an allocation factor, instead of a GPCD rate. The allocation factor will decrease over time, depending when the application is filed, until it reaches zero in 2025. This structure is similar to the current rules for the Phoenix and Tucson AMAs.

Extinguishment credits earned as a result of the extinguishment of a GFR in the AMA prior to the effective date of October 1, 2007 ("existing extinguishment credits") will retain their annual allocation nature, regardless of when they are pledged to an assured water supply certificate or designation. Existing extinguishment credits pledged to a determination of assured water supply prior to the effective date of October 1, 2007 will retain the current "rollover provision," while existing extinguishment credits pledged to a determination of assured water supply on or after that date will not. However, if a designated provider (designated before or after the effective date of October 1, 2007) takes over service to a subdivision with a certificate supported by extinguishment credits that were pledged to the certificate before this rulemaking becomes effective, the designated provider may use the extinguishment credits and any of the credits not used during a year will roll over to the following year. Consistent with the Department's current practice, the Department will consider a GFR to have been extinguished on the date a notarized statement of extinguishment of the GFR is filed with the Department pursuant to R12-15-723(A).

Extinguishment credits earned as a result of the extinguishment of a GFR in the AMA on or after the effective date of October 1, 2007 ("new extinguishment credits") will function like the credits in the Tucson, Phoenix, and Prescott AMAs. The new structure will have a single lump sum allocation that may be used in any year. The allocation factor used to determine the amount of the extinguishment credits will also decrease over time similar to the other AMAs, but much more slowly. In the other AMAs, the allocation factor will reach zero by 2025, whereas in the Pinal AMA, it will reach zero after 2054. Unique to the Pinal AMA, this rulemaking also includes a "freezing provision" for the declining allocation factor. If, prior to January 1, 2055, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), the allocation factor is frozen at that time and will no longer decrease until the moratorium has ended. When the moratorium ends, the decreasing allocation factor will resume where it left off.

Municipal providers designated as having an assured water supply as of the effective date of October 1, 2007, and undesignated municipal providers serving water as of that date that submit a complete and correct application for designation before January 1, 2012, will be allocated a groundwater allowance using a methodology similar to the groundwater allowance calculation under the current AWS rules, but with certain differences. These providers will receive a groundwater allowance of 125 GPCD based on their service area population as of the effective date of October 1, 2007. This population-based groundwater allowance will retain the permanent, annual allocation structure currently used in the Pinal AMA rules. However, the groundwater allowance will be a set annual volume that will not increase as the population increases and there will be no rollover provision for any portion not used in a year. Undesignated municipal providers serving water as of the effective date of October 1, 2007 that submit a complete and correct application for designation on or after January 1, 2012, and municipal providers initiating service after the effective date of October 1, 2007 will receive a groundwater allowance of zero.

For providers designated as of the effective date of October 1, 2007, in addition to the population-based groundwater allowance and any extinguishment credits that may be pledged to the designation, the providers will receive a "transition volume" of allowable groundwater use based on "committed demand." Just like the population-based groundwater allowance, the transition volume is a permanent, annual allocation of allowable groundwater use without any rollover provision. The transition volume is applicable to residential lots within plats recorded as of the effective date of October 1, 2007 ("committed lots") and to which the provider commences water service after October 1, 2007 but no later than January 1, 2010. The volume is calculated by multiplying the number of these lots by 0.35 acre-feet per lot (the equivalent of 125 GPCD x 2.5 persons per housing unit). The Department included a cut-off date of January 1, 2010, to prevent the transition volume from increasing indefinitely. The Department determined that January 1, 2010, is a reasonable cut-off date because it coincides with the beginning of the fourth management period and is the date that extinguishment credits begin to decrease in the AMA.

The allocation for these lots will be included in the designated provider's groundwater allowance when the lots are occupied and served by the provider on or before January 1, 2010. Beginning with the first annual report year after

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the effective date of October 1, 2007, the transition volume will be added to the designated provider's groundwater allowance account based on the number of committed lots served in the reporting year, as reported to the Department in the designated provider's annual report. This process will continue for committed lots to which the provider commences service through January 1, 2010. If, after that date, there are committed lots that have not been developed and served, the designated provider will receive zero groundwater allocation for those lots.

Designated providers (designated before or after this rulemaking becomes effective) will also be given a 4% incidental recharge factor (identical to the Tucson and Phoenix AMAs).

Effective Date of Rules

Pursuant to A.R.S. § 41-1032(B), the Department has specified an effective date for this rulemaking more than 60 days after the filing of the rules with the Secretary of State. The Department has specified an effective date of October 1, 2007 to allow the regulated community a reasonable period of time to make the necessary adjustments to come into compliance with the new rules.

The Department will review an application for a determination of assured water supply submitted before October 1, 2007 under the rules in effect on the date the application is submitted. The Department will notify the applicant in writing of any deficiencies in an application and allow the applicant 60 days to submit the requested materials. If the applicant fails to provide the requested materials within 60 days (or a longer period, if the Department specifies), the Department may deny the application. The applicant may re-submit the application, but the application would be subject to the rules in effect on the date the application is re-submitted.

Rule by Rule Summary

R12-15-704. Certificate of Assured Water Supply

The amendments to R12-15-704 include inserting a new subsection (L) relating only to the Pinal AMA. The new subsection will exempt a subdivision from the requirement to obtain a certificate if all of the following apply: (1) the plat for the subdivision was recorded prior to October 1, 2007; (2) there are no material plat changes; (3) the municipal provider was designated as having an assured water supply when the plat was recorded, but is no longer designated; and (4) water service is currently available to each lot. The purpose of this subsection is to exempt a subdivision from the requirement to obtain a certificate if a designated provider committed to serve the subdivision at the time the plat was recorded, but the designation terminated after the effective date of this rulemaking (for any reason, including inability to comply with the more stringent groundwater allowance provision in the new rule), provided that certain conditions are met. One condition is that water service must be available to each lot. Also, to prevent the subsection from being used to avoid assured water supply requirements, it will apply only if the subdivision plat is recorded before October 1, 2007, and there are no material changes to the recorded plat.

The current subsection (L), which sets forth the procedures for requesting a letter stating that the owner is not required to obtain a certificate of assured water supply, is being re-lettered to (M) to conform to the addition of the new subsection (L). The subsection is also being amended to include a reference to the new subsection (L) so that the procedures in the subsection will apply to that subsection.

R12-15-722. Consistency with Management Goal

The amendments to R12-15-722 change the criteria for demonstrating consistency with management goal for the Pinal AMA. The consistency with management goal criteria for the other AMAs are not changed. The following is a description of the amendments to each subsection:

Subsection (A) currently provides that the Director shall determine the volume of groundwater that may be used in the Phoenix, Pinal, Prescott or Tucson AMA consistent with the AMA's management goal by adding the applicable groundwater allowance for the certificate or designation, the amount of any extinguishment credits pledged to the certificate or designation, and any groundwater use that is consistent with the goal pursuant to the Groundwater Code. This subsection is amended to remove the references to the Pinal AMA because the criteria for the Pinal AMA are moved to separate subsections (subsections (C), (D) and (E)). In addition, language is added to clarify that the volume calculated pursuant to the subsection is a volume of groundwater that may be used consistent with the management goal *for at least 100 years*. Minor grammatical changes are also being made.

Subsection (B) currently provides that the volume of groundwater calculated in subsection (A) is a volume that may be used consistent with the management goal of the Phoenix, Prescott or Tucson AMA for at least 100 years. This language is deleted because identical language is being added to subsection (A). In its place, language is added to subsection (B) to provide that the Director shall determine that a proposed groundwater use in the Phoenix, Prescott or Tucson AMA is consistent with the AMA's management goal if the volume calculated in subsection (A) is equal to or greater than the portion of the estimated water demand to be met with groundwater. This language is currently in subsection (D), and is simply being moved to subsection (B).

Subsection (C) is amended by deleting the existing language, which applies only to the Pinal AMA, and adding new language describing how the Director will calculate the volume of groundwater that may be used for a certificate in the Pinal AMA consistent with the AMA's management goal. The new language states that the Director shall calculate the volume by adding together: (1) the groundwater allowance according to R12-15-725(A)(1); (2) the amount of any new extinguishment credits pledged to the certificate according to R12-15-725(B); (3) the amount of any existing

extinguishment credits pledged to the certificate, calculated by multiplying the annual amount of the credits by 100; and (4) any groundwater that is consistent with the management goal pursuant to the Groundwater Code.

This formula for calculating the volume of groundwater that may be used for a certificate consistent with the management goal of the Pinal AMA is similar to the formula in the current rules, with two exceptions. First, the amount of the groundwater allowance according to R12-15-725(A)(1) is less than the amount of the groundwater allowance under the current rules (see the explanation of the changes to R12-15-725 below). Second, beginning in 2010, the volume of groundwater allocated for new extinguishment credits according to rule R12-15-725(B) is less than the volume allocated for extinguishment credits under the current rules. Under rule R12-15-725(B), the volume will no longer be an annual allocation, but will be a lump sum that may be used in any year. The allocated volume gradually decreases over time, beginning in 2010, depending on when the GFR is extinguished. Existing extinguishment credits will retain their annual allocation structure.

Subsection (D) currently provides that for the Pinal AMA, the Director shall determine that a proposed groundwater use is consistent with the AMA's management goal if the volume calculated in subsection (A) is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater. This language is amended so that it applies only to certificates (designations are covered by subsection (F)) and by replacing the reference to subsection (A) with a reference to subsection (C). In addition, because the volume calculated in subsection (C) is no longer an annual volume, the word "annual" is removed.

A new subsection (E) is added to describe how the Director will calculate the volume of groundwater that may be used for a designation in the Pinal AMA consistent with the AMA's management goal. This subsection provides that the director shall calculate the volume on an annual basis by adding the following: (1) the amount of the groundwater allowance according to R12-15-725(A)(2), with no rollover of any unused portion of the annual allowance; (2) the amount of any new extinguishment credits pledged to the designation, according to R12-15-725(B), divided by 100 (the credits may be used in any year); (3) the annual amount of any existing extinguishment credits pledged to the designation; and (4) any groundwater that is consistent with the management goal pursuant to the Groundwater Code.

The new subsection (E) changes the volume of groundwater that may be used by a designated provider consistent with the management goal in several respects. First, for most providers, the amount of the groundwater allowance according to R12-15-725(A)(2) will be less than the amount of the groundwater allowance under the current rules (see the explanation of the changes to R12-15-725 below). In addition, although the groundwater allowance will continue to be an annual amount added to the provider's designation each year, any portion of the annual amount not used in a year will not rollover to the next year. The current rules allow for the rollover of any unused annual groundwater allowance. Second, as explained below, the new subsection changes the manner in which groundwater is allocated for new extinguishment credits pledged to a designation and, in some cases, for existing extinguishment credits pledged to a designation after October 1, 2007.

For existing extinguishment credits, no changes will be made to the annual volume of the credits. In addition, if the credits are pledged to a designation prior to October 1, 2007, any portion of the annual amount not used during a year will rollover to the next year. However, if existing extinguishment credits are pledged to a designation on or after October 1, 2007, any unused portion of the annual amount will *not* rollover to the next year, with one exception. If the existing extinguishment credits were originally pledged to a certificate before October 1, 2007 and are subsequently used to support a provider's designation under R12-15-723(G)(2), any unused portion of the annual amount of the credits will rollover to the next year. Under the current Pinal AMA rules, all unused extinguishment credits are allowed to rollover to the following year, regardless of when the credits were earned or pledged.

For new extinguishment credits, the volume of groundwater allocated for the credits will be determined according to R12-15-725(B). Beginning in 2010, the volume allocated decreases over time, depending on when the grandfathered right is extinguished. Although new extinguishment credits will have a lump sum volume, the Department will annualize the credits by dividing them by 100 to determine whether an applicant's proposed groundwater use is consistent with the AMA's management goal. The credits may be used in any year; however, which means that the municipal provider will have the flexibility of determining when to use the credits.

A new subsection (F) is added. This subsection provides that for a designation in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the AMA's management goal if the annual volume calculated in subsection (E) is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater. This language is consistent with the language in subsection (D) of the current rules, which sets forth the manner in which the Director will determine whether a proposed groundwater use in the Pinal AMA is consistent with the AMA's management goal.

R12-15-723. Extinguishment Credits

R12-15-723(D) contains a list of grandfathered rights that may not be extinguished in exchange for extinguishment credits. This subsection is amended by adding the following to the list: "Any grandfathered right in the Pinal AMA beginning in the first calendar year in which the allocation factor for the extinguishment of a grandfathered right is zero, pursuant to R12-15-725(B)(3) or (4)." This is a conforming amendment that simply clarifies in R12-15-723 that a grandfathered right in the Pinal AMA may not be extinguished for credits after the allocation factor used to determine the volume of extinguishment credits is zero under R12-15-725(B). Minor grammatical changes are made in R12-15-723(A) and (G).

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

R12-15-725 currently sets forth the method for calculating the groundwater allowance and extinguishment credits for certificates and designations in the Pinal AMA. This rule is repealed and replaced with a new rule that contains a new method for calculating the groundwater allowance and extinguishment credits in the Pinal AMA. The following is a description of the provisions of the new rule.

Groundwater Allowance

Certificates

Under R12-15-725(A)(1), the groundwater allowance for a certificate will be calculated by multiplying the allocation factor specified in the rule for the date of application by the annual estimated water demand for the proposed subdivision. The application factor is 10 for applications filed during the third and fourth management periods; five for applications filed during the fifth management period; and zero for applications filed after the fifth management period. The groundwater allowance is a lump sum, rather than an annual amount.

This method of calculating the groundwater allowance for a certificate is different than the method set forth in the current rule. Under the current rule, if the proposed subdivision will be served by a small municipal provider or a large municipal provider regulated under the Total GPCD Program or the Non-Per Capita Conservation Program in the management plan in effect at the time of the application, the groundwater allowance for the certificate is an annual amount calculated by multiplying the subdivision's build-out population by 125 GPCD, and then multiplying the product by 365 days. If the proposed subdivision will be served by a municipal provider regulated under the Alternative Conservation Program in the management plan in effect at the time of the application, the groundwater allowance depends on whether the municipal provider was in existence as of January 1, 1990. If the provider was in existence as of that date, the groundwater allowance is zero. If the provider was not in existence as of that date, the groundwater allowance is an annual amount calculated by multiplying the proposed subdivision's build-out population by 62.5 GPCD, and then multiplying the product by 365 days.

Note that issued certificates will retain the groundwater allowance as determined at the time the certificates were issued. For purposes of assignment or reissuance of a certificate that has already been issued, the assigned or reissued certificate will retain the groundwater allowance as determined at the time it was issued.

Designations

Under R12-15-725(A)(2), regardless of the conservation program the municipal provider is regulated under, if the provider is designated as having an assured water supply on October 1, 2007, or if the provider provided water to customers prior to October 1, 2007 and submits a complete and correct application for designation prior to January 1, 2012, the provider's annual groundwater allowance will be calculated by first multiplying its service area population as of October 1, 2007 by 125 gallons per capita per day, and then multiplying the product by 365 days. The resulting volume will then be converted to acre-feet by dividing the number by 325,851 gallons. That volume will then be added to a transition volume, calculated by multiplying 0.35 acre-feet by 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 provider commenced water service by January 1, 2010.

If the municipal provider supplied water to customers prior to October 1, 2007, but was not designated as having an assured water supply on that date and does not submit a complete and correct application for designation prior to January 1, 2012, or if the provider began providing water to its customers after October 1, 2007, the provider's groundwater allowance will be zero.

All designated providers will receive an annual incidental recharge volume, calculated by multiplying the provider's total water use in the previous calendar year by an incidental recharge factor of 4%. A designated provider may apply to the Director for a different incidental recharge factor under the criteria set forth in the Section.

This method for calculating the groundwater allowance for designated providers is different than the method used to calculate the groundwater allowance under the current rule. Under the current rule, the method for calculating the groundwater allowance depends on the conservation program the provider is regulated under at the time of application. If the provider is a small municipal provider or a large municipal provider regulated under the Total GPCD Program or the Non-Per Capita Conservation Program in the management plan in effect at the time of application, the provider's annual groundwater allowance is calculated by multiplying the provider's service area population for the calendar year by 125 GPCD, and then multiplying the product by 365 days. If the provider is regulated under the Alternative Conservation Program in the management plan in effect at the time of application, the provider's groundwater allowance depends on whether the provider was in existence on January 1, 1990. If the provider was in existence on that date, its groundwater allowance is the largest volume of groundwater withdrawn by the provider within the AMA in any one calendar year from 1980 through 1989. If the provider was not in existence on January 1, 1990, its groundwater allowance is calculated by multiplying its service area population for the calendar year by 62.5 GPCD, and then multiplying the product by 365 days. In addition to these differences in calculating a provider's groundwater allowance under the current rule and the proposed new rule, the current rule does not contain an allowance for incidental recharge.

Extinguishment Credits

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Under R12-15-725(B), extinguishment credits in the Pinal AMA will be calculated in a manner similar to the manner in which they are calculated in the Tucson, Phoenix, and Prescott AMAs. For the extinguishment of a type 2 non-irrigation GFR, the credits will be calculated by multiplying the number of acre-feet on the certificate by an allocation factor determined in the rule. For the extinguishment of all or a portion of an irrigation GFR or all or a portion of a type 1 non-irrigation GFR, the credits will be calculated by multiplying 1.5 AF by the number of irrigation acres associated with the extinguished irrigation GFR or the number of acres to which the extinguished type 1 GFR is appurtenant, and then multiplying the product by an allocation factor determined in the rule. If an extinguished irrigation GFR has a debit balance in its flex account, the amount of the debit will be subtracted from the amount of the extinguishment credits.

The rule contains a table with an allocation factor for each year beginning with 2007. The rule provides that in calculating the extinguishment credits for an extinguished GFR, the Director shall use the allocation factor associated with the year in which the GFR is extinguished. Similar to the Tucson, Phoenix, and Prescott AMAs, the allocation factor decreases over time. The allocation factor will be zero after 2054. However, if before January 1, 2055, there is a moratorium on enrolling new member lands in the CAGR pursuant to A.R.S. § 45-576.06(A), the allocation factor will be frozen until the moratorium is no longer in effect, at which time the allocation factor will again begin decreasing until it reaches zero.

This method of calculating extinguishment credits is similar to the method used under the current rule, with certain exceptions. Under the current rule, the volume allocated for extinguishment credits is an annual volume, rather than a lump sum. In addition, the volume allocated for extinguishment credits does not decrease over time, but remains the same regardless of when the GFR is extinguished.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, 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 following are documents relevant to this rulemaking that the Department reviewed, and on which the Department relied in its justification for the rulemaking:

- Document entitled “Arizona Department of Water Resources, Pinal Active Management Area, Assured Water Supply Rules Modification Concepts.” This document was approved by the Pinal AMA GUAC on February 23, 2006. The public may obtain a copy of the document by contacting the agency personnel identified in item number 5 above.
- Document entitled “Professional Review of the Pinal Active Management Area’s Groundwater Budget, Arizona Department of Water Resources,” dated December 2004, by Burgess & Niple. The public may obtain a copy of the document by contacting the agency personnel identified in item number 5 above.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:

An Identification of the Rulemaking

The Department is amending R12-15-722, “Consistency with Management Goal” and R12-15-723, “Extinguishment Credits”. The Department is also repealing R12-15-725, “Pinal AMA – Calculation of Groundwater Allowance and Extinguishment Credits” and adopting a new R12-15-725, “Pinal AMA – Groundwater Allowance and Extinguishment Credits Calculation.” The purposes of this rulemaking are to:

- *reduce the proportion of groundwater supplies* that can be used without replenishment to demonstrate an assured water supply for new subdivisions and designation applicants in the Pinal AMA (R12-15-725(A)(1) and (2));
- *reduce the number of years used to calculate the extinguishment credits generated* when a GFR is extinguished in the Pinal AMA (R12-15-725(B));
- *eliminate the “rollover” of unused groundwater allowances and, with certain exceptions, extinguishment credits* in the Pinal AMA (R12-15-722(C), (D), (E) and (F)); and
- make minor modifications of minimal or no economic impact to rule R12-15-704.

The modifications affect the Pinal AMA. Over time, the Department expects the combined impacts of the modifications to lead to a shift towards much greater reliance on renewable municipal water supplies. This shift is expected to facilitate the realization of large, long-term economic benefits associated with more certain growth and development that will outweigh small, short-term costs associated with enhanced groundwater conservation and increased use of renewable municipal water supplies.

After October 1, 2007, the extinguishment credits generated when GFRs are newly extinguished will be calculated as a lump sum rather than a continuous annual volume, and the amount of the credits allocated for extinguished GFRs

will decrease over time to zero after 2054. Except for existing extinguishment credits pledged to a designation as of the effective date of the rules, there will no longer be a rollover provision for unused extinguishment credits. The groundwater allowance for certificates will also be a lump sum, rather than an annual volume. The groundwater allowance for designations will be an annual volume, but will be capped based on the designated provider's service area population as of October 1, 2007 and the number of committed lots that the provider begins serving by January 1, 2010. There will be no rollover provision for the groundwater allowance.

The rule modifications are expected to contribute to the realization of large net long-term economic benefits. The Department expects that the new rules will result in increased costs to some persons over a short-to-medium term, but will result in increased benefits and reduced costs to agencies, political subdivisions, and businesses over the longer term. The Department has designed the rule provisions to minimize the expected short-term costs and has provided a "laundry list" of cost-mitigation measures and options.

The rule modifications will affect groundwater allowances only for those subdivisions approved based on applications filed after the date the modifications take effect and will not apply to certificates issued for subdivisions under the existing AWS Rules. For purposes of assignment or reissuance of a certificate that has already been issued, a certificate will retain the groundwater allowance as determined at the time it was issued. This rulemaking does not require designated providers to re-apply for a designation or to apply for a modification of the designation.

The Department and the Pinal AMA GUAC further expect the reductions in allowable groundwater use to help ensure a long-term, reliable supply of water for municipal uses, to encourage subdivisions to be developed on lands with irrigation GFRs and to assure the preservation of future water supplies for non-irrigation uses.

A Brief Summary of the Information Included in the Economic, Small Business and Consumer Impact Statement

Persons who will be directly affected by, bear the costs of, or directly benefit from the AWS rule modifications for the Pinal AMA include: (1) agencies such as the Department, the Arizona State Land Department (ASLD), and the CAGR (although the CAGR is a division of the Central Arizona Water Conservation District, which is a tax-levying public improvement district of the state and a municipal corporation, in this EIS, the CAGR is treated as if it were an agency); (2) political subdivisions including counties, cities, and towns that seek economic development or provide municipal water; (3) investors and businesses large and small that develop or seek to develop subdivisions or provide municipal water; (4) agencies, businesses, and political subdivisions that provide municipal water by pumping (lifting) groundwater; (5) owners of GFRs, both public (the state of Arizona, city of Mesa) and private (farmers, irrigation districts and real estate investors); and (6) residents within the Pinal AMA. Consumers purchasing new houses after October 1, 2007 are likely to experience higher property taxes or pay increased water costs. In some cases, the same group of persons may experience shorter-term costs but longer-term benefits. All residents within the AMA will benefit from the use of more renewable water supplies within the AMA and the reduction in groundwater mining.

Landowners or developers dividing land into five or fewer lots will not be affected by this rulemaking because such a division of land does not meet the definition of subdivision pursuant to A.R.S. § 32-2101(55). Only new subdivisions are subject to the AWS Rules. Additionally, pumping of 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.

Persons Directly Benefiting From The Rulemaking

- The Department
- The CAGR
- Large and small real estate businesses developing new subdivisions, including builders, real estate brokerages, and suppliers of associated services such as building materials
- Homeowners and other residents within the AMA
- Owners of irrigation GFRs
- Persons who pump groundwater

Persons Directly Bearing The Costs Of The Rulemaking

- Owners of new homes in the AMA
- Persons who develop and build new subdivisions
- Landowners who wish to subdivide without appurtenant GFRs
- Municipal water users
- Designated water providers

Cost – Benefit Analysis

As of March 2005, approximately 300,000 lots were zoned but not yet platted for subdivision development. Current municipal water demand of about 60,000 acre-feet per year plus the new demand from these 300,000 lots at build out

would exceed renewable groundwater supplies by approximately 100,000 acre-feet of groundwater per year without the proposed rule modifications.

The Department and Pinal GUAC view this level of unreplenished demand – essentially mined groundwater – as unsustainable and inconsistent with the AMA's management goal of preserving future water supplies for non-irrigation uses. Further, the GUAC found that this level of groundwater mining would begin to exhaust the physically available groundwater supplies in the not too distant future.

These considerations create the basic premise of this cost-benefit analysis. Costs and benefits are associated with the Pinal AMA AWS rules over both shorter- and longer-terms, whether or not the current rules are modified. Without the rule modifications, most new AMA subdivisions are not likely to enroll in the CAGR or pay enrollment, activation, and assessment fees, saving these short-term costs. But such relatively small short-term cost savings lead to the real possibility of enormous longer-term costs if the Department must deny applications, thereby precluding real estate development, because groundwater supplies are not physically available. Adoption of the rules will cause persons to experience relatively small short-term costs. But the whole Arizona economy experiences benefits that greatly outweigh those costs as sustainable development predicated on a secure water supply is assured longer-term.

Probable Benefits and Costs to Agencies

- The Department will better serve the people of Arizona by supporting the Pinal AMA's water management goal of preserving future water supplies for non-irrigation uses.
- The ASLD will benefit as the value of its approximately 24,000 acres of Pinal AMA lands that have appurtenant irrigation GFRs increases. But, as with any AMA landowner, costs to develop the approximately 316,000 acres of state-owned AMA land without appurtenant GFRs may increase, perhaps prohibitively, particularly because these lands are likely to develop later than lands privately held. This situation is not, however, a product of the rule modifications; it is normal in all AMAs.

Probable Benefits and Costs to Political Subdivisions

- The CAGR will collect fees and assessments from most housing units within new subdivisions for which certificates are issued and from most designated providers. In a worst-case scenario, additional fees during the last several years might have varied between \$1.14 million and \$0.62 million per year. Annual new assessments might have varied between \$0.97 and \$0.53 million. Renewable surface supplies are likely to become more costly and harder to locate, exposing the CAGR to rising supply acquisition costs. CAGR's administration costs are also likely to rise as applications, enrollments, and water deliveries increase.
- Any county, city, or town seeking sustained longer-term development will benefit from greater certainty that development can continue in an orderly manner over the long-term, assuring growth in revenue sources (sales and property taxes, development fees) and avoiding the dire consequences of a public perception that the area is "running out" of water.
- Political subdivisions will experience cost increases associated with sustained long-term growth, e.g., transportation infrastructure, schools and public safety.
- Municipal water providers that pump groundwater are likely to experience reduced pump lift, or at least less lift than under present rules. This associates directly with lower power costs and less operation, maintenance and repair ("O, M & R") costs on wells. Agricultural groundwater users have experienced large cost savings from this effect since CAP water became widely available in the AMA.

Probable Benefits and Costs to Business, Including Small Business

- Businesses, including small businesses, that directly develop or are directly linked to the development of housing subdivisions will benefit over a longer term from greater certainty that development can proceed in a more orderly manner and will avoid the dire consequences that will occur if development stops due to a real or perceived lack of physically available water.
- Owners of approximately 1,830 active irrigation GFRs encompassing approximately 272,000 active irrigation acres will benefit over both shorter and longer terms as extinguishment credits become increasingly valuable. The value of acres with appurtenant irrigation GFRs will increase.
- Owners of several hundred thousand undeveloped acres without appurtenant irrigation GFRs – e.g., "raw desert" – may see the value of these lands diminish longer term, if these lands become more costly to develop. The potential for subdivision development may diminish. Again, such an eventuality is not a product of the proposed rule modifications, and in fact, the proposed rules are likely to delay this eventuality, if it occurs at all.
- In 2005, there were approximately 4,400 wells in the Pinal AMA. Groundwater pumpers, including exempt well owners, municipal providers, irrigation districts, farmers, and investors in lands with appurtenant irrigation GFRs are likely to experience less pump lift than under present rules, resulting in lower power costs and less O, M & R on wells.

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- Greater reliance on renewable supplies by designated providers over a longer term introduces certainty that service will proceed without disruption and eliminates the dire consequences associated with service outages that will occur with physical groundwater depletion. Over a shorter term, new and upfront CAGRDR fees of \$85 per housing unit served will apply. CAGRDR fees and assessments will associate with future designated provider service area expansion, and will increase supply acquisition costs.
- The existing rules contain the following provision designed to reduce the administrative and other cost burdens for small businesses: owners of dry lot subdivisions of 20 lots or fewer are exempt from the consistency with goal requirement for a certificate. This provision is retained in the rule modifications. R12-15-722(H).

Probable Benefits and Costs to Households

It is housing consumers – homeowners, lessees, and renters – who ultimately will pay incremental water costs associated with greatly increased use of renewable municipal water supplies, in the form of higher property taxes or higher water bills. But these same households will avoid potentially severe property value losses, as supply certainty and reduced groundwater depletion sustain property values long-term. Households will also benefit from the reduction in groundwater depletion, as the health and safety concerns that would result from aquifer depletion will be avoided.

Some housing consumers may choose to limit short-term incremental cost impacts expected by the Department by adopting municipal water conservation measures, or otherwise limiting their water use.

At 2006-07 CAGRDR rates, the incremental cost per housing unit for supplies secured from the CAGRDR increases by \$6.62 per housing unit per month with 90% replenishment, or \$7.35 with 100% replenishment. In other words, households already pay for water under the existing rules. The incremental cost under the new rules is the difference between current water costs – usually the costs to pump groundwater – and the ‘worst case’ cost increases of about \$79.38 per housing unit per year at 2006-07 rates. As an example, Arizona Water Company, a large Pinal AMA water provider, currently charges Casa Grande homeowners approximately \$500 per acre-foot, equivalent to about \$189 per household per year. Using this example, these charges would increase by \$79.38, to about \$268 per household per year.

Over a longer-term, the total annual incremental cost to 300,000 new subdivision housing units at build-out, all securing 90% of their supplies from the CAGRDR under a worst-case scenario, is \$23.81 million per year, or \$26.46 million with 100% renewable supplies, all at 2006 rates.

The total magnitude of 300,000 zoned but not platted housing units each paying CAGRDR enrollment and activation fees totaling \$85.00 at 2006 rates is also significant. At these rates at full build-out, the CAGRDR might collect an additional total of \$25.5 million in a worst-case scenario.

Employment

The Department does not anticipate a measurable impact on employment as a result of an increase in the wholesale price of water of the magnitude being proposed (e.g., an additional \$210 per acre-foot, or about \$7.35 per housing unit per month after the year 2024). This conclusion is supported by the observed course of development in the Phoenix and Tucson AMAs and the employment it supports. There, it would be difficult to argue that municipal water costs and long-standing AWS rules that are more restrictive than the Pinal modifications have had any measurable impact on economic growth.

State Revenues

Excise, income, property, and sales taxes are expected remain stable to increasing longer-term as growth increases at a sustainable pace in the Pinal AMA. 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.

Alternative Methods of Achieving the Rulemaking

The Department and the Pinal AMA GUAC engaged in a public dialogue extending over several years with the regulated community while drafting the Pinal AMA rule modifications. The Department held four public meetings in 2006 to discuss written drafts of the rule modifications and issues raised by stakeholders. Throughout this process, the Department invited stakeholder suggestions and incorporated changes to the draft rules in response to stakeholder concerns. The Department, as well as the Pinal AMA GUAC, considered many alternatives, some less intrusive or costly, some more. The rules emerged from this public participation process in preference to other alternatives.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

There are no substantial changes between the proposed rules and the final rules. Minor grammatical and typographical corrections were made at the request of Governor’s Regulatory Review Council staff. The Department also adjusted general references to the effective date of the rules to reflect the actual date the rules will become effective, October 1, 2007.

Additionally, because pending legislation may affect a citation that appeared in the proposed rules, the Department is removing the reference to the statute and instead providing the equivalent statutory language. Specifically, proposed

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R12-15-725(A)(3) provided that, “[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) (2006).” 12 A.A.R. 4607 (December 15, 2006). Because pending legislation would amend A.R.S. § 45-566.01 to delete the relevant language, the Department has revised R12-15-725(A)(3) using language from the current statute explaining that the designated provider must submit a hydrologic study, and what the study must demonstrate. The new language clearly states the original intended meaning and does not substantively change the rule.

The Department made the following clarifying change:

The Department revised R12-15-725(A)(2)(a)(iii) by substituting the phrase “within plats” for the phrase “within the applicant’s service area.” The change does not alter the effect of the rule, but clarifies its meaning. This change was made in response to two public comments that requested the Department to clarify the language in the proposed rule. The change eliminates the ambiguity that might incorrectly suggest that the applicant’s service area must include the residential lots in question on October 1, 2007. Moreover, a reference to the service area is superfluous because the lots will be within the provider’s service area when the provider begins serving the lots. Therefore, the language change clarifies the intended meaning of the rule, i.e., that the lots are included on a plat that was approved on or before October 1, 2007.

11. A summary of the comments made regarding the rules and the agency response to them:

The following is a summary of the comments received by the Department during the public comment period and the Department’s response to the comments. The name of the party who submitted the comment is shown in parentheses after the comment, as well as an indication of whether the comment was oral or written. If more than one party submitted similar comments, each party submitting the comment is listed after the summary of the comment.

Comment:

Commenter served on many of the committees that developed the rulemaking and encouraged all necessary elements to implement changes to the AWS rules for the Pinal AMA. (Oliver Anderson, Chairman of GUAC – oral comment.)

Response:

The Department appreciates the support.

Comment:

Commenter supports the rulemaking because it is the first step in the right direction in order to have sustained growth in the Pinal AMA. (Brian Betcher, Assistant General Manager, Maricopa Stanfield Irrigation and Drainage District, representing Santa Cruz Water & Power districts Association – oral comment.)

Response:

The Department appreciates the support.

Comment:

The commenter fully supports the rulemaking. The rulemaking represents a consensus work product resulting from many meetings which were widely inclusive of many different interests. The commenter believes that the rulemaking will be a good overall practical solution to the management of water supplies for the Pinal AMA. (William M. Garfield, President, Arizona Water Company –written comment.)

Response:

The Department appreciates the support.

Comment:

Commenter is convinced that this rulemaking is the best thing for Pinal County and for future generations to assure water for now and protect water for the future. (Jackie Guthrie, Pinal GUAC – oral comment.)

Response:

The Department appreciates the support.

Comment:

It is imperative that the Assured Water Supply Rules be amended to adjust to the drastic changes that have and are about to occur in the demographics of the Pinal Active Management Area, to ensure that a vital water supply is available for future generations. The rulemaking was unanimously endorsed by members of the Water Management Subcommittee, and should be supported, adopted and implemented. (Jack C. Long, Chief Executive Officer, Hohokam – written comment.)

Response:

The Department appreciates the support.

Comment:

The commenter supports the rulemaking. The large reduction in the groundwater allowance will give an incentive for development on irrigated farmland, and this conversion was clearly intended by the 1980 Groundwater Code. (Douglas D. Mason, General Manager, San Carlos Irrigation and Drainage District – written comment.)

Response:

The Department appreciates the support.

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Comment:

Commenter speaks favorably about all the hard work of the stakeholders, members of GUAC and the Department and would like to see the rulemaking implemented. (Doug Olson, City of Eloy – oral comment.)

Response:

The Department appreciates the support.

Comment:

The rulemaking begins to confront the change in growth in Pinal County. All stakeholders came to an agreement and this is a reasonable compromise package to go forward. Commenter fully supports the package. (Scott Riggins, Pinal County Planning and Zoning Commissioner, Pinal GUAC, and member of water management subcommittee – oral comment.)

Response:

The Department appreciates the support.

Comment:

Commenter supports the changes in the rule because they are deliberate and cautious and have been recommended by stakeholders representing water consumers and providers, as well as governments. The changes will in no way negatively impact the development effort, but clearly show that the Department, the water community and the Pinal county governments are aware of the need to manage water resources in a responsible way. (David Snider, County Supervisor, Pinal County-oral comment.)

Response:

The Department appreciates the support.

Comment:

The commenter supports the rulemaking, particularly as it applies to extinguishment credits. The extinguishment credit concept is essential for the long-term viability of the AMA's groundwater resources, and the rulemaking provides a good first step in bringing the AWS rules in line with the management goal of the Pinal AMA. The transition provisions in the rulemaking allow for reasonable transition without compromising the overall needs of the AMA to focus on replenishment to support sustained growth over the long term. (Grant R. Ward, General Manager, Santa Cruz Water & Power Districts Association – written comment.)

Response:

The Department appreciates the support.

Comment:

What will be the impact to a designation if, because of this rulemaking, a designated provider has difficulty maintaining compliance with the consistency with management goal requirements? (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Global Water Resources, Santa Cruz Water Company and Palo Verde Utilities Company – written comment.)

Response:

The Director may review and/or revoke a designation if the designated provider fails to meet the consistency with management goal requirements. See A.A.C. R12-15-710(E)(7) and R12-15-711(F)(1).

Comment:

Will the Department accept a voluntary termination of a designation by a designated provider? (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Global Water Resources, Santa Cruz Water Company and Palo Verde Utilities Company – written comment.)

Response:

There is no mechanism or process that allows the voluntary termination of a designation in the statute or in the rules. The Department declines to address this issue in the rulemaking because it is outside the scope of the rulemaking and also because the ramifications would affect multiple AMAs, not just the Pinal AMA.

Comment:

Would the Department require or pressure a designated provider to join the CAGR in order to remain in compliance with the AWS program? (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Global Water Resources, Santa Cruz Water Company and Palo Verde Utilities Company – written comment.)

Response:

No, the Department will not require or pressure a designated provider to join the CAGR.

Comment:

If the Department adopts the rulemaking and enrollment in the CAGR remains the primary method of demonstrating consistency with the management goal, how does the Department anticipate it will address the issue of cost recovery for private water companies? (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Global Water Resources, Santa Cruz Water Company and Palo Verde Utilities Company – written comment.)

Response:

The Department has no jurisdiction or authority to address the issue of cost recovery for private water companies, which is within the jurisdiction of the Arizona Corporation Commission (ACC). However, the Department will generally assist private water companies in explaining the issues of cost recovery related to CAGR membership before the ACC and will encourage the ACC to support water management efforts of private water companies.

Comment:

The Department's proposed "transition volume" concept, based on qualified lots being limited to recorded plats is not representative of the manner in which some designated providers must act under the ACC's rules because the ACC requires that private water companies provide water service within the area described in Certificates of Convenience & Necessity ("CC&N"). The "transition volume" should also account for commitments to serve subdivisions without recorded plats. (Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, on behalf of Global Water Resources, Santa Cruz Water Company and Palo Verde Utilities Company – written comment.)

Response:

The "transition volume" is a volume of allowable groundwater use allocated to designated providers to ease the transition to the new consistency with management goal requirements. The transition volume is applicable to residential lots within plats recorded as of the effective date of October 1, 2007 ("committed lots") and to which the provider commences water service after October 1, 2007 but no later than January 1, 2010.

The Department believes that the transition volume should be limited to lots within plats recorded as of October 1, 2007. Including unrecorded lots for which a commitment of water service has been made would allow significant groundwater mining with little or no limitation. A municipal provider could rush to give as many commitments of service as possible prior to the rules becoming effective, which would defeat the purpose of the amendments. Furthermore, although a private water company is required to serve customers within the area described in their CC&N, the ACC recognizes the requirements of A.R.S. § 45-576 and does not require private water companies to serve subdivisions without an assured water supply. The Department has therefore decided to make no changes in response to this comment.

Comment:

How will the Department treat applications for certificates of assured water supply received before the effective date of the Proposed Rules? Will all applications for certificates of assured water supply received before the effective date of the proposed Rules be reviewed under the rules in effect on the date the application was submitted? The commenter also requested clarification of the statement appearing at 12 A.A.R. 4598, December 15, 2006. (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of Langley Properties, L.L.C. – written comment.)

Response:

An application for a certificate of assured water supply submitted before the effective date of October 1, 2007 will be reviewed by the Department under the rules in effect when the application is submitted. The Department will notify an applicant of the deficiencies in an application and allow the applicant 60 days to submit the requested materials. If the applicant fails to provide the requested material within 60 days (or a longer period, if the Department specifies), the Department may deny the application. Additionally, the Department agrees with the proposed clarification. The preamble has been modified and now reads, "The rule modifications will affect groundwater allowances only for those subdivisions approved *based on applications filed* after the date the modifications take effect and will not apply to certificates issued for subdivisions under the existing AWS Rules."

Comment:

The commenter appreciates that the Department included language in section 8 of the Notice of Proposed Rulemaking indicating that existing certificates retain their existing groundwater allowances and will do so when assigned or reissued. The commenter suggests that the Department repeat and clarify the sentences about existing certificates retaining their groundwater allowances even when assigned or reissued in the explanation of groundwater allowance for certificates. (Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of Langley Properties, L.L.C. – written comment.)

Response:

The Department agrees and has added the explanation to the discussion of groundwater allowances in section 6 of the preamble. Additionally, the Department has clarified the language in section 9.

Comment:

There should be a longer time period for transition to the rulemaking, and the effective date should be delayed until the end of 2008 to allow landowners and developers more time to evaluate how these changes will affect their current and planned projects and to avoid a mad rush to plat projects and apply for Certificates before the rules change. (Ryan Hurley, Rose Law Group PC, on behalf of MainSpring Stanfield LLC –oral and written comment.)

Response:

The Department disagrees. The Department considered the effective date in light of the planning needs of the regulated community, as well as the impact on the water supplies and current water users within the Pinal AMA. Based on these varied interests, the Department determined that an effective date of October 1, 2007 is appropriate. Due to rapid subdivision development, an over-draft condition based on municipal groundwater demands is expected to occur in the next two years under the existing rules. Any further delays would likely allow excessive mining of

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groundwater, which would eventually lead to the depletion of the aquifer. If the aquifer were depleted, the AMA would likely experience shortages of water supplies for such essential activities as drinking, sanitation and fire fighting. For these reasons, no changes have been made in response to this comment.

Comment:

By lowering the credits received for retiring a grandfathered right, the rulemaking may actually discourage retirement of agricultural uses after the effective date. Because agricultural uses consume far more groundwater than residential uses, it is unfair to significantly lower these credits and diminish the incentive for retiring farmland. The Department should reconsider the way it calculates credits for the extinguishment of grandfathered rights in the proposed rules. (Ryan Hurley, Rose Law Group PC, on behalf of MainSpring Stanfield LLC –oral and written comment.)

Response:

The Department disagrees. The management goal of the Pinal AMA 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 uses. See A.R.S. § 45-562(B). The scale-down of extinguishment credits in this rule-making supports the management goal. Moreover, the gradual reduction in the allocation factor for extinguishment credits encourages retirement of agricultural uses earlier to maximize the volume of extinguishment credits.

Comment:

Proposed rule R12-15-725(A)(2)(iii) provides the manner in which the per capita groundwater allowance is determined for designated providers. The commenters understand the proposed rule to mean that the groundwater allowance will be calculated based on the number of residential lots that are actually receiving water service by January 1, 2010, if those lots were included within plats that were recorded as of the effective date of the rule, and not to mean that the lots must be included in the designated provider's service area as of the effective date of the rule. In order to avoid any other possible reading of R12-15-725(A)(2)(iii), the commenters request clarification of the language as a non-substantive change. (Sheryl A. Sweeney, Ryley Carlock & Applewhite; Michael J. Pearce, Fennemore Craig, P.C., on behalf of Johnson Utilities –written comment.)

Response:

The Department agrees and will replace the phrase “within the applicant’s service area” with “within plats” in R12-15-725(A)(2)(iii) to clarify the language. This clarifying change does not change the substance or intent of the rule.

Comment:

It is the commenter’s understanding that for existing Certificates, the annual calculation of the certificated subdivision’s groundwater allowance and extinguishment credits pledged before the effective date of this rulemaking will be calculated in the same manner they are under the existing rules, with any unused groundwater allowance or extinguishment credits pledged prior to the effective date rolling over to the following year. Extinguishment credits pledged after the effective date will be calculated pursuant to this rulemaking. (Sheryl A. Sweeney, Ryley Carlock & Applewhite – written comment.)

Response:

The commenter’s understanding is correct. Extinguishment credits for grandfathered rights that were extinguished before the effective date of October 1, 2007 and pledged to a determination of assured water supply before October 1, 2007, as well as the groundwater allowance for certificates issued under the previous rules, will continue to rollover to subsequent years if not used in the current year. Extinguishment credits for grandfathered rights that were extinguished before the effective date of October 1, 2007 but pledged to a determination of assured water supply after October 1, 2007 will not rollover for use in subsequent years if not used in the current year.

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

None

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

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Section

R12-15-704. Certificate of Assured Water Supply

- R12-15-722. Consistency with Management Goal
R12-15-723. Extinguishment Credits
R12-15-725. ~~Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits~~ Pinal AMA – Groundwater Allowance and Extinguishment Credits Calculation

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

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 fee required by R12-15-730 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 D 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.
- 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;

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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 (F)(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), ~~or subsection (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), ~~or subsection (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), ~~or subsection (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 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.

R12-15-722. Consistency with Management Goal

- A.** For the Phoenix, ~~Pinal~~, 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:

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1. The amount of the groundwater allowance, according to R12-15-724(A), ~~R12-15-725(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), ~~R12-15-725(B)~~, R12-15-726(B), or R12-15-727(B).
 3. Any groundwater use that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- B.** ~~If the proposed use is located in the Phoenix, Prescott, or Tucson AMA, the volume calculated in subsection (A) is the volume of groundwater that may be used, consistent with the management goal, for at least 100 years. 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) of this Section is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.~~
- C.** ~~If the proposed use is located in the Pinal AMA, the volume calculated in subsection (A) is the volume of groundwater that may be used, consistent with the management goal, on an annual basis. If in any calendar year less groundwater is used than the volume calculated in subsection (A), the Director shall add the difference to the volume calculated in subsection (A) for the following calendar year. 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 October 1, 2007, according to R12-15-725(B).~~
 3. ~~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.~~
 4. ~~Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.~~
- D.** ~~For the Phoenix, Pinal, Prescott, or Tucson AMAs, the Director shall determine that a proposed groundwater use is consistent with the management goal of the AMA if the volume calculated in subsection (A) of this Section is equal to or greater than:~~
1. ~~In the Phoenix, Prescott, or Tucson AMA, the portion of an applicant's estimated water demand to be met with groundwater.~~
 2. ~~In the Pinal AMA, the portion of an applicant's annual estimated water demand to be met with groundwater. 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) of this Section 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 by adding the following:~~
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 October 1, 2007, according to R12-15-725(B), divided by 100. Extinguishment credits for a grandfathered right that was extinguished on or after October 1, 2007 may be used in any year.~~
 3. ~~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.~~
 4. ~~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 annual volume calculated in subsection (E) of this Section is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater.~~

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~~E-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) of this Section, 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.

~~F-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.

R12-15-723. Extinguishment Credits

- A. Except as provided in subsection (D) of this Section, 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 ~~Active Management Area~~ 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
 - 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. Any grandfathered right in the Pinal AMA beginning in the first calendar year in which the allocation factor for the extinguishment of a grandfathered right is zero, pursuant to R12-15-725(B)(3) or (4).
 - ~~5-6.~~ 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 ~~active management area~~ 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.

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

- A.** ~~The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:~~
1. ~~If the application is for a certificate and the proposed municipal provider is a small municipal provider or a municipal provider that is required to comply with either a total gallons per capita per day requirement or a non-per capita program requirement established in the management plan in effect on the date of application, multiply the proposed subdivision's build-out population by 125 gallons per capita per day, and multiply the product by 365 days.~~
 2. ~~If the application is for a certificate and the proposed municipal provider is an existing municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, the groundwater allowance is zero acre-feet.~~
 3. ~~If the application is for a certificate and the proposed municipal provider is a new municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, multiply the proposed subdivision's build-out population by 62.5 gallons per capita per day and multiply the product by 365 days.~~
 4. ~~If the application is for a designation and the applicant is a small municipal provider or a municipal provider that is required to comply with either a total gallons per capita per day requirement or a non-per capita program requirement established in the management plan in effect on the date of application, multiply the provider's service area's population for the calendar year by 125 gallons per capita per day and multiply the product by 365 days.~~
 5. ~~If the application is for a designation and the applicant is an existing municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, the groundwater allowance is the largest volume of groundwater withdrawn by the applicant within the AMA in any one calendar year from calendar year 1980 through calendar year 1989.~~
 6. ~~If the application is for a designation and the applicant is a new municipal provider that is required to comply with a residential gallons per capita per day requirement established in the management plan in effect on the date of application, multiply the provider's service area's population for the calendar year by 62.5 gallons per capita per day and multiply the product by 365 days.~~
- B.** ~~The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:~~
1. ~~For the extinguishment of a type 2 non-irrigation grandfathered right, an annual amount equal to the number of acre-feet indicated on the certificate.~~
 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, the amount calculated annually by multiplying 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, 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 credits.~~
- A.** The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:
1. If the application is for a certificate, multiply the applicable allocation factor in the table below for the management period in effect on the date of application by the annual estimated water demand for the proposed subdivision.

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<u>MANAGEMENT PERIOD/ DATE OF APPLICATION</u>	<u>ALLOCATION FACTOR</u>
<u>Third</u>	<u>10</u>
<u>Fourth</u>	<u>10</u>
<u>Fifth</u>	<u>5</u>
<u>After Fifth</u>	<u>0</u>

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) of this Section by 0.35 acre-foot per lot.
 - v. Add the volume from subsection (A)(2)(a)(ii) of this Section 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 is 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 is 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 provider 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 the extinguishment of a grandfathered right in the Pinal 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 applicable allocation factor as determined under subsection (B)(3) or (B)(4) of this Section.
 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, an amount calculated by multiplying 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 the applicable allocation factor as determined under subsection (B)(3) or (B)(4) of this Section, 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 credits.

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3. Except as provided in subsection (B)(4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (B)(1) or (B)(2) of this Section, the Director shall use the allocation factor associated with the year in which the grandfathered right is extinguished, as shown in the table below.

<u>Year</u>	<u>Allocation Factor</u>
<u>2007</u>	<u>100</u>
<u>2008</u>	<u>100</u>
<u>2009</u>	<u>100</u>
<u>2010</u>	<u>90</u>
<u>2011</u>	<u>88</u>
<u>2012</u>	<u>86</u>
<u>2013</u>	<u>84</u>
<u>2014</u>	<u>82</u>
<u>2015</u>	<u>80</u>
<u>2016</u>	<u>78</u>
<u>2017</u>	<u>76</u>
<u>2018</u>	<u>74</u>
<u>2019</u>	<u>72</u>
<u>2020</u>	<u>70</u>
<u>2021</u>	<u>68</u>
<u>2022</u>	<u>66</u>
<u>2023</u>	<u>64</u>
<u>2024</u>	<u>62</u>
<u>2025</u>	<u>60</u>
<u>2026</u>	<u>58</u>
<u>2027</u>	<u>56</u>
<u>2028</u>	<u>54</u>
<u>2029</u>	<u>52</u>
<u>2030</u>	<u>50</u>
<u>2031</u>	<u>48</u>
<u>2032</u>	<u>46</u>
<u>2033</u>	<u>44</u>
<u>2034</u>	<u>42</u>
<u>2035</u>	<u>40</u>
<u>2036</u>	<u>38</u>
<u>2037</u>	<u>36</u>
<u>2038</u>	<u>34</u>
<u>2039</u>	<u>32</u>
<u>2040</u>	<u>30</u>
<u>2041</u>	<u>28</u>
<u>2042</u>	<u>26</u>
<u>2043</u>	<u>24</u>
<u>2044</u>	<u>22</u>
<u>2045</u>	<u>20</u>
<u>2046</u>	<u>18</u>
<u>2047</u>	<u>16</u>
<u>2048</u>	<u>14</u>

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<u>2049</u>	<u>12</u>
<u>2050</u>	<u>10</u>
<u>2051</u>	<u>8</u>
<u>2052</u>	<u>6</u>
<u>2053</u>	<u>4</u>
<u>2054</u>	<u>2</u>
<u>After 2054</u>	<u>0</u>

4. If, before January 1, 2055, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (B)(1) or (B)(2) of this Section, the Director shall use an allocation factor determined as follows:
- a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (B)(3) of this Section.
 - b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (B)(3) of this Section. The Director shall determine the year as follows:
 - i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.
 - ii. Subtract the difference in subsection (B)(4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

[R07-109]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R20-5-601 | Amend |
| R20-5-602 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
 Authorizing statute: A.R.S. § 23-405(4)
 Implementing statute: A.R.S. § 23-410
- 3. The effective date of the rules:**
 March 30, 2007
- This rule is directly related to the health and safety of those employees working in the state of Arizona that are required to wear respirators for the purpose of protecting their health while working in contaminated atmospheres. These amendments clearly specify the type of respirator required in order to protect the worker from known hazardous chemical exposure. Under current standards employees and employers are unclear as to the proper respirator for a given hazardous atmosphere should be. The sooner these rules become effective the sooner employers will know the requirements for proper respiratory protection and employees will be protected. The effective date of this final rule package will be the date it is filed with the Secretary of State according to § 41-1032
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
 Notice of Rulemaking Docket Opening: 12 A.A.R. 3571, September 29, 2006
 Notice of Proposed Rulemaking: 12 A.A.R. 3889, October 20, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
 Name: William M. Wright
 Address: Division of Occupational Safety and Health

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Industrial Commission of Arizona
800 W. Washington St., Ste. 203
Phoenix, AZ 85007

Telephone: (602) 542-1695
Fax: (602) 542-1614
E-mail: wright.william.m@dol.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor. The Industrial Commission is amending R20-5-601 and R20-5-602 by incorporating by reference these amendments to Subpart D, Occupational Health and Environmental Controls, Subpart Z, Toxic and Hazardous Substances of 29 CFR 1926, Construction Industry, and Subpart I, Personal Protective Equipment, Subpart Z, Toxic and Hazardous Substances of 29 CFR 1910, General Industry, as published in 71 FR 50122 - 50192, August 24, 2006. These rules revise the existing Respiratory Protection Standard to add definition and requirements that identify Assigned Protection Factors (APF) and Maximum Use Concentration (MUC) so that proper respirators will be selected for uses while working in contaminated atmospheric environments. The Assigned Protection Factor (APF) provides employers with critical information to use when selecting proper respirators for employees who are exposed to atmospheric contaminants found in general industry and construction workplaces. The Maximum Use Concentration (MUC) is the maximum concentration of a hazardous substance from which an employee can expect to be protected when wearing a respirator and is determined by the Assigned Protection Factor of the respirator or class of respirators and the exposure limit of the hazardous substance. Proper respirator selection using Assigned Protection Factors (APF) and Maximum Use Concentration (MUC) are necessary components of an effective respiratory protection program.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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:

None

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:

The Federal Occupational Safety and Health Administration has determined that these amendments will have minimal financial impact on the construction and general industry sector and has determined the amendments to be economically feasible for all industries including small business. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 W. Washington St., Phoenix, AZ 85007.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

None

11. A summary of the comments made regarding the rule and the agency response to them:

The Arizona Division of Occupational Safety and Health did not receive any written or oral comments concerning this rule.

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

None

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

29 CFR 1926 *Federal Occupational Safety and Health Standards for the Construction Industry*, and CFR 1910 *Federal Occupational Safety and Health Standards for General Industry* with amendments as of August 24, 2006. This incorporation by reference will appear in A.A.C. R20-5-601 and R20-5-602.

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of ~~September 12, 2002~~, August 24, 2006, incorporated by reference, ~~and on file with the Office of the Secretary of State~~. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after ~~September 12, 2002~~, August 24, 2006.

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of ~~February 17, 2004~~, August 24, 2006, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of rule R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~February 17, 2004~~, August 24, 2006.