

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 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

Editor's note: The following Notice of Final Rulemaking was reviewed per the Governor's Regulatory Review Plan memorandum, January 22, 2009 and its continuations on April 30, June 29 and October 16, 2009. (See a copy of the memoranda in this issue on pages 1985 through 1987.) The Governor's Office authorized the notice to proceed through the rulemaking process on July 23, 2009.

[R09-112]

PREAMBLE

- 1. Sections Affected**

R4-33-104	<u>Rulemaking Action</u>
R4-33-206	Amend
R4-33-405	Amend
R4-33-501	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. § 36-446.03(A)
Implementing statute: A.R.S. §§ 36-446.03(B) and (H) and 36-446.12(A) and (C)

- 3. The effective date for the rules:**

November 3, 2009

Under A.R.S. § 41-1032(A)(1), the Board respectfully requests an immediate effective date to enable it to continue to protect the public health and safety by licensing and regulating nursing care institution administrators and assisted living facility managers. If the Board spent at the level of its appropriation, it would run out of money at the beginning of 2010. Even with the major cost-saving steps it has implemented, the Board will run out of money by the fall of 2010 and be unable to fulfill its statutory responsibilities. To enable the Board to function and begin to rebuild its fund, it is important that the fee increases in this rulemaking be in effect before the next biennial renewal period begins in early 2010.

- 4. List of all previous notices appearing in the *Register* addressing the final rules:**

Notice of Rulemaking Docket Opening: 15 A.A.R. 1337, August 14, 2009
Notice of Proposed Rulemaking: 15 A.A.R. 1328, August 14, 2009

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

Name:	Allen Imig, Executive Director
Address:	Board of Examiners for Nursing Care Administrators and Assisted Living Facility Managers 1400 W. Washington St., Suite B-8 Phoenix, AZ 85007
Telephone:	(602) 364-2273
Fax:	(602) 542-8316
E-mail:	allen.imig@nciabd.state.az.us

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- 6. An explanation of the rules, including the agency's reasons for initiating the rulemaking:**
During its 2009 session, the legislature passed S.B. 1104, which amended A.R.S. §§ 36-446.03(B) and 36-446.12(A), to allow the Board to increase the fees charged for it licensing and regulatory activities. The bill also clarified that an individual may seek the Board's approval of a continuing education. The bill required the Board to establish a percentage limitation on the amount by which a fee may be increased. This rulemaking increases fees and makes conforming changes regarding license and certificate renewal and continuing education.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
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:**
Most of the fees charged by the Board for its licensing and regulatory activities are being increased because the Board's fund is nearly exhausted. The Board expects the fee increases to produce approximately \$148,425 annually. Ten percent of this will go to the state's general fund. The fee increases will directly affect applicants and licensees and certificate holders. They may affect the nursing care institutions and assisted living facilities that employ administrators and managers. Licensing fees are a cost of doing business that may be passed to consumers of the services provided by nursing care institutions and assisted living facilities. Enabling the Board to continue to fulfill its statutory responsibilities will benefit those required to pay the fees and those who use their services.
- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
No changes were made between the proposed and final rules.
- 11. A summary of the comments made regarding the rules and the agency response to them:**
No comments were made regarding the rules.
- 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 rule:**
None
- 14. Were these rules previously made as emergency rules?**
No
- 15. The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

ARTICLE 1. GENERAL

Section
R4-33-104. Fees

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

Section
R4-33-206. Renewal Application

ARTICLE 4. ASSISTED LIVING FACILITY MANAGER CERTIFICATION

Section
R4-33-405. Renewal Application

ARTICLE 5. CONTINUING EDUCATION

Section
R4-33-501. Continuing Education Requirement

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ARTICLE 1. GENERAL

R4-33-104. Fees

- A. Under the authority provided at A.R.S. § 36-446.12(A), the Board establishes and shall collect the following fees related to nursing care institution administrators. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
1. Initial application, ~~\$100~~ \$150
 2. No change
 3. No change
 4. Issuance of a license, ~~\$260~~ \$400 or ~~\$11~~ \$17 for each month remaining in the biennial period, whichever is less
 5. Duplicate license, ~~\$50~~ \$75
 6. Biennial active license renewal, ~~\$300~~ \$400
 7. Biennial inactive license renewal, ~~\$100~~ \$200
 8. Late renewal ~~penalty~~, ~~\$50~~ \$100
 9. Temporary license, ~~\$250~~ \$300
 10. Certify licensure status, ~~\$40~~ \$15
 11. Review sponsorship of a continuing education, ~~\$20~~ \$10 per credit hour.
 12. Review a licensed administrator's request for continuing education credit. \$5 per credit hour.
- B. Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to assisted living facility managers. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
1. Initial application, ~~\$100~~ \$150
 2. Arizona examination, ~~\$100~~ \$150
 3. Re-administer Arizona examination, ~~\$100~~ \$150
 4. Issuance of a certificate, ~~\$100~~ \$150 or ~~\$4~~ \$7 for each month remaining in the biennial period, whichever is less
 5. Duplicate certificate, ~~\$50~~ \$75
 6. Biennial active certificate renewal, ~~\$100~~ \$150
 7. Biennial inactive certificate renewal, ~~\$75~~ \$100
 8. Late renewal ~~penalty~~, ~~\$50~~ \$75
 9. Temporary certificate, ~~\$50~~ \$100
 10. ~~Verify certificate status, \$10~~
 11. Review sponsorship of a continuing education, \$20 \$10 per credit hour.
 11. Review a certified manager's request for continuing education credit. \$5 per credit hour.
- C. The Board shall ensure that fees established under subsections (A) and (B) are not increased by more than 25 percent above the amounts previously prescribed by the Board.

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

R4-33-206. Renewal Application

- A. No change
- B. No change
- C. No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
- D. No change
1. No change
 2. No change
 3. No change
- E. No change
1. No change
 2. The individual pays the ~~penalty~~ late renewal fee prescribed under R4-33-104, and
 3. No change
- F. No change

ARTICLE 4. ASSISTED LIVING FACILITY MANAGER CERTIFICATION

R4-33-405. Renewal Application

- A. No change
- B. No change
- C. No change

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1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
- D. No change
 1. No change
 2. No change
 3. No change
- E. No change
 1. No change
 2. The individual pays the ~~penalty~~ late renewal fee prescribed under R4-33-104; and
 3. No change
- F. No change

ARTICLE 5. CONTINUING EDUCATION

R4-33-501. Continuing Education Requirement

- A. Continuing education is a prerequisite of license or certificate renewal.
 1. A licensed administrator shall obtain 50 credit hours of Board-approved continuing education during each biennial period. During the biennial period in which an administrator is initially licensed, the administrator shall obtain two credit hours of Board-approved continuing education for each month or part of a month remaining in the biennial period.
 2. A certified manager shall obtain 24 credit hours of Board-approved continuing education during each biennial period. During the biennial period in which a manager is initially certified, the manager shall obtain one credit hour of Board-approved continuing education for each month or part of a month remaining in the biennial period.
- B. The Board shall award credit hours in an approved continuing education as follows:
 1. Seminar or workshop. One credit hour of continuing education for each contact hour;
 2. Course at an accredited educational institution. Fifteen credit hours of continuing education for each ~~seminar~~ course hour;
 3. Attendance at a business meeting of a national health care organization or of a state association affiliated with a national health care organization. One-half credit hour of continuing education for each business meeting attended;
 4. Self-study, online, or correspondence course. Approved credit hours of continuing education requested by the course provider;
 5. Serving as a preceptor. Two credit hours of continuing education for each month that an administrator serves as an AIT preceptor; and
 6. Teaching a Board-approved continuing education. One credit hour of continuing education for each hour taught.
- C. The Board shall limit the number of credit hours of Board-approved continuing education awarded as follows:
 1. No more than 40 percent of the required credit hours may be obtained using self-study, online, or correspondence courses;
 2. No more than 50 percent of the required credit hours may be obtained from serving as an AIT preceptor;
 3. No change
 4. No change
- D. No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. Number of credit hours in the continuing education.
- E. An administrator or manager shall maintain the evidence of attendance described in subsection (D) for three years and make the evidence available to the Board under R4-33-503 and as otherwise required under this Chapter.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Editor's note: The following Notice of Final Rulemaking was reviewed per the Governor's Regulatory Review Plan memorandum, January 22, 2009 and its continuations on April 30, June 29 and October 16, 2009. (See a copy of the memoranda in this issue on pages 1985 through 1987.) The Governor's Office authorized the notice to proceed through the rulemaking process on June 19, 2009.

[R09-111]

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R12-15-725 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. §§ 45-105(B)(1) and 45-576(H)
Implementing statutes: A.R.S. § 45-576
3. **The effective date of the rules:**
January 2, 2010
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 15 A.A.R. 1338, August 14, 2009
Notice of Proposed Rulemaking: 15 A.A.R.1332, August 14, 2009
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Joe Singleton
Address: Pinal AMA
1729 N. Trekell Road, Suite 105
Casa Grande, AZ 85122
Telephone: (520) 836-4857
Fax: (520) 836-9208
E-mail: jesingleton@azwater.gov
or
Name: Sandra Fabritz-Whitney
Address: ADWR Water Management Division
3550 N. Central Ave.
Phoenix, AZ 85012
Telephone: (602) 771-8586
Fax: (602) 771-8689
E-mail: safabritz@azwater.gov
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
Developers of new subdivisions within an Active Management Area ("AMA") must obtain a determination of assured water supply ("AWS") from the Arizona Department of Water Resources ("Department") prior to the sale of any lots. A.R.S. § 45-576(A). One of several requirements to obtain a determination of assured water supply is to demonstrate that any groundwater use is consistent with the management goal of the AMA. 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).

One method of demonstrating that groundwater use is consistent with the management goal of the AMA is through a mechanism for the extinguishment of grandfathered groundwater rights. When a grandfathered groundwater right is extinguished, the Department issues credits that can be used by a developer to meet the consistency with the management goal requirement for an AWS determination.

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Prior to 2007, the existing AWS rules for the Pinal AMA allowed for the amount of credits issued for the extinguishment of grandfathered groundwater rights in the Pinal AMA to remain the same each year, with no reduction over time. The AWS rules for the Pinal AMA were amended in 2007 to provide for a gradual reduction in the amount of credits given for the extinguishment of grandfathered rights, depending on when the extinguishment occurs. The current version of R12-15-725 provides that the first reduction takes effect on January 1, 2010.

One of the major reasons for the 2007 amendment was that development in the Pinal AMA was increasing rapidly, and the rate of development was projected to continue for the foreseeable future. Some of this development was anticipated to result in the extinguishment of Irrigation Grandfathered Rights (“IGFRs”) for extinguishment credits. Extinguishment of IGFRs, combined with rapid development, would lead to over-allocation of unreplenished groundwater supplies. R12-15-725 therefore imposes a gradual reduction of the extinguishment credit allocation factor beginning in 2010.

Due to the downturn in the Arizona real estate market, development in the Pinal AMA has slowed dramatically. However, with the first reduction in the allocation factor approaching, several irrigation districts in the AMA have expressed concerns that some landowners within their districts may prematurely extinguish their IGFRs without actually developing their lands in order to maximize the extinguishment credits. Once the rights are extinguished, the lands could no longer be used for agricultural purposes. The irrigation districts are concerned that such actions will result in an economic hardship for the remaining IGFR holders within their districts because they will be required to pay a higher proportion of the fixed costs of the districts resulting from a loss in water sales, as those costs will be divided among fewer IGFR holders. Although not primary factor for this modification, the irrigation districts would also see an immediate increase to power costs for pumping groundwater as their electric providers would not be able to offset the loss in revenue from the lands with the extinguished IGFRs until those lands are developed sometime in the future.

Consistent with the Pinal AMA management goal of preserving the agricultural economy for as long as feasible while ensuring water supply availability for future municipal and industrial water uses, the Department proposes to amend R12-15-725 to delay the effective date of the first reduction of the allocation factor until 2014. At that point the irrigation districts should be better equipped to absorb the economic impacts, and the rate of development may begin to improve. The Department proposes to change the allocation factors for calendar years 2010 through 2016 as follows:

Year	Allocation Factor
2010	90 100
2011	88 100
2012	86 100
2013	84 100
2014	82 94
2015	80 88
2016	78 82

No changes are proposed for the allocation factors for calendar years 2017 and thereafter.

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

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 rule amendment will have a positive short-term economic impact on those persons who will use groundwater to irrigate agricultural lands within irrigation districts in the Pinal AMA after 2009. The Department estimates that the cost savings for these persons during calendar year 2010 could be up to \$2.05 per acre-foot of groundwater used, with additional cost savings during calendar years 2011 through 2013. Additionally, the rule amendment will likely mitigate an otherwise negative economic impact on businesses within the Pinal AMA that sell farming materials, such as seed and equipment, and have a positive short-term economic impact on land developers within the Pinal AMA.

The rule amendment may have a negative short-term economic impact on governmental entities that receive tax revenues from the real estate taxes assessed on lands within the Pinal AMA, such as Pinal County and Maricopa County, as some lands within the AMA will remain in agricultural production for several more years, and therefore retain

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their lower agricultural tax status during those years. However, the loss in real estate tax revenue may be offset by more revenues from other taxes paid by the persons farming the lands, such as income taxes and sales taxes.

The rule amendment will likely result in more unreplenished groundwater withdrawals within the Pinal AMA, as some Irrigation Grandfathered Right (“IGFR”) holders will likely continue irrigating their lands with groundwater for several more years and some IGFR holders will receive more extinguishment credits between calendar years 2010 through 2016 than they would receive without the rule amendment. Although these additional unreplenished groundwater withdrawals will likely have some negative economic impact on groundwater users and landowners within the general areas of the withdrawals by reducing the physical availability of groundwater supplies in those areas, the Department anticipates that the impact will be minimal.

10. A description of the changes between the proposed rules and final rules:

There are no changes between the proposed rules and the final rules.

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

Ron McEachern, General Manager for the Central Arizona Irrigation & Drainage District, submitted written comments in support of the rulemaking. The following persons provided comments in support of the proposed rule amendment at the oral proceeding on September 14, 2009:

Brian Betcher, General Manager, Maricopa Stanfield Irrigation & Drainage District

Paul Orme, Central Arizona Irrigation & Drainage District

Clifford Cauthen, General Manager, Hohokam Irrigation & Drainage District

Benjamin Belkin, Walton International Group (USA), Inc.

The Department appreciates the support for the proposed rule amendment.

Bill Collings, Vice Chairman, Pinal County Water Augmentation Authority, also expressed support for the proposed rule amendment at the September 14, 2009, oral proceeding, but suggested reducing the allocation factor to zero beginning in 2046, rather than in 2055, to make up for the unreplenished groundwater use that may occur because of the proposed amendment. However, the Department has estimated the total volume of unreplenished groundwater use over 100 years (as a result of the rule amendment) to be less than 0.2% of the total groundwater in storage to a depth of 1,100 feet below land surface. Given the minimal volume of unreplenished groundwater use, in combination with the need to publish the rule amendment before 2010, when the allocation factor would otherwise change, the Department will not make Mr. Collings’ proposed change at this time. However, if the Department later determines that the unreplenished groundwater use has increased substantially more than originally projected as a result of the rule amendment, the Department may consider amending the allocation factor in later years, as suggested.

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. Was this rule previously made as an emergency rule?

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

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

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

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

- A. No change
 - 1. No change
 - 2. No change
 - a. No change
 - i. No change

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- ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - b. No change
 - c. No change
 - d. No change
- 3. No change
- B.** No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - 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.

Year	Allocation Factor
2007	100
2008	100
2009	100
2010	90 <u>100</u>
2011	88 <u>100</u>
2012	86 <u>100</u>
2013	84 <u>100</u>
2014	82 <u>94</u>
2015	80 <u>88</u>
2016	78 <u>82</u>
2017	76
2018	74
2019	72
2020	70
2021	68
2022	66
2023	64
2024	62
2025	60
2026	58
2027	56
2028	54
2029	52
2030	50
2031	48
2032	46
2033	44
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2038	34

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2046	18
2047	16
2048	14
2049	12
2050	10
2051	8
2052	6
2053	4
2054	2
After 2054	0

- 4. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change