



*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

R16-3-115	Renumber
R16-3-115	Amend
R16-3-116	Renumber
R16-3-117	Repeal
R16-3-118	Repeal
R16-3-119	Repeal
R16-3-120	Repeal
R16-3-121	Renumber

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

Authorizing statute: A.R.S. § 42-1252

Implementing statutes: A.R.S. §§ 42-1252 and 42-1253

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 4712, December 27, 1999

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

Name: Ruben M. Medina  
Address: 101 N. First Avenue, Suite 2340  
Phoenix, Arizona 85007  
Telephone: (602) 528-3966  
Fax: (602) 528-3956

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

The State Board of Tax Appeals (the "Board") is updating and reorganizing its rules to conform to statutory and procedural changes. The old rules in Title 16, Chapter 3 are being concurrently repealed in this rulemaking. The new rules incorporate changes proposed in the last 5-year review report. All rule Sections have been updated to reflect current rule drafting style.

**6. A reference to any study that the agency proposed to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**

Not applicable

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

Not applicable

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

Modifications to the Chapter to reflect procedural changes and improve readability will benefit those participating in the Board's administrative appeals process. Other than the impact attributable to the difference in the time value of money, the economic impact to small businesses and consumers under the Board's amended rules should generally be the same as when the existing rules were promulgated. A minimal increase in the economic impact to those participating in the Board's administrative appeals process will occur under new rules the Board plans to implement that require parties to submit additional copies of pertinent documents.

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

Name: Ruben M. Medina  
Address: 101 N. First Avenue, Suite 2340  
Phoenix, Arizona 85007  
Telephone: (602) 528-3966  
Fax: (602) 528-3956

*Arizona Administrative Register*  
Notices of Proposed Rulemaking

---

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

No oral proceedings are scheduled. The Board will schedule an oral proceeding on the proposed rules if a written request for the proceeding is submitted to the agency personnel listed in question 4 of this preamble. Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement may be submitted to the person listed in item #4 no later than 5:00 p.m., August 31, 2000.

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

Not applicable

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

None

**13. The full text of the rules follows:**

**TITLE 16. TAX APPEALS**

**CHAPTER 3. STATE BOARD OF TAX APPEALS ~~-DIVISION TWO~~ - LUXURY,  
TRANSACTION PRIVILEGE (SALES), ~~RENTAL OCCUPANCY~~, USE, ESTATE, INCOME**

**ARTICLE 1. GENERAL PROVISIONS**

Sections

R16-3-101.	<del>Purpose</del> <u>Definitions</u>
R16-3-102.	<del>Proper parties</del> <u>Notice of Appeal</u>
R16-3-103.	<del>Form of notice of appeal</del> <u>Supplementation of Notice of Appeal</u>
R16-3-104.	<del>Manner of filing</del> <u>Memoranda, Waivers and Supporting Authorities</u>
R16-3-105.	<del>Timeliness of appeal</del> <u>Stipulations and Statements of Fact</u>
R16-3-106.	<del>Supplementation of appeal</del> <u>Dismissal, Withdrawal or Abeyance of Appeal</u>
R16-3-107.	<del>Memoranda</del> <u>Request for Hearing</u>
R16-3-108.	<del>Dismissal of appeal</del> <u>Hearing Procedure</u>
R16-3-109.	<del>Deferral</del> <u>Evidence</u>
<del>R16-3-110.</del>	<del>Hearing; oral or waived</del> <u>Repealed</u>
<del>R16-3-116.</del>	<del>R16-3-110.</del> <u>Official Notice</u>
R16-3-111.	<del>Hearing before single member/hearing officer</del> <u>Subpoena</u>
R16-3-112.	<del>Place of hearing; time allowed</del> <u>Burden of Proof</u>
R16-3-113.	<del>Hearing procedure</del> <u>Transcripts and Records</u>
R16-3-114.	<del>Stipulation of facts</del> <u>Decisions and Orders of Dismissal</u>
<del>R16-3-115.</del>	<del>Evidence</del> <u>Repealed</u>
<del>R16-3-121.</del>	<del>R16-3-115.</del> <u>Rehearing or Review of Decision</u>
R16-3-116.	<u>Renumbered</u>
R16-3-117.	<del>Subpoena</del> <u>Repealed</u>
R16-3-118.	<del>Burden of proof</del> <u>Repealed</u>
R16-3-119.	<del>Transcripts and records</del> <u>Repealed</u>
R16-3-120.	<del>Decisions and orders</del> <u>Repealed</u>
R16-3-121.	<u>Renumbered</u>

**ARTICLE 1. GENERAL PROVISIONS**

**R16-3-101. ~~Purpose~~ Definitions**

The purpose of the law providing for the establishment of the State Board of Tax Appeals, Division Two (hereinafter "Board") is to provide taxpayers with an effective opportunity to appeal from decisions of the Department of Revenue (hereinafter "Department") concerning luxury, transaction privilege (sales), rental occupancy, use, estate, income and any other taxes not appealable to Division One. In order to implement that law and its purpose, these rules and Regulations are hereby promulgated.

For purposes of this Article:

1. "Appellant," unless otherwise noted, means the taxpayer or the representative of the taxpayer against whom the Department has issued a tax assessment or refund denial, or other person or entity directly interested who is legally entitled to initiate the proceedings.
2. "Board" means the State Board of Tax Appeals.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

3. “Clerk” means the Clerk appointed by the Board to carry out the duties established by A.R.S. § 42-1252.
4. “Commission” means the Municipal Tax Code Commission.
5. “Day” means a calendar day. If the last day for filing a document under the provisions of this Article falls on a Saturday, Sunday, or legal holiday, the document is considered timely if filed on the following business day.
6. “Department” means the Arizona Department of Revenue.
7. “Good cause” means illness, emergency, or other reason as determined by the Board.
8. “Hearing Officer” means a person appointed by the Board to take oral testimony and other evidence, make recommendations, and carry out the duties of the Board established by A.R.S. § 42-1252.
9. “Memorandum” means a written submission in support of a party’s position.
10. “Notice of Appeal” means a written request for correction or redetermination including all applicable attachments.
11. “Notice of determination” means a written notification issued by the Department of a tax assessment, refund or reimbursement denial, the application of penalties and interest or any other action taken that is subject to appeal as a contested case or an appealable agency action under A.R.S. Title 41, Chapter 6.
12. “OAH” means Office of Administrative Hearings as established by A.R.S. § 41-1092.01.
13. “Quorum” means 2 members of the Board.
14. “Refund denial” means a taxpayer’s claim for a refund of tax, penalty, interest, or refundable credit that has been denied by the Department.
15. “Supporting authorities” means principal cases and authorities cited and relied on by a party.

**R16-3-102. Proper parties Notice of Appeal**

An appeal from a ruling of the Department shall be filed by and in the name of the person against whom the deficiency or other tax liability was determined, or by and in the full descriptive name of the fiduciary or other person directly interested who is legally entitled to institute the proceedings. If there is a variance between the name set forth in the notice of determination or other notice of tax liability issued by the Department and the name of the appellant, the appeal shall contain a statement of the reasons for such variance.

- A.** Appellant shall sign the notice of appeal and mail or deliver the original and 6 copies to the Board’s office in Phoenix, Arizona. The Board shall consider a notice of appeal received by mail filed on the date shown by its postmark. In the absence of a legible postmark, the Board shall determine whether an appeal was timely filed.
- B.** A notice of appeal shall be typed, legibly written, or legibly printed and shall include the following information:
  1. Appellant’s name and address. If there is a difference between the name set forth in the notice of determination and the name set forth in the notice of appeal, the notice of appeal shall contain an explanation of the difference.
  2. The amount of tax assessed or refund or reimbursement denied by the Department or the OAH, the type of tax, the year or other period for which the determination was made, and, if different from the determination, the approximate amount of the tax assessment or refund or reimbursement denial that is appealed.
  3. A statement of issues involved in the appeal.
  4. A statement of errors Appellant alleges the Department committed in the determination of the tax assessment or refund or reimbursement denial.
  5. Relief sought.
  6. Whether an oral hearing is requested. Appellant may waive a previously requested hearing within 10 days after the due date of the reply memorandum.
- C.** Appellant shall file 6 copies of the tax assessment or refund or reimbursement denial and any findings of fact and conclusions of law issued by the Department or the OAH with the notice of appeal.
- D.** Appellant shall file the notice of appeal not more than 30 days after the final decision or order of the Department or the OAH becomes final.
- E.** In addition to the requirements set forth in subsections (A) through (D), a notice of appeal regarding reimbursement for fees and other costs shall include 6 copies of the following:
  1. The application that was submitted to the Department for reimbursement of fees and other costs.
  2. Documentation of payment of fees and other costs.
- F.** A notice of appeal filed by a party aggrieved by an order or decision of the Municipal Tax Code Commission must be filed within 30 days after notice of the order or decision of the Commission has been received by the party and shall be signed by Appellant and include the following information:
  1. Names and addresses of the municipalities.
  2. Taxpayer’s name and address.
  3. The applicable tax rates of the municipalities.
  4. A statement of issues involved in the appeal.
  5. The relief sought.
  6. Whether an oral hearing is requested.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

- G.** Appellant shall submit 6 copies of the respective municipal ordinances involved in the notice of appeal.
- H.** In an appeal from an order or decision of the Commission, "Appellant" means the taxpayer, city, town, or representative of the taxpayer, city, or town initiating the appeal.

**R16-3-103. Form of notice of appeal Supplementation of Notice of Appeal**

- A.** All notices of appeal shall be typewritten, legibly written or legibly printed and shall state the following information:
1. Appellant's name and address.
  2. The amount of deficiency (or liability) determined by the Department, the nature of the tax, the year or other period for which the determination was made, and, if different from the determination, the approximate amount of taxes in controversy.
  3. Statement of error(s) alleged to have been committed by the Department in the determination of the deficiency.
  4. Statement of fact(s) upon which the appellant relies to support their assignment of error(s) alleged to have been committed by the Department.
  5. Relief sought.
  6. If oral hearing is requested.
- B.** A copy of the decision notice, including any findings of fact and conclusions of law issued by the Department, shall be filed with the notice of appeal.
- C.** A notice of appeal shall not be accepted for filing more than 30 days after the receipt of the decision or order of the Department.
- A.** If Appellant files a timely notice of appeal that is incomplete, the Clerk may grant Appellant additional time to perfect the appeal.
- B.** The Board may dismiss an appeal or exclude supplemental information that is not filed within the additional time granted.
- C.** The Clerk may grant Appellant, upon written request, a reasonable extension of time to comply with the provisions of this rule.

**R16-3-104. Manner of filing Memoranda, Waivers and Supporting Authorities**

- A.** ~~An appeal to the Board from action by the Department and any memoranda in support of such appeal shall be mailed or delivered to the office of the Board in Phoenix, Arizona and shall be filed in duplicate.~~
- B.** ~~Upon receipt of a notice of appeal, the Clerk shall record the filing of the appeal in the docket book and assign a case number. A copy of the appeal and any memoranda in support thereof shall then be transmitted by the Board to the Department at Phoenix, Arizona.~~
- C.** ~~A fee will not be charged for the filing of any document.~~
- A.** Parties shall submit an original and 6 copies of all memoranda filed with the Board. The Board shall provide a copy of any memorandum filed to the opposing party.
- B.** A party may waive the filing of a memorandum in writing within 10 days before the memorandum is due.
- C.** Appellant may file a memorandum of 15 pages or less in support of the appeal within 20 days after filing the notice of appeal.
- D.** The Department may file a response memorandum of not more than 15 pages within 20 days after receiving Appellant's memorandum or waiver.
- E.** Appellant may file a reply memorandum of not more than 10 pages within 15 days after receiving the Department's memorandum. Appellant's reply memorandum shall be limited to a reply to the issues of law or fact raised in the Department's memorandum.
- F.** Parties shall file 6 copies of supporting authorities at the time of filing memoranda.
- G.** The Board may grant a reasonable extension of time for the filing of memoranda upon written request from either party for good cause shown.

**R16-3-105. Timeliness of appeal Stipulations and Statements of Fact**

- A.** ~~An appeal will be timely filed if it is received at the office of the Board within 30 days from receipt of the Department's decision. If the last day for filing an appeal falls on a Saturday, Sunday, or legal holiday, the appeal may be timely filed on the following business day. An appeal filed by mail will be considered filed on the date shown by its postmark. In the absence of other evidence, the Board will determine whether an appeal was timely filed.~~
- B.** ~~An appeal not filed within the time prescribed shall be dismissed pursuant to R16-3-108.~~

At the Board's request, the parties shall file a stipulation or separate statements of fact stating the facts upon which they agree, the facts that are in dispute and the reasons for the dispute. If there are no facts in dispute, this should be stated in the stipulation or statements.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

**R16-3-106. Supplementation of appeal Dismissal, Withdrawal or Abeyance of Appeal**

If the appeal is timely but incomplete, the appellant may be granted an additional period of time by the Clerk within which to supplement the appeal. The appeal is subject to dismissal or the supplemental information is subject to exclusion if it is not filed within the time period which was granted for that purpose. Reasonable extensions of time for complying with the provisions of this rule may be granted upon written request.

- A. If the Board lacks jurisdiction of an appeal, the appeal shall be dismissed by the Board on its own motion or on motion by the Department.
- B. An appeal may be withdrawn upon Appellant's written notification or the parties' written stipulation any time before the Board issues its decision.
- C. The Board may hold an appeal in abeyance for a reasonable period of time upon written request of either party, written stipulation of the parties, or at its own discretion.

**R16-3-107. Memoranda Request for Hearing**

~~A. The appellant may file a memorandum in support of the appeal within 30 days of filing the notice of appeal. The Department will be allowed 30 days from the date of receipt of appellant's memorandum to respond. In the event that appellant does not file a memorandum, the Department will be allowed 30 days to file its memorandum from the time appellant's memorandum would have been due. The appellant will then be allowed 30 days from receipt of the Department's memorandum to respond. Appellant's reply memorandum shall be limited to a reply to the issues of law or fact raised in the Department's memorandum. Reasonable extensions of time for the filing of memoranda may be granted upon written request from either party. The Board will transmit a copy of any memorandum filed to the opposing party. Both or either party to the appeal may waive the filing of memorandum.~~

- ~~B. If the last day for filing a memorandum falls on a Saturday, Sunday, or legal holiday, the memorandum may be timely filed on the following business day. A memorandum filed by mail will be considered filed on the date shown by its postmark. In the absence of other evidence, the Board will determine whether a memorandum was timely filed.~~
- A. The Board shall schedule a hearing upon written request of either party. Either party may waive appearance, in writing, at least 10 days prior to the hearing.
- B. A hearing officer or 1 or more members of the Board may hold a hearing and take testimony and other evidence.
- C. The Board shall send a written notice of the time and place of the hearing to the parties at least 20 days in advance. Hearings shall ordinarily be scheduled to last no more than 1 hour. The Board may, upon written request, grant a party additional time for the hearing if the request is submitted to the Clerk within 10 days after the due date of the reply memorandum.
- D. The Board may postpone, continue, or cancel a hearing for good cause upon the written request of either party if the request is submitted at least 10 days prior to the hearing.
- E. If an oral hearing is not requested, the Board shall consider the appeal submitted for decision based on the record.

**R16-3-108. Dismissal of appeal Hearing Procedure**

~~A. Prior to the issuance of a decision by the Board, an appeal may be withdrawn at the written request of the appellant or upon the basis of a written stipulation between the appellant and the Department. The Board shall thereafter enter an order dismissing the appeal.~~

~~B. Whenever it is evident that the Board lacks jurisdiction of an appeal, such appeal shall be dismissed by order of the Board on its own motion or on motion filed by the Department.~~

- A. The hearing shall ordinarily proceed in the following manner:
  - 1. Appellant may make an opening statement.
  - 2. The Department may make an opening statement or reserve its opening statement until the close of Appellant's case.
  - 3. Appellant shall state its position and present its evidence.
  - 4. The Department may, if previously reserved, make an opening statement, state its position and present its evidence.
  - 5. Appellant may make closing statements or arguments.
  - 6. The Department may make closing statements or arguments.
  - 7. Appellant may reply to any statements or arguments.
- B. The Board may direct a party to submit additional memoranda or information within a prescribed period of time. The opposing party may respond to the additional memoranda or information within a prescribed period of time.
- C. The Board may recess or continue a hearing for good cause.

**R16-3-109. Deferral Evidence**

The Board may defer proceedings for an indefinite period upon the filing of a written stipulation between the appellant and the Department. Proceedings may also be deferred for a reasonable period upon the request of either party or at the discretion of the Board.

- A. The Board shall accept oral evidence only upon oath or affirmation.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

- B.** Each party may call and examine witnesses, introduce exhibits, and cross-examine witnesses on any matter relevant to the appeal. The presiding officer at the hearing may call a party, or any other person who is present, to testify under oath or affirmation. The presiding officer and any member of the Board or its staff may question witnesses.
- C.** The Board may admit any relevant evidence including affidavits and other forms of hearsay evidence. The Board shall be liberal in admitting evidence but shall consider objections to the admission and comments on the weakness of evidence in assigning weight to the evidence.
- D.** The Board may admit carbon copies, photocopies, or copies made by similar procedures in place of original documents upon a showing of proper foundation.
- E.** A party may substitute an exhibit with an exact legible copy upon written request if the request is submitted to the Board within 10 days after the hearing.

**~~R16-3-110.~~ Hearing; oral or waived ~~Repealed~~**

- A.** ~~After the notice of appeal and permitted memoranda are filed, the appeal shall be set for oral hearing. Written notice of the time and place of hearing will be sent to the parties at least 20 days in advance. The hearing may be postponed for good cause shown, in the Board's discretion, at the written request of either party.~~
- B.** ~~Oral hearing may be waived in writing by both the appellant and the Department. If oral hearing is waived, the appeal will be deemed submitted to the Board for decision upon the basis of the notice of appeal and any memoranda filed in the matter. Either party may waive appearance at the oral hearing.~~

**~~R16-3-116.~~ R16-3-110. Official Notice**

- A.** ~~The Board may take official notice as an admission of facts in the case of the following~~ as admissions of facts:
  - 1. ~~The records maintained by the Board.~~
  - 2. ~~Tax returns filed with the Department for or on behalf of appellant~~ Appellant or any affiliated company ~~together with and related records on file with the Department.~~
  - 3. ~~Any fact which may be judicially noticed by the courts of this state.~~
- B.** ~~The parties may, at the hearing, request permission to refute any matters thus~~ officially noticed.

**~~R16-3-111.~~ Hearing before single member/hearing officer ~~Subpoena~~**

~~When a member of the Board or hearing officer conducts a hearing, that individual shall make a report to the other members of the Board. The report shall include a summary of the material evidence presented at the hearing, a recommendation as to the Board's decision and the reasons in support of the recommended decision.~~

The Board may, at its discretion or upon written request submitted by a party at least 15 days before a hearing, issue subpoenas for the attendance of witnesses or the production of books, records, documents, or other evidence that is not confidential or privileged. A subpoena shall be served on behalf of and at the expense of the party requesting its issuance.

**~~R16-3-112.~~ Place of hearing; time allowed ~~Burden of Proof~~**

~~Oral hearings are held in the Board's hearing room in Phoenix, Arizona. Hearings shall ordinarily be conducted between the hours of 9 A.M. and 5 P.M. and are scheduled to last for not more than one hour. If additional time is needed, this may be arranged in advance through the Clerk of the Board. Hearings may be authorized to be held in other parts of the state subject to the approval of a majority of the Board.~~

Appellant shall, with 2 exceptions, bear the burden of proof as to all issues of fact. The Department shall bear the burden of proof on the issue of whether or not Appellant is liable for civil fraud penalties. In addition, the Department has the burden of proof by a preponderance of the evidence in any proceeding before the Board regarding any factual issue relevant to ascertaining the tax liability of a taxpayer if the record establishes, by the preponderance of the evidence, that Appellant has:

- 1. Asserted a reasonable dispute regarding the issue;
- 2. Fully cooperated with the Department regarding the issue, including providing within a reasonable period of time, access to and inspection of all witnesses, information, and documents within Appellant's control, as reasonably requested by the Department; and
- 3. Kept and maintained records as required by Titles 42, 43, and the Department.

**~~R16-3-113.~~ Hearing procedure ~~Transcripts and Records~~**

- A.** ~~The hearing will ordinarily proceed in the following manner:~~
  - 1. ~~The appellant may make an opening statement;~~
  - 2. ~~The Department may make an opening statement or reserve its opening statement until the close of the appellant's case;~~
  - 3. ~~The appellant will state its position and present its evidence;~~
  - 4. ~~The Department may, if previously reserved, make an opening statement, state its position and present its evidence;~~
  - 5. ~~Closing statements or arguments of the appellant may be made;~~
  - 6. ~~Closing statements or arguments of the Department may be made;~~
  - 7. ~~The appellant may reply to any statements or arguments.~~

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

- ~~B.~~ If the Board desires the submission of additional memoranda or information, it shall so direct the parties to comply within a reasonable period of time.
- ~~C.~~ Whenever, because of illness, emergency or for other reasons the Board considers that it would be in the interest of justice to order a recess or continuance, the hearing shall be recessed or continued to a specified date, time and place.
- A. The hearing before the Board shall be transcribed upon written request submitted by a party to the Board at least 5 days prior to the hearing. The transcript shall be prepared at the expense of the requesting party.
- B. The records of the Board shall not be removed from its office for use as evidence or other purposes. Certified copies of records that the Board is permitted by law to divulge may be provided.

**R16-3-114. ~~Stipulation of facts~~ Decisions and Orders of Dismissal**

The appellant and the Department may file a stipulation stating the facts upon which they agree, the facts which are in dispute and the reasons for the dispute. The Board may require the parties to file such a stipulation.

- A. A quorum of the Board must agree on a decision or order of dismissal.
- B. All decisions shall be in writing and shall include separately stated findings of fact and conclusions of law.
- C. A decision or order of dismissal of the Board shall be mailed, return receipt requested, or delivered to the parties.
- D. Except in the case of a tax dispute between municipalities, a decision or order of dismissal shall be final 30 days after Appellant receives it unless an aggrieved party files a motion for rehearing or review within 15 days after receiving it.
- E. In a dispute between municipalities, a decision or order of dismissal shall be final when received by the party. An aggrieved party has 30 days to appeal the decision or order of dismissal to the superior court.

**R16-3-115. Evidence Repealed**

- ~~A.~~ Oral evidence will be taken only on oath or affirmation.
- ~~B.~~ Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, impeach any witness regardless of which party first called the witness to testify, and rebut the evidence against it. A party or its employee, agent or officer may be called by the opposing party and examined as if under cross-examination. The presiding officer at the hearing may call a party, or any other person who is present, to testify under oath or affirmation. Any member of the Board or its staff may question witnesses.
- ~~C.~~ Any relevant evidence, including affidavits and other forms of hearsay evidence, will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The Board will be liberal in admitting evidence, but objections to the admission of and comments on the weaknesses of evidence will be considered in assigning weight to the evidence. The Board may deny admission of evidence which it considers irrelevant, untrustworthy or unduly repetitious.
- ~~D.~~ Carbon copies, photocopies or copies made by other types of similar procedures may, upon a showing of proper foundation, be admitted in evidence or substituted in place of the original documents.
- ~~E.~~ At the conclusion of the hearing, any exhibit may be withdrawn on written request of the party who produced the exhibit. In such case the party may be required to substitute an exact legible copy of the original thereof.

**~~R16-3-121.~~ R16-3-115. Rehearing or Review of Decision**

- A. Procedure; grounds. A decision of the Board may be vacated and The Board may grant a rehearing or review of the decision ~~granted~~ on motion filed by the an aggrieved party within 15 days from receipt of such order or decision or at its own discretion for any of the following reasons ~~materially affecting his rights~~:
  1. ~~Irregularity in the proceedings of the Board or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing. The findings of fact, conclusions of law, order or decision are not supported by the evidence or are contrary to law.~~
  2. ~~Misconduct of the prevailing party. The party seeking review was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct of the prevailing party.~~
  3. Accident or surprise which could not have been prevented by ordinary prudence.
  4. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the hearing.
  5. ~~Excessive or insufficient damages. Error in admission or rejection of evidence, or other errors of law occurring at the hearing or during the progress of the action.~~
  6. ~~Error in admission or rejection of evidence, or other errors of law occurring at the hearing or during the appeal. The decision is the result of bias or prejudice.~~
  7. ~~That the decision is the result of passion or prejudice.~~
  8. ~~That the decision, findings of fact, or conclusions of law is not justified by the evidence or is contrary to law.~~

~~A decision of the Board is revoked pending determination of the motion for rehearing or review of decision.~~

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

- B.** Scope. On motion for a rehearing or review of a decision, the Board may open the decision, if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new decision. A decision of the Board shall be held in abeyance pending a determination on the motion for rehearing or review of decision. Upon denying a motion for rehearing or review, the Board shall reinstate the original decision. The original decision becomes final 30 days after Appellant is notified of the Board's action on the motion for rehearing or review.
- C.** Contents of motion; amendment; rulings reviewable
1. The motion for a rehearing or review of a decision shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the Board.
  2. Upon the general ground that the Board erred in admitting or rejecting evidence, the Board shall review all rulings during the hearing upon objections to evidence.
  3. Upon the general ground that the decision or findings of fact is not justified by the evidence, the Board shall review the sufficiency of the evidence.  
The motion for a rehearing or review of a decision shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before the Board rules on it.
- D.** Time for serving affidavits. When a motion for rehearing or review of a decision is based upon affidavits, they shall be served with the motion. The opposing party has 20 days after receipt of the motion and affidavits within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the Board for good cause shown or by the parties by written stipulation. The Board may permit reply affidavits. No response shall be made to the motion for rehearing or review unless the Board requests it.
- E.** On initiative of the Board. Before the decision becomes final, the Board on its own initiative may order a rehearing or review of the decision for which it might have granted a rehearing or review of the decision on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a motion. In either case, the Board shall specify in the order the grounds for the rehearing or review. On granting a motion for rehearing or review, the Board may open the decision, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and issue a new decision.
- F.** Questions to be considered at rehearing or review of decision. A rehearing or review of a decision, if granted, shall be only a rehearing or review of the question or questions with respect to which the decision is found erroneous, if separable. If a rehearing or review is ordered because the refund or assessment is excessive or insufficient and granted solely for that reason, the decision shall be set aside only in respect of the refund or assessment, and shall stand in all other respects.
- G.** Specification of grounds of rehearing or review of a decision in order. No order granting a rehearing or review of a decision shall be made and entered unless the order specifies with particularity the ground or grounds on which the rehearing or review of the decision is granted.

**R16-3-116.      Renumbered**

**R16-3-117.      Subpoena Repealed**

- A.** Subpoenas for the attendance of witnesses and/or the production of books, records, documents and other evidence may, upon request by any party or at the Board's instance, be issued by the Board. Except where the subpoena is issued at the instance of the Board, a subpoena shall be served on behalf of and at the expense of the person requesting its issuance.
- B.** Nothing in this regulation shall be construed to authorize the issuance of a subpoena for confidential or privileged information.

**R16-3-118.      Burden of proof Repealed**

The burden of proof will be upon the appellant as to all issues of facts. In any proceeding involving the issue of whether or not the appellant has been guilty of fraud with intent to evade tax, the burden of proof will be upon the Department.

**R16-3-119.      Transcripts and records Repealed**

- A.** The record of hearing before the Board will be transcribed at the request of any party to the appeal. The transcript shall be prepared at the expense of the requesting party, unless otherwise provided by law. A request that the hearing be transcribed shall be made in writing to the Clerk of the Board at least five days in advance of the hearing.
- B.** The records and files of the Board will not be removed from its office for use as evidence or other purposes. Certified copies of records which the Board is permitted by law to divulge will, however, be furnished.
- C.** Where certified copies of papers or records are requested, a reasonable charge will be made as determined by the Board.

**R16-3-120.      Decisions and orders Repealed**

- A.** A decision or order must be agreed upon by a quorum of the Board. Two members shall constitute a quorum. Any member who dissents may state the reasons for their dissent.
- B.** All decisions shall be in writing and shall include findings of fact and conclusions of law, separately stated.
- C.** Notice of the decision or order of the Board shall be mailed, return receipt requested, or delivered to all parties to the proceedings.



*Arizona Administrative Register*  
Notices of Proposed Rulemaking

---

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

Name: Wendy S. LeStarge, Rules Analyst  
Address: Arizona Department of Transportation  
Administrative Rules Unit, Mail Drop 507M  
3737 North Seventh Street, Suite 160  
Phoenix, Arizona 85014-5017  
Telephone: (602) 712-6007  
Fax: (602) 241-1624  
E-Mail: wlestarge@dot.state.az.us

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

No oral proceeding is scheduled for this rulemaking. Written, faxed, e-mail comments, or requests for an oral proceeding may be made by contacting the officer listed in #4 between 8:00 a.m. and 4:30 p.m., Monday through Friday. If no oral proceeding is requested, the public comment period shall continue for 30 days from this notice's publication date. This rulemaking's public record will close at 4:30 p.m. on December 15, 2000.

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

None

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

Not applicable

**13. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 3. DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION**

**ARTICLE 9. HIGHWAY TRAFFIC CONTROL DEVICES**

Sections

R17-3-903. ~~Selection of Responsible Operator~~ Repealed  
R17-3-904. ~~Location~~ Repealed  
R17-3-905. ~~Criteria for LOGO Signing~~ Repealed  
R17-3-906. ~~Lease Administration~~ Repealed  
R17-3-907. ~~Elimination from the LOGO Signing Program~~ Repealed  
R17-3-908. ~~Sign Panels, Supports, and Materials~~ Repealed  
R17-3-909. ~~Termination of the LOGO Signing Program~~ Repealed

**ARTICLE 9. HIGHWAY TRAFFIC CONTROL DEVICES**

**R17-3-903. ~~Selection of Responsible Operator~~ Repealed**

- A.** A responsible operator will be eligible for the placement of a LOGO sign if it meets the conditions as set forth in this rule and rules R17-3-904 and R17-3-905.
- B.** Each lessee identified on a specific service sign shall have furnished written and notarized certification to the Department, through the contractor, of its conformity with all applicable federal, state and local laws, ordinances, rules and regulations, and shall not be in breach of that certification. Such certification shall be provided before the lease is approved.
- C.** Eligible responsible operators for LOGO signs shall be selected by a first come, first serve rule until the maximum number of permissible LOGO signs is reached.
- D.** Eligible responsible operators which have been selected for LOGO signs will be permitted to display their LOGOS for the period covered by the lease agreement.

**R17-3-904. ~~Location~~ Repealed**

- A.** Signs intended for areas rural in character. Specific service signs are intended for use on interstate highways in areas which are rural in character where traffic interchanges are normally spaced a minimum of two miles apart. LOGO signing shall be excluded from the Phoenix and Tucson metropolitan areas as follows:

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

Phoenix: I-10, Litchfield Road to Chandler Blvd.  
I-17, Happy Valley Road to Jet. I-10  
Tucson: I-10, Ina Road to Wilmot Road  
I-19, Valencia Road to Jet. I-10

Additional areas of exclusion may be identified in the contract by mutual agreement.

- B.** Sign sequence and spacing. In the direction of travel, successive specific service signs shall be "CAMPING", "LODGING", "FOOD", and "GAS" in that order. The spacing shall be as shown in Appendix A or as directed by the Department. (See Appendix A following this rule.)
- C.** Number of signs permitted. The number of specific service signs permitted shall be limited to one for each type of service along an approach to an interchange exit, i.e., GAS, FOOD, LODGING, and CAMPING.

**R17-3-905. Criteria for LOGO Signing Repealed**

Types of services:

1. "Gas."
  - a. Located within three miles of freeway exit ramp terminal; if a qualifying responsible operator does not exist within the first three miles, the distance may be extended in 3 mile increments until a maximum of 15 miles is reached.
  - b. Gasoline, oil, lubrication, and water are available.
  - c. Restroom facilities and drinking water.
  - d. Continuous operation at least 12 hours per day, seven days per week.
  - e. Telephone.
2. "Food."
  - a. Located within three miles of freeway exit ramp terminal; if a qualifying responsible operator does not exist within the first three miles, the distance may be extended in 3 mile increments until a maximum of 15 miles is reached.
  - b. Continuous operation to serve three meals per day, seven days per week.
  - c. Minimum indoor seating capacity of 20.
  - d. Restroom facilities.
  - e. Telephone.
3. "Lodging."
  - a. Located within three miles of freeway exit ramp terminal; if a qualifying responsible operator does not exist within the first three miles, the distance may be extended in 3 mile increments until a maximum of 15 miles is reached.
  - b. Five or more units of sleeping accommodations are available.
  - c. Telephone.
4. "Camping"
  - a. Located within five miles of freeway exit ramp terminal; if a qualifying responsible operator does not exist within the first five miles, the distance may be extended in 5 mile increments until a maximum of 15 miles is reached.
  - b. Be accessible to and capable of handling all common types of travel trailers and recreational vehicles.
  - c. Be equipped to handle a minimum of 15 vehicles.
  - d. Be available the year around unless camping in the general area is of a seasonal nature in which case the facilities in question must be open to the public the entire season. The facilities must be open to the public 24 hours per day, seven days per week during this period.
  - e. Sanitary facilities and drinking water shall be available.

**R17-3-906. Lease Administration Repealed**

- A.** The responsible operator shall sign a lease agreement with the contractor on a form approved by the Department.
- B.** Before approving the lease agreement the contractor shall review the responsible operator's qualifications for compliance with the criteria established in rules R17-3-903, R17-3-904, R17-3-905 and shall not approve the lease agreement if the criteria are not met.
- C.** Upon approval of the lease agreement, the contractor shall transmit the signed lease agreement to the lessee. The lessee shall deliver the LOGO to the contractor for installation, or contract with the contractor to fabricate the LOGO to the lessee's specifications.
- D.** LOGO sign lease agreements shall be valid for a period not to exceed five full years, beginning on the first day of the month following the installation of the lessee's LOGO sign.
- E.** When a lessee meets the requirements established by rules R17-3-903, R17-3-904 and R17-3-905 and the required fees have been paid, the contractor shall install the LOGO within 30 calendar days if the specific service sign has already been installed or within 120 calendar days of receipt of the LOGO if the specific service sign has yet to be installed.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

- ~~F.~~ The lessee or his legal successor shall have the right during the term of the agreement to change the advertising copy so long as the copy conforms to these rules. Cost of such changes in the copy or legend of the LOGO sign shall be at the expense of the lessee. The lessee may be charged an additional fee for each sign removed and remounted by the contractor at the request of the lessee.
- ~~G.~~ For businesses operated on a seasonal basis, LOGO signs shall be covered or removed during the off season. This work shall be done by the contractor. An additional fee shall be paid for this work. It shall be the responsibility of the lessee to notify the contractor of the dates of nonavailability of a motorist service 30 calendar days prior to closure or nonavailability of services.
- ~~H.~~ Upon expiration of the LOGO sign lease agreement and failure to renew the agreement prior to expiration, the contractor shall remove the LOGO sign and shall inform the lessee in writing by certified U.S. mail how to obtain possession of the LOGO sign.
- ~~I.~~ When it is determined by the Department or the contractor that a previously qualified lessee becomes subsequently ineligible for LOGO signs under these rules, or a motorist service is no longer available, the contractor shall notify the lessee by certified U.S. mail that its LOGO sign is to be removed and the reasons for the removal. The lessee shall have ten calendar days to provide information in support of the continued display of the LOGO sign. If the lessee fails to reply within ten calendar days the contractor shall remove the LOGO sign within 20 calendar days of the original notice to the lessee.
- ~~J.~~ If for reasons caused by the Department or the contractor the lessee's LOGO sign is not erected, the fee will be returned.

**R17-3-907. Elimination from the LOGO Signing Program Repealed**

The LOGO sign of a lessee shall be removed from a specific service sign if the following circumstances occur:

- ~~1. The maximum number of responsible operators have signed lease agreements to display LOGO signs on the same specific service sign, and are closer to the interchange than the lessee's business, and~~
- ~~2. The lessee's initial lease has expired, and~~
- ~~3. At least one year has elapsed since the lessee's LOGO sign was installed.~~

**R17-3-908. Sign Panels, Supports, and Materials Repealed**

All sign panels, supports, and materials shall conform to the Department design standards and specifications as provided in the contract.

**R17-3-909. Termination of the LOGO Signing Program Repealed**

If the LOGO Signing Program is terminated, the following actions shall be taken:

- ~~1. Each lessee shall be notified by certified U.S. mail of the termination and the location where they may claim their LOGO sign.~~
- ~~2. The specific service sign panels and supports shall be removed.~~
- ~~3. Fees shall be refunded on a pro-rated basis.~~