

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 1. BOARD OF ACCOUNTANCY

PREAMBLE

- 1. Sections Affected**

R4-1-226	Amend
R4-1-226.01	New Section
R4-1-229	Amend
R4-1-230	Amend
R4-1-341	Amend
R4-1-341.01	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-703
Implementing statutes: A.R.S. §§ 32-723 and 32-729
- 3. The effective date of the rules:**

January 3, 2004
- 4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 1873, June 13, 2003
Notice of Proposed Rulemaking: 9 A.A.R. 3104, July 18, 2003
The record was closed on August 28, 2003.
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Valerie M. Elliott, Executive Director
	George L. Beard, Deputy Director
Address:	Accountancy Board 100 N. 15th Avenue, Ste. 165 Phoenix, AZ 85007
Telephone:	(602) 364-0804
Fax:	(602) 364-0903
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

Beginning in April 2004, the uniform CPA examination will be computer-based. The conversion to the computer-based uniform CPA examination will enable testing of higher-level cognitive skills, permit integration of real-world, entry-level requirements, provide flexibility and convenience to candidates, save time in administration, grading, and reporting, and provide added exam security.
- 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

Notices of Final Rulemaking

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

The economic impact of the proposed rules does not involve small business or consumers. Switching to a computer-based exam only impacts the candidates for the CPA exam. The fee charged to the candidates by the Board actually drops from three hundred dollars for all four parts of the exam to one hundred dollars for the initial exam application and fifty dollars for the re-exam application. However, the fees charged by the exam providers have increased. The benefits of a more flexible, less rigid exam structure outweigh the costs to the candidates. The computer-based model allows candidates to sit for the exam at their convenience. The candidates will not have to sit for all four parts of the exam in a two-day period. They may schedule one part of the exam at a time and in any order that they feel is in their best interest.

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

Only minor technical changes were made throughout the rules to improve clarity, grammar, and consistency as suggested by G.R.R.C. staff.

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

No comments were received.

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

Not applicable

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

None

14. Were the rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

ARTICLE 2. CPA EXAMINATION

Section

- R4-1-226. Applications; Examination - Paper and Pencil
- R4-1-226.01. Applications; Examination - Computer-based
- R4-1-229. Condition Credit
- R4-1-230. Non-conditioned Candidates; Evidence of Additional Study

ARTICLE 3. CERTIFICATION AND REGISTRATION

- R4-1-341. CPA Certificates; by Examination
- R4-1-341.01. CPA Certificates; by Non-Arizona Examinee

ARTICLE 2. CPA EXAMINATION

R4-1-226. Applications; Examination - Paper and Pencil

- A. No change
- B. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - a. No change
 - b. No change
 - c. No change
- D. No change
- E. No change
- F. This rule applies until the Board implements the computer-based examination.**

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

- A.** A person desiring to take the examination for qualification as a certified public accountant shall apply on an application form provided by the Board, indicating the section or sections of the examination the person intends to take. The Board shall provide the applicable form for initial examination or re-examination. The applicant shall submit the application form to the Board office with a registrar- certified, or equivalent, university or college transcript to confirm that the educational requirement in A.R.S. § 32-723 is completed.
- B.** Filing date: An applicant shall file the application form and pay the fee required in subsection (C) during the Board's normal business hours.
1. After the Board approves the applicant to sit for the examination, the Board shall issue an Authorization to Test (ATT) to permit the applicant to take a specified section or sections of the examination. The ATT for the specified section or sections of the examination is effective on the date of issuance and expires upon issuance of a new ATT for the same section or sections, attainment of a passing score on every section or sections specified on the ATT, expiration of a Notice to Schedule (NTS), or failure to pay the fee required under subsection (C)(4).
 2. At the time of application and during the time any ATT issued by the Board is open, the applicant shall not have an open ATT for the same section or sections in any other state or jurisdiction.
 3. After the applicant remits the fee required in subsection (C)(4), the Board shall issue a NTS to the applicant. If the applicant fails to comply with subsection (C)(4), a NTS will not be issued, the issued ATT expires, and the applicant shall apply anew to obtain another ATT for the specified section or sections.
 4. A NTS enables an applicant to schedule testing at an examination test center. The NTS is effective on the date of issuance and expires when the applicant schedules testing for all sections specified in the ATT or six months from the date of issuance, whichever occurs first.
 5. If an applicant does not pass a section of the examination under an existing ATT, the applicant shall not schedule testing for that section until the applicant obtains a new ATT for the section from the Board.
- C.** Application fees: Each applicant shall pay the examination fee, required under A.R.S. § 32-729, in the following amount:
1. Initial applicant: For an initial examination, if the applicant has not previously filed an application for examination in Arizona, \$100 at the time of application.
 2. Re-take applicant: For an applicant who has previously filed an application for examination in Arizona, \$50 at the time of application.
 3. Out-of-state candidates: Any candidate who applies through a state other than Arizona, but sits for the examination in Arizona, shall pay the fee specified in subsection (C)(1) at the time of application.
 4. In addition to the applicable fee in subsection (C)(1), (C)(2), or (C)(3), within 90 calendar days of the date an ATT is issued, the applicant shall remit the fee required for an NTS to the National Association of State Boards of Accountancy.
 5. Refunds:
 - a. The Board shall refund two of the examination fees paid under subsection (C)(1), (C)(2) or (C)(3) to an applicant who makes a written request and shows good cause for a refund. Examples of good cause include permanent or partial disability, illness, physical or mental condition, military service, or financial hardship that prevents the applicant from appearing for the examination.
 - b. Except as provided in subsection (C)(5)(a), an examination fee is forfeited by an applicant who withdraws an application for examination after an ATT is issued.
- D.** The Board shall accept or reject an application or fee as provided by law and shall not hold an application or fee for a future examination.
- E.** This rule applies on the date that the Board implements the computer-based examination.

R4-1-229. Condition Credit

- A.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
- B.** No change
- C.** Upon implementation of the computer-based examination, a candidate is allowed to sit for each section individually and in any order.
1. The candidate shall pass all four sections of the examination within any 18-month period that begins on the date that the first section is passed. If the candidate does not pass all four sections within the 18-month period, the candidate may continue to take the examination, but is required to retake any section passed earlier than 18 months from the date that the last section is passed.

Notices of Final Rulemaking

2. The Board shall give the candidate conditional credit for any section passed for 18 months from the date the candidate passes that section. This credit is retained regardless of any score on failed sections and without regard to whether the candidate takes other sections.
3. The candidate shall not retake a failed section in the same examination window. An examination window is the three-month period in which the candidate has an opportunity to take the examination.
- D.** Upon implementation of the computer-based examination, the Board shall give conditional credit for any section a candidate has passed under R4-1-229(A).
 1. The candidate will have 18 months from the implementation date of the computer-based examination to pass every remaining section. If the candidate does not pass every remaining section, the candidate will lose credit for any section passed before the implementation date of the computer-based examination.
 2. Notwithstanding subsection (D)(1) any section passed after implementation of the computer-based examination will be retained as prescribed in R4-1-229(C).

R4-1-230. Non-conditioned Candidates; Evidence of Additional Study

- A.** No change
 1. No change
 2. No change
 - a. No change
 - b. No change
- B.** No change
- C.** No change
- D.** This rule expires on the date that the Board implements the computer-based examination.

ARTICLE 3. CERTIFICATION AND REGISTRATION

R4-1-341. CPA Certificates; by Examination

- A.** Application: Upon passing all parts of the examination prescribed by A.R.S. § 32-723(C) at one sitting or ~~within the 3-year period~~ as prescribed by R4-1-229, a candidate believing himself or herself to be otherwise qualified under A.R.S. § 32-721, may apply for a certificate of certified public accountant. The candidate shall complete an application packet as prescribed by the Board. The application packet shall include the following information: applicant's background, personal data and photograph; examination scores; education and work history; university or college transcripts to confirm that the bachelor's degree and requirements have been completed; employer or employers name, address, and telephone number; authorization for investigation; and affirmation of truthfulness.
- B.** No change
- C.** No change
- D.** No change
 1. No change
 2. No change
 3. No change
- E.** No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
- F.** No change
 1. No change
 2. No change
 3. No change
- G.** No change
 1. No change
 2. No change
 3. No change

R4-1-341.01. CPA Certificates; by Non-Arizona Examinee

- A.** Application: An applicant for certification who sat for the CPA examination, as prescribed by A.R.S. § 32-723(C), outside of Arizona, passed all parts of the CPA examination at one sitting or ~~within the 3-year period~~ as prescribed by R4-1-229, and who believes himself or herself to be otherwise qualified under A.R.S. § 32-721 shall comply with the application requirements as set forth in R4-1-341.

- B. No change
- C. No change
- D. No change

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD CHIROPRACTIC EXAMINERS

PREAMBLE

- 1. Sections Affected**

Article 13	<u>Rulemaking Action</u>
R4-7-1301	Amend
	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**

Authorizing statute: A.R.S. § 32-904(B)(2)
Implementing statute: A.R.S. § 32-907
- 3. The effective date of the rule:**

January 3, 2004
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 1711, May 30, 2003
Notice of Proposed Rulemaking: 9 A.A.R. 3108, July 18, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Patrice A. Pritzl, Executive Director
Address:	5060 N. 19th Avenue, Suite 416 Phoenix, AZ 85015-3210
Telephone:	(602) 864-5088
Fax:	(602) 864-5099
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rules amendment will set the charge for researching, preparing, and certifying and mailing verification of a license in good standing.
- 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:**

The Board did not review any study relevant to the rule.
- 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 economic impact is minor for the agency and the licensee. The public will not experience an economic impact.
The agency currently provides this service at no charge, and therefore experiences a loss of revenue and resources. The agency will benefit by recouping associated costs of approximately twenty-five (\$25.00) dollars per request. Licensees requesting a verification of license in good standing will pay twenty-five (\$25.00) dollars per request.
The fee closely mirrors fees other states charge for the same service.
- 10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):**

None
- 11. A summary of the principal comments and the agency response to them:**

The agency did not receive written or oral comment regarding the rule.

Notices of Final Rulemaking

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

Not applicable

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

Not applicable

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

No

15. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD CHIROPRACTIC EXAMINERS

ARTICLE 13. ~~FEES~~ CHARGES

Section

R4-7-1301. Additional Fees Charges

ARTICLE 13. ~~FEES~~ CHARGES

R4-7-1301. Additional Fees Charges

A. The Board shall collect ~~fees~~ charges for services as follows:

1. \$40.00 for directories, address labels, or lists of licensees, applicants, or other regulated parties.
2. \$40.00 for annual subscriptions for meeting minutes, agendas, or other agency documents published and provided on an ongoing basis ~~for a period of one year.~~
3. \$10 for a jurisprudence booklet.
4. \$5 for a duplicate renewal receipt.
5. \$20 for a duplicate ornamental license.
6. \$20 for a duplicate ornamental certificate.
7. \$2.00 for a hard copy ~~license or of a credential verification for each license or credential verification requested.~~
8. 25¢ per page for the preparation and copying of public records.
9. \$25.00 for a verification of a license in good standing.

B. All ~~fees~~ charges are non-refundable.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 9. REGISTRAR OF CONTRACTORS

PREAMBLE

- 1. Sections Affected**
R4-9-108
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 32-1104(A)(5)
Implementing statute: A.R.S. § 32-1154(A)(3)
- 3. The effective date of the rule:**
January 3, 2004
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 2849, July 5, 2002
Notice of Proposed Rulemaking: 9 A.A.R. 1382, May 9, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Alan Felber, Chief of Licensing
Address: Registrar of Contractors
800 W. Washington, 6th Floor
Phoenix, AZ 85007
Telephone: (602) 542-1525
Fax: (602) 542-7852
E-mail alan.felber@roc1.rc.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
Existing R4-9-108 incorporates by reference the current editions of the building codes with which licensed contractors must comply in any county, city, or town that has not adopted building codes. Anyone reading this rule may think the codes mentioned are for statewide use instead of realizing the codes listed are for areas that have not adopted any codes. The portion of subsection (C) addressing the specific building codes is of little value since all cities and counties, except Mohave and Greenlee counties, of the state have adopted codes. For the two counties that have not adopted local codes, the agency believes that the rule's requirement that work be performed in accordance with professional industry standards is sufficient. Therefore, the agency proposes striking the references to building codes contained in subsection (C).
- 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 economic impact on all affected parties is favorable because the amendments to R4-9-108 will aid owner-builders and administrators who may be confused by what should be the prevailing building code.
- 10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):**
None
- 11. A summary of the comments made regarding the rule and the agency response to them:**
No comments were received.

Notices of Final Rulemaking

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. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 9. REGISTRAR OF CONTRACTORS

ARTICLE 1. GENERAL PROVISIONS

Section

R4-9-108. Workmanship Standards

ARTICLE 1. GENERAL PROVISIONS

R4-9-108. Workmanship Standards

- A. A contractor shall perform ~~All all~~ work ~~shall be performed~~ in a professional and workmanlike manner.
- B. A contractor shall perform ~~All all~~ work ~~shall be performed~~ in accordance with any applicable building codes and professional industry standards.
- C. All work performed by a contractor in ~~any a~~ county, city, or town ~~which that~~ has not adopted building codes or where any adopted building codes do not contain specific provisions applicable to that aspect of construction work shall be performed in accordance with professional industry standards, ~~and shall comply with the minimum standards set forth in subsections (C)(1) through (4).~~
 - 1. ~~In all new construction or remodeling, the minimum standards shall be in accordance with the Minimum Property Standards for Housing, Directive No. 4910.01, U.S. Department of Housing and Urban Development, 1994 (M.P.S.), as they pertain to construction and construction design but not to matters of site design and development of such residential construction.~~
 - 2. ~~In all new construction or remodeling, the minimum standards shall be in accordance with the minimum building requirements as set forth in volumes 1, 2, and 3 of the 1997 Uniform Building Code, International Conference of Building Officials, 1997 (U.B.C.).~~
 - 3. ~~In all general engineering work, the minimum standards shall be in accordance with the minimum building requirements as set forth in the U.B.C. and to the Principles of Construction of Hot Mix Asphalt Pavements, Manual Series No. 22, Asphalt Institute, January 1983 and to Asphalt in Pavement Maintenance, Manual Series No. 16, The Asphalt Institute, March 1983 as they pertain to construction and to matters of design and site development.~~
 - 4. ~~Plumbing, electrical, and mechanical refrigeration work shall be governed as follows:~~
 - a. ~~Plumbing: The minimum standards in the plumbing field shall be in accordance with the Uniform Plumbing Code, International Association of Plumbing and Mechanical Officials, 1997 (U.P.C.).~~
 - b. ~~Electrical: The minimum standards in the electrical field shall be in accordance with the 1996 National Electrical Code, National Fire Protection Association (NFPA 70-1996), 1995 (N.E.C.).~~
 - c. ~~Mechanical Refrigeration: The minimum standards in the mechanical refrigeration field shall be in accordance with the 1997 Uniform Mechanical Code, International Conference of Building Officials, 1997 (U.M.C.).~~
 - 5. ~~The codes and industry manuals, referred to in subsections (C)(1) through (4) are incorporated by reference and on file with the Office of the Secretary of State and the Registrar of Contractors. This incorporation by reference contains no future editions or amendments.~~

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

- 1. Sections Affected**

R4-23-110	Amend
R4-23-402	Amend
R4-23-408	Amend
R4-23-609	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-1904(A)(1) and (2)
Implementing statute: A.R.S. § 32-1904(B)(3) and (5)
- 3. The effective date of the rules:**

January 3, 2004
- 4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 4425, October 18, 2002
Notice of Proposed Rulemaking: 9 A.A.R. 3110, July 18, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rules:**

Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
4425 W. Olive, Suite 140
Glendale, AZ 85302
Telephone: (623) 463-2727, ext. 131
Fax: (623) 934-0583
E-mail: rxcop@msn.com
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Board staff identified minor clarity and consistency issues in R4-23-402, R4-23-408, and R4-23-609 that warrant amending those Sections. The words "supportive personnel" in R4-23-402(A)(9) are changed to the words "pharmacy technician or pharmacy technician trainee." In November 1999, the Board amended the rules related to pharmacy technicians and eliminated the term "supportive personnel," but this subsection was missed in that effort. Amending R4-23-402(A)(9) now will correct that oversight. The Board completed a revision of R4-23-408 in January 2001, but a phrase in the previous version of R4-23-408 that provided an exemption to compliance with R4-23-407(B) was inadvertently left out. R4-23-407(B) requires that a pharmacist document prescription refills on the back of the original hard-copy prescription. The previous version of R4-23-408 allowed an exemption to the physical hard-copy recordkeeping of R4-23-407(B) if the pharmacy used a computer that complied with the computer requirements of R4-23-408. The proposed amendment to R4-23-408 will provide an exemption to R4-23-407(B) for those pharmacies that comply with the requirements of R4-23-408. R4-23-609(A) states that the minimum area of a community pharmacy "shall not be less than 300 square feet when a maximum of three pharmacy personnel, are practicing or working simultaneously." It could be argued that this language means that a pharmacy with less than three personnel working simultaneously may have less than 300 square feet. When the rule was written, the Board intent was that the minimum area of a pharmacy is 300 square feet when one, two, or three pharmacy personnel are working in a pharmacy. The amended rules change the language to clearly and concisely reflect the Board's intent. The amended rules include new definitions for "compounding and dispensing counter" and "pharmacy counter working area" in R4-23-110. Changes to R4-23-609(B) involving the compounding and dispensing counter requirements and changes to R4-23-609(F) involving pharmacy building security were made while drafting the rules. The existing rules require ten unobstructed square feet of working counter area per pharmacist on duty in the pharmacy. The changes to R4-23-609(B) require a compounding and dispensing counter that provides a minimum of three square feet of pharmacy counter working area for not less than 16 inches in depth and 24 inches in length for the practice of one pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee. Additional changes to R4-23-609(B) include language specifying how to determine total compounding and dispensing counter requirements and numbers of personnel allowed in the pharmacy area based on compounding and dispensing counter area and total pharmacy area. Because no one has utilized the provisions in R4-23-609(F) that allow use of a partial physical barrier

Notices of Final Rulemaking

in conjunction with an electronic pharmacy security system, the Board is repealing those subsections. The amended rules include minor changes to improve the clarity, conciseness, and understandability of the rules. The amended rules include format, style, and grammar changes necessary to comply with the current rules of the Secretary of State and Governor’s Regulatory Review Council. When originally opened in October 2002, the docket contained the compounding rule, R4-23-410. At the January 2003 Board meeting, the Board president appointed a task force to review the compounding rule along with the sterile pharmaceuticals rule, R4-23-670. R4-23-410 was pulled from this rule package and placed with R4-23-670 in another open docket.

The Board believes that approval of these rules benefits the public and the pharmacy community by clearly establishing the professional practices required of pharmacists and interns and minimum standards for pharmacy computer systems and the area of a community pharmacy.

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 rule changes have minimal economic impact on the regulated community, small business, or the general public. The rule changes improve the clarity, conciseness, and understandability of the rules. The economic impact on the Board is for personnel time spent in the rulemaking process. That economic impact is minimal.
The Board, the public, and the pharmacy community benefit from rules that clearly establish the professional practices required of pharmacists and interns and minimum standards for pharmacy computer systems and the area of a community pharmacy.

10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
At the request of G.R.R.C. staff, the Board made some minor grammatical, format, and style changes.

11. **A summary of the comments made regarding the rules and the agency response to them:**
The Board received one written comment from the Arizona Pharmacy Association voicing the Association’s support of the amended rules.

12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable

13. **Incorporations by reference and their location in the rules:**
None

14. **Were these rules previously adopted as emergency rules?**
No

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

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section
R4-23-110. Definitions

ARTICLE 4. PROFESSIONAL PRACTICES

Section
R4-23-402. Pharmacist, Graduate Intern, and Pharmacy Intern
R4-23-408. Computer Requirements

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section
R4-23-609. Pharmacy Area of Community Pharmacy

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to A.A.C. Title 4 Chapter 23:

“Active ingredient” No change

“Alternate physician” No change

“Approved course in pharmacy law” No change

“Approved Provider” No change

“Authentication of product history” No change

“AZPLEX” No change

“Batch” No change

“Beyond-use date” No change

“Biological safety cabinet” No change

“Certified pharmacy technician” No change

“Class 100 environment” No change

“Community pharmacy” No change

“Component” No change

“Compounding and dispensing counter” means a pharmacy counter working area defined in this Section where a pharmacist or a graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist compounds, mixes, combines, counts, pours, or prepares and packages a prescription medication to dispense an individual prescription order or prepackages a drug for future dispensing.

“Computer system” No change

“Computer system audit” No change

“Container” No change

“Continuing education” No change

“Continuing education activity” No change

“Continuing education unit” or “CEU” No change

“Contact hour” No change

“Correctional facility” No change

“CRT” No change

“Current good compounding practices” No change

“Current good manufacturing practice” No change

“Cytotoxic” No change

“Day” No change

“DEA” No change

“Delinquent license” No change

“Dispensing pharmacist” No change

“Drug sample” No change

“Drug therapy management” No change

“Drug therapy management agreement” No change

“Extreme emergency” No change

“FDA” No change

“Immediate notice” No change

“Inactive ingredient” No change

“Internal test assessment” No change

“Limited-service correctional pharmacy” No change

“Limited-service long-term care pharmacy” No change

“Limited-service mail-order pharmacy” No change

Notices of Final Rulemaking

- “Limited-service nuclear pharmacy” No change
- “Limited-service pharmacy permittee” No change
- “Long-term care consultant pharmacist” No change
- “Long-term care facility” No change
- “Lot” No change
- “Lot number” or “control number” No change
- “Materials approval unit” No change
- “Mediated instruction” No change
- “MPJE” No change
- “NABP” No change
- “NABPLEX” No change
- “NAPLEX” No change
- “Other designated personnel” No change
- “Outpatient” No change
- “Outpatient setting” No change
- “Patient profile” No change
- “Pharmaceutical care” No change
- “Pharmacy counter working area” means a clear and continuous working area that contains no major obstacles such as a desktop computer, computer monitor, computer keyboard, external computer drive device, printer, facsimile machine, pharmacy balance, typewriter, or pill-counting machine, but may contain individual documents or prescription labels, pens, prescription blanks, refill log, pill-counting tray, spatula, stapler, or other similar items necessary for the prescription-filling process.
- “Pharmacy law continuing education” No change
- “Pharmacy technician” No change
- “Prepackaged drug” No change
- “Provider pharmacy” No change
- “Radiopharmaceutical” No change
- “Radiopharmaceutical quality assurance” No change
- “Radiopharmaceutical services” No change
- “Red C stamp” No change
- “Remote drug storage area” No change
- “Resident” No change
- “Responsible person” No change
- “Score transfer” No change
- “Sight-readable” No change
- “Single-drug audit” No change
- “Single-drug usage report” No change
- “Sterile pharmaceutical product” No change
- “Strength” No change
- “Supervision” No change
- “Supervisory physician” No change
- “Supplying” No change
- “Support personnel” No change
- “Transfill” No change
- “Wholesale distribution” No change
- “Wholesale distributor” No change

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-402. Pharmacist, Graduate Intern, and Pharmacy Intern

- A. A pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist shall perform the following professional practices in dispensing a prescription medication from a prescription order:
1. Receive, reduce to written form, and manually initial oral prescription orders;
 2. Obtain and record the name of an individual who communicates an oral prescription order;
 3. Obtain, or assume responsibility to obtain, from the patient, patient's agent, or medical practitioner and record, or assume responsibility to record, in the patient's profile, the following information:
 - a. Name, address, telephone number, date of birth (or age), and gender;
 - b. Individual history including known diseases and medical conditions, known drug allergies or drug reactions, and if available a comprehensive list of medications currently taken and medical devices currently used;
 4. Record, or assume responsibility to record, in the patient's profile, a pharmacist's, graduate intern's, or pharmacy intern's comments relevant to the ~~individual's~~ patient's drug therapy, including other information specific to the patient or drug;
 5. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
 - a. A patient's allergies,
 - b. Incompatibilities with a patient's currently taken medications,
 - c. A patient's use of unusual quantities of dangerous drugs or narcotics,
 - d. A medical practitioner's signature, and
 - e. The frequency of refills;
 6. Verify that a dosage is within proper limits;
 7. Interpret the prescription order, which includes exercising professional judgement in determining whether to dispense a particular prescription;
 8. Compound, mix, combine, or otherwise prepare and package the prescription medication needed to dispense individual prescription orders;
 9. Prepackage or supervise the prepackaging of drugs by ~~supportive personnel~~ a pharmacy technician or pharmacy technician trainee under ~~R4-23-403~~ R4-23-1104. For drugs prepackaged by ~~supportive personnel~~ a pharmacy technician or pharmacy technician trainee, a pharmacist shall:
 - a. Verify the drug to be prepackaged;
 - b. ~~Decide the wording and requirements placed on the label;~~ Verify that the label meets the official compendium's standards; and
 - c. Check the completed prepackaging procedure and product; and
 - d. Manually initial the completed label; or
 - e. For automated packaging systems, manually initial the completed label or a written log or initial a computer-stored log;
 10. Check a prescription label to ensure that it communicates the prescriber's directions precisely;
 11. Make a final accuracy check on the completed prescription medication and manually initial the finished label. Manual initialing of a finished label is not required if the pharmacy's computer system complies with the computer documentation requirements of R4-23-408(B)(4);
 12. Record, or assume responsibility to record, a prescription serial number and date dispensed on the original prescription order;
 13. Obtain, or assume responsibility to obtain, permission to refill a prescription ~~orders~~ order and record, or assume responsibility to record, on the original prescription order:
 - a. Date dispensed,
 - b. Quantity dispensed, and
 - c. Name of medical practitioner or medical practitioner's agent who communicates permission to refill the prescription order;
 14. Reduce to written or printed form, or assume responsibility to reduce to written or printed form, a new prescription order received by:
 - a. Facsimile,
 - b. Computer modem,
 - c. Other means of communication;
 15. Verify and manually initial a new prescription order received by:
 - a. Facsimile,
 - b. Computer modem, or
 - c. Other means of communication;
 16. Record on the original prescription order the name or initials of the pharmacist, graduate intern, or pharmacy intern who originally dispenses the prescription order; and

Notices of Final Rulemaking

17. Record on the original prescription order the name or initials of the pharmacist, graduate intern, or pharmacy intern who dispenses each refill.
- B.** Only a pharmacist, graduate intern, or pharmacy intern shall provide oral consultation about a prescription medication to a patient or patient's agent in ~~an~~ an outpatient settings setting, including a patient discharged from a hospital. The oral consultation performed in a patient counseling area as prescribed in R4-23-609(D) is required whenever the following occurs:
1. The prescription medication has not been previously dispensed to the patient;
 2. A new prescription number is assigned to a previously dispensed prescription medication;
 3. The prescription medication has not been previously dispensed to the patient in the same strength or dosage form or with the same directions;
 4. The pharmacist, through the exercise of professional judgment, determines that oral consultation is warranted; or
 5. The patient or patient's agent requests oral consultation.
- C.** Oral consultation shall include:
1. The name, strength, and dosage form of a prescription medication or prescription-only device;
 2. The directions for use;
 3. The route of administration; and
 4. Special instructions, precautions, or storage requirements.
- D.** The pharmacist, through the exercise of professional judgment, may provide oral consultation that includes:
1. Common severe adverse effects, interactions, or therapeutic contraindications, and the action required if they occur;
 2. Techniques of self-monitoring drug therapy;
 3. The duration of the drug therapy;
 4. Prescription refill information; and
 5. Action to be taken if a dose is missed.
- E.** Nothing in subsection (B) shall be construed as requiring a pharmacist, graduate intern, or pharmacy intern to provide oral consultation if a patient or patient's agent refuses the consultation.
1. Only a pharmacist, graduate intern, or pharmacy intern shall accept a refusal for consultation.
 2. A pharmacist, graduate intern, or pharmacy intern shall document, or assume responsibility to document, a refusal for consultation on the original prescription order or document by alternative methods approved by the Board or its designee.
- F.** When a prescription is delivered to the patient or patient's agent outside the immediate area of a pharmacy and a pharmacist is not present, the prescription shall be accompanied by written or printed patient medication information that, in addition to the requirements in subsection (C), includes:
1. Approved use for the prescription medication;
 2. Possible adverse reactions;
 3. Drug-drug, food-drug, or disease-drug interactions;
 4. Missed dose information; and
 5. Telephone number of the dispensing pharmacy.
- G.** A prescription medication or prescription-only device, delivered to a patient at a location where a licensed health care professional is responsible for administering ~~a~~ the prescription medication to ~~a~~ the patient, is exempt from the requirement of subsection (C).
- H.** A pharmacist, graduate intern, or pharmacy intern shall wear a badge indicating name and title while on duty.
- I.** Nothing in this Section ~~shall prevent~~ prevents a hospital ~~pharmacists~~ pharmacist from accepting ~~a~~ a prescription ~~orders in accordance with~~ order according to rules pertaining specifically to hospital pharmacies.

R4-23-408. Computer Requirements

- A.** Systems ~~Manual~~ manual. A pharmacy permittee or pharmacist-in-charge shall:
1. Develop and implement policies and procedures for the following operational aspects of a computer system:
 - a. Examples of all output documentation provided by the computer system that contains original or refill prescription order or patient profile information;
 - b. Steps a pharmacy employee follows when the computer system is not operational due to scheduled or unscheduled system interruption;
 - c. Regular and routine backup file procedure and file maintenance;
 - d. Audit procedures, personnel code assignments, and personnel responsibilities; and
 - e. Quality assurance mechanism for data entry validation;
 2. Review biennially and, if necessary, revise the policies and procedures biennially required under these rules;
 3. Document the review required under subsection (A)(2);
 - ~~3-4.~~ Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee; and
 - ~~4-5.~~ Make the policies and procedures available within the pharmacy for reference by pharmacy personnel and inspection by the Board or its designee.

Notices of Final Rulemaking

- B.** Computer system data storage and retrieval. A pharmacy permittee or pharmacist-in-charge shall ensure that the computer system is capable of:
1. Producing sight-readable information on all original and refill prescription orders and patient profiles;
 2. Providing on-line retrieval (via CRT display or hard-copy printout) of original prescription order information required in A.R.S. § 32-1968(C), ~~A.A.C. R4-23-402(A)~~, and R4-23-407(A);
 3. Providing on-line retrieval (via CRT display or hard-copy printout) of patient profile information required in ~~A.A.C. R4-23-402(A)~~;
 4. Providing documentation identifying the pharmacist responsible for dispensing each original or refill prescription order, except a pharmacy permittee with a computer system, that is in use before the effective date of this Section that cannot provide documentation identifying the dispensing pharmacist, may continue to use the computer system by providing manual documentation identifying the dispensing pharmacist;
 5. Producing a printout of all prescription order information, including a single-drug usage report that contains:
 - a. The name of the prescribing medical practitioner;
 - b. The name and address of the patient;
 - c. The quantity dispensed on each original or refill prescription order;
 - d. The date of dispensing for each original or refill prescription order;
 - e. The name or identification code of the dispensing pharmacist; and
 - f. The serial number of each prescription order; and
 6. Providing a printout of requested prescription order information to an individual pharmacy within 72 hours of the request if prescription order information is maintained in a centralized computer record system.
- C.** A pharmacy permittee or pharmacist-in-charge of a pharmacy that ~~begins using~~ uses a pharmacy computer system:
1. ~~shall~~ Shall notify the D.E.A. and the Board in writing that original and refill prescription information and patient profiles are ~~now contained~~ stored in a pharmacy computer system-;
 2. Shall comply with this Section if the pharmacy computer system's refill records are used as an alternative to the manual refill records required in R4-23-407(B);
 3. Is exempt from the manual refill recordkeeping requirements of R4-23-407(B), if the pharmacy computer system complies with the requirements of this Section; and
 4. Shall ensure that documentation of the accuracy of original and refill information entered into a computer system is provided by each pharmacist using the computer system and kept on file in the pharmacy for seven years from the date of the last refill. Documentation includes one of the following:
 - a. A hard-copy printout of each day's original and refill data that:
 - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
 - ii. Includes the printed name of each dispensing pharmacist; and
 - iii. Is signed and initialed by each dispensing pharmacist; or
 - b. A log book or separate file of daily statements that:
 - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
 - ii. Includes the printed name of each dispensing pharmacist; and
 - iii. Is signed and initialed by each dispensing pharmacist.
- D.** If a pharmacy computer system does not comply with the requirements of subsections (A) ~~or~~ and (B), the pharmacy permittee or pharmacist-in-charge shall bring the computer system into compliance within ~~3~~ three months of a notice of non-compliance or violation letter. If the computer system is still ~~non-compliant~~ noncompliant with ~~subsections~~ subsection (A) or (B) after ~~3~~ three months, the pharmacy permittee or pharmacist-in-charge shall immediately comply with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- E.** If a pharmacy's personnel perform manual recordkeeping under subsection (D), the pharmacy's personnel shall continue manual recordkeeping until the pharmacist-in-charge sends proof, verified by a Board compliance officer, that the computer system complies with subsections (A) and (B).
- F.** Security. To maintain the confidentiality of patient records, a pharmacy permittee or pharmacist-in-charge shall ensure that:
1. The computer system has security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription order information and patient profiles; and
 2. After a prescription order is dispensed, any alteration of prescription order information is documented, including the identification of the pharmacist responsible for the alteration.
- G.** A computer system that does not comply with all the requirements of subsections (A) and (B) may be used in a pharmacy if:
1. The computer system was in use in the pharmacy before ~~the effective date of this Section~~ July 11, 2001, and
 2. The pharmacy complies with the manual recordkeeping requirements of R4-23-402 and R4-23-407.

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-609. Pharmacy Area of Community Pharmacy

- A. Minimum area of community pharmacy: The minimum area of a community pharmacy, the actual area primarily devoted to stocking drugs restricted to pharmacists, and to the compounding and dispensing of prescription medication, exclusive of office area or other support function area, shall not be less than 300 square feet, ~~when a~~ Δ maximum of three pharmacy personnel are practicing or working may practice or work simultaneously in the minimum area. ~~For~~ The pharmacy permittee shall provide an additional 60 square feet of floor area for each additional pharmacist, or graduate intern, or clerical pharmacy intern, pharmacy technician, pharmacy technician trainee, or support personnel who may practice or work simultaneously, ~~an additional 60 square feet of floor area shall be provided.~~ All of the allotted square footage area, including adequate shelving, shall lend itself to efficient pharmaceutical practice and permit free movement and visual surveillance of personnel by the pharmacist.
- B. Compounding and dispensing counter: ~~There~~ On or after January 6, 2004, a pharmacy permit applicant or remodel or relocation applicant shall be provide a compounding and dispensing counter ~~which shall provide that provides~~ a minimum of ~~10~~ three square feet of ~~unobstructed~~ pharmacy counter working area of not less than 16 inches in depth and 24 inches in length for the practice of one pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee. For each additional pharmacist, ~~or graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee~~ practicing simultaneously, there shall be an additional ~~10~~ three square feet of ~~unobstructed~~ pharmacy counter working area of not less than 16 inches in depth and 24 inches in length. The Board shall determine a pharmacy's total required compounding and dispensing counter area by multiplying the maximum number of personnel allowed in the pharmacy area using the requirements specified in subsection (A) by three square feet per person. A pharmacy permittee or pharmacist-in-charge may operate the pharmacy with a total pharmacy counter working area specified in subsection (A) that is equal to the actual maximum number of pharmacists, graduate interns, pharmacy interns, pharmacy technicians, and pharmacy technician trainees, working simultaneously in the pharmacy area times three square feet per person.
- C. Working area for compounding and dispensing counter: The aisle floor area ~~to be occupied~~ used by the pharmacist, ~~or graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee~~ at the compounding and dispensing counter shall extend the full length of the counter and be clear and ~~unobstructed~~ continuous for a minimum of 36 inches ~~therefrom~~ from any counter, fixture, or structure.
- D. Area for ~~oral communication:~~ patient counseling. ~~Any pharmacy permit issued or pharmacy remodeled~~ On or after April 1, 1995, a pharmacy permit applicant or remodel or relocation applicant shall provide ~~an~~ a separate and distinct patient counseling area for the purpose of patient oral communication that provides patient privacy. ~~This rule shall~~ subsection does not apply to a pharmacy that is exempt from the requirements of R4-23-402(B).
- E. Narcotic cabinet or safe: ~~Narcotics~~ To prevent diversion, narcotics and other controlled substances may be:
 - 1. Housed ~~Kept~~ in a separate locked cabinet or safe, or
 - 2. ~~they may be dispersed throughout the pharmacy to prevent diversion according to the requirements of the federal laws and regulations pertaining thereto~~ Dispersed throughout the pharmacy's prescription-only drug stock.
- F. Building security standard of community pharmacy area: ~~In order for the pharmacy area to be left without a pharmacist on duty when other people are in the store, it shall be secured by either a complete physical barrier with suitable locks or a partial physical barrier with an electronic security barrier to detect entry at a time the pharmacist is not present. Such electronic security barrier, prior to use, must be approved by the Board or its designee.~~
 - 1. ~~Complete physical barrier:~~ The pharmacy area shall be enclosed by a permanent barrier or partition from floor or counter to structural ceiling or roof, with entry doors that can be securely locked. The barrier shall be so designed so that only a pharmacist shall have can access to the area where prescription-only drugs, narcotics, and other controlled substances restricted to sales by pharmacists are stored, compounded and dispensed. If a pharmacy area is continually attended by a pharmacist while other people are in the store, it need not be enclosed by a permanent barrier. Where the ~~The~~ permanent barrier is required, it may be constructed of other than a solid material. If constructed of a material other than a solid, the openings or interstices of the material shall not be large enough to permit removal of items in the pharmacy area by any means through the barrier. Any material used in the construction of the permanent barrier must be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The pharmacy permittee shall submit plans and specifications of the permanent barrier shall be submitted to the Board for approval that it affords the security as required in this Section.
 - 2. ~~Partial physical barrier:~~ The pharmacy area shall be enclosed by a permanent barrier or partition from floor or counter to the false or drop ceiling, with entry doors that can be securely locked. The permanent physical barrier shall be a minimum 84 inches high. A pharmacy area enclosed by a partial physical barrier shall also be enclosed by an electronic security barrier approved by the Board or its designee.
 - 3. ~~Electronic pharmacy security:~~ An electronic pharmacy security system shall provide sound and motion detection or be a system that provides intrusion protection of equal or greater effectiveness as determined by the Board or its designee. The system shall provide direct notification to a local law enforcement office or security organization that provides continuous monitoring. The specifications of the electronic systems shall be submitted to the Board for approval with the appropriate fee prior to installation to ensure the system affords security required in the section.

Notices of Final Rulemaking

~~After installation the system shall be inspected by the Board or its designee and certified provided that the system complies with the previously approved plans and specifications. A quarterly report of system inspections and an entry log shall be available for inspection by the Board or its designee. Nothing in this section shall prevent a pharmacy with a complete physical barrier from utilizing an electronic security system.~~

- G. Drug storage and security:
- ~~All areas where drugs and devices are stored~~ The pharmacy permittee shall be ensure that drugs and devices are stored in a dry, adequately lighted and well-lit, ventilated, and maintained in a clean and orderly condition area. Storage areas ~~The pharmacy permittee shall be maintained~~ maintain the drug storage area at temperatures which will that ensure the integrity of the drugs prior to their before dispensing as stipulated by stated in the official compendium as defined in A.R.S. § 32-1901(43)(52) or the manufacturer's or distributor's labeling.
 - ~~When an additional storage area is required for~~ If the pharmacy permittee needs additional storage area for drugs that are restricted to ~~pharmacists sale by a pharmacist, the pharmacy permittee shall ensure that the area shall also be is contained by a permanent barrier from floor or counter to structural ceiling or roof. All doors or gates to the storage area shall be able to be locked and~~ The pharmacy permittee shall lock all doors and gates to the drug storage area. Only ~~Only~~ a pharmacist with a key shall be is permitted to enter the storage area, except in an extreme emergency.
- H. ~~The prescription~~ A pharmacy permittee or pharmacist-in-charge shall ensure that the pharmacy working counter shall be separated from the public area is protected from unauthorized access while the pharmacy is open for business by a barrier not less than 66 inches in height or another method approved by the Board or its designee.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

PREAMBLE

- Sections Affected Rulemaking Action
R12-5-413 Amend
- The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):

Authorizing statute: A.R.S. § 37-132(A)(1)

Implementing statute: A.R.S. § 37-132(B)(2)

- The effective date of the rules:

November 4, 2003—Effective immediately upon filing with the Secretary of State.

This rule qualifies for an immediate effective date under A.R.S. § 41-1032(A)(4) to provide a benefit to the public and a penalty is not associated with a violation of the rule.

On October 7, 2003, the Governor's Regulatory Review Council (G.R.R.C.) approved the Department's final rule, R12-5-413 (Real Estate Broker Commission), and subsequently forwarded the approved rule to the Secretary of State's Office (SOS).

Pursuant to the Administrative Procedure Act (APA), A.R.S. § 41-1032, the effective date of a rule is 60 days after the rule is filed with the SOS. In the instant case, the estimated effective date would be on or about December 7, 2003.

The State Land Department has been functioning under an emergency rule amendment, originally approved by the Attorney General in November 2002, renewed by the Attorney General in May 2003 and is now due to expire on November 20, 2003. As the final rule will not become effective until on or about December 7th, a "window" (November 20, 2003 to December 7, 2003) exists wherein neither the emergency rule nor the final rule would apply.

On October 9th, the Department requested the Attorney General's Office to "extend" or renew the emergency rule to ensure "rule" coverage through the "window" until the final rule becomes effective. The Attorney General notified the Department on October 23, 2003, that, by law, the rule cannot be extended a third time, even under the existing circumstances.

The Department has sales scheduled or being processed during November and December including during the "window" time-frame. With neither the final rule nor the emergency rule effective during the "window," two major state land sales, scheduled for public auction, as well as other pending state real estate transactions requiring administrative decision, are jeopardized. The sales, with a collective value of over \$6.2 million, have been publicly noticed in newspapers, the Department's web site and through other noticing actions. Considerable public interest in the sales have been received by the Department including confirmed prospective bidders and real estate agents associated with the sales.

Notices of Final Rulemaking

Without the rule being effective immediately, the Department is required to hold sales and make decisions regarding sales and long-term commercial leasing within the “window” under the former rule. That rule requires the Department to pay commissions that may not be commensurate with the work required of the proposed sales or leasing transaction.

The only other option the Department can consider would be to delay or postpone sales and decisions on sales and long-term commercial leasing during the “window” time-frame.

To delay or postpone the sales would (1) adversely impact prospective bidders who have pre-arranged financing to meet the Department’s statutory sales requirements; (2) delay prospective bidders land use planning and development efforts; (3) delay and possibly cost real estate agent’s sales commissions if the agents lose their bidding clients due to delay or postponement of the sales; (4) delay revenues to the State Land Trust’s beneficiaries (public schools and institutions), and (5) delay much needed revenues to the State’s General Fund.

The scheduled sales and other proposed real estate transactions pending before the Department result from several months of administrative and staff work operating under the emergency rule granted by the Attorney General’s Office.

To delay or postpone the scheduled sales or to delay decisions on proposed real estate actions pending before the Department would be costly, both economically and in public opinion, to the state, the Trust’s beneficiaries, the applicants, real estate brokers, and the public who benefit or work for industries that benefit from the sales and long-term commercial leasing of state lands.

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

Notice of Emergency Rulemaking: 8 A.A.R. 5151, December 20, 2002

Notice of Emergency Rulemaking: 9 A.A.R. 1963, June 20, 2003

Notice of Rulemaking Docket Opening: 9 A.A.R. 1430, May 9, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 1926, June 20, 2003

Notice of Final Rulemaking: 9 A.A.R. 4646, October 31, 2003

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

Name: Richard B. Oxford, Director
Land Information, Title & Transfer Division

Address: Arizona State Land Department
1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

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

The State Land Department amended R12-5-413 and the Governor’s Regulatory Review Council approved the final rule on October 7, 2003. This rule package is resubmitted solely for the purpose of changing the effective date of the rule.

A.R.S. § 37-132(B)(2) authorizes the State Land Commissioner to use private real estate brokers to assist in any sale or long-term lease of state land. The Department is authorized to pay a commission to licensed real estate brokers or their agents for their services associated with the successful selling or long-term commercial leasing of state properties at public auction. The commission is to be paid from fees collected for sale or long-term lease of state land under A.R.S. § 37-108(A)(10)(a).

Under R12-5-413(B), “...the commission paid shall be the amount collected pursuant to A.R.S. § 37-108(A)(10)(a)” (emphasis added). Under the amended rule, “...the commission shall be paid from the fees collected under A.R.S. § 37-108(A)(10)(a)” (emphasis added).

R12-5-413(B), as written, restricts the Commissioner’s ability to provide appropriate commissions to brokers in keeping with economic trends in the real estate business and consistent with the services provided in a transaction.

To provide fair and equitable broker fees, the Commissioner needs to be able to assess the amount of work required of a broker relating to a proposed sale or long-term lease and offer a broker a commission commensurate to the proposed leasing or sales transaction.

Other amendments clarify text and bring the rule up to Secretary of State’s rulewriting standards.

- 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:**

The Land Department did not review any study relevant to the rule.

- 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:**

In 1993, the Arizona Legislature enacted A.R.S. § 37-132(B)(2), which (1) authorized the State Land Commissioner to use private real estate brokers to assist in any sale or long-term lease of state land, and (2) authorized the Department to pay a broker's commission within certain parameters, for their services. The broker's commission fee is authorized to be paid from selling fees collected pursuant to A.R.S. § 37-108(A)(10)(a).

The current rule requires the commission paid to be the amount collected pursuant to A.R.S. § 37-108(A)(10)(a). This inflexibility does not allow the State Land Commissioner to establish a broker's commission commensurate to the amount of work by a broker for the sale or long-term lease being offered. The broker's role in securing a successful bidder in a sale is different than securing a successful lessee for a long-term lease. In its simplest form, the broker's role in a sale is to notify a potential client of the Department's proposed sale, provide information, and have the client be the successful bidder. In a long-term lease, the broker must be familiar with the lease and the terms being offered, secure an interested lessee, negotiate lease terms where possible, and have the client be the successful bidder at the lease auction.

The impact of the rule amendment will be primarily on the licensed real estate brokers in the state whose commissions will be tailored to fit the proposed sale or lease. The impact may also be felt by the Department as brokers may not consider the commissions on smaller sales as lucrative enough to warrant their time, and thus, the Department would not be able to capitalize on the services of the brokers to market its properties on these sales.

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

Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

- 11. A summary of the principal comments and the agency response to them:**

No comments were received by the agency.

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

Not applicable

- 13. Incorporations by reference and their location in the rule:**

None

- 14. Was this rule previously adopted as an emergency rule?**

The Department implemented the adopted rule as an emergency rule amendment in November 2002, pursuant to A.R.S. § 41-1026 (8 A.A.R. 5151, December 20, 2002). The emergency rule was renewed by the state's Attorney General in May 2003, and will expire in November 2003 (A.A.R. 1963, June 20, 2003).

- 15. The full text of the rule follows:**

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 4. SALES

Section

R12-5-413. Real Estate Broker Commissions

ARTICLE 4. SALES

R12-5-413. Real Estate Broker Commissions

- A. No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change

Notices of Final Rulemaking

- B. If a commission is offered for the sale or long-term commercial lease of state land at public auction, the Department shall pay the commission shall be the amount paid from the fees collected pursuant to under A.R.S. § 37-108(A)(10)(a).
- C. The Department shall publish the decision of the Commissioner to pay or not ~~to~~ pay a commission for the sale or long-term commercial lease of state land and the amount and terms of the commission offered, if any, in the public notice of the auction.
- D. Upon determination by the Commissioner that a commission ~~shall~~ will be offered on a sale or long-term commercial lease, a person holding an active ~~Arizona~~ real estate broker license in this state is eligible to receive the commission, from the Department, by registering with the Department the successful purchaser or lessee at public auction. ~~The A~~ broker shall register himself or herself and the potential purchaser or lessee with the Department no later than three business days before the auction. ~~Registration~~ The broker shall register ~~be~~ in writing and include the following:
1. Name and address of the brokerage;
 2. Name and real estate license number of the broker and any real estate salesperson acting as an agent for the broker at the public auction;
 3. Name and address of the potential purchaser or lessee;
 4. Auction number, location, and parcel number of the land to be auctioned for sale or lease; and
 5. Signature of the broker or salesperson and the potential purchaser or lessee verifying that the broker or salesperson represents the potential purchaser or lessee and that together they have inspected the land to be auctioned for sale or lease.
- E. A broker shall submit registration meeting the requirements of subsection (D) by mail or hand-delivery to the Department's public counter, ~~located at 1616 West Adams, Phoenix, Arizona 85007.~~ ~~Registration shall be deemed~~ The Department deems registration received by the Department on the date postmarked if mailed or time-stamped if hand-delivered. A broker shall not register the following:
1. A potential purchaser or lessee who is registered with another broker for the same auction, or
 2. A governmental agency.
- F. The Department shall pay the commission to the broker representing the successful purchaser or long-term commercial lessee at the time of delivery of the certificate of purchase or patent, or lease, or after final disposition of any protests or appeals resulting from the auction, whichever occurs later.
- G. The Department shall not pay a commission to a broker if the Commissioner determines that the broker has violated this ~~rule~~ Section.
- H. For the purpose of this Section, the following definitions apply:
1. "Long-term commercial lease" means a lease granted on state land for commercial purposes to the highest and best bidder at public auction for a term in excess of 10 years, but not more than 99 years ~~for commercial purposes to the highest and best bidder at public auction.~~
 2. No change

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R15-5-2240 Repeal
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 42-1005
Implementing statutes: A.R.S. §§ 42-5003 through 42-5015
3. **The effective date of the rules:**
January 3, 2004
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 9 A.A.R. 1821, June 6, 2003
Notice of Proposed Rulemaking: 9 A.A.R. 1746, June 6, 2003
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Christie Comanita, Manager
Address: Office of Tax Policy and Legal Support
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007
Telephone: (602) 542-4672
Fax: (602) 542-4680
E-mail: ComanitaC@revenue.state.az.us
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The rule provides definitions of various terms used in the rules and in the statutory provision and further identifies the requirements under the statute. The rule is repealed because the definitions of the terms "motion picture" and "completing the filming or production activities" are overly broad and go beyond the legislative intent of the implementing statute.
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 rulemaking repeals R15-5-2240.
The repeal of this rule will benefit the public by eliminating an inaccurate rule that does not serve its intended purpose. The Department will incur the costs associated with the rulemaking process. Motion picture companies are not expected to incur any expense in the repeal of this rule.
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
None
11. **A summary of the principal comments and the agency response to them:**
The agency received no comments on the repeal of 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 rule:

None

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

No

15. The full text of the rule follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 22. TRANSACTION PRIVILEGE TAX - ADMINISTRATION

Section

R15-5-2240. ~~Motion Picture Production Refund~~ Repealed

ARTICLE 22. TRANSACTION PRIVILEGE TAX - ADMINISTRATION

R15-5-2240. ~~Motion Picture Production Refund~~ Repealed

~~A.~~ The following definitions apply for purposes of determining qualification for the refund of transaction privilege and use tax by a motion picture company under A.R.S. § 42-1322.01:

- ~~1.~~ "Checking account in a financial institution in this state" means a checking account in an Arizona office or branch office of a financial institution.
- ~~2.~~ "Completing the filming or production activities" means the later of the date the motion picture production company closes the checking account at the Arizona financial institution or the date production activities are completed in the state.
- ~~3.~~ "Motion picture" means any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media.
- ~~4.~~ "Production activities" means those support activities related to the filming of a motion picture but which may occur before or after the actual filming begins or ends in Arizona.
- ~~5.~~ "Qualified expenditures" means monies spent in Arizona except for those items which are statutorily excluded.

~~B.~~ Tangible personal property, upon which Arizona tax was paid, which was purchased or leased in Arizona from an Arizona vendor or which was purchased from an out-of-state vendor, while the motion picture production company was engaged in production or filming in Arizona, shall qualify for refund treatment of the transaction privilege or use tax.

~~C.~~ Copies of records which support the claim for refund as documented by the total expenditure report, the payroll expenditure report, and the final expenditure report shall be made available to the Department upon request.

~~D.~~ The person designated pursuant to A.R.S. § 42-1322.01(B) as responsible for maintaining records of expenditures shall retain the records for the statutorily required period of time pursuant to A.R.S. § 42-113.

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE
GENERAL ADMINISTRATION

PREAMBLE

- 1. Sections Affected**

R15-10-501	<u>Rulemaking Action</u>
R15-10-502	Amend
R15-10-504	Amend
	New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 42-1005
Implementing statutes: A.R.S. §§ 42-1103.03, 42-1105, 42-1105.01, 42-1105.02, and 42-1125.01
- 3. The effective date of the rules:**

November 4, 2003
- 4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 3670, August 15, 2003
Notice of Proposed Rulemaking: 9 A.A.R. 3627, August 15, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Christie Comanita
Address:	Arizona Department of Revenue 1600 W. Monroe Phoenix, AZ 85007
Telephone:	(602) 716-6791
Fax:	(602) 542-4680
E-mail:	ComanitaC@revenue.state.az.us
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Department initiated this rulemaking package to supplement the Department's electronic filing program for individual income tax and make it possible for taxpayers to electronically file transaction privilege, use, and withholding tax returns. The rulemaking package provides additional definitions of terms that are used in the Department's electronic filing program for transaction privilege, use, and withholding tax. The rulemaking package also sets forth the requirements for maintenance of records related to electronically filed transaction privilege, use, and withholding tax returns. Finally, the rulemaking package provides taxpayers with information regarding the use of the taxpayer's signature, as obtained through either the business registration process or the taxpayer service center registration process, to sign the taxpayer's transaction privilege, use, and withholding tax returns.
- 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:**

Generally, the benefits of the rulemaking package will outweigh the burdens. For taxpayers electronically filing individual income tax returns, there will be no benefit or burden because the electronic filing program procedures have not changed for them. For taxpayers filing transaction privilege, use, or withholding tax returns, the benefits of the rulemaking package outweigh the burdens. Electronic return preparers will find that the benefits of the rulemaking package outweigh the burdens. Small businesses should find that the benefits of the rulemaking package will outweigh the burdens. Consumers should experience no impact from the rulemaking package.

Notices of Final Rulemaking

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

In R15-10-504(C), a correction was made to clarify that either document—the executed, mail-in Arizona Joint Tax Application *or* the AZTaxes.gov Registration Signature Card—provided under subsection (B)(3) would suffice to sign any of the returns listed. Grammatical, nonsubstantive changes were also made in response to G.R.R.C.’s comments.

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

No comments were received.

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 adopted as emergency rules?

No

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE
GENERAL ADMINISTRATION

ARTICLE 5. ELECTRONIC FILING PROGRAM

Section

R15-10-501. Definitions

R15-10-502. Recordkeeping Requirements

R15-10-504. Electronic Signatures for Transaction Privilege, Use, and Withholding Tax

ARTICLE 5. ELECTRONIC FILING PROGRAM

R15-10-501. Definitions

In addition to the definitions provided in A.R.S. §§ 42-1101.01, 42-1103.01, 43-1103.02, 42-1103.02, 43-1103.03 42-1103.03, and 42-1105.02, unless the context provides otherwise, the following definitions apply to this Article and to A.R.S. Title 42, Chapter 2:

“AZTaxes.gov” means the Department’s taxpayer service center web site that provides taxpayers with the ability to conduct transactions and review tax account information over the internet.

“Authorized user” means an individual, including a return preparer or electronic return preparer as defined in A.R.S. § 42-1101.01, granted limited authority by the security administrator to access taxpayer information available on the AZTaxes.gov web site.

1. “Electronic return, statement or other document” means all data entered into a return, statement, or other document that is prepared using computer software and transmitted electronically to the Department.

2. “Electronic return transmitter” includes a person who is part of the chain of transmission of an electronic return, statement, or other document from the taxpayer or from an electronic return preparer to the Department even though the person did not receive the transmitted return, statement, or other document directly from the taxpayer or electronic return preparer.

“License” means one or more transaction privilege, use, or withholding tax licenses or registrations obtained from the Department by completing and submitting a mail-in Arizona Joint Tax Application or by completing the online AZTaxes.gov business registration process and submitting an executed AZTaxes.gov Registration Signature Card.

“Registered customer” means a taxpayer that has, by means of providing specific information requested by the Department through its AZTaxes.gov web site registration process, obtained a username and password entitling that taxpayer to conduct transactions and access its account information through the AZTaxes.gov web site.

“Security administrator” means an individual, including a return preparer or electronic return preparer as defined in A.R.S. § 42-1101.01, appointed and authorized to administer security access on the AZTaxes.gov web site for the specified taxpayer. The security administrator is appointed by the individual taxpayer, a partner duly authorized to act for the partnership, a manager duly authorized to act for the limited liability company, or a principal officer of the corporation.

Notices of Final Rulemaking

“Security access” means the unlimited ability of the taxpayer or the security administrator to access the taxpayer’s online accounts, conduct online transactions for the taxpayer, designate authorized users, specify the level of access granted to an authorized user, and modify or terminate the access of any authorized user.

R15-10-502. Recordkeeping Requirements

- A.** For each electronic return of individual income or withholding tax filed with the Department, the electronic return preparer shall keep the documents listed in A.R.S. § 42-1105(F) for four years following the later of the return’s due date or the date the return was filed with the Department.
- B.** For each electronic return of transaction privilege or use tax filed with the Department, the electronic return preparer shall keep the documents listed in A.R.S. § 42-1105(F) for six years following the later of the return’s due date or the date the return was filed with the Department.

R15-10-504. Electronic Signatures for Transaction Privilege, Use, and Withholding Tax

- A.** To become a registered customer of the AZTaxes.gov web site a taxpayer that has a license shall:
1. Provide the following information during the AZTaxes.gov web site registration process:
 - a. The legal name of the registrant and any one of the following numbers:
 - i. The registrant’s federal employer identification number.
 - ii. The registrant’s social security number, if the registrant is a sole proprietor, or
 - iii. The identification number assigned to the registrant by the Department if the registrant is not required under federal or international law to obtain either a federal employer identification number or social security number, and
 - b. The legal name and e-mail address of the security administrator, and
 2. Submit to the Department an executed AZTaxes.gov Registration Signature Card as evidence of the following:
 - a. If submitted during web site registration, the information provided during the AZTaxes.gov registration process is true and correct.
 - b. If previously submitted, the information contained in the Arizona Joint Tax Application is true and correct.
 - c. The signatory is duly authorized to act on behalf of the business, receive confidential information, and waive any rights of confidentiality, and
 - d. Security access is granted to the taxpayer’s security administrator if one is appointed.
- B.** To become a registered customer of the AZTaxes.gov web site a taxpayer that has not obtained a license from the Department shall:
1. Obtain a license by completing either the mail-in Arizona Joint Tax Application or the online business registration.
 2. Provide the following information during the AZTaxes.gov web site registration process:
 - a. The legal name of the registrant and any one of the following numbers:
 - i. The registrant’s federal employer identification number.
 - ii. The registrant’s social security number, if the registrant is a sole proprietor, or
 - iii. The identification number assigned to the registrant by the Department if the registrant is not required under federal or international law to obtain either a federal employer identification number or social security number, and
 - b. The legal name and e-mail address of the security administrator, and
 3. Submit to the Department either the executed, mail-in Arizona Joint Tax Application or the AZTaxes.gov Registration Signature Card as evidence of the following:
 - a. If submitted during web site registration, the information provided during the AZTaxes.gov registration process is true and correct.
 - b. The information contained in the Arizona Joint Tax Application or submitted during the online business registration is true and correct.
 - c. The signatory is duly authorized to act on behalf of the business, receive confidential information, and waive any rights of confidentiality, and
 - d. Security access is granted to the taxpayer’s security administrator if one is appointed.
- C.** A taxpayer, its security administrator, or authorized user shall use the taxpayer’s signature on the document submitted under subsection (B)(3) to sign any of the taxpayer’s electronic transaction privilege, use, or withholding tax returns. Use of the taxpayer’s signature is the taxpayer’s declaration, under penalties of perjury, that the electronic return is, to the best of the taxpayer’s knowledge and belief, true, correct, and complete.
- D.** To file an electronic return under subsection (C):
1. If the taxpayer or security administrator is preparing the taxpayer’s electronic return, the taxpayer or security administrator shall access the AZTaxes.gov web site and electronically file the return.
 2. If the taxpayer’s authorized user is preparing the taxpayer’s electronic return, the taxpayer shall:
 - a. Access the AZTaxes.gov web site and electronically file the return, or
 - b. Authorize, in writing on a form prescribed by the Department, the authorized user to access the taxpayer’s account on the AZTaxes.gov web site and electronically file the return on behalf of the taxpayer.

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION
HIGHWAYS

PREAMBLE

- 1. Sections Affected**

R17-3-902	<u>Rulemaking Action</u>
R17-3-904	Amend
R17-3-906	Amend
- 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. §§ 28-366 and 28-7311(C)
Implementing statute: A.R.S. § 28-7311
- 3. The effective date of the rules:**

November 4, 2003—The Arizona Department of Transportation and interested stakeholders seek an immediate effective date. This rulemaking implements the attraction category for logo signs. This rulemaking benefits qualifying businesses and the motoring public. No penalty is associated with a violation of the rule.
- 4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 3150, July 18, 2003
Notice of Proposed Rulemaking: 9 A.A.R. 3482, August 8, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Wendy S. LeStarge, Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
Telephone: (602) 712-6007
Fax: (602) 241-1624
E-mail: wlestarge@dot.state.az.us
Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.
- 6. An explanation of the rules, including the agency's reasons for initiating the rulemaking:**

The logo sign program, created under A.R.S. § 28-7311, allows for the placing of logo signs (or specific service information signs) along the state highway system, in order to provide motorists with service information, such as gas, food, lodging, and camping. The Arizona legislature recently amended the logo sign statute to include the additional category of "Attraction." Laws 2003, Ch. 126, § 1.
A.R.S. § 28-7311(C) requires the Arizona Department of Transportation ("ADOT") to institute rulemaking for the logo sign program. This rulemaking defines the term "attraction," establishes the eligibility criteria for attraction businesses to qualify for a logo sign, and sets other criteria for placing attraction logo signs.
- 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 interstate and rural logo sign programs are marketed and administered by a private contractor, as allowed under A.R.S. § 28-7311. Under the logo sign programs, the contractor markets the programs to eligible businesses to lease

Notices of Final Rulemaking

space on a specific service information sign for a business' logo. This rulemaking adds an additional category to the logo sign program eligibility and therefore should expand the available customer base of the contractor

ADOT's costs and benefits are not readily quantifiable. ADOT provides administrative oversight for the logo sign program, so its costs include the salaries for those employees overseeing the logo sign program or installation of signs as part of their duties. It is not expected that an additional category of service businesses eligible to participate in the logo sign program will increase ADOT's costs. The motoring public benefits through increased convenience and reduced travel time for locating a participating business. Services may cost more due to the advertising costs passed onto the motoring public consumer. The Arizona Department of Revenue should benefit through increased tax revenue due to increased sales from participating businesses.

Businesses that provide an attraction will benefit because they can qualify for a logo sign. They will have minimal costs for purchasing the sign and paying monthly lease payments. Businesses should benefit by increased revenue due to advertising by logo signs.

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

In response to comments received, ADOT made the following non-substantial changes:

- Added the activities hang-gliding and air tours to recreational in the definition of Attraction in R17-3-902(A).
- Deleted any hours and days open requirement for Attractions in the definitions of R17-3-902(A), and created an exception for hours and days open for Arenas, Cultural, and Educational facilities in R17-3-902(C)(6)(e).
- Added a minimum annual attendance figure for a seasonal attraction business in R17-3-902(C)(6)(f).

ADOT also added Tucson urban limits for I-10 which was amended in separate rulemaking approved by Council on September 9, 2003 and became effective September 9, 2003. Grammatical and organizational changes were made at the request of staff from the Governor's Regulatory Review Council.

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

The contractor, Arizona Logo Sign Group, through Robert Brooks, requested changes as follows:

- R17-3-902(A) Definition of "Educational" - Change the days open to at least five days per week because most education facilities have business hours and are usually not open more than five days per week.
- R17-3-902(A) Definition of "Recreational" - Include the activities hang-gliding and air tours. Both activities involve either "physical exercise or enjoyment of nature." Arizona Logo Sign Group has some customers that include hang-gliding and air tours at the Grand Canyon.
- R17-3-902(C)(6)(e) Change the hours and days open requirement for Arenas, Cultural and Educational facilities so that the hours and days are consistent with the time requirements in the definitions R17-3-902(A).
- R17-3-902(C)(6)(f) Include a prorated exception for the minimum annual attendance of 5,000 for seasonal businesses. Some seasonal attraction facilities will be of interest to motorists and will provide positive economic impact to their communities, but due to their seasonal nature, but may not be able to achieve the 5,000 attendance figure.
- Institute an immediate effective date in order to implement the program.

ADOT agrees with all the requested changes in the comments and made appropriate amendments as outlined in items #3 and #10 of this Preamble.

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

Not applicable

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

Not applicable

14. Were these rules previously adopted as emergency rules?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 3. DEPARTMENT OF TRANSPORTATION
HIGHWAYS**

ARTICLE 9. HIGHWAY TRAFFIC CONTROL DEVICES

Section

- R17-3-902. Logo Sign Program
- R17-3-904. Logo Sign Requirements
- R17-3-906. Existing Leases

ARTICLE 9. HIGHWAY TRAFFIC CONTROL DEVICES

R17-3-902. Logo Sign Program

A. Definitions

“Attraction” means any of the following:

“Arena” means a facility that has a capacity of at least 5,000 seats, and is a:

Stadium or auditorium;

Track for automobile, boat, or animal racing; or

Fairground that has a tract of land where fairs or exhibitions are held, and permanent buildings that include bandstands, exhibition halls, and livestock exhibition pens.

“Cultural” means an organized and permanent facility that is open to all ages of the public, and is a:

Facility for the performing arts, exhibits, or concerts; or

Museum with professional staff, and an artistic, historical, or educational purpose, that owns or uses tangible objects, cares for them, and exhibits them to the public.

“Educational” means a facility that is a:

Community college, regionally accredited college or university, or state university as defined in R17-3-901(A). Educational excludes a business or research park affiliated with a college or university;

Scientific institution, designated research area, or site of specialized research techniques and apparatus that is accredited by a nationally recognized accreditation educational agency and conducts regular tours; or

Zoological or botanical park that houses and exhibits living animals, insects, or plants to the public.

“Golf course” means a facility offering at least 18 holes of play. Golf course excludes a miniature golf course, driving range, chip-and-putt course, and indoor golf.

“Historic” means a structure, district, or site that is listed on the National or Arizona Register of Historic Places as being of historical significance, and includes an informational device to educate the public as to the facility’s historic features.

“Mall” means a shopping area with at least 1,000,000 square feet of retail shopping space.

“Recreational” means a facility for physical exercise or enjoyment of nature that includes at least one of the following activities: walking, hiking, skiing, boating, swimming, picnicking, camping, fishing, playing tennis, horseback riding, skating, hang-gliding, taking air tours, and climbing;

“Business” means a commercial enterprise an entity that provides a specific service open for the general public, is located on a roadway within the required distance of an interstate or rural state highway, and is a primary or secondary business.

“Community logo plan” means a project aspect of the rural logo sign program, agreed to by the Department, the contractor, and a municipality outside an urbanized area to place specific service information signs on a rural state highway for the municipality.

“Contract” means a written agreement between the Department and a contractor to operate a logo sign program that describes the obligations and rights of both parties.

“Contractor” means a person or entity that enters into an agreement with the Department to operate a logo sign program and that is responsible for marketing, furnishing, installing, maintaining, and replacing specific service information signs.

“Department” means the Arizona Department of Transportation.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designee.

“Exit ramp” means a roadway by which traffic may leave a controlled access highway to another highway.

“Food court” means a collective food facility that exists in one contiguous area and contains a minimum of three separate food service businesses.

“Highway” has the meaning in A.R.S. § 28-101(49).

“Interchange” means the point at which traffic on a system of interconnecting roadways that have one or more grade separations, moves from one roadway to another at a different level.

“Intersection” has the meaning in A.R.S. § 28-601(7).

“Interstate highway” has the meaning in A.R.S. § 28-7901(4).

“Interstate logo sign program” means a system to install and maintain specific service information signs on certain portions of an interstate highway as provided in A.R.S. § 28-7311(A).

“Lease agreement” means a written contract between a contractor and a responsible operator to lease space for a responsible operator’s logo sign on a contractor’s specific service information sign.

“Logo sign” means part of a specific service information sign consisting of a lettered board attached to a separate rectangular panel, and that displays an identification brand, symbol, trademark, name, or a combination of these, for a responsible operator.

“Major decision point” means a location at or before the point at which a rural state highway intersects with another rural state highway or a local roadway, that is within a municipality (except an urbanized area), and that the Department determines to be the point at which a driver must make a decision whether to stay on the highway or turn off onto the other highway or local roadway.

“Municipality” means an incorporated city or town.

“Primary business” means:

A gas service business that is within three miles of an intersection or exit ramp, and is in continuous operation to provide services at least 12 hours per day, seven days per week;

A food service business that is within three miles of an intersection or exit ramp terminal, is open for operation no later than 7:00 a.m., provides seating for at least 20, and is in continuous operation to provide service at least three meals per day (breakfast, lunch, and dinner) at least six days per week;

A lodging service business that is within three miles of an intersection or exit ramp terminal; ~~or~~

A camping service business that is within five miles of an intersection or exit ramp terminal; ~~or~~

An attraction service business that is within three miles of an intersection or exit ramp terminal.

“Ramp terminal” means the area where an exit ramp intersects with a roadway.

“Responsible operator” means a person or entity that:

Owens or operates a business,

Has authority to enter into a lease, and

Enters into a lease for a logo sign through the interstate or rural logo sign program.

“Rural logo sign program” means a system to install and maintain specific service information signs on a rural state highway outside of an urbanized area, as provided in A.R.S. § 28-7311(B).

“Rural state highway” means any class of state highway, other than an interstate highway, located outside of an urbanized area as provided in A.R.S. § 28-7311(B).

“Secondary business” means a business as follows:

A gas service business that is within 15 miles of an intersection or exit ramp terminal, and in continuous operation to provide services at least eight hours per day, five consecutive days per week;

A food service business that is within 15 miles of an intersection or exit ramp terminal, and is in continuous operation to serve at least two meals per day (either breakfast and lunch, or lunch and dinner) for a minimum of five consecutive days per week;

A lodging service business that is within 15 miles of an intersection or exit ramp terminal; ~~or~~

A camping service business that is within 15 miles of an intersection or exit ramp terminal; ~~or~~

An attraction service business that is within 15 miles of an intersection or exit ramp terminal.

“Specific service” means gas, food, lodging, ~~or~~ camping, or attraction services.

“Specific service information sign” means a rectangular sign panel that contains the following:

The words “GAS,” “FOOD,” “LODGING,” ~~or~~ “CAMPING,” or “ATTRACTION.”

Directional information; and

One or more logo signs.

“Straight-ahead sign” means a specific service information sign that provides additional directional guidance to a location, route, or building located straight ahead on a roadway, and that is located before a junction that is a major decision point.

Notices of Final Rulemaking

“Trailblazing sign” means a specific service information sign that provides additional directional guidance to a location, route, or building from another highway or roadway.

“Urbanized area” has the meaning in A.R.S. § 28-7311(D).

B. Logo sign program administration

1. The Department shall solicit offers, as provided in A.R.S. §§ 41-2501 through ~~41-2662~~ 41-2673, to select a contractor to operate a logo sign program.
2. The Department may contract separately for each program.
3. The contract shall specify the standards that a contractor shall use including the following:
 - a. Manual on Uniform Traffic Control Devices for Streets and Highways, USDOT/FHWA, ~~1988 edition~~ current edition as adopted by the Department;
 - b. Arizona Department of Transportation Traffic Control Supplement, 1996 edition; and
 - c. Arizona Department of Transportation Standard Specifications, 2000 edition.
4. The Department shall approve the form of any lease agreement between the contractor and a responsible operator. The lease agreement shall include, by reference, the terms and conditions of the Department’s contract with the contractor under A.R.S. §§ 41-2501 through ~~41-2662~~ 41-2673.

C. Eligibility criteria for businesses

1. Any business is ineligible for a logo sign if it already has a highway guide sign installed by the Department.

~~1-2.~~ Gas service business. To be eligible to place a logo sign, a gas service business shall:

- a. Provide fuel, oil, and water for public purchase or use;
- b. Provide restroom facilities and drinking water; and
- c. Provide a telephone available for emergencies to the public during hours of operation.

~~2-3.~~ Food service business. To be eligible to place a logo sign, a food service business shall:

- a. Provide restroom facilities for customers;
- b. Provide a telephone available for emergencies to the public during hours of operation; and
- c. If a food service business is part of a food court located within a shopping mall, the shopping mall may qualify as the responsible operator if the food court:
 - i. Complies with subsection ~~(C)(2)~~ (C)(3), and
 - ii. Has clearly identifiable on-premise signing consistent with the logo sign that is sufficient to guide motorists directly to the entrance to the food court.

~~3-4.~~ Lodging service business. To be eligible to place a logo sign, a lodging service business shall:

- a. Provide five or more units of sleeping accommodations, and
- b. Provide a telephone available for emergencies to the public during hours the lobby is open for registration.

~~4-5.~~ Camping service business. To be eligible to place a logo sign, a business providing camping facilities shall:

- a. Be able to accommodate all common types of travel trailers and recreational vehicles;
- b. Be equipped to handle a minimum of 15 travel trailers or recreational vehicles;
- c. Provide drinking water and a sewer hook-up or dump station; and
- d. Be available on a year-round basis unless camping in the general area is of a seasonal nature in which case the facilities in question shall be open to the public 24 hours per day, seven days per week during the entire season.

6. Attraction service business. To be eligible to place a logo sign, an attraction service business shall:

- a. Derive less than 50% of its sales from:
 - i. The sale of alcohol consumed on the premises, or
 - ii. Gambling.
- b. Derive more than 50% of its sales or visitors during the normal business season from motorists not residing within a 25-mile radius of the business.
- c. Provide at least 10 parking spaces.
- d. Provide restroom facilities and drinking water.
- e. Be in continuous operation at least six hours per day, six days per week, except:
 - i. An arena attraction shall hold events at least 28 days annually;
 - ii. A cultural attraction shall be open at least 180 days annually; or
 - iii. An educational attraction shall operate at least six hours per day, five days per week; and
- f. Have a minimum annual attendance of 5,000, except if the attraction business operates on a seasonal basis, the attraction business shall have a minimum annual attendance of 2,500.

D. Ranking

1. If more than six eligible businesses providing the same specific service request lease space for a logo sign on one specific service information sign, the contractor shall use the following ranking criteria to determine which businesses are awarded a lease:
 - a. The business closest to an intersection or exit ramp terminal shall receive first priority,
 - b. A gas service business or a food service business that provides the most days and hours of service shall receive second priority,

Notices of Final Rulemaking

- c. A food service business that provides the most indoor seating capacity shall receive third priority, and
 - d. A business that does not have an off-premise advertising sign to direct motorists to its business within five miles of where the specific service information sign is to be located shall receive fourth priority.
2. If two or more businesses have the same ranking in qualifications, the contractor shall award a lease to the first business that requests a logo sign. The contractor shall establish a waiting list for other businesses in sequence of request.
 3. The contractor shall not renew the lease of a responsible operator if another eligible business with higher priority requests lease space for a logo sign.
- E. Secondary businesses**
1. Lease limitations. For a secondary business, the contractor may enter into a lease for up to five years or renew a lease for up to five years, with the following terms:
 - a. The responsible operator is guaranteed a term of two years, providing the responsible operator complies with all other terms of the lease;
 - b. After the two-year period, the contractor shall terminate the lease and remove the logo sign if another eligible business with higher priority requests lease space for a logo sign; and,
 - c. The contractor shall notify the responsible operator at least six months before terminating the lease and removing the logo sign.
 2. The contractor shall display the following additional information on a specific service information sign for a secondary business, as space allows, based on the following ranking order:
 - a. Distance,
 - b. Days and hours of operation, and
 - c. Seasonal operation.
- F. Contractor responsibility**
1. The contractor shall follow all Department design standards and specifications for all sign panels, supports, and materials, as provided in the contract.
 2. The contractor shall ensure that a business complies with all criteria established in this Section. The contractor shall not enter into a lease agreement or renew a lease agreement if the criteria are not met. If a responsible operator becomes ineligible for a logo sign, the contractor shall remove the logo sign within 20 days after notifying the responsible operator as provided in the lease.
 3. The contractor shall require that a responsible operator certify in writing to the contractor that the responsible operator will comply with all applicable federal, state, and local laws, ordinances, rules, and regulations.
 4. The contractor shall not place a specific service information sign so as to obstruct or detract from a traffic control device.
 5. The contractor shall not remove or relocate an existing traffic control device to accommodate a specific service information sign without prior written approval by the Department, or a local authority under A.R.S. § 28-643.
 6. The contractor shall provide a copy of the signed lease agreement to the responsible operator. The responsible operator shall deliver the logo sign to the contractor for installation, or contract with the contractor to fabricate the logo sign to the responsible operator's and the Department's specifications.
 7. The contractor shall return any pre-paid lease payments to the responsible operator if the responsible operator's logo sign is not erected for reasons caused by the Department or the contractor.
 8. The contractor shall obtain an encroachment permit under R17-3-702 before erecting a specific service information sign along a state highway.
 9. If the contractor requests an encroachment permit under R17-3-702, the Department's staff shall decide the best placement of a specific service information sign and cooperate with the contractor to provide information to the motoring public as prescribed in subsection (E)(2).
 10. If a logo sign program is terminated, the contractor shall:
 - a. Notify a responsible operator by certified mail of the termination and the location where the responsible operator may claim its logo sign,
 - b. Remove all sign panels and supports, and
 - c. Refund any lease payments on a ~~pro-rated~~ prorated basis to each responsible operator.

R17-3-904. Logo Sign Requirements

- A. Urban area.** Except as prescribed in subsection (A)(4) or R17-3-903, the contractor shall not place a specific service information or directional sign on any highway in an urbanized area, which includes the following:
1. Phoenix:
 - Interstate 10, Agua Fria River bridge to Gila River Indian Reservation boundary (milepost 161.68);
 - Interstate 17, Skunk Creek bridge to junction Interstate 10;
 - State Route 51;
 - US 60, Beardsley Canal to Ellsworth Road (milepost 191.40);

Notices of Final Rulemaking

State Route 85, 17th Avenue to 15th Avenue;
State Route 87, Chandler south city limit (milepost 162.82) to Salt River bridge;
State Route 88, US 60 to 200 feet north of Tomahawk Road (milepost 197.50);
State Route 101 loop;
State Route 143;
State Route 153;
State Route 202 loop; or
State Route 303 loop.

2. Tucson:

Interstate 10, from railroad overpass (milepost 243.33) to milepost 272.00 (between Kolb and Rita traffic interchanges);
State Business 19, milepost 59.00 (between Hughes Plant Road and Los Reales Road) to junction Interstate 10;
Interstate 19, San Xavier Indian Reservation boundary (milepost 57.96) to junction Interstate 10;
State Route 86, milepost 167.83 (between Century Road and Old Ajo Way) to State Business 19;
State Route 77, junction Interstate 10 to Oro Valley north city limit (milepost 84.16); or,
State Route 210; or

3. Any other urbanized area with a population of 100,000 or more.

4. Boundary changes. If the boundaries of an urbanized area, as identified in a subsequent decennial census, are relocated so that an intersection, interchange, or exit ramp is no longer eligible for the logo sign program, the Department shall allow the logo signs within the revised urbanized boundaries to remain until the minimum lease obligations between the contractor and a responsible operator have been fulfilled.

B. Number of signs allowed. ~~Only one specific service information sign for each category of specific service is~~ Only four specific service information signs are allowed on an interstate or rural state highway to the approach to an intersection, interchange, or exit ramp, as shown in Illustrations A and B.

1. Each specific service information sign may contain a maximum of six logo signs.

2. Only one specific service information sign for each category of specific service is allowed on an interstate or rural state highway to the approach to an intersection, interchange, or exit ramp. The contractor may combine categories of specific services as prescribed in subsection (F).

C. Sign sequence and spacing

1. The contractor shall install successive specific service information signs in the direction of travel as shown in Illustrations A and B:

- a. Camping or Attraction,
- b. Lodging,
- c. Food, and
- d. Gas.

2. If the approach to an intersection, interchange, or exit ramp on an interstate or rural state highway has insufficient space in a single direction for four specific service information signs, priority shall be in the following order, as shown in Illustration A:

- a. Gas,
- b. Food,
- c. Lodging, and
- d. Camping or Attraction.

D. If a responsible operator operates on a seasonal basis, the contractor shall:

1. Remove or cover the logo sign during the off-season, or
2. Display the dates of operation, if additional information is not required under R17-3-902(E)(2).

E. If the Department requires that a specific service information sign be moved due to construction or reconstruction of transportation facilities, or the placement of other signs or traffic control devices, the standards of the Manual on Uniform Traffic Control Devices shall apply as to the new placement.

F. Combination signs

1. The contractor may combine two categories of specific services on a specific service information sign, as shown in Illustration C, if:

- a. The contractor does not reasonably expect that more than three businesses for each service will request a logo sign within five years from the time of installing the combination sign, ~~or~~ ;
- b. The approach to an intersection, interchange, or exit ramp on an interstate or rural state highway has insufficient space in a single direction for four specific service information signs: ~~;~~ or
- c. Businesses for each of the five categories of specific services request a logo sign.

Notices of Final Rulemaking

2. ~~A~~ The contractor shall ensure that a combination sign shall contain ~~contains~~ at least one logo sign for each category of specific service displayed.
3. The contractor shall not display a logo sign on a combination sign if the specific service category advertised by the logo sign already exists on a specific service information sign on the approach to the intersection, interchange, or exit ramp.

G. Trailblazing signs

1. The contractor shall install a trailblazing sign for a responsible operator along a highway if the responsible operator's business is not located on and is not visible from an intersection with the highway as directed from the specific service information sign.
2. The contractor may locate a trailblazing sign near all intersections where the direction of the route changes or where a motorist may be uncertain as to which road to follow.
3. A trailblazing sign is limited to six logo signs.
4. The contractor shall obtain written approval from the local governing authority to install and maintain a trailblazing sign along a highway that is not under the Department's maintenance jurisdiction.
5. The contractor shall not install a logo sign until all necessary trailblazing signs have been installed.
6. A trailblazing sign shall indicate by arrow the direction to the responsible operator's business.
7. A trailblazing sign may:
 - a. Duplicate the logo sign or specific service information sign, or both;
 - b. Consist of two lines of text; or
 - c. Include the category of specific service and distance to the responsible operator's business.

H. A logo sign shall comply with A.R.S. § 28-648. Descriptive advertising words, phrases, or slogans are prohibited on a logo sign, except:

1. If a responsible operator does not have an official trademark or logo, the responsible operator may display on its logo sign the name indicated in its partnership agreement, incorporation documents, or other documentation.
2. Words to identify alternative fuel availability, including "diesel," "propane," "natural gas," and "alcohol" are allowed on a logo sign for a gas service business.

R17-3-906. Existing Leases

A lease in existence on the effective date of February 7, 2003 is not affected by this rulemaking. Any change to R17-3-902 through R17-3-905 does not affect a responsible operator's existing lease before the lease expires.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

- 1. Sections Affected**

Article 16	Amend
R20-4-1601	Amend
R20-4-1602	Amend
R20-4-1603	Repeal
R20-4-1604	Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general), and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 6-123(2)

Implementing statutes: A.R.S. §§ 6-123(3) and 6-145(A)
- 3. The effective date of the rules:**

January 3, 2004
- 4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 3760, August 30, 2002

Notice of Proposed Rulemaking: 9 A.A.R. 1537, May 23, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: John P. Hudock

Address: Banking Department
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

Telephone: (602) 255-4421, ext. 167

Fax: (602) 381-1225

E-mail: jhudock@azbanking.com
- 6. An explanation of the rules, including the agency's reason for initiating the rules:**

These Sections govern the acquisition of control of Arizona financial institutions. On November 7, 2000, the Council approved the Department's five-year rule review report. In that report, the Department promised to revise or repeal several Sections of Article 16. This rulemaking is to fulfill that promise.

The Department will amend R20-4-1601 to improve the clarity of the definitions, to tighten the writing style, and to conform the definitions to modern rulewriting standards.

The Department will amend R20-4-1602 to permit filing of the same application documents used with federal banking regulators.

The Department will repeal R20-4-1603 because it is inconsistent with federal statutes and regulations, it is not enforced, and it does not accurately describe the Department's modern practices.

The Department will repeal R20-4-1604 because it is not enforced, and it does not accurately describe the Department's modern practices.
- 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 Department did not rely on any study as an evaluator or justification for the rules.
- 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

Notices of Final Rulemaking

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

A. The Banking Department

The Department will incur the costs of completing this rulemaking and of putting the revised Sections into effect. It expects to receive the offsetting benefits of a more modern set of regulations accurately describing current best practices, and a resultant ease of communication with all licensees.

B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree, nor should these revisions increase the cost of doing business in compliance with these Sections.

D. Consumers

The Department expects no measurable effect on consumers.

E. Private and Public Employment

The Department expects no measurable effect on private and public employment.

F. State Revenues

This rulemaking will not change state revenues.

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

The Council's staff has recommended editorial and stylistic changes to the originally proposed text of these Sections. The changes, which required some rewriting of these Sections, improved the precision and clarity of the text and have been implemented.

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

Before the Department published the Notice of Proposed Rulemaking, it circulated a draft of the revisions for comment. At that time, the only commentator suggested narrowing the definition of the term "officer" in R20-4-1602. His suggestion was that the current use of the term is unduly broad because it requires the submission of data on every officer. In response, the Department revised the proposed language to more closely parallel the language of federal "Reg O." That regulation concerns itself solely with the policymaking executive officers of financial institutions. The present revision will give the Department all the information it needs to do a sound job of regulation, without unduly burdening the members of the regulated community. No further comments have been received since publication of the Notice of Proposed Rulemaking.

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

Not applicable

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

There is no material incorporated by reference in these final rules.

14. Were these rules previously adopted as emergency rules?

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 16. ~~ACQUIRING ACQUISITION OF~~ CONTROL OF FINANCIAL INSTITUTIONS

Section

R20-4-1601. Definitions

R20-4-1602. Application for Approval to Acquire Control of Financial Institution

R20-4-1603. ~~Amendment or Supplement to Application~~ Repealed

R20-4-1604. ~~Certificate of Service~~ Repealed

ARTICLE 16. ~~ACQUIRING ACQUISITION OF~~ CONTROL OF FINANCIAL INSTITUTIONS

R20-4-1601. Definitions

In this Article, unless the context otherwise requires:

- 1. "Acquiring party" means ~~the a person or persons who intend~~ intends to acquire control of a bank, trust company, savings and loan association, or controlling person so as to require approval of the Superintendent pursuant to under ~~A.R.S. Title 6, Chapter 1, Article 4, Arizona Revised Statutes.~~
- 2. "Acquisition of control" ~~shall have~~ has the meaning set forth stated in A.R.S. § 6-141.
- 3. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
- 4. "Bank" ~~means a person which is required to possess or possesses a permit issued by the Superintendent pursuant to Title 6, Chapter 2, Arizona Revised Statutes~~ has the meaning stated in A.R.S. § 6-101.
- 5. "Control" means direct or indirect ownership of or power has the meaning stated in A.R.S. § 6-141.
 - a. To vote 15% or more of the outstanding voting securities of another entity, or
 - b. To control in any manner the election of a majority of the directors of another entity. For the purposes of determining the percentage of voting securities owned, controlled or held by a person, there shall be aggregated of the voting securities attributed to such person the voting securities owned, held or controlled by any affiliate of such person, or by any officer, partner, employee or agent of such person, or by any person, or by any spouse, parent or child of such person.
- "Controlling person" has the meaning stated in A.R.S. § 6-141.
- 6. "Person" ~~shall have~~ has the meaning set forth stated in A.R.S. § 6-141.
- 7. "Savings and loan association" means a person ~~which is required to possess or possesses a permit issued by the Superintendent~~ under A.R.S. pursuant to Title 6, Chapter 3, Arizona Revised Statutes.
- 8. "Superintendent" ~~means the Superintendent of Banks or his authorized agent~~ has the meaning stated in A.R.S. § 6-101.
- 9. "Target company" means ~~the a~~ bank, savings and loan association, trust company, or controlling person, ~~the control of which is to be acquired by the an~~ acquiring party.
- 10. "Trust company" means a person ~~which is required to possess or possesses a certificate issued by the Superintendent pursuant to Title 6, Chapter 8, Arizona Revised Statutes~~ has the meaning stated in A.R.S. § 6-851.
- 11. "Voting security" means any security presently entitling the owner or holder of such security to vote for the election of directors of another entity, excluding in the case of a savings and loan association, votes attributable to savings accounts. A specified percentage of outstanding voting securities means such amount of the outstanding voting securities as entitles the holder or holders of such securities to cast that specified percentage of the aggregate votes which the holders of all the outstanding voting securities are entitled to cast has the meaning stated in A.R.S. § 6-141.

R20-4-1602. Application for Approval to Acquire Control of Financial Institution

- A. Application for approval to acquire control of a bank, trust company, a savings and loan association or controlling person pursuant to Title 6, Chapter 1, Article 4, Arizona Revised Statutes, shall be made by filing with the Superintendent an original and two copies of an application as provided in this rule.
- B. The application shall be in writing or printed on 8 1/2 x 14 inch paper and the first page shall be in the following form:

APPLICATION FOR APPROVAL TO ACQUIRE CONTROL OF FINANCIAL INSTITUTION

Application is hereby made to the Superintendent of Banks pursuant to Title 6, Chapter 1, Article 4, Arizona Revised Statutes, for approval to acquire control of the financial institution or controlling person described below. This application is made based upon the information contained herein and the attachments hereto and upon such information as may hereafter be submitted on behalf of the applicant as an amendment to this application or otherwise.

Name of acquiring party/applicant

Name of target company

Name of financial institution concerned
(if other than target company)

Date of application

Notices of Final Rulemaking

- ~~C.~~ Commencing on the second page, the application shall contain the following information in the sequence indicated:
- ~~1.~~ The name and address of the acquiring party and if other than a natural person, the name and address of each director, partner and executive officer of the acquiring party.
 - ~~2.~~ The name and address of each affiliate of the acquiring party and a description of the relationship between the acquiring party and each affiliate.
 - ~~3.~~ An informative description of the business operations of the acquiring party and its affiliates during the past five years or such lesser period as such person and any predecessor thereof shall have been in existence. In addition, describe any proceedings wherein the acquiring party or any affiliate was placed in bankruptcy or receivership or wherein its corporate charter was revoked or wherein its license or permit to engage in any business was suspended or revoked.
 - ~~4.~~ The name and address of the target company and the state of incorporation. If the target company is a controlling person, include the name and address of the financial institution concerned which is controlled by this controlling person.
 - ~~5.~~ The date upon which the acquiring party intends to first make a tender offer for, request or invite a tender offer for, offer to exchange securities for or acquire in the open market or otherwise the security referred to in A.R.S. § 6-144 or the date upon which the acquiring party entered into a conditional agreement to acquire said security and the date by which the acquiring party expects to complete his acquisition of said security.
 - ~~6.~~ The number of shares of the security referred to in A.R.S. § 6-144 which the acquiring party proposes to acquire and the total number of shares of the voting security of the target company the acquiring party will directly or indirectly control once the proposed acquisition is completed.
 - ~~7.~~ The terms of any offer, request, invitation, exchange or acquisition to be made by the acquiring party.
 - ~~8.~~ The source, nature and amount of the consideration used or to be used in making the acquisition of the security referred to in A.R.S. § 6-144, a full description of any transaction wherein funds were or are to be obtained for the purpose of the acquisition, including the identity of the persons furnishing the funds, and any arrangements, agreements or understandings of such persons, and a complete description of all such funds obtained directly or indirectly from the target company or any affiliate thereof.
 - ~~9.~~ A full description of all extensions of credit made or contemplated to be made within the next three months to the acquiring party by the target company or any affiliate thereto.
 - ~~10.~~ A full description of any plans or proposals which the acquiring party may have to liquidate, merge, consolidate or sell the assets of the target company or any affiliate thereof or to make any material change in the corporate structure, business or management of the target company or affiliate thereof.
 - ~~11.~~ The number of shares of each class of any voting security of the target company or any affiliate thereof, which the acquiring party or any affiliate thereof owns, controls or has a beneficial interest in or in which the acquiring party or any affiliate thereof has a right to acquire ownership, control or a beneficial interest. With regard to such securities which the ownership, control or beneficial interest therein was acquired during the twelve calendar months preceding the filing of this application, include the date of such acquisition, the name and address of the transferor of the ownership, control or beneficial interest acquired, and the nature and amount of the consideration paid or agreed to be paid therefor.
 - ~~12.~~ A full description of any recommendations to purchase any voting security of the target company or any affiliate thereof made during the twelve calendar months preceding the filing of this application by the acquiring party or any affiliate thereof, or by any other person based upon an interview or at the suggestion of the acquiring party or an affiliate thereof.
 - ~~13.~~ A full description of any contracts, arrangements or understandings which the acquiring party has with any person with respect to any voting securities of the target company or any affiliate thereof, including but not limited to transfers of such securities, joint ventures, loan or option arrangement, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into, and shall include the details thereof.
 - ~~14.~~ A full description of the terms of any agreement, contract or understanding made with any broker-dealer as to the solicitation of any voting security of the target company or any affiliate thereof, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with respect thereto.
 - ~~15.~~ Any additional information the acquiring party believes is relevant to the application.
 - ~~16.~~ A complete index of all attachments to the application.
- ~~D.~~ Immediately following the information required under subsection (C), the application shall contain a separate verification signed by each acquiring party or its authorized representative:
- ~~1.~~ Where the acquiring party is a natural person, the verification shall be signed by the acquiring party and shall be in the following form completed in all respects:

Notices of Final Rulemaking

- 3. As attachment "C" financial statements prepared in accordance with generally accepted accounting principles regarding the earnings and financial condition of the acquiring party for a period ending not earlier than 90 days prior to the filing of the application.
 - 4. As attachment "D" copies of all solicitations, proxies, prospectus or other material to be used in making offers, requests, invitations, exchanges or acquisitions of the security referred to in A.R.S. 6-144, or if a conditional agreement has been executed, a copy of said agreement.
 - 5. As attachment "E" copies of all documents relevant to the matters described in paragraph (7) of the application.
 - 6. As attachment "F" copies of all documents relevant to the matters described in paragraph (8) of the application.
 - 7. As attachment "G" copies of all documents relevant to the matter described in paragraph (9) of the application.
 - 8. As attachment "H" copies of all documents relevant to the matter described in paragraph (10) of the application.
 - 9. As attachment "I" copies of all documents relevant to the matter described in paragraph (12) of the application.
 - 10. As attachment "J" copies of all documents relevant to the matter described in paragraph (13) of the application.
 - 11. As attachment "K" any additional documents the acquiring party believes are relevant to the application or which are referred to in the application and not previously included as an attachment, including copies of all applications or notices filed or proposed to be filed with federal regulatory agencies in connection with the proposed acquisition.
- F.** Where more than one document is included under a category as provided in subsection (E), each document shall be separately identified with the appropriate letter designation followed by consecutive numbers in parentheses [i.e., ATTACHMENT C(4)].
- G.** The Superintendent may require additional information in connection with any application filed under this rule.
- A.** An applicant seeking approval to acquire control of a bank, savings and loan association, or controlling person of a bank or savings and loan association, under A.R.S. Title 6, Chapter 1, Article 4, shall file with the Superintendent copies of all application documents filed with federal regulatory agencies in connection with the planned acquisition of control.
- B.** As used in this subsection, "executive officer" includes the chairman of the board, president, each vice president, cashier, secretary, treasurer, and every other person who participates in major policymaking functions of the applicant. Under A.R.S. § 6-145(A), an applicant seeking approval to acquire control of a trust company or controlling person of a trust company, under A.R.S. Title 6, Chapter 1, Article 4 shall supply all information the Superintendent requires under this subsection. The Superintendent may require an applicant to supplement or amend its application based on issues raised by the initial submission. The initial application shall consist of the following items:
- 1. A copy of the signed purchase agreement.
 - 2. The applicant's audited financial statement.
 - 3. A personal history statement, on a form supplied by the Department, for each executive officer and each director of the acquiring party.
 - 4. Each executive officer's and each director's audited financial statement.
 - 5. A fingerprint card for each executive officer and each director, and
 - 6. A copy of each executive officer's and each director's driver's license.

R20-4-1603. Amendment or Supplement to Application Repealed

- A.** An acquiring party desiring to amend or supplement an application filed with the Superintendent pursuant to R20-4-1602 shall file with the Superintendent an original and two copies of an amendment as provided in this rule.
- B.** The amendment shall be in writing or printed on 8 1/2 x 14 inch paper and the first page shall be in the following form:

AMENDMENT NUMBER _____
 TO APPLICATION FOR APPROVAL TO ACQUIRE
 CONTROL OF FINANCIAL INSTITUTION

The application for approval to acquire control of the financial institution described below filed with the Superintendent and dated is amended as provided hereafter:

 Name of acquiring party/applicant

 Name of target company

 Name of financial institution concerned
 (if other than target company)

 (Date of amendment)

Notices of Final Rulemaking

- ~~C.~~ Commencing on the second page, the amendment shall contain a reference to the paragraph number of each provision in the application which is amended or supplemented followed by the amended or supplemental information.
- ~~D.~~ Immediately following the information required under subsection (C), the amendment shall contain a separate verification signed by each acquiring party as in the manner provided in R20-4-1602(D) for original applications, except that the word "amendment" shall be substituted for the word "application" in the verification.
- ~~E.~~ There shall be attached to the application, immediately following the verification, any documents intended to be added to the application and the identity of any documents previously filed which are intended to be deleted, together with a reference to the appropriate category as provided in R20-4-1602(E).

R20-4-1604. Certificate of Service Repealed

The acquiring party/applicant shall file with any application filed under R20-4-1602 or any amendment filed under R20-4-1603 a certificate of service certifying that a true and correct copy of the application or amendment, together with attachments, was hand-delivered or mailed by United States mail, postage prepaid, to the financial institution concerned.