

NOTICES OF PROPOSED RULEMAKING

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

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 15. DEPARTMENT OF ADMINISTRATION MANAGEMENT SERVICES DIVISION

PREAMBLE

1. Sections Affected

R2-15-301
R2-15-302
R2-15-303
R2-15-304
R2-15-305
R2-15-306
R2-15-307
R2-15-308
R2-15-309
R2-15-310

Rulemaking Action

Amend
Repeal
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend

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

Authorizing statutes: A.R.S. §§ 41-703(3) and 41-2511

Implementing statutes: A.R.S. §§ 41-2601, 41-2602, 41-2603, 41-2604, 41-2605, 41-2606, and 41-2607

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 1872, June 13, 2003

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

| | | |
|------------|------------------------------------------------------------------|----------------------------------------------------------------|
| Name: | Bill Hernandez Assistant Director | Steve Perica Surplus Administrator |
| Address: | ADOA – MSD 100 N. 15th Avenue, Suite 402 Phoenix, AZ 85007 | MSD – Surplus Property 1537 W. Jackson Phoenix, AZ 85007 |
| Telephone: | (602) 364-2872 | (602) 542-5701 |
| Fax: | (602) 542-2010 | (602) 379-4929 |

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

The purpose of this rulemaking is to respond to issues raised in the five-year review process. Additionally, the rulemaking will update the rules and bring them into conformance with current rulewriting standards, legislative changes, and current practice.

SPECIFIC SECTION BY SECTION EXPLANATION OF THIS PROPOSAL

R2-15-301.

In this Section the term "General Services Administrator" is updated to "General Accounting Administrator," the term "General Services Division" is updated to the term "Management Services Division," and the term "Finance

Division” is updated to the term “Financial Services Division” to reflect the current titles of the Divisions. The term “State Governmental Unit” is added and defined as is the term “Capital Asset.”

R2-15-302.

This Section defines the procurement officer’s responsibilities in relation to the specifications in the solicitations and requires an annual inventory of state assets. This Section is repealed and the inventory requirement is incorporated within R2-15-304.

R2-15-303.

This Section establishes the state Surplus Property Administrator’s authority to act on behalf of the state in all matters pertaining to the disposition of excess and surplus materials and clarifies the responsibilities of state agencies regarding the disposition of excess and surplus materials. This Section provides the methods of disposal for excess and surplus material. In this Section the methods of disposal are updated by adding “online sales” to the approved methods of sale, correcting a citation, and removing outdated language. In this Section the term “State Purchasing Administrator” is updated to the term “Surplus Property Administrator” with respect to the sealed bidding process for surplus and excess materials. This Section is updated by clarifying the advertisement of sales by adding the word “public” and providing guidance for online sales advertising. This Section provides the guidance for the trade-in of materials on the procurement of new equipment, and the language is updated within the rule to remove duplication of approval and to clarify the process for gaining approval to trade in materials.

R2-15-304.

This Section requires each state governmental unit to conduct an inventory. The Section is further updated by clarifying the requirements for an annual inventory report.

R2-15-305.

This Section establishes the mechanism by which a state governmental unit may remove from the next inventory report materials that have been lost, stolen, or destroyed.

R2-15-306.

This Section directs the Surplus Property Administrator to file a state plan of operation with the General Services Administration, provides authority for the Surplus Property Administrator to act on behalf of the state regarding federal surplus materials, and requires the Surplus Property Administrator to distribute federal surplus materials to eligible entities.

R2-15-307.

This Section directs the Surplus Property Administrator to determine whether an entity is eligible for federal or state surplus materials and prohibits agencies from acquiring federal or state surplus materials without approval of the State Property Administrator. This Section is updated by clarifying the requirements for eligibility and makes changes to update the language to current rulewriting standards.

R2-15-308.

This Section establishes the authority for the Surplus Property Administrator to assess service and handling fees. This Section is updated by making clarifying language changes and updating terms to current rulewriting standards.

R2-15-309.

This Section provides authority for the State Treasurer to place monies into a government-insured depository institution. It is updated by inserting clarifying language and updating terms to current rulewriting standards.

R2-15-310.

This Section provides authority for the Surplus Property Administrator to reimburse agencies on the sale or disposal of state surplus or excess materials and provides thresholds for that reimbursement. This Section is updated by adding language that makes it easier to determine when reimbursement should occur and clarifies the maximum amount that may be reimbursed.

In addition to the changes listed above, technical changes were made throughout the rules to improve clarity, grammar, and consistency, and to conform to current rulewriting standards.

- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to 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:**

Not applicable

7. 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

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

This rulemaking establishes clear procedures for materials management and the disposition of state excess and surplus materials.

A. Estimated Costs and Benefits to ADOA Surplus Property Management Office.

Surplus Property Management does not anticipate any additional administrative functions will result from this rulemaking, nor will revenues increase or decrease.

B. Estimated Costs and Benefits to Political Subdivisions.

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. Businesses Directly Affected by the Rulemaking. (State agencies)

State agencies should have a clearer understanding of the requirements for the disposition of state excess and surplus materials. Further, this rulemaking will enhance the state's ability to sell excess and surplus materials.

D. Estimated Costs and Benefits to Private and Public Employment.

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. Estimated Costs and Benefits to Consumers and the Public.

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

F. Estimated Costs and Benefits to State Revenues.

This rulemaking will have no impact on state revenues.

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

| | | |
|------------|------------------------------------------------------------------|----------------------------------------------------------------|
| Name: | Bill Hernandez Assistant Director | Steve Perica Surplus Administrator |
| Address: | ADOA – MSD 100 N. 15th Avenue, Suite 402 Phoenix, AZ 85007 | MSD – Surplus Property 1537 W. Jackson Phoenix, AZ 85007 |
| Telephone: | (602) 364-2872 | (602) 542-5701 |
| Fax: | (602) 542-2010 | (602) 379-4929 |

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

No oral proceeding is scheduled at this time. Under A.R.S. § 41-1023(C), an oral proceeding will be scheduled if a written request is submitted to the persons identified in item #4 within 30 days after publication of this notice. Written comments may be made to the persons identified in item #4 within 30 days after publication of this notice.

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

None

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

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

**CHAPTER 15. DEPARTMENT OF ADMINISTRATION
MANAGEMENT SERVICES DIVISION**

ARTICLE 3. MATERIALS MANAGEMENT

Notices of Proposed Rulemaking

Section

- R2-15-301. Definitions
- R2-15-302. ~~Material Management~~ Repealed
- R2-15-303. Disposition
- R2-15-304. ~~Nonexpendable Material (General Fixed Assets)~~ Materials Inventory Records Report and Submission of Contracts
- R2-15-305. ~~Lost, Stolen, or Destroyed Nonexpendable Material~~ Materials (Capital Assets) (General Fixed Assets)
- R2-15-306. Federal Surplus ~~Material~~ Materials Program
- R2-15-307. Authority for Transfer of ~~Material~~ Materials
- R2-15-308. Fees and Charges
- R2-15-309. Surplus Materials Revolving Funds
- R2-15-310. Allocation of Proceeds from Sale or Disposal of Excess or Surplus Materials

ARTICLE 3. MATERIALS MANAGEMENT

R2-15-301. Definitions

In this Article, unless the context otherwise states:

“Department” means the Department of Administration.

- 1. “Direct transfer” means the transfer of surplus or excess materials by the Surplus Property Management Office from one state governmental unit to another without physically moving the property to the Surplus Property Management Office.

“Director” means the director of the Department of Administration.

- 2. “Established markets” means those places where materials are regularly bought and sold at prices set by open competition.

- 3. “Fair market value” means the price at which sales have been consummated for materials assets of like type, quality, and quantity in a particular market at the time of acquisition.

- 4. ~~“General Services Administrator”~~ “General Accounting Administrator” means the person holding the position as Administrator of the General Accounting Office, ~~Finance~~ Financial Services Division of the Department of Administration.

- 5. “Posted prices” means the sale price determined by the Surplus Property Administrator to be fair market value.

“State governmental unit” means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this state as defined in A.R.S. § 41-2503.

- 6. “State plan of operation” means the agreement for acquiring federal surplus property between the state and the United States General Services Administration.

- 7. “Surplus Property Administrator” means the person holding the position as Administrator of the Surplus Property Management Office, ~~General Management~~ Services Division of the Department of Administration.

“Capital asset” has the same meaning as “nonexpendable materials” in A.R.S. § 41-2601.

R2-15-302. ~~Material Management~~ Repealed

- ~~A. The procurement officer shall ascertain or verify that materials, services, or construction items procured by such officer conform to specifications as set forth in the solicitation. The procurement officer may establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories and inspection and testing facilities, and contract with others for inspection or testing work as needed. The procurement officer may delegate authority for inspection and testing.~~

- ~~B. Each state governmental unit shall conduct an annual inventory, to be verified by a physical count and certified by the unit's director, of all material warehoused or otherwise stored by the unit.~~

R2-15-303. Disposition

- A. The Surplus Property Administrator may act on behalf of the state in all matters pertaining to the disposition of excess and surplus materials.

- B. ~~No using agency, except~~ Except as specifically authorized for the Department of Public Safety pursuant to under A.R.S. § 41-1713(B)(7), the Arizona Exposition and State Fair Board Coliseum and Exposition Center pursuant to under A.R.S. § 3-1007(I) A.R.S. § 3-1007(A)(1), Arizona Correctional Industries pursuant to under A.R.S. §§ 41-1623(E) and 41-1624(B), and the Department of Mines and Mineral Resources pursuant to under A.R.S. § 27-105(6), a state governmental unit shall not transfer, sell, trade-in, condemn, or otherwise dispose of materials owned by the state without written authorization of from the Surplus Property Administrator.

Notices of Proposed Rulemaking

- C. ~~Using agencies~~ Each state governmental unit shall notify the Surplus Property Administrator of all excess and surplus materials on ~~such forms provided by and at such times as that officer may prescribe~~ the Surplus Property Administrator. The Surplus Property Administrator shall determine the fair market value of excess and surplus ~~property materials~~.
- D. The Surplus Property Administrator shall facilitate the transfer of excess or surplus materials to or between ~~other~~ state agencies, ~~other units of government~~ political subdivisions, and eligible nonprofit institutions. The transfer document ~~of for~~ state ~~property materials~~ shall indicate state that the recipient agrees not to transfer title or dispose of the ~~material materials~~ within a six-month period, except for motor vehicles, which have a 12-month restriction, without prior approval of the Surplus Property Administrator.
- E. Disposition of surplus materials
1. ~~Surplus materials material shall be offered~~ The Surplus Property Administrator shall offer surplus materials through competitive sealed bids, public auction, online sales, established markets, or posted prices. If unusual circumstances render the above methods impractical, the Surplus Property Administrator may employ other disposition methods, including appraisal or barter, provided ~~such officer~~ the Surplus Property Administrator makes a written determination that ~~such the~~ procedure is advantageous to the state. The following methods of payment are accepted by the Surplus Property Administrator: a United States Postal Money Orders Order, certified checks check, cashier's checks check or and cash shall be accepted for sales the sale of surplus property materials unless otherwise approved by the Surplus Property Administrator or for sales of less than \$100.
 2. Competitive sealed bidding. The Surplus Property Administrator shall ensure that:
 - a. ~~Notice of sale bids shall be~~ Sale Notices are publicly available from the State Procurement Surplus Property Office at least ten five days before the date set for opening bids; ~~Notice of the sale bids shall be mailed to prospective bidders, including those bidders on lists maintained by the State Procurement Office, pursuant to R2-7-312.~~
 - b. ~~The notice for Each sale notice bids shall list the lists material materials offered for sale, their location of materials, and availability of materials for inspection, the terms and conditions of sale, and instructions to bidders, including the place, date, and time set for the bid opening.~~
 - c. Bids are shall be opened publicly; ~~pursuant to the requirements of R2-7-318.~~
 - b.d. Awards are made ~~The award shall be made~~ in accordance with the provisions of the sale notice; and for sale bids
 - e. Awards are made to the highest responsive and responsible bidder, provided that the price offered by ~~such the~~ highest responsive and responsible bidder is acceptable to the Surplus Property Administrator. If the State Procurement Surplus Property Administrator determines that the a bid is not advantageous to the state, such officer the Surplus Property Administrator may reject the bids in whole or in part, and may resolicit bids, or such officer the Surplus Property Administrator may negotiate the sale, provided that the negotiated sale price is higher than the highest responsive and responsible bidder's price.
 3. ~~The Surplus Property Administrator shall advertise a public auction Auctions shall be advertised at least three times before prior to the auction date; the last notice to be no less than six days prior to the auction date; and ensure that all All the terms and conditions of any sale are shall be published and be available to the public at least 24 hours prior to before the auction date or, in the case of online sales, within the sales notice.~~
 4. ~~The Surplus Property Administrator shall determine whether Before surplus materials are may be disposed of by trade-in to a vendor for credit on an acquisition; the Surplus Property Administrator and the State Procurement Administrator shall approve such of the disposal. In making this determination, the The Surplus Property Administrator shall base this determination on consider the urgency of need by other state governmental units, or and whether the trade-in value is expected to exceed the value realized through the sale of the materials.~~
 5. An employee of the owning or disposing state governmental unit shall not directly or indirectly purchase or agree with another person to purchase surplus ~~property materials~~ if that employee is, or has been, directly or indirectly involved in the purchase, disposal, maintenance, or preparation for sale of the surplus ~~material materials~~.

R2-15-304. ~~Nonexpendable Material (General Fixed Assets) Materials Inventory Records Report and Submission of Contracts~~

- A. Each state governmental unit, ~~as of at~~ the end of each fiscal year, shall prepare an inventory report of all materials warehoused or otherwise held by the unit submit to the General Accounting Administrator an inventory report, verified by a physical count and certified by the unit's director highest-ranking officer, which lists all of listing the following:
1. Nonexpendable materials (capital assets), All nonexpendable material (general fixed assets) capitalized in accordance with the state of Arizona accounting manual Accounting Manual;
 2. Nonexpendable materials (capital assets) held under capital leases and similar financial arrangements; Lease purchase or installment purchase equipment;
 3. Nonexpendable material materials (capital assets) (general fixed assets) that has have been, or will be, leased or rented for more than 90 days; and
 4. Other materials warehoused or otherwise held by the agencies that are subject to the stewardship requirements of the state of Arizona Accounting Manual.

Notices of Proposed Rulemaking

- B. ~~The state governmental unit shall include and identify separately in the inventory report all real property, buildings, and other improvements to real property, shall be included in the report required under subsection (A) of this rule but shall be identified separately within the report.~~
- C. ~~The state governmental unit shall submit a copy of any All copies of signed capital leases and similar financial arrangements lease purchase and installment contracts shall be submitted to the General Accounting Administrator within 30 days of execution.~~

R2-15-305. Lost, Stolen, or Destroyed Nonexpendable ~~Material~~ Materials (Capital Assets) (~~General Fixed Assets~~)

- A. ~~A state governmental unit shall immediately report The theft of nonexpendable material materials shall be immediately reported to the appropriate law enforcement agency.~~
- B. ~~Within 10 days after discovery, an agency shall report All lost, stolen, or destroyed nonexpendable material materials shall be reported by the state governmental unit within ten days after discovery of the loss to the General Accounting Administrator. Based upon results of the investigation, the The General Accounting Administrator may authorize the unit, in writing, the deletion of such to delete the missing nonexpendable material materials from the inventory any internal inventory report and on the AFIS Fixed Asset Subsystem (FAS). If materials are Any such material deleted from the inventory and that is subsequently located, the unit shall again list the materials shall be added to the inventory in any internal inventory report and on the FAS.~~

R2-15-306. Federal Surplus ~~Material~~ Materials Program

The Surplus Property Administrator shall:

1. Prepare and file a state plan of operation with the United States General Services Administration.
2. Act on behalf of the state with any federal agencies or other surplus property agencies regarding federal surplus materials.
3. Distribute federal surplus ~~material~~ materials to eligible entities.

R2-15-307. Authority for Transfer of ~~Material~~ Materials

- A. ~~The Surplus Property Administrator shall determine whether an entity is eligible to acquire eligibility for the acquisition of federal or state surplus material materials. Eligibility for federal surplus material materials shall be is determined in accordance with federal law. All entities eligible under federal law or federal income tax exempt non-profit entities and having at least one full-time salaried employee shall be eligible for state surplus material. An entity may be eligible for state surplus materials if the entity:~~
 1. ~~Is eligible to receive federal surplus materials, or~~
 2. ~~Is a federal income tax exempt non-profit entity that has at least one full-time salaried employee and is a health or educational organization as defined in federal law. When making an eligibility determination for non-profit entities who are not eligible to acquire federal surplus materials, the Surplus Property Administrator shall consider the public benefit of the services provided by the entity. Applicants that cannot demonstrate to the satisfaction of the Surplus Property Administrator that the services provided are providing a public benefit shall not be eligible.~~
- B. ~~A state governmental unit shall not No state governmental unit shall acquire federal or state surplus material materials without the approval of the Surplus Property Administrator.~~

R2-15-308. Fees and Charges

- A. ~~The Surplus Property Administrator shall determine and assess proper service and handling fees, with the approval of the Director for the acquisition, receipt, warehousing, rehabilitation, delivery, distribution, or transfer of state surplus materials. Such The Surplus Property Administrator shall ensure that fees shall be are fair and equitable, and shall be based on the cost of services performed and the continuous maintenance support requirements of the surplus property management office Surplus Property Management Office.~~
 1. ~~The Surplus Property Administrator shall approve or deny any All direct transfers transfer of state surplus materials between state governmental units. must be approved by the Surplus Property Administrator. The Surplus Property Office shall not assess service Service and handling fees charges will not be assessed by the Surplus Property Management Office, if the a direct transfer between state governmental units can be accomplished without the use of personnel, equipment handling, or facilities facility support, of the Surplus Property Management Office.~~
 2. ~~For all All other direct transfers of state surplus materials, will be assessed the Surplus Property Administrator shall assess a service and handling fee charge. The receiving entity shall pay a transfer fee of 10% of the fair market value of the materials. property with a The minimum fee is charge of \$20.00 and a the maximum fee of is \$300.00.~~
- B. ~~Fees on other transfers or sales shall be pursuant to are determined according to R2-15-310.~~

R2-15-309. Surplus Materials Revolving Funds

- A. ~~The State Treasurer may, after a determination that a portion of the monies in the state surplus materials revolving fund is not required for a period of three months, deposit such that portion of the monies in a government-insured depository institution offering a rate of return with maturity of 13 months or less from the date of purchase. All interest earned shall be credited to the revolving fund.~~

B. The federal surplus materials revolving fund shall be maintained in accordance with the state plan of ~~operations~~ operation.

R2-15-310. Allocation of Proceeds from Sale or Disposal of Excess or Surplus Materials

A. Except as ~~otherwise~~ provided in subsection (B) or subsection (C), the Surplus Property Administrator shall ensure that proceeds from the disposition of excess or surplus materials are shall be retained by the Surplus Property Office.

B. State governmental units, except the Department of Public Safety, ~~pursuant to~~ under A.R.S. § 41-1713(B)(6), that originally purchased ~~a material~~ materials with General Fund monies shall not be reimbursed for ~~it's~~ the materials transfer or sale.

C. The Surplus Property Administrator shall reimburse proceeds from the disposition of materials ~~State governmental units that originally purchased a material with special fund monies, such as revolving, dedicated, or federal funds, shall be reimbursed, less the Surplus Property Office's fee, for it's the material's transfer or sale, according to the following schedule. The Surplus Property Administrator shall:~~

1. ~~The Surplus Property Office shall collect a fee for~~ For direct transfer of state excess or surplus ~~material~~ materials ~~in accordance with R2-15-308(A)(1), collect the fee required in R2-15-308(A), and reimburse the~~ The balance of the sale of proceeds ~~price shall be reimbursed~~ to the transferring agency.
2. ~~Reimbursement of~~ For non-direct transfer or sale of state excess or surplus materials. ~~shall be as follows:~~
 - a. ~~No reimbursement~~ Reimburse nothing if the sale proceeds for an item are less than or equal to \$50.00.
 - b. ~~Reimbursement at the~~ Reimburse at a rate of not less than 70% of the sale proceeds for an item that sells ~~selling~~ for a price greater than \$50.00.
3. ~~Reimbursement shall not be made until~~ Reimburse sale proceeds after ~~completion of the~~ sale is completed.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. Sections Affected

R4-23-110
R4-23-410
R4-23-670
R4-23-671
R4-23-675

Rulemaking Action

Amend
Amend
Amend
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. § 32-1904(A)(1) and (2) and (B)(3)

Implementing statutes: A.R.S. §§ 32-1901(7), 32-1929, 32-1930, 32-1931, and 32-1968(D)

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 1975, April 26, 2002

Notice of Rulemaking Docket Opening: 8 A.A.R. 4425, October 18, 2002

Notice of Rulemaking Docket Opening: 9 A.A.R. 2217, June 27, 2003

4. 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@cox.net

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

The Board's five-year rule review in September 2002 identified R4-23-410 for amending. This Section deals with pharmacy compounding practices and was originally noticed on October 18, 2002 along with five other non-com-

pounding-related rules. In January 2003, the Board appointed a committee to review sterile pharmaceuticals and compounding together. R4-23-410 was pulled out of its original docket and combined with the sterile pharmaceuticals docket which was noticed on April 26, 2002. Because no action was taken on the sterile pharmaceuticals docket, it expired on April 25, 2003. This new docket, noticed on June 27, 2003, includes the sterile pharmaceuticals and compounding rules. R4-23-410 will be amended to establish more specific recordkeeping requirements for compounding, improve clarity and conciseness, and reduce misunderstandings involving compliance. The Board's sterile pharmaceutical products pharmacy rule will be amended to incorporate the use of the limited-service pharmacy permit and increase the rule's clarity, conciseness, and understandability. R4-23-110 will be amended to include new definitions for "limited-service sterile pharmaceutical products pharmacy" and "pharmaceutical product" and amended definitions for "beyond-use-date" and "sterile pharmaceutical product." R4-23-670 will be amended to describe the requirements for preparing and dispensing sterile pharmaceuticals. R4-23-671 will receive minor changes for clarity, conciseness, and understandability. A new Section R4-23-675, Limited-service Sterile Pharmaceutical Products Pharmacy, will describe specific requirements for a limited-service sterile pharmaceutical products pharmacy. The proposed rules include necessary style, format, grammar, and punctuation changes to comply with the rules of the Secretary of State and Governor's Regulatory Review Council.

The Board believes that approval of these rules benefits the public and the pharmacy community by clearly establishing the standards for good compounding practice and sterile pharmaceutical products preparation and specific requirements for opening and operating a limited-service sterile pharmaceutical products pharmacy.

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

7. 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

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

The proposed rules will impact the Board, pharmacists, and pharmacies. The proposed rules will have minimal economic impact on the Board. The impact on the Board will be usual rulemaking-related costs which are minimal. The proposed rules will have minimal economic impact on pharmacists and pharmacies. The proposed rules clarify and improve the labeling and recordkeeping requirements for compounding. The proposed changes to the labeling and recordkeeping requirements will require minor changes to a pharmacy's labels. The cost of the label changes will be minimal and may be covered in a pharmacy's contract with their software provider. The proposed rules will have no economic impact on the public.

The public, Board, pharmacists, and pharmacies benefit from rules that are clear, concise, and, understandable. The proposed rules benefit the public, the Board, and the pharmacy community by clearly establishing the standards for good compounding practice and sterile pharmaceutical products preparation and specific requirements for opening and operating a limited-service sterile pharmaceutical products pharmacy.

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

Name: 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@cox.net

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

Comments may be written or presented orally. Written comments must be received by 5:00 p.m., Monday, March 22, 2004. An oral proceeding is scheduled for:

Date: March 22, 2004
Time: 10:00 a.m.
Location: 4425 W. Olive, Suite 140
Glendale, AZ 85302

A person may request information about the oral proceeding by contacting the person listed in item #9.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section

R4-23-110. Definitions

ARTICLE 4. PROFESSIONAL PRACTICES

Section

R4-23-410. Current Good Compounding Practice

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

R4-23-670. Sterile Pharmaceutical Products ~~Pharmacy~~

R4-23-671. General Requirements for Limited-service Pharmacy

R4-23-675. ~~Reserved~~ Limited-service Sterile Pharmaceutical Products 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” means:

a A date determined by a pharmacist and placed on a prescription label at the time of dispensing to indicate a time beyond which the contents of the prescription are not recommended to be used; or

A date determined by a pharmacist and placed on a compounded pharmaceutical product’s label at the time of preparation as specified in R4-23-410(B)(3)(d), (I)(6)(e), or (J)(1)(d) to indicate a time beyond which the compounded pharmaceutical product is not recommended to be used.

“Biological safety cabinet” No change

“Certified pharmacy technician” No change

“Class 100 environment” No change

“Community pharmacy” No change

“Component” No change

“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 mail-order pharmacy” No change
- “Limited-service nuclear pharmacy” No change
- “Limited-service pharmacy permittee” No change
- “Limited-service sterile pharmaceutical products pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices as sterile pharmaceutical products.
- “Long-term care consultant pharmacist” 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 product” means a medicinal drug.
- “Pharmaceutical care” No change
- “Pharmacy law continuing education” No change
- “Pharmacy technician” No change
- “Prepackaged drug” No change
- “Provider pharmacist” 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” means a ~~dosage form~~ medicinal drug free from living ~~micro-organisms~~ biological organisms.
- “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

R4-23-410. Current Good Compounding Practices

- A. This rule establishes the current good compounding practices to be used by a pharmacist licensed by the Board, in a pharmacy permitted by the Board, and in compliance with applicable federal and state law governing the practice of pharmacy.
- B. A pharmacy permittee shall ensure compliance with the provisions in this subsection.
 - 1. All ~~drug~~ substances for compounding that are received, stored, or used by the pharmacy permittee:
 - a. Meet official compendium requirements;
 - b. Are of high quality, such as Chemically Pure (CP), Analytical Reagent (AR), certified American Chemical Society (ACS), or Food Chemical Codex (FCC) grade; or
 - c. Are obtained from a source that, in the professional judgement of the pharmacist, is acceptable and reliable.
 - 2. ~~A pharmacist, employed by the pharmacy permittee, compounds a drug in limited quantity~~ Before compounding a pharmaceutical product in excess of the quantity dispensed in anticipation of receiving valid prescriptions for the drug pharmaceutical product, only after establishing a pharmacist, employed by the pharmacy permittee, shall establish a history of compounding valid prescriptions for the drug pharmaceutical product.
 - 3. Neither the pharmacy permittee nor a pharmacist employed by the pharmacy permittee provides a compounded ~~drug pharmaceutical product~~ to a pharmacy, medical practitioner, or other person for dispensing or distributing except that a compounded ~~drug pharmaceutical product~~ may be provided to a medical practitioner to administer to a patient of the medical practitioner: if each container is accompanied by the written list required in subsection (I)(5) and has a label that includes the following:
 - a. The pharmacy’s name, address, and telephone number;
 - b. The pharmaceutical product’s name and the information required in subsection (I)(4);
 - c. A lot or control number;
 - d. A beyond-use-date based upon the pharmacist’s professional judgment, but not more than the maximum guidelines recommended in the Pharmacy Compounding Practices chapter of the official compendium unless there is published or unpublished stability test data that shows a longer period is appropriate;
 - e. The statement “Not For Dispensing;” and
 - f. The statement “For Office or Hospital Administration Only.”
 - 4. A pharmacy or pharmacist may advertise or otherwise promote the fact that the pharmacy or pharmacist provides prescription compounding services.
- C. A pharmacy permittee shall ensure compliance with the organization, training, and personnel issues in this subsection.
 - 1. Before dispensing a compounded ~~drug pharmaceutical product~~, a pharmacist:
 - a. Inspects and approves or rejects, or assumes responsibility for inspecting and approving or rejecting, components, ~~drug product~~ pharmaceutical product containers and closures, in-process materials, and labeling;
 - b. Prepares or assumes responsibility for preparing all compounding records;

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- c. Reviews all compounding records to ensure that no errors occur in the compounding process; ~~and~~
 - d. Ensures the proper use, cleanliness, and maintenance of all compounding equipment; ~~and~~
 - e. Documents by hand-written initials or signature in the compounding record the completion of the requirements of subsections (C)(1)(a), (b), (c), and (d).
2. A pharmacist engaged in compounding:
 - a. Complies with the current good compounding practices and applicable state pharmacy laws;
 - b. Maintains compounding proficiency through current awareness, training, and continuing education; and
 - c. Ensures that personnel engaged in compounding wear:
 - i. Clean clothing appropriate to the work performed; and
 - ii. Protective apparel, such as coats, aprons, gowns, gloves or masks to protect the personnel from chemical exposure and prevent ~~drug~~ pharmaceutical product contamination.
- D. A pharmacy permittee shall ensure the security, safety, and quality of a compounded ~~drug~~ pharmaceutical product by conforming with the following standards:
1. Implement procedures to exclude from direct contact with components, ~~drug~~ pharmaceutical product containers and closures, in-process materials, labeling, and ~~drug~~ pharmaceutical products, any person with an apparent illness or open lesion that may adversely affect the safety or quality of a compounded ~~drug~~ pharmaceutical product, until the illness or lesion, as determined by competent medical personnel, does not jeopardize the safety or quality of a compounded ~~drug~~ pharmaceutical product; and
 2. Require all personnel to inform a pharmacist of any health condition that may adversely affect a compounded ~~drug~~ pharmaceutical product.
- E. A pharmacy permittee shall provide compounding facilities that conform with the standards in this subsection.
1. In addition to the minimum area requirements of A.A.C. R4-23-609, R4-23-655, or R4-23-673, the compounding area:
 - a. Complies with the requirements in A.A.C. R4-23-604(C)(1) and R4-23-611; and
 - b. Has sufficient space to permit efficient pharmacy practice, free movement of personnel, and visual surveillance by a pharmacist.
 2. If sterile pharmaceutical product or radiopharmaceutical product compounding is performed, ~~provide a separate compounding area that complies with the rules governing sterile pharmaceuticals and radiopharmaceuticals~~ the compounding area complies with the requirements of R4-23-670, R4-23-681, and R4-23-682.
 3. A clean, dry, and temperature-controlled area and, if required, a refrigerated area, in which to store properly labeled containers of bulk drugs, chemicals, and materials used in compounding, that complies with state statutes and rules.
- F. To protect ~~drug~~ pharmaceutical product safety, identity, strength, quality, and purity, a pharmacy permittee shall ensure that equipment and utensils used in ~~drug~~ pharmaceutical product compounding ~~conform with the standards in this subsection. are:~~
1. ~~Are of~~ Of appropriate design, adequate size, and suitably located for proper operation, cleaning, and maintenance; ~~;~~
 2. ~~Are made~~ Made of material that is not reactive, additive, or absorptive when exposed to components, in-process materials, or ~~drug~~ pharmaceutical products; ~~;~~
 3. ~~Are cleaned and sanitized~~ Cleaned and protected from contamination before use; ~~;~~
 4. ~~If previously cleaned-~~
 - a. ~~Are protected from contamination before use; and-~~
 - b. ~~Are inspected~~ Inspected and determined suitable for use, ~~by a pharmacist, immediately~~ before initiation of compounding operations; ~~and~~
 5. ~~Are routinely~~ Routinely inspected, calibrated, or checked to make proper performance certain.
- G. A pharmacy permittee shall ensure that the pharmacist-in-charge establishes and implements procedures to prevent cross-contamination when ~~drug~~ pharmaceutical products that require special precautions to prevent cross-contamination, such as penicillin, are used in a compounding procedure. The procedures shall include either the dedication of equipment or the meticulous cleaning of contaminated equipment before its use in compounding other ~~drugs~~ pharmaceutical products.
- H. A pharmacy permittee shall ensure that the pharmacist-in-charge establishes and implements control procedures for components and ~~drug~~ pharmaceutical product containers and closures, either written or electronically stored with printable documentation, that conform with the standards in this subsection.
1. Components and ~~drug~~ pharmaceutical product containers and closures are:
 - a. Stored off the floor,
 - b. Handled and stored to prevent contamination, and
 - c. Rotated so the oldest approved stock is used first.
 2. Container closure systems comply with official compendium standards.
 3. ~~Drug~~ Pharmaceutical product containers and closures are clean and made of material that is not reactive, additive, or absorptive.

4. ~~Drug product containers and closures used for compounded sterile pharmaceuticals and radiopharmaceuticals are handled, sterilized, and stored in compliance with A.A.C. R4-23-670, R4-23-681, and R4-23-682.~~
- I. A pharmacy permittee shall ensure that the pharmacist-in-charge establishes and implements drug pharmaceutical product compounding controls that conform with the standards in this subsection.
 1. Drug Pharmaceutical product compounding procedures are available in either written form or electronically stored with printable documentation:
 - a. To ensure that a finished drug pharmaceutical product has the identity, strength, quality, and purity it is purported or represented to possess, the procedures include, for each drug pharmaceutical product compounded, a description of:
 - i. The components, their manufacturer, lot number, expiration date, and amounts, the order of component addition, if applicable, and the compounding process;
 - ii. The ~~required~~ equipment and utensils used; and
 - iii. The drug pharmaceutical product container and closure system proper for the sterility and stability of the drug pharmaceutical product as it is intended to be used.
 - b. To test the pharmaceutical product being compounded, the procedures monitor the output and validate the performance of compounding processes that may cause variability in the final drug pharmaceutical product, including assessing:
 - i. Dosage form weight variation;
 - ii. Adequacy of mixing to ensure uniformity and homogeneity; and
 - iii. Clarity, completeness, and pH of solutions, if applicable.
 2. Components for drug pharmaceutical product compounding are accurately weighed, measured, or subdivided. To ensure that each weight, measure, or subdivision is correct as stated in the compounding procedures, a pharmacist:
 - a. Checks and rechecks, or assumes responsibility for checking and re-checking, the operations at each stage of the compounding process; and
 - b. Documents by hand-written initials or signature the completion and accuracy of the compounding process.
 3. Compounding equipment and utensils are properly cleaned and maintained.
 4. In addition to the labeling requirements of A.R.S. § 32-1968(D), the label contains:
 - a. A statement, symbol, designation, or abbreviation that the pharmaceutical product is a compounded pharmaceutical product, and
 - b. A beyond-use-date as specified in subsection (B)(3)(d).
 5. A written list of the compounded pharmaceutical product's active ingredients is given to the patient at the time of dispensing.
 - ~~3-6.~~ When a component is removed from its original container and transferred to another container, the new container label contains, in full text or an abbreviated code system, the following:
 - a. The component name,
 - b. The manufacturer's or supplier's name.
 - ~~b-c.~~ The lot or control number,
 - ~~e-d.~~ The weight or measure,
 - ~~d-e.~~ The beyond-use-date as specified in subsection (B)(3)(d), and
 - ~~e-f.~~ The transfer date.
- J. A pharmacy permittee shall ensure that the pharmacist-in-charge stores any quantity of compounded drug pharmaceutical product produced in excess of the quantity dispensed in accordance with subsection (B):
 1. In an appropriate container with a label that contains:
 - a. A complete list of components or the drug product pharmaceutical product's name;
 - b. The preparation date;
 - c. The assigned lot or control number; and
 - d. A beyond-use-date ~~based upon the pharmacist's professional judgment, but not more than the maximum guidelines recommended in the Pharmacy Compounding Practices chapter of the official compendium unless there are published data based on testing that show a longer period is appropriate~~ as specified in subsection (B)(3)(d); and
 2. Under conditions, dictated by the drug's pharmaceutical product's composition and stability characteristics, that ensure its strength, quality, and purity.
- K. A pharmacy permittee shall ensure that the pharmacist-in-charge establishes and implements recordkeeping procedures that comply with this subsection:
 1. Drug Pharmaceutical product compounding procedures and other records required by this Section are ~~retained in~~ maintained by the pharmacy for not less than ~~3~~ seven years, and
 2. Drug Pharmaceutical product compounding procedures and other records required by this Section are readily available for inspection by the Board or its designee.

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-670. Sterile Pharmaceutical Products ~~Pharmacy~~

~~A. Prior to compounding sterile pharmaceutical products, the owner shall obtain a pharmacy permit in compliance with R4-23-606.~~

~~B. In addition to the ~~space~~ minimum area requirement of R4-23-609(A) and R4-23-655(B) and before compounding a sterile pharmaceutical product, ~~there a pharmacy permittee, limited-service pharmacy permittee, or applicant shall be provide~~ a minimum 60 square feet of contiguous floor ~~space~~ area that:~~

- ~~1. Is~~ Is dedicated to the purpose of preparing and compounding sterile pharmaceutical products;
- ~~2. The sterile compounding area shall be~~ Is isolated from other pharmacy functions;
- ~~3. Have restricted~~ Restricts entry or access ~~and;~~
- ~~4. Be~~ Is free from unnecessary disturbances in air flow; ~~and~~
- ~~5. This area shall have~~ Is made of non-porous and cleanable floor, wall, and ceiling material surfaces. ~~The Board may also require more than the minimum area in instances where equipment, inventory, personnel, or other factors cause crowding to such a degree as to interfere with safe pharmacy practice.~~

~~C. B. Equipment required to compound sterile products shall, in~~ In addition to the equipment requirements in R4-23-611 and R4-23-612 ~~include~~ or R4-23-656 and before compounding a sterile pharmaceutical product, a pharmacy permittee, limited-service pharmacy permittee, or applicant shall ensure that a pharmacist who compounds a sterile pharmaceutical product has the following equipment:

1. Environmental control devices capable of maintaining a compounding area environment equivalent to a “class 100 conditions environment” as described in the Federal Standard 209 Clean Room and Work Station Requirements: Controlled Environment, publication FED-STD-209D, June 15, 1988 edition which includes January 28, 1991 changes, incorporated herein by reference and on file with the Office of the Secretary of State defined in R4-23-110. Devices capable of meeting these standards include ~~but are not limited to:~~ laminar airflow hoods, hepa filtered zonal airflow devices, and biological safety cabinets;
2. Disposal containers designed for needles, syringes, and other material used in compounding sterile pharmaceutical products and if applicable, separate containers to dispose of cytotoxic, chemotherapeutic, and infectious waste products;
3. ~~Freezer/storage~~ Freezer storage units with thermostatic control and thermometer, if applicable;
4. ~~temperature controlled~~ Packaging or delivery containers capable of maintaining official compendial drug storage conditions;
- ~~4-5.~~ Infusion devices and accessories, if applicable; and
- ~~5-6. Reference library shall, in~~ In addition to the reference library requirements of R4-23-612, ~~include a current references~~ reference pertinent to the preparation of sterile pharmaceutical products.

~~D. C. Prior to~~ Before compounding a sterile pharmaceutical ~~products~~ product, the pharmacy permittee, limited-service pharmacy permittee, or pharmacist-in-charge shall:

1. ~~prepare and have~~ Prepare and implement policies and procedures for compounding and dispensing sterile pharmaceutical products.
2. Review biennially and if necessary revise the policies and procedures required under subsection (C)(1).
3. Document the review required under subsection (C)(2).
4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee a policy and procedure manual addressing the following:

~~D. The policies and procedures shall include, where applicable, the following:~~

1. Supervisory controls and verification procedures to ensure the quality and safety of sterile pharmaceutical products;
- ~~1-2.~~ Clinical services and drug monitoring; procedures for:
 - a. Patient drug utilization reviews;
 - b. Inventory audits;
 - c. Patient outcome monitoring;
 - d. Drug information; and
 - e. Education of pharmacy and other health professionals;
- ~~2-3.~~ Controlled substances;
- ~~3-4.~~ Supervisory controls and verification procedures for:
 - a. Cytotoxics handling, storage, and disposal;
 - ~~4-b.~~ Disposal of unused supplies and ~~medications~~ pharmaceutical products; and
 - c. Handling and disposal of infectious wastes;
5. Drug Pharmaceutical product administration, including guidelines for the first dosing of ~~the medication~~ a pharmaceutical product;

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6. Drug ~~product~~ and component procurement;
 7. ~~Drug~~ Pharmaceutical product compounding, dispensing, and storage;
 8. Duties and qualifications of professional and support staff;
 9. Equipment maintenance ~~and inventory~~;
 - ~~10. Handling of infectious wastes;~~
 - ~~11.10.~~ Infusion devices and drug pharmaceutical product delivery systems;
 - ~~12.11.~~ Investigational drugs and their protocols;
 - ~~13.12.~~ Patient profiles;
 - ~~14.13.~~ Patient education and safety which includes, but is not limited to, provisions for the assessment of the living environment of patients receiving sterile products;
 - ~~15.14.~~ Quality assurance management procedures which in addition to the requirements set forth in R4-23-662, shall include for:
 - a. ~~Recall procedures~~ Adverse drug reactions;
 - b. ~~Storage and beyond use dating as defined in R4-23-110~~ Drug recalls;
 - c. ~~Educational procedures for professional staff, support staff and patient~~ Expired and beyond-use-date pharmaceutical products;
 - d. ~~Sterile procedures including a log of the temperature of the refrigerator/freezer, routine maintenance and record of hood certification~~ Temperature and other environmental controls;
 - e. ~~Sterility testing with documentation of end product and process testing~~ Documented process validation testing; and
 - f. Annual certification of the laminar air flow hood or other class 100 environment, including documentation of routine hood maintenance; and
 - ~~16. Recordkeeping;~~
 - ~~17. Sanitation;~~
 - ~~18. Security;~~
 - ~~19.15.~~ Delivery of sterile products Sterile pharmaceutical product delivery requirements for:
 - a. ~~Transportation~~ Shipment to the patient;
 - b. ~~Emergency provision. Security; and~~
 - c. Maintaining official compendial storage conditions.
- E.** ~~The non-distributive roles of the pharmacist may include but are not limited to chart reviews, audits, drug therapy monitoring, committee participation, drug information, in-service training of pharmacy and other health professionals.~~

R4-23-671. General Requirements for Limited-service Pharmacy

- A.** Before opening a limited-service pharmacy, a person shall obtain a permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.
- B.** The limited-service pharmacy permittee shall secure the limited-service pharmacy by conforming with the following standards:
 1. Permit no one to be in the limited-service pharmacy unless the pharmacist-in-charge or a pharmacist authorized by the pharmacist-in-charge is present;
 2. Require the pharmacist-in-charge to designate in writing, by name, title, and specific area, those persons who will have access to particular areas of the limited-service pharmacy;
 3. Implement procedures to guard against theft or diversion of drugs, including controlled substances; and
 4. Require all persons working in the limited-service pharmacy to wear badges, with their names and titles, while on duty.
- C.** To obtain permission to deviate from the minimum area requirement set forth in A.A.C. R4-23-609, R4-23-673, or R4-23-682, a limited-service pharmacy permittee shall submit a written request to the Board and include documentation that the deviation will facilitate experimentation or technological advances in the practice of pharmacy as defined in A.R.S. § 32-1901. If the Board determines the requested deviation from the minimum area requirement will enhance the practice of pharmacy and benefit the public, the Board shall grant the requested deviation.
- D.** The Board shall require more than the minimum area in a limited-service pharmacy when the Board determines that equipment, personnel, or other factors in the limited-service pharmacy cause crowding that interferes with safe pharmacy practice.
- E.** Before dispensing from a limited-service pharmacy, the limited-service pharmacy permittee or pharmacist-in-charge shall:
 1. Prepare and implement written policies and procedures for pharmacy operations and drug dispensing and distribution,
 2. Review biennially and if necessary revise the policies and procedures required under subsection (E)(1),
 3. Document the review required under subsection (E)(2),

4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.

R4-23-675. ~~Reserved~~ Limited-service Sterile Pharmaceutical Products Pharmacy

- A.** The limited-service pharmacy permittee or the pharmacist-in-charge shall ensure that the limited-service sterile pharmaceutical products pharmacy complies with the standards for area, personnel, security, sanitation, equipment, sterile pharmaceutical products, and limited-service pharmacies established in R4-23-608, R4-23-609, R4-23-610, R4-23-611, R4-23-612, R4-23-670, and R4-23-671.
- B.** The pharmacist-in-charge of a limited-service sterile pharmaceutical products pharmacy shall authorize only pharmacists, interns, compliance officers, peace officers acting in their official capacities, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel to be in the limited-service sterile pharmaceutical products pharmacy.
- C.** The pharmacist-in-charge of a limited-service sterile pharmaceutical products pharmacy shall ensure that prescription medication is delivered to the patient or locked in the dispensing area when a pharmacist is not present in the pharmacy.
- D.** In addition to the delivery requirements of R4-23-402, the limited-service pharmacy permittee shall, during regular hours of operation, but not less than a minimum 40 hours per week, provide toll-free telephone service to facilitate communication between patients and a pharmacist who has access to patient records at the limited-service sterile pharmaceutical products pharmacy. The limited-service pharmacy permittee shall disclose this toll-free number on a label affixed to each container dispensed from the limited-service sterile pharmaceutical products pharmacy.
- E.** The limited-service pharmacy permittee or the pharmacist-in-charge shall ensure development and implementation of policies and procedures for pharmacy operations, including pharmaceutical product compounding, dispensing, and distribution, that comply with R4-23-402, R4-23-410, R4-23-670, and R4-23-671.
- F.** The non-dispensing roles of the pharmacist may include chart reviews, audits, drug therapy monitoring, committee participation, drug information, and in-service training of pharmacy and other health professionals.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. LAND DEPARTMENT

PREAMBLE

1. Sections Affected

Rulemaking Action

| | |
|-----------|-------------|
| R12-5-101 | Renumber |
| R12-5-101 | New Section |
| R12-5-102 | Renumber |
| R12-5-102 | Amend |
| R12-5-201 | Renumber |
| R12-5-201 | New Section |
| R12-5-202 | Renumber |
| R12-5-202 | Amend |
| R12-5-203 | Repeal |
| R12-5-203 | Renumber |
| R12-5-203 | Amend |
| R12-5-204 | Repeal |
| R12-5-204 | New Section |
| R12-5-205 | Renumber |
| R12-5-205 | New Section |
| R12-5-206 | Repeal |
| R12-5-206 | Renumber |
| R12-5-206 | Amend |
| R12-5-207 | Repeal |
| R12-5-207 | Renumber |
| R12-5-207 | Amend |
| R12-5-208 | Renumber |
| R12-5-208 | Amend |
| R12-5-209 | Renumber |
| R12-5-209 | Amend |
| R12-5-210 | Renumber |
| R12-5-211 | Repeal |
| R12-5-211 | Renumber |
| R12-5-211 | Amend |
| R12-5-212 | Renumber |
| R12-5-212 | Amend |
| R12-5-213 | Repeal |
| R12-5-213 | Renumber |
| R12-5-213 | Amend |
| R12-5-214 | Renumber |
| R12-5-214 | Amend |
| R12-5-215 | Renumber |
| R12-5-215 | Amend |
| R12-5-216 | Renumber |
| R12-5-216 | New Section |
| R12-5-217 | Renumber |
| R12-5-217 | Amend |
| R12-5-218 | Renumber |
| R12-5-218 | Amend |
| R12-5-219 | Renumber |
| R12-5-219 | Amend |
| R12-5-220 | Renumber |
| R12-5-220 | Amend |
| R12-5-221 | Renumber |
| R12-5-222 | Renumber |

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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. § 37-132(A)(1)

Implementing statutes: A.R.S. §§ 37-132(B)(1), 37-301, 37-312, 37-332(D), 37-1038(A), and 27-557(C)

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 5066, November 21, 2003

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

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

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

Article 1, provides definitions and general rules applicable to all transactions with the Department. The rules under Article 1 are being amended to provide definitions of terms and phrases as well as to clarify computation of time, enlargement of time in which performance of an action may be extended, document protection, correction of manifest typographical or clerical error, requirements for use of Departmental applications and report forms, exceptions to Departmental forms, requirements for a complete application, where applications will be accepted, criteria in which an application may be rejected, required signatures, and restrictions of subleasing of a sublease. The amendments to Article 1 will clarify language and provide the general public with an understanding of what is expected when conducting business with the Department.

Article 2, adopted in 1994, provided rules governing the practice and procedures in contested cases before the State Land Commissioner. In 1995, the legislature established the Office of Administrative Hearings (Laws 1995, Ch. 251, § 14) which rendered the majority of the rules within Article 2 obsolete.

As the Commissioner retains authority to conduct certain types of hearings regarding land management actions pending before the Department, portions of the rules, with amendments, would continue to have applicability. The hearings under the Commissioner's statutory authority are:

1. A.R.S. § 37-132(B)(1): Hearing to gather information to assist the Department in its decision making process.
2. A.R.S. § 37-301: Protest of land auction.
3. A.R.S. § 37-312(H): Classification of trust lands suitable for conservation purposes.
4. A.R.S. § 37-332(D): Classification of urban lands suitable for development.
5. A.R.S. § 37-1038(A): Dissolution of a Natural Resource Conservation District.
6. A.R.S. § 27-557(C): Protest of proposed cooperative or unit plan for exploration, development or operation of oil and gas pools.

With the exception of A.R.S. § 37-301 (Protest of auction) all hearings are pre-decisional or public hearings.

The Department proposes to amend the rules under Article 2 to conform to statute and to make the rules applicable to the hearing responsibilities retained by the Department.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to 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 Land Department did not review any study relevant to the rules.

7. 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

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

The Arizona State Land Department manages 9.3 million acres of state owned "Trust" lands. These lands were granted to the state of Arizona under the provisions of the federal Enabling Act that provided for Arizona's statehood in 1912. The lands are held in trust for various beneficiaries including the common schools (K-12) and 13 other pub-

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lic institutions. The Trust's beneficiaries receive revenue from leasing, selling, or using State Trust lands and its resources.

The Department has adopted rules that provide guidelines for entities proposing to conduct business with the Arizona State Land Department as well as rules addressing the conduct of hearings administered by the State Land Commissioner. The adopted rules are separated into Article 1 (General Provisions) and Article 2 (Practice and Procedure in Administrative Hearings Before the Arizona State Land Commissioner).

The rules in Article 1 apply to virtually every entity that proposes to lease, purchase, or use Trust land and its resources. Article 1 provides definitions of terms and phrases as well as general rules applicable to all transactions with the Department. The rules clarify language and provide the general public and other entities an understanding of what is expected when conducting business with the Department.

Economically, the rules under Article 1 will save an applicant time, will eliminate unnecessary expenses, and avoid confusion when applying for a lease, permit, or land sale or other use of Trust land or its resources or conducting general business transactions with the Department.

Article 2 (Practice and Procedure in Administrative Hearings before the Commissioner) provides guidelines and rules applicable to the conduct of hearings authorized by statute to be heard by the State Land Commissioner. The rules apply to any issue where the Commissioner elects to conduct a hearing or appoints a hearing officer prior to issuing a decision or a hearing resulting from a protest of a sales auction. The majority of the hearings are public hearings relating to land conservation, urban land classification, or hearings to gather information to assist in the decision making process.

The rules under Article 2 will save time for hearing participants by explaining the hearing process and outlining what is expected of the Department and participants in order to address the issue in a fair and impartial manner.

The rules under Article 2 are designed to allow the Commissioner or the designated hearing officer to conduct a hearing in an organized, fair, and expeditious manner. By understanding the hearing process, participants will be able to prepare and present information or testimony in an efficient and organized manner. Savings in time and expense will be realized by both the Department and participants. Costs to the participants may include legal or consultant services to prepare documents, provide testimony, or represent parties that may be affected by the hearing decision.

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

Name: 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

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

For information on this rule package please contact the agency official listed in item #9.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES
CHAPTER 5. LAND DEPARTMENT
ARTICLE 1. GENERAL PROVISIONS

Section

R12-5-101. Definitions

~~R12-5-101.~~ R12-5-102. Relating to Proceedings Before the State Land Department

ARTICLE 2. PRACTICE AND PROCEDURE IN ~~CONTESTED CASES~~ ADMINISTRATIVE HEARINGS
BEFORE THE ARIZONA STATE LAND COMMISSIONER

Section

- ~~R12-5-201.~~ Applicability
~~R12-5-201.~~ ~~R12-5-202.~~ Appointment of Hearing Officer; Disqualification
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~~R12-5-202.~~ ~~R12-5-203.~~ Initiation of a ~~Contested Case~~ an Administrative Hearing
R12-5-204. ~~Denial of Request for Hearing~~ Rejection of Hearing Request
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~~R12-5-208.~~ ~~R12-5-207.~~ Representation
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~~R12-5-212.~~ ~~R12-5-210.~~ Consolidation and Severance
~~R12-5-211.~~ Intervention
~~R12-5-214.~~ ~~R12-5-211.~~ Filing; Computation of Time; Extension of Time
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~~R12-5-213.~~ Prehearing Conference, Procedure and Prehearing Order
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~~R12-5-220.~~ ~~R12-5-218.~~ Recommended Decision
~~R12-5-221.~~ ~~R12-5-219.~~ Decision
~~R12-5-222.~~ ~~R12-5-220.~~ Review and Rehearing of Decision
~~R12-5-221.~~ Renumbered
~~R12-5-222.~~ Renumbered

ARTICLE 1. GENERAL PROVISIONS

R12-5-101. Definitions

- A.** Unless the context otherwise requires, a word, term, or phrase which has been defined in Arizona Revised Statutes, Title 37, shall be defined in the same manner when used in Articles 1 through 9, 11, 17, 24, and 25 of this Chapter.
- B.** Excepted as otherwise provided in subsection (A), the following words, terms or phrases apply to Articles 1 through 9, 11, 17, 24, and 25 of this Chapter.
1. "Best Interest of the State" means best interest of the Trust.
 2. "Contiguous" means adjoining and have at least part of one side in common or having a corner touching.
 3. "Grantee" means the holder of any right of way and includes the holder of an approved assignment of a right of way other than assignment for the purpose of granting a security interest.
 4. "Lease" means any validly executed document which entitles the lessee to surface or subsurface use or occupancy of state land. "Lease" includes any validly assigned lease other than an assignment for the purposes of granting a security interest.
 5. "Lessee" means the holder of any lease and includes the holder of an approved assignment of a lease other than an assignment for the purpose of granting a security interest. "Lessee" also means "Permittee" or "Grantee" of a Right of Way.
 6. "Lessor" means the Department.
 7. "Natural Products" include water, naturally occurring vegetation, common mineral products, materials and property that are severable from the land.
 8. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, and may include the Department.
 9. "Permit" means any validly executed document which entitles the Permittee to surface or subsurface use or occupancy of state land. "Permit" includes any validly assigned permit other than an assignment, for the purposes of granting security interest.
 10. "Permittee" means the holder of any permit and includes the holder of an approved assignment of a permit, where provided by law, other than an assignment for the purpose of granting a security interest.

11. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
12. "Hearing Officer" means the hearing officer appointed by the Commissioner. Commissioner, when used in this Chapter, may refer to the Deputy Commissioner or any officer of the Department, if acting as the decision maker in the Commissioner's stead.
13. "Public Records" means the area designated by the Commissioner within the offices of the Department for the submission of all documents to be filed with the Department.
14. "Right of Way" means a right of use and passage over, or through, or beneath the surface of state land, for an express purpose and location.
15. "Special Land Use Permit" means a validly executed document from the Commissioner which entitles a permittee to occupy or use state lands for an expressly limited purpose, not otherwise expressly provided for by law, and for an expressly limited duration whenever issuance of such permit would further the best interest of the state.
16. "Sublease" means an agreement approved by the Commissioner, by the lessee with a third person where the lessee retains an interest in the lease.

~~R12-5-101. R12-5-102.~~ Relating to Proceedings Before the State Land Department

~~Except as otherwise provided in Article 2:-~~

- ~~1-A.~~ Computation of time. In computing any time period, of time prescribed or allowed by these rules, by order of court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included; the last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. the Department shall exclude the day from which the designated time period begins to run. The Department shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the period of time period prescribed or allowed is less than seven days, ten days or less, the Department shall exclude intermediate Saturdays, Sundays, and legal holidays. shall be excluded in the computation.
- ~~2-B.~~ Enlargement of time. When, by these rules or by a notice given thereunder or by order of the Commissioner, an act is required or allowed to be done at or within a specified time, the Commissioner may, for cause shown at any time in the Commissioner's discretion with notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or upon request made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect. At the Commissioner's initiative, or upon request, the Commissioner may enlarge any time period to perform or complete any ordered or required action.
- ~~3-C.~~ Record. Every document and other object filed in the Department shall be time stamped to record date and time of receipt. The document or other object, once filed, shall constitute a part of the record, thereof and shall be available for public inspection, except as prohibited by law, at any time during the office hours of the Department.
4. Inspection of records. The records of the Department, except as prohibited by law, may be inspected by any person at any time during the office hours of the Department.
- ~~5-D.~~ Withdrawal of papers. No instruments, documents, or other papers or objects on file with the Department may be taken from the Department office, except for the use of as authorized by the Commissioner or the Commissioner's duly appointed deputies or employees or by order of a court of competent jurisdiction.
- ~~6-E.~~ Clerical mistakes. Correction of Errors. Manifest typographical or clerical mistakes error in decisions, orders, instruments, or other records of the Department or parts thereof and errors therein arising resulting from oversight or omission may be corrected by the Commissioner at any time upon discovery on the Commissioner's own initiative or on motion of upon discovery and request by any party, and after such notice, if any, Notice of any correction shall be as the Commissioner orders deems necessary. During the pendency of an appeal, such mistakes errors may be so corrected before the appeal is docketed in the appellate court and thereafter, while the appeal is pending, may be corrected with leave permission of the appellate court.
- ~~7-F.~~ Forms supplied. All applications, or reports or other documents required by law or under these rules to be filed with the Department shall be submitted upon forms prescribed and furnished by the Department, unless accepted or authorized in writing by the Commissioner. The Department will accept other instruments, i.e. corporation papers, liens or mortgages, powers of attorney, affidavits or heirship, death certificates, and other legal documents generally used in the course of business or courts of law.
- ~~8-G.~~ Submission of applications. All applications, reports, documents and other instruments, unless otherwise authorized, are to be submitted to the Department's Phoenix Office to the attention of Public Records. No application report, document or other instrument will be accepted by the Department without the payment of the required application fee. and No application will be accepted unless all answers to questions and all information and other data required by the Commissioner have been furnished submitted. Incomplete applications will be returned to the applicant. If the applicant does not complete and return the application within 15 days from date of mailing, the application will be rejected and cancelled from the records of the Department.

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H. Rejection of Application

Applications may be rejected by the Department for the following reasons:

1. The land under application is not state land;
2. Applicant is not authorized to conduct business in the state of Arizona;
3. The applicant fails to submit application fees;
4. The applicant fails to respond to the Department's request for additional information within the specified time;
5. The state land under application is leased for the same purpose at the time of application;
6. The application is incorrect for the proposed use;
7. Use of obsolete or outdated applications;
8. Other non-discretionary reasons.

9-I. Manner of signing ~~instruments~~ documents before the Department; acknowledgment.

1. All ~~instruments~~ documents requiring signature are required to be signed in the same manner as the applicant's, lessee's, or permittee's or grantee's name appears of record in the Department or in the manner in which a new ~~instrument~~ document is requested to be issued. All assignments of instruments shall be signed and acknowledged in the same manner as required for the signing and acknowledgment of a deed or conveyance of real property.
2. If a document is executed for the benefit of:
 - a. One individual, the document shall be signed by that individual or by an authorized representative;
 - b. More than one individual, the document shall be signed by those individuals or by their authorized representative or representatives;
 - c. A business entity or an association of any kind, the document shall be signed by an authorized representative of the entity or association.
3. In any case where an authorized representative signs on behalf of another, there shall be filed with the Department written authority to do so.

J. Subleases of Sublease. The Department shall not approve a sublease of a sublease for any lease, permit, or other contract issued for lease or use of state sovereign or State Trust lands.

K. Required Information as to Legal Status. Any Corporation, limited partnership or association, legally qualified to conduct business in the state or Arizona, applying to purchase, lease, or sublease state lands or any interest in state lands shall state in its application that it is qualified to transact business in the state of Arizona. A corporation shall also provide the Department with the name and address of its statutory agent.

L. Application Confers No Rights

1. A pending application to lease, purchase or use state land confers no rights to the applicant.
2. A non-conflicted application for a renewal of an existing lease shall also be an application for permission to use the previously leased land until the Commissioner orders otherwise or until the application to renew is granted. A Lessee who has filed an application for a renewal of an existing lease, conflicted or not, may remain in possession or continue to occupy or use the land in accordance with the provisions of the lease sought to be renewed. Permission for interim use shall be granted if all of the following are complied with:
 - a. The rental is current;
 - b. The lessee is in possession, or otherwise occupies or uses the land; and
 - c. The lessee is in good standing under the lease sought to be renewed.
3. A lessee who remains in possession with permission under this Section is responsible for any rental or monies owed as determined by the Department.

M. Assignments; Subleases

1. No assignment or sublease of any right, entitlement, or interest, in whole or in part, in any state lands, or possession, occupancy or right to remove anything, in whole or in part, from state lands shall be permitted or effective unless and until:
 - a. Application has been made for the assignment or sublease; and
 - b. The Commissioner has approved the assignment or sublease in writing.
2. In addition to the conditions and provisions of the lease sought to be subleased, any approved sublease shall be subject to further conditions and provisions as the Commissioner may determine are necessary and which further the best interest of the Trust, including but not limited to provisions relating to ownership of any improvements on the lease and disposition of any proceeds relating to any improvements.
3. Any violation of any provision of a lease by a sublessee shall be sufficient grounds to cancel the lease.
4. The lessee and the sublessee shall be jointly and severally liable for any damages arising out of any violation of any provision of a lease.

N. Time for Payment. All billing statements issued by the Department, whether relating to rent, royalty, or any other moneys owed to the Department, shall be paid within 30 days of the date of issuance, unless otherwise specified on the billing statement.

O. Filing Fees and Remittances

1. Fees and other remittances to the Department shall be by cash, or money order, bank draft or check payable to the "Arizona State Land Department."
2. Any remittance not personally hand delivered and receipted for at the Cashier's office of the Phoenix office is wholly at the risk of the remitter. Remittances delivered to the Department by the United States Postal Service or any other parcel or post delivery service are not the responsibility of the Department, but are the responsibility of the remitter and the delivery service.

- P. Public Docket.** Any person may obtain a copy of a public docket listing the matters pending before the Department by contacting the Phoenix Office in person or by mail or by electronic e-mail and requesting a copy. Charges to cover the costs of copying a public docket shall be in accordance with A.R.S. § 37-108.

**ARTICLE 2. PRACTICE AND PROCEDURE IN ~~CONTESTED CASES~~ ADMINISTRATIVE HEARINGS
BEFORE THE ARIZONA STATE LAND COMMISSIONER**

R12-5-201. Applicability

These rules apply to any issue where the Commissioner elects to conduct a hearing or appoints a hearing officer prior to issuing a decision or a hearing resulting from a protest of an auction pursuant to A.R.S. § 37-301.

~~R12-5-201. R12-5-202.~~ Appointment of Hearing Officer; Disqualification

- A. The Commissioner may appoint a hearing officer to conduct ~~any contested case on the Commissioner's behalf~~ an administrative hearing exempt from A.R.S. § 41-1092.
- B. If a hearing officer is disqualified pursuant to this rule, or for any reason cannot continue to preside at the hearing of an ~~contested case~~ administrative hearing, a new hearing officer may be appointed.
- C. Any party may file a request to disqualify the hearing officer for cause.
 1. The request shall be filed with the Department within ten days of service of the initial notice of hearing ~~or prehearing conference~~ or within five days after the discovery of facts indicating cause exists to disqualify the hearing officer.
 2. The request shall be accompanied by an affidavit setting forth the facts that show cause for disqualification.
 3. The request shall allege one or more of the following causes for disqualification:
 - a. That the hearing officer, if a lawyer, has represented a party to the ~~contested case~~ administrative hearing before the Department within the past two years;
 - b. That the hearing officer has a financial interest in the outcome of the ~~contested case~~ administrative hearing;
 - c. That the hearing officer is related to a party;
 - d. That the hearing officer has been employed by a party, other than the Department, within the past two years;
 - e. That the hearing officer is a witness;
 - f. That the party filing the affidavit has cause to believe and does believe that the party cannot obtain a fair and impartial hearing because of the bias, prejudice, or interest of the hearing officer.
 4. While a request to disqualify is pending before the Commissioner, the hearing officer shall take no further action in the ~~contested case~~ administrative hearing except to make such temporary orders as are necessary to prevent immediate and irreparable injury, loss, or damage from occurring.

~~R12-5-203. Request for Hearing~~

~~When a request for a hearing is filed with the Department, the request shall be in writing and shall state the specific actions of the Department which are the basis of the hearing request and the statute, rule, or other legal basis entitling the person to a hearing.~~

~~R12-5-202. R12-5-203.~~ Initiation of a ~~Contested Case~~ Administrative Hearing

- ~~A.~~ A ~~contested case~~ Administrative hearing may be initiated by the Department on its ~~Commissioner's own volition~~ initiative.
- ~~B.~~ The following persons may request a hearing:
 1. Any person whose legal rights, duties, or privileges have been directly and adversely affected by a written order or decision of the Commissioner concluding a matter under consideration by the Department, if that order or decision is not preceded by an opportunity for a hearing;
 2. Any person whose legal rights, duties, or privileges are required to be determined after an opportunity for a hearing by statute, rule, or as otherwise provided by law;
 3. After a notice of default or failure to comply has been mailed, any lessee or certificate of purchase holder, or any person who has registered with the Department as a mortgagee or other lienholder of the interest of the lessee or certificate holder.
- ~~C.~~ A request for hearing shall be filed within the time allowed by statute to cure or comply. The purpose of the hearing shall be to determine whether a formal cancellation order shall be entered, and any other issues relevant to the cancellation that are within the jurisdiction of the commissioner to decide. Notwithstanding subsections (a) and (c) of this rule, no opportunity for a hearing shall be granted when automatic termination of a lease or automatic cancellation of a certificate of pur-

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chase is mandated by statute.

- ~~D.~~ No other person has standing to initiate a contested case.
- ~~E.~~ Unless a different period is provided by statute, rule, or within the order or decision, a request for hearing shall be filed within 20 days of mailing, by certified mail, of the commissioner's order or decision.
- ~~F.~~ The hearing shall take place before the commissioner or before the board of appeals, whichever has jurisdiction to hear the matter.
- ~~G.~~ The department shall initiate a contested case by serving a copy of the notice of hearing on the named parties.
- ~~H.~~ If no request for a hearing is timely filed, the order or decision of the commissioner shall be final and not subject to further review.

R12-5-204. Denial of Request for Hearing Rejection of Hearing Request

If the Commissioner denies the request for a hearing, the denial shall be in writing and shall state the reasons therefor. A denial of a request for hearing is final and not subject to further administrative review.

The Commissioner may reject any request for hearing on an action that has been determined not to be either a contested case or an appealable agency action.

R12-5-205. Ex Parte Communications

A party shall not communicate, either directly or indirectly with the hearing officer, nor any party whose interest may be affected by the outcome of the hearing, or any person acting on their behalf, nor the Commissioner, the Deputy Commissioner, or any officer of the Department, if acting as the decision-maker on the Commissioner's behalf, nor any member of the Commissioner's staff involved in the decision making process unless:

1. All parties are present;
2. It is during a scheduled proceeding where an absent party fails to appear after proper notice pursuant to R12-5-215;
3. It is by written motion to all parties.

R12-5-206. Amendment of Notice of Hearing; Request for More Definite Statement

- ~~A.~~ No later than ten days after a notice of hearing is issued, a party may request a more definite statement of the issues or assertions or both. If the request is granted, the hearing officer shall set a date for filing a more definite statement.
- ~~B.~~ At any time before the hearing commences, the Department may amend the notice of hearing to add additional issues or make additional assertions. The hearing officer may reschedule the hearing, maintaining due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

R12-5-205. R12-5-206. Failure to Appear; Default

If a party fails to appear at a hearing, the administrative hearing officer may proceed with the presentation of the evidence of the appearing party or vacate the hearing.

- ~~A.~~ If, after being served by the Department with notice, a party fails to appear at the time and place of hearing, or prehearing conference, or other proceeding of a contested case, the hearing officer may serve upon all parties a proposed default order that includes a statement of the reasons to default the nonparticipating party.
- ~~B.~~ Within seven days after service of a proposed default order, the party against whom it was issued may file a written request to vacate the proposed default order, including a statement of the reasons it should be vacated.
- ~~C.~~ Before the default order is vacated or entered, the hearing officer may either adjourn the proceedings or conduct them without the party against whom a proposed default order was issued, maintaining due regard for the interest of justice and the orderly and prompt conduct of the proceedings.
- ~~D.~~ The hearing officer shall either enter or vacate the default order promptly after expiration of the time specified in subsection (B) of this rule or upon filing of the request to vacate.
- ~~E.~~ After entering a default order, the hearing officer may conduct any further proceedings necessary to complete the contested case without the defaulted party and shall determine all issues in the hearing, including those affecting that party.

R12-5-207. Communications Regarding Matters Related to Contested Case

Once a notice of hearing has been issued, all communications relating to the contested case between any person listed in paragraph (1) and any person listed in paragraph (2) below shall take place in a formal hearing or conference, in the presence of all parties or their attorneys, if represented, or be filed in accordance with R12-5-215.

1. Any party, any person whose interest may be affected by the outcome of the case, or any person acting on behalf of any of them.
2. The Commissioner, the Deputy Commissioner, or any officer of the Department, if acting as the decision maker in the Commissioner's stead, any member of the Commissioner's staff involved in the decisional process, or the hearing officer.

~~R12-5-208.~~ R12-5-207. Representation

Parties may participate in the administrative hearing in person or through an attorney, except that a corporation shall be represented by an attorney. A partnership may appear through any partner, an association through a key administrator or other executive officer, and an agency or a governmental subdivision or unit of a governmental subdivision may appear through an employee.

~~R12-5-209.~~ R12-5-208. Notice of Hearing ~~or Prehearing Conference~~

- A. The notice of hearing shall contain:
1. A caption referencing the official Department case number and a brief matter name or the names of the parties and their status, or both;
 2. The time, place, and nature of the hearing;
 3. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 4. A short, plain statement of the subject matter and issues presented, with citation to any statute or rule relied upon;
 5. The name, mailing address, and telephone number of the hearing officer;
 6. The names and mailing addresses of persons to whom notice is being given, including any attorney or employee who has been designated to appear for a Department Division; and
 7. Any other matters required by statute or rule.
- ~~B. The notice may set the time, place, and subject matter of a prehearing conference and include any other matters the presiding officer considers desirable to expedite the proceedings.~~

~~R12-5-210.~~ R12-5-209. Contested Case Administrative Hearing Record

- A. After the notice of hearing is issued, the ~~contested case~~ administrative hearing file shall be available for inspection upon request during regular business hours.
- B. All administrative hearings shall be electronically or stenographically reported. The hearing officer shall designate the official record of the proceedings. This rule shall not be construed as prohibiting or limiting any person from having the proceedings stenographically reported or from making their own recording, so long as the proceedings are not disrupted by the recording equipment or operators. The cost of a court reporter and the transcript shall be paid by the person making the request, unless assessment of the cost is waived by the Department. When hearings are recorded electronically, tapes shall be available for review during regular business hours. The cost of copies of tapes shall be paid by the person requesting them. The original transcript of the official record of any proceeding, if available, shall be filed as a part of the case file.

~~R12-5-212.~~ R12-5-210. Consolidation and Severance

- A. When proceedings involving a common question of law or fact or common parties are pending before the Department, the hearing officer may, upon the hearing officer's own volition or upon request of any party, order a joint hearing on any or all the matters at issue.
- B. In furtherance of convenience, to avoid prejudice, or when separate hearings will be conducive to expedition and economy, the hearing officer may, upon the hearing officer's own volition or upon request of any party, order any proceeding severed with respect to some or all issues or parties.

~~R12-5-211.~~ Intervention

- ~~A. A person seeking to intervene in any contested case shall file a written request to intervene. Intervention shall be granted only if the hearing officer determines that:~~
- ~~1. The legal interests of the person requesting to intervene may be substantially affected by the outcome of the contested case;~~
 - ~~2. Intervention will not unduly delay or bias the hearing;~~
 - ~~3. The interest of the person requesting to intervene is not adequately represented by another party to the contested case; and~~
 - ~~4. The proposed intervention is in the interests of justice.~~
- ~~B. The request shall state the claims or defenses for which intervention is sought, briefly describing the interests that may be affected by the outcome of the case and including such facts as demonstrate those interests, and may address the other issues to be determined by the hearing officer.~~
- ~~C. The request shall be filed and served upon all parties at least 15 days prior to hearing.~~
- ~~D. Any party may file a response to the request to intervene within five days of service of the request upon the party.~~
- ~~E. The hearing officer shall decide on the request to intervene at least three days prior to the hearing date and shall promptly notify the person requesting to intervene and all parties of the decision. The hearing officer may reschedule a hearing or prehearing conference to provide sufficient time for the parties to respond to a request to intervene or to prepare for the hearing or prehearing conference.~~
- ~~F. The hearing officer may limit the intervener's participation to issues in which the intervener has a particular interest.~~

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~~R12-5-214.~~ R12-5-211. Filing; Computation of Time; Extension of Time

- A. All papers concerning a ~~contested case~~ administrative hearing shall be filed with the Department within the time limit, if any, for such filing.
- B. All papers filed with the Department in any ~~contested case~~ administrative hearing shall be typewritten or legibly written on paper no larger than 8 1/2 by 11 inches in size, shall contain the name and address of the party or other correspondent, shall be properly captioned and designate the title and case number, shall state the name and address of each party served with a copy, and shall be signed by the party or, if represented, by the party's attorney. The signature certifies that the signer has read the paper, that to the best of the signer's knowledge, information, and belief there is good ground to support its contents, and that it is not interposed for delay.
- C. In computing any period of time prescribed or allowed by this Article, or any notice or order concerning a ~~contested case~~ administrative hearing, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, a Sunday, or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a holiday. The computation shall include intermediate Saturdays, Sundays, and holidays.
- D. Whenever a party has the right or is required to do some act within a prescribed period after the service of a paper upon the party by another party, and the paper is served by mail, five days shall be added to the prescribed period. This subsection has no application to notices, orders, or other papers issued by the hearing officer or the Commissioner.
- E. For good cause shown, the hearing officer may grant continuances and extensions of time.

~~R12-5-215.~~ R12-5-212. Service; Proof of Service

- A. After a notice of hearing has ~~initiated a contested case,~~ been issued, a copy of every paper filed by a party, or person seeking to intervene, shall be served on all parties to the ~~contested case~~ administrative hearing, or their ~~lawyers~~ counsel if represented, at the same time the paper is filed. Service shall be complete at the time of personal service or on the date placed in the mail if served by certified or regular mail addressed to the last address of record in the ~~contested case~~ administrative hearing file.
- B. The following evidences completed service:
 - 1. If personally served, an affidavit of personal service, sworn to by the person serving the paper and stating that the server personally served the paper on the person to whom it was directed, where service was made, and the date of such service; or
 - 2. If served by certified mail, the return receipt signed by the party served or someone authorized to act on behalf of the party served; or
 - 3. If served by regular or certified mail, either a statement subscribed on the paper filed with the Department, or an affidavit indicating the date mailed and listing those to whom it was mailed.
- C. The Department shall serve notices of hearing ~~or prehearing conference;~~ findings, conclusions, ~~and recommended decisions of the hearing officer;~~ and decisions and final orders, either by personal service or by certified mail. All other papers required to be served may be served by regular or certified mail or may be personally served.
- D. When a party is represented by an attorney, service shall be made on the attorney. If a notice of hearing shows service on the Attorney General, all papers served thereafter shall be served on the Assistant Attorney General named on the notice of hearing or who later appears on behalf of a ~~Division~~ of the Department, or, if no Assistant Attorney General is named, then on the Attorney General, Civil Division, Chief Counsel, ~~Land and~~ Natural Resources Section.

~~R12-5-213.~~ Prehearing Conference, Procedure and Prehearing Order

- A. ~~The hearing officer may hold a prehearing conference to consider matters set forth in subsection (B) of this rule and shall promptly notify the parties and any person whose request to intervene is pending. Any party may request a prehearing conference.~~
- B. ~~A prehearing conference may be convened to consider consolidation; severance; intervention; settlement; stipulations; clarification of issues; the extent of prehearing discovery, if any; rulings regarding issuance of subpoenas, discovery orders, and protective orders; rulings on identity of and limitation of the number of witnesses; objections to proffers of evidence; use of written presentation for direct evidence, rebuttal evidence, or cross-examination; use of telephone, television, or other electronic means as a substitute for proceedings in person; order of presentation of evidence and cross-examination; and such other matters as will promote the orderly and prompt conduct of the hearing.~~
- C. ~~The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means so long as each participant in the conference has an opportunity to participate during the entire proceeding.~~
- D. ~~The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order based on the contested case record.~~

~~R12-5-216.~~ R12-5-213. Subpoenas

- A. The hearing officer may issue subpoenas for witnesses to appear and testify at the hearing or produce books, records, documents, and other evidence, or both, on the hearing officer's own volition or at the request of a party.

Notices of Proposed Rulemaking

- B. A request for a hearing subpoena shall be in writing, filed with the Department, and served on each party at least seven days prior to the date set for hearing and shall state:
1. The name of the ~~contested case~~ administrative hearing, the case number, and the time and place where the witness is expected to appear and testify;
 2. The name and address of the witness subpoenaed; and
 3. The documents, if any, ~~sought to be provided~~ subpoenaed.
- C. A request for a ~~prehearing deposition or a~~ subpoena for the production of documents prior to the hearing shall be in writing and may be granted at the hearing officer's discretion only upon a showing of a reasonable need, including facts expected to be established by the person or document subpoenaed and the reasons such facts are relevant and material and not unduly repetitious.
- D. ~~The person to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for hearing, the hearing officer grants a written request to quash or modify the subpoena. The request shall state the reasons why it should be granted. The hearing officer shall grant or deny such request by order. A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the hearing officer. The objection shall be filed within five days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than five days before the hearing.~~
- E. The party requesting the subpoena shall prepare it and cause it to be served upon the person to whom it is directed, ~~in the same manner as provided for service of subpoenas in civil matters before the superior court. The return of service shall be filed with the Department. Any person who is not a party and is at least eighteen years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the office a certified statement of the date and manner of service and the names of the persons served.~~

~~R12-5-217, R12-5-214, Procedure at Hearing~~

- A. At the hearing the hearing officer shall regulate the course of the proceedings, giving all parties the opportunity to testify, respond, present evidence and argument, present witnesses, conduct examination and cross-examination, and submit rebuttal evidence ~~except as restricted by a limited grant of intervention or by the prehearing order. The hearing officer shall make rulings necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.~~
- ~~B. The hearing officer may give nonparties an opportunity to present, under oath, oral or written statements. The hearing officer shall give all parties an opportunity to cross-examine a nonparty witness and to challenge or rebut statements of nonparties.~~
- ~~C. B.~~ The hearing officer may conduct all or part of the hearing by telephone, ~~television~~, or other electronic means, as long as each party has an opportunity to participate in the entire proceeding as it takes place.
- ~~D. C.~~ All hearings are open to public observation, except where closed pursuant to an express provision of law. A hearing conducted by telephone, ~~television~~, or other electronic means shall be made available to members of the public by the opportunity to view or listen to the tape of the hearing, and to inspect any transcript of the hearing that has been prepared and filed with the Department.
- ~~E. If for any reason a hearing officer cannot continue with a contested case, a new hearing officer shall use any existing record and may conduct such further proceedings as the interests of justice may require.~~
- ~~F. D.~~ Conduct at any hearing that is disruptive or shows contempt for the proceedings shall be grounds for exclusion from further participation or observation.

~~R12-5-218, R12-5-215, Evidence~~

- A. All witnesses shall testify under oath or affirmation. All parties shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing officer shall receive evidence, rule upon offers of proof, and exclude evidence the hearing officer has determined to be irrelevant, immaterial, or unduly repetitious. The hearing officer shall admit the kind of evidence on which reasonably prudent people would rely, even if it would be inadmissible in a civil court trial.
- B. Unless otherwise ordered by the hearing officer, documentary evidence shall be limited in size ~~when folded~~ to 8 1/2 by 11 inches. The submitting party shall identify documentary exhibits by number or letter and party and furnish a copy of each exhibit to each party present. One additional copy shall be furnished to the Department, unless the hearing officer otherwise directs. When evidence offered by any party appears in a larger work, containing other information, the party shall plainly designate the portion offered. If the evidence offered is in such volume as would unnecessarily encumber the record, the book, paper, or document shall not be received in evidence but may be marked for identification and, if properly authenticated, the designated portion may be read into or photocopied for the record. All documentary evidence offered shall be subject to appropriate and timely objection.

Notices of Proposed Rulemaking

R12-5-216. Judicial Notice; Technical Facts

The Commissioner may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Commissioner's specialized knowledge. The Commissioner's experience, technical competence and specialized knowledge may be utilized in the evaluation of any information and evidence submitted in a hearing.

~~R12-5-219.~~ **R12-5-217. Stipulations**

Parties to any ~~contested case~~ administrative hearing may stipulate, in writing, agreement upon any matter involved in the proceeding. If approved by the hearing officer, agreement on matters of procedure shall be binding upon the parties to the stipulation. The hearing officer may require presentation of evidence for proof of stipulated facts for the hearing officer's consideration. No substantive matter agreed to by the parties shall be binding upon the Department unless incorporated into the decision of the Commissioner.

~~R12-5-220.~~ **R12-5-218. Recommended Decision**

- ~~A.~~ If a hearing officer presides at the hearing, a recommended decision shall be prepared for the Commissioner.
- ~~B.~~ A recommended decision shall be delivered to the Commissioner within 30 days after the close of the hearing or the date ordered for submission of proposed findings or legal memoranda, whichever comes last, unless the Commissioner extends the period for good cause.

~~R12-5-221.~~ **R12-5-219. Decision**

- ~~A.~~ A decision shall include separately stated findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the Commissioner's discretion, including the reasoning for the remedy recommended. The experience, technical competence, or specialized knowledge of the Commissioner and that of the Commissioner's staff may be utilized in evaluating the evidence.
- ~~B.~~ When the Commissioner is the hearing officer, the decision shall be rendered within 60 days following the final day of the hearing or the date ordered for submission of proposed findings or legal memoranda, whichever comes last.
- ~~C.~~ Within 30 days after receipt of any recommended decision from the hearing officer, the Commissioner shall render a decision adopting the recommended decision, or modifying it and setting forth the reasons for departing from the recommendation, and the evidence supporting the modification.
- ~~D.~~ If no request for rehearing or review has been timely filed by a party, a decision in a contested case is effective ten days from the date served on that party and is not subject to judicial review pursuant to A.R.S. § 37-134.

~~R12-5-222.~~ **R12-5-220. Review and Rehearing of Decision**

- A. Except as provided in subsection (G) of this rule, any party to a ~~contested case~~ administrative hearing before the Commissioner who is aggrieved by a decision rendered in such case may file with the Department, not later than ten days from the date of service of the decision, a written request for rehearing or review of the decision. The request shall specify the particular grounds for rehearing or review.
- B. A party may file a response to a request for rehearing or review within ten days after service of the request or amended request by any other party. The Commissioner may require the filing of written argument on any issue raised in the request and may provide for oral argument.
- C. A rehearing of the decision may be granted for any of the following causes materially affecting the requesting party's rights:
 1. Irregularity in the proceedings before the Commissioner or any order or abuse of discretion, whereby the requesting party was deprived of a fair hearing;
 2. Misconduct of the Commissioner, Departmental employees, the hearing officer, or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient remedies;
 6. Error in the admission or rejection of evidence or other errors of law occurring in the proceedings;
 7. The decision is not justified by the evidence or is contrary to law.
- D. On review the Commissioner may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C) of this rule. An order granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the ~~contested case~~ administrative hearing may participate as parties at any rehearing.
- E. The Commissioner may, on the Commissioner's volition, order a rehearing or review of the Commissioner's decision within ten days after a decision is rendered, for any reason for which a rehearing on request of a party might have been granted. The order granting such a rehearing shall specify the grounds therefor.
- ~~F.~~ When a request for rehearing is based on affidavits, they shall be served with the request. An opposing party may, within ten days after the service, serve opposing affidavits.

~~G.~~ If in a particular decision the Commissioner makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Commissioner's final decision.

~~H.E.~~ If, after a timely request for rehearing or review, the decision is affirmed or modified without rehearing, the decision is final on the date affirmed or modified. If a rehearing is granted, the decision made after rehearing is final on the date rendered. A final decision is subject to judicial review pursuant to A.R.S. § 37-134.

R12-5-221. Renumbered

R12-5-222. Renumbered

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

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

PREAMBLE

- 1. Sections Affected**

| | |
|-------------------------|---------------------------------------------------|
| R15-5-127 R15-5-2327 | <u>Rulemaking Action</u> Amend 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. § 42-1005
Implementing statutes: A.R.S. §§ 42-5061(A)(22) and 42-5159(A)(5)
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 3352, July 25, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

| | |
|------------|--------------------------------------------------------------------------------------------------------------------|
| Name: | Hsin Pai, Tax Analyst |
| Address: | Tax Policy and Research Division Arizona Department of Revenue 1600 W. Monroe, Room 810 Phoenix, AZ 85007 |
| Telephone: | (602) 716-6851 |
| Fax: | (602) 716-7995 |
| E-mail: | paih@revenue.state.az.us |

Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at www.revenue.state.az.us/tra/draftdoc.htm.
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

The agency is amending the rules to: (a) more clearly address several issues relating to the transaction privilege and use tax exemptions on certain fuels that, under certain conditions, are subject to A.R.S. Title 28 taxes administered by the Arizona Department of Transportation, and (b) reflect statutory changes to A.R.S. Title 28. The amendments explicitly address taxation of aviation fuel, dyed diesel fuel, liquefied petroleum gas, natural gas, and use fuel for purposes of transaction privilege and use taxes.
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to 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

7. 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

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

The Department does not anticipate any significant economic impact as a result of adopting the amended rules. Because the amendments clarify and more accurately explain the scope and nature of the transaction privilege tax and use tax exemptions for the aforementioned types of fuels, some consumers and fuel vendors may experience a minimal impact resulting from increased compliance measures. The agency expects that the benefits of the amended rules to the public and the agency from achieving a better understanding of the exemptions will be greater than the costs.

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

Name: Hsin Pai, Tax Analyst
Address: Tax Policy and Research Division
Arizona Department of Revenue
1600 W. Monroe, Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6851
Fax: (602) 716-7995
E-mail: paih@revenue.state.az.us

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

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: Friday, March 26, 2004
Time: 9:00 a.m.
Location: Arizona Department of Revenue—East Valley Office
Conference Room One
3191 N. Washington
Chandler, AZ 85225

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

None

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

None

13. The full text of the rules follows:

TITLE 15. REVENUE

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

ARTICLE 1. RETAIL CLASSIFICATION

Section
R15-5-127. Sales of Fuel

ARTICLE 23. USE TAX

Section
R15-5-2327. Fuels

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-127. Sales of Fuel

A. ~~For the purposes of this rule, “use fuel” means fuel other than motor vehicle fuel, as defined in A.R.S. § 28-101(28). Diesel fuel is a use fuel. Gasoline is a motor vehicle fuel. In this Section, “aviation fuel” and “dyed diesel fuel” have the same meanings as prescribed in A.R.S. §§ 28-101 and 28-5601.~~

- ~~B. Gross receipts from the sale of use dyed diesel fuel are taxable under the retail classification if the use fuel is not used to propel vehicles on the streets, roads, and highways of this state: subject to transaction privilege tax.~~
- ~~C. Retail sales of jet fuel are taxable under the jet fuel excise and use tax classification. Gross receipts from the sale of liquefied petroleum gas or natural gas used to propel a motor vehicle are exempt from transaction privilege tax.~~
- D. Aviation fuel is only subject to tax under A.R.S. § 28-8344.
- E. Gross receipts from the retail sale of jet fuel are subject to the jet fuel excise and use tax under A.R.S. § 42-5352.

ARTICLE 23. USE TAX

R15-5-2327. Fuels

- ~~A. For purposes of this rule, "use fuel" means fuel other than motor vehicle fuel as defined in A.R.S. § 28-101(28). Diesel fuel is a use fuel. Gasoline is a motor vehicle fuel. In this Section, "aviation fuel," "dyed diesel fuel," and "use fuel" have the same meanings as prescribed in A.R.S. §§ 28-101 and 28-5601.~~
- ~~B. Except as provided in subsection (D), purchases of use fuel are taxable if the subject to use tax under A.R.S. § 42-5155 on the date the consumer is entitled to a refund because the use fuel is not used to propel vehicles on the streets, roads, or highways of this state subject to the use fuel tax under A.R.S. § 28-5606.~~
- ~~C. Purchases of jet fuel are subject to tax under the jet fuel excise and use tax classification. Dyed diesel fuel is subject to use tax if transaction privilege tax has not been imposed by the Department.~~
- D. Liquefied petroleum gas or natural gas used to propel a motor vehicle is exempt from use tax.
- E. Aviation fuel is only subject to tax under A.R.S. § 28-8344.
- E. Purchases of jet fuel are subject to the jet fuel excise and use tax under A.R.S. § 42-5352.