

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 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

[R07-228]

PREAMBLE

1. Sections Affected

R12-5-2101
R12-5-2104
R12-5-2105
R12-5-2106
R12-5-2115
R12-5-2118
R12-5-2120
R12-5-2122

Rulemaking Action

New Section
Amend
Amend
Amend
Amend
Amend
Amend
Amend

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

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

Implementing statute: A.R.S. §§ 27-552, 27-556, 27-557

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2450, July 6, 2007

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

Name: Richard B. Oxford, Director, LIT & T Division

Address: 1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

E-mail: roxford@land.az.gov

or

Name: Mike Rice, Manager, Minerals Section

Address: 1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4628

Fax: (602) 542-3407

E-Mail: mrice@land.az.gov

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

In 1980 and 1982, the statutes governing oil and gas leasing on state lands were extensively revised, thus rendering the majority of the rules for competitive oil and gas leases obsolete or ineffective (Laws 1980, Ch. 80, § 1; Laws 1982, Ch. 299, § 2). The remaining oil and gas rules under Title 12, Chapter 5, Article 21 are applicable to conflicting

Notices of Proposed Rulemaking

applications for non-competitive oil and gas leases or simultaneous filings for non-competitive oil and gas leases. The rules are repetitive or inconsistent with statute, contain antiquated language and require updating to meet current Secretary of State's rulewriting standards.

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

The Agency did not review any study relevant to the rule.

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

Not applicable

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

The Department maintains 202 oil and gas leases encompassing 335,268 acres of Trust land. *Table 1* summarizes oil and gas revenue production for Fiscal Years 2000-2006. The revenues collected are primarily oil and gas lease rentals. Only in FY 2002-2003 did a state lessee commercially produce carbon dioxide gas from a state lease and pay a royalty to the state.

Table 1. Oil and gas leases, acreages and revenues from State Trust Lands from Fiscal Years 2000 - 2006

Fiscal Year	Number of Leases	Number of Acres	Rental Revenue	Royalty Revenues
2000	109	191,500	\$ 200,000	0
2001	136	233,800	313,600	0
2002	190	324,000	476,900	0
2003	213	363,600	471,600	\$21,800*
2004	228	382,100	482,600	0
2005	227	374,663	460,500	0
2006	206	335,300	398,800	0

*Carbon dioxide royalty

The majority of the Department's oil and gas leases are located in Apache County in the St. Johns – Springerville area. The leases focus on the large helium and carbon dioxide resource field within the area. If developed, the Department estimates royalties will exceed \$100 million over the life of the resource. The state and Trust beneficiaries will benefit from development of these reserves as will many small businesses and individuals in the region resulting from retail sales, labor and supplies associated with the exploration and development of the gas field.

Costs to an oil and gas lease applicant include personal or staff time to research the records of various agencies (i.e. Arizona State Land Department, Arizona Oil and Gas Commission, U.S. Department of Energy) and institutions (i.e. University of Arizona, Department of Geological Sciences) to collect data in order to compile the information required for a state oil and gas lease application. Because oil and gas resource development requires the interpretation of highly specialized geological data, an applicant may also require the consulting services of a professional petroleum geologist whose fees are approximately \$700 - \$1000 per day. Plans of operations, reclamation of drill site, and compliance with other laws and rules of other state, federal and local government agencies, will also add to the applicant's costs to explore, drill and develop oil and gas resources on state land. Pursuant to A.R.S. § 27-560, the State Land Commissioner may require the applicant to post a bond to ensure reclamation and compensation to the surface lessee in the event of damage to the lessee's improvements, i.e. fencing.

As competitive oil and gas leases are auctioned to the highest and best bidder, the applicant will need to secure funding to compete against competitive bidders. The annual rental, \$1.00 per acre under lease, is paid in advance by the successful bidder and is in addition to the bid price and bonus bid.

The applicant will also incur costs associated with oil and gas resource exploration including:

1. Costs in exploration and assessment;
2. Costs in oil and gas resource development;
3. Marketing costs;
4. Equipment, labor costs;

5. Taxes;
6. Other permits that may be required (state, federal, local government).

Historically, there has been a limited amount of oil and gas exploration on Arizona's Trust lands. What little exploration there has been did not develop beyond the initial leasing stage. One of the major administrative problems associated with oil and gas leasing and development is the preponderance of state and federal laws and rules governing the activity. Exploration and development of oil and gas resources as well as compliance with multiple agency rules is costly in time and money to the applicants as well as to the various agencies.

The Department proposes to amend its oil and gas leasing rules to ensure clarity and efficiency as well as to prevent the Department from being an impediment to any future interest in exploration and development of oil and gas resources on Trust lands.

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, LIT & T Division
Address: 1616 W. Adams
Phoenix, AZ 85007
Telephone: (602) 542-4602
Fax: (602) 542-5223
E-mail: roxford@land.az.gov

or

Name: Mike Rice, Manager, Minerals Section
Address: 1616 W. Adams
Phoenix, AZ 85007
Telephone: (602) 542-4628
Fax: (602) 542-3407
E-Mail: mrice@land.az.gov

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

No public proceeding is scheduled. Persons may submit written comments to or request an oral proceeding be held on the proposed rules by submitting the comments or a written request for oral proceeding no later than 5:00 p.m., August 20, 2007 to either person listed in item 9.

11. Any other matters prescribed by statute that are applicable to the specific agency or 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. STATE LAND DEPARTMENT

ARTICLE 21. OIL AND GAS LEASES

Section

- R12-5-2101. ~~Expired~~ Completed Oil and Gas Lease Application
- R12-5-2104. Application for Noncompetitive Lease; ~~Time for Filing~~ Acreage Limitation
- R12-5-2105. Simultaneous Filings; Conflicts
- R12-5-2106. ~~Department's Decisions~~ ~~Conflicts~~ Noncompetitive Lease; Conflict
- R12-5-2115. Competitive Lease; Award of Lease
- R12-5-2118. Cooperative and Unit Agreements
- R12-5-2120. Surrender
- R12-5-2122. Monthly Statement

ARTICLE 21. OIL AND GAS LEASES

R12-5-2101. Expired Completed Oil and Gas Lease Application

An oil and gas lease application, filed pursuant to this Article, shall be on a form prescribed and furnished by the Department. The application is complete if all blank spaces are addressed and any requested attachments are included. The applicant may indicate “not applicable” or “N/A” on any blank, as appropriate. The applicant shall complete the application’s certification page pursuant to the instructions. An applicant shall appropriately sign and date the application.

R12-5-2104. Application for Noncompetitive Lease; —Time for Filing Acreage Limitation

A. The Department shall not issue an oil and gas lease on land already leased for that purpose. If State lands are not located within a known geological structure of a producing oil or gas field, a person shall submit a noncompetitive oil and gas lease Applications application for a noncompetitive oil and gas leases lease. shall be received for filing in the office of the Department in Phoenix during the office hours of any business day. Except as hereinafter specifically provided, all such applications received, whether by U.S. Mail or by personal delivery over the counter, shall be immediately stamped with the date and time of filing. Each application filed by U.S. Mail shall be considered to have been filed in the Department at the time and date it is delivered to the mail room of the Department. Lands under a single oil and gas lease application shall not exceed 2,560 acres which shall be the maximum acreage in a noncompetitive oil and gas lease. The lands under application shall be in as compact a body as possible. The application may include non-contiguous lands within a six mile square area if the maximum acreage of contiguous land is not available, but shall not exceed 2,560 acres.

B. An applicant shall submit the completed noncompetitive oil and gas lease application to the Department’s Phoenix Office, 1616 W. Adams, Phoenix, AZ 85007, to the attention of Public Records, along with payment of the required application fee pursuant to A.R.S. § 37-108 and advanced rent payment as calculated under A.R.S. § 27-555(D). The time of filing so indicated on each application shall evidence the priority of the first qualified applicant and the right to a lease which may be had thereby; subject, however, to the adjudication of conflicts which may arise by reason of applications simultaneously filed as hereinafter set forth. The first applicant to file a complete noncompetitive oil and gas lease application with required fees and advance rental payment has priority to the lease. The Department shall resolve conflicts resulting from simultaneously filed noncompetitive oil and gas lease applications in accordance with Rule R12-5-2105.

R12-5-2105. Simultaneous Filings; Conflicts

A. In the event it is determined that two or more applications for a lease have been filed at the same time as indicated by the time stamp applied as set forth in rule 4, such applications shall be deemed to be simultaneous filings. An “8:00 a.m. simultaneous filing” of an application for a noncompetitive oil and gas lease exists when a noncompetitive oil and gas lease application is submitted along with required payments by an individual present at the Department’s Phoenix Office, Public Records Room at 8:00 a.m. Each application submitted in accordance with this rule will be time stamped and considered an “8:00 a.m.” simultaneous filing. In the event If two or more simultaneously filed applications include any identical land which are identical, a conflict shall exist exists as to such lands the identical land. Adjudication of The Department shall resolve conflicts shall be in accordance with the provisions of rule 6 thereof. Rule R12-5-2106.

B. Any application found to be invalid or not completed pursuant to R12-5-2101, after being stamped as an “8:00 a.m. simultaneous filing” shall not be considered an “8:00 a.m. simultaneous filing.”

R12-5-2106. Department’s Decisions — Conflicts Noncompetitive Lease; Conflict

The Department will not issue any lease pursuant to an application unless the land is vacant, and then in accordance with the following procedure:

1. No conflict. Where there is no conflict, the Department shall issue a noncompetitive lease to the first qualified applicant.
2. Conflicts. Where there is a conflict, and the Department determines that a drawing will be held for a noncompetitive oil and gas lease, the Department shall provide for conduct a drawing between the qualified applicants to determine which applicant shall be is entitled to a lease. The Department shall give notice of the drawing by certified mail to the conflicting applicants that filed conflicting applications by registered mail, fixing a specifying the date and hour on which a when the drawing will be held, for the land in conflict, which date shall not be less than 10 days or more than 30 days from the date of said notice. The applicants
 1. An applicant may remove the conflict by file an amended application, that removes the conflict which shall carry the same filing date as the original application, at any time prior to the date of the drawing. The effective date of the amended application shall be the original time and date of filing of the original application. Rentals advanced applicable to The Department shall refund to the applicant advance rentals for the lands withdrawn from conflict. shall be refunded to the applicant. If, however, the conflict is not so removed, the drawing will be held and the lease, by the Department decision, will be awarded to the winner.
 2. The Department will then shall give notice of the results of said the drawing to each applicant by certified mail.

R12-5-2115. Competitive Lease; Award of Lease

When state lands are located within a known geological structure of a producing oil or gas field, the oil and gas interest in the

land shall be leased only by sealed bid. Following the

1. ~~Within 30 days of opening of sealed bids, the Department, subject to its right to reject any or all bids, a bid, shall award the lease to the successful highest bidder. Notice of the Department's action shall be forthwith transmitted. The Department shall give notice of its decision, by certified mail, to the interested parties applicants. The Department shall return forthwith all checks accompanying rejected bids. If the lease be awarded, two copies of the lease,~~
2. ~~The Department shall send a lease offer will be sent to the successful bidder, and he The successful bidder will shall be sent to the successful bidder, and he will be required within 30 days from receipt thereof to execute them, the leases and pay the first year's rental, the cost of publication, and the reasonable expenses of the sale, within 30 days from receipt of the lease offer. If a bidder, after having been awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited.~~
3. ~~If two or more tracts, where the acreage does not exceed more than two sections of land, are awarded to any bidder where the acreage does not exceed more than two sections of land, such the tracts may, if not otherwise prohibited by law, be included in a single lease.~~

R12-5-2118. Cooperative and Unit Agreements

~~Commitment of leased state lands to A lessee seeking the Commissioner's approval of a cooperative or unit agreements agreement under A.R.S. § 27-557, shall be conditioned on comply with the following procedure and requirements.~~

1. ~~That there be submitted To facilitate the Department's decision making process and to allow an applicant to obtain feedback prior to formal submission, an applicant shall submit the following information no less than 60 days before submitting a cooperative or unit agreement for approval: to the Department two copies~~
 - a. ~~A copy of a plat map showing the area to be unitized, together with such structural and geological information as will tend to support the delineation of the area. The information so furnished shall be held confidential until released by the applicant or applicants. included in the cooperative or unit agreement; and.~~
 - b. ~~Structural and geological information that supports the land to be included in the cooperative or unit agreement; and.~~
2. ~~c. That there be submitted to the Department two preliminary drafts of the agreement for approval as to form. Where the amount of federal land predominates in any area, the standard form of unit agreement of the United States should be followed. A draft of the proposed cooperative or unit agreement for the Department's review.~~
- d. ~~If the proposed cooperative or unit agreement includes federal lands, and if by inclusion of those lands, the federal government requires standard provisions for a cooperative or unit agreement, the applicant shall submit a proposed cooperative or unit agreement that includes the federal provisions.~~
3. ~~Upon determination by the Department that it is for the best interest of the state to commit leased state lands to a cooperative or unit agreement for the development and operation of an oil or gas pool, the Department shall thereafter finally join in and consent to such agreement when submitted for final approval.~~
4. ~~2. A cooperative or unit agreement shall does not affect the leasehold of any leased state lands lying outside of the cooperative or unit area, and shall The cooperative or unit agreement does not be effective as to the affect leaseholds lying within the cooperative or unit area unless the lessees' thereof and the then approved operating interests shall subscribe to such an agreement. land is committed to the cooperative or unit area pursuant to A.R.S. §§ 27-557 or 27-531 et seq.~~
5. ~~The terms and conditions of leases covering state lands will be modified and changed to the extent necessary to conform the same to the terms and conditions of the agreement.~~

R12-5-2120. Surrender

~~A lessee may surrender to the Department a lease or any part thereof of a lease, but not less than a an approximate quarter of a quarter section 40 acre parcel, or the approximate equivalent thereof, may be surrendered at any time by the record title holder thereof to the lessor upon payment to the Department of all amounts then due as to the lands so surrendered. No refund of any part of the cash consideration or rental theretofore paid shall be made to the lessee or record title holder upon any such surrender. Such surrender shall be made by depositing with A lessee shall surrender the lease or a part of a lease to the Department by submitting to the Department one copy of the instrument of surrender, together lease to be surrendered and with the prescribed surrender fee and thereafter any rentals or other monies owed, the lessee or record title holder shall incur no further liability under said lease as to the land so surrendered.~~

R12-5-2122. Monthly Statement

~~A lessee shall submit to the Department a monthly statement of oil or gas production and other statements required of the lessee under the lease. shall be made in triplicate and shall be transmitted to the Department.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION

[R07-231]

PREAMBLE

- 1. Sections affected:**

R17-1-308	Repeal
R17-1-318	Repeal
R17-1-319	Repeal
R17-1-322	Repeal
R17-1-323	Repeal
R17-1-333	Repeal
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 28-366 and 28-5602

Implementing statute: A.R.S. §§ 28-373, 28-5605, 28-5606, 28-5610, 28-5611, 28-5612, 28-5613, 28-5614, 28-5615, 28-5616, 28-5614, 28-5617, 28-5619, 28-5620, 28-5626, and 28-5924
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 3075, August 25, 2006
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Janette M. Quiroz

Address: Administrative Rules Unit
Department of Transportation
1801 W. Jefferson, MD 530M
Phoenix, AZ 85007

Telephone: (602) 712-8996

Fax: (602) 712-3081

E-mail: jmquiroz@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at <http://www.azdot.gov/mvd/mvdrules/index.asp>
- 5. An explanation of the rule, including the agency's reasons for initiating the rulemaking:**

This rulemaking is being initiated as a result of a Five-Year-Rule Review approved by Council July 13, 2004. The current rules under A.A.C. 1, Article 3, Taxes Regulating Motor Fuel Tax Refunds are antiquated and no longer reflect current statute, making it difficult for the Division to enforce. Therefore, the Division proposes to repeal these rules and create new rules under a new Chapter 8.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

The Division does not propose to review nor rely upon any study relevant to this rulemaking.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

The Division anticipates no economic impact of repealing these rules except those resources necessary to promulgate rules.
- 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: Janette M. Quiroz

Notices of Proposed Rulemaking

Address: Administrative Rules Unit
Department of Transportation
1801 W. Jefferson, MD 530M
Phoenix, AZ 85007

Telephone: (602) 712-8996

Fax: (602) 712-3081

E-mail: jmquiroz@azdot.gov

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

Date: August 31, 2007

Time: 1:00 p.m.

Location: 206 S. 17th Ave.
Phoenix, AZ

Nature: Oral Proceeding

Written, faxed, or e-mailed comments will be accepted by the Division under item #4 until September 7, 2007, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays.

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 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION

ARTICLE 3. TAXES

Section

R17-1-308. ~~Motor vehicle fuel—distributor exports~~ Repealed

R17-1-318. ~~Motor vehicle fuel—government employee~~ Repealed

R17-1-319. ~~Motor vehicle fuel tax—military sales to personnel~~ Repealed

R17-1-322. ~~Motor vehicle tax refunds~~ Repealed

R17-1-323. ~~Exported motor vehicle fuel—tax refund~~ Repealed

R17-1-333. ~~Unmanned self-serve use fuel vending entity; records; tax collection; invoicing~~ Repealed

ARTICLE 3. TAXES

R17-1-308. Motor vehicle fuel—distributor exports Repealed

~~Each distributor shall, upon forms furnished by the Motor Vehicle Division and designated as “Motor Vehicle Fuel Export Declaration,” declare the number of gallons of motor vehicle fuel being exported by him. Such forms shall be made in triplicate and shall show the number of gallons of motor vehicle fuel exported by the distributor, the capacity of the container in which such fuel is exported, the actual content of such container, the number of gallons of such fuel found in the container on return of said distributor to the state of Arizona, the net number of gallons exported by such distributor, the invoice number and amount of gallons of motor vehicle fuel sold or disposed of by such distributor in the foreign state or country to which such fuel was exported, and shall be signed by the operator of the equipment in which such motor vehicle fuel is exported and a member of the Arizona State Highway Patrol, and indicate the date and the hour of export and date and hour of the return of said distributor to the state of Arizona. The original and triplicate copy of such forms shall be retained by the operator and the duplicate to be surrendered to a member of the Arizona State Highway Patrol or an agent of the Motor Vehicle Division, and when a distributor makes a claim for refund based on motor vehicle fuel exported, the original of said “Motor Vehicle Fuel Export Declaration,” properly dated, signed and executed, shall accompany such claim.~~

R17-1-318. Motor vehicle fuel—government employee Repealed

~~A. Motor vehicle fuel sold to employees or agents of the United States, or of any department thereof, for the current use of~~

such employees, is subject to the motor vehicle fuel tax.

- B. Such employee or agent may obtain refund of the motor vehicle fuel tax paid upon specific motor vehicle fuel on claim for refund thereof upon affidavit Form No. 70 3316, to which shall be attached satisfactory written proof that the cost of the specific motor vehicle fuel less motor vehicle fuel tax thereon has been refunded to such employee or agent by the United States or department thereof.
- C. Motor vehicle fuel delivered to the United States or department thereof, or an employee or agent of the United States or department thereof, upon a credit account chargeable to the United States or department thereof, the payment for which has been assumed by the United States or department thereof, is exempt from motor vehicle fuel tax, and in respect thereto the Motor Vehicle Division will accept in lieu of the motor vehicle fuel tax thereon, the sworn statement of the distributor through whom the transaction was handled, showing as to each such delivery as to which exemption is claimed:
 1. Date and place of delivery.
 2. Name of distributor or retailer and agent thereof, if any, making the delivery.
 3. Identification number of credit card, contract or requisition authorizing purchase.
 4. Name of person to whom delivery was made.
 5. Registry number of motor vehicle in respect to which delivery was made.
 6. Authority of the United States guaranteeing the account.
 7. The number of gallons of motor vehicle fuel delivered.

R17-1-319: Motor vehicle fuel tax—military sales to personnel Repealed

- A. Section 10 of the amendment to the Federal Aid Highway Act, approved June 16, 1936, provides:
 - “1. That all taxes levied by any state, territory, or the District of Columbia upon sales of gasoline and other motor vehicle fuels may be levied, in the same manner and to the same extent, upon such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied, shall be paid to the proper taxing authorities of the state, territory, or the District of Columbia, within whose borders the reservation affected may be located.
 - “2. The officer in charge of such reservation shall, on or before the fifteenth day of each month, submit a written statement to the proper taxing authorities of the state, territory, or the District of Columbia within whose borders the reservation is located, showing the amount of such motor fuel not sold for the exclusive use of the United States during the preceding month.”
- B. The Attorney General of Arizona has interpreted the term “exclusive use” to mean that the fuel must be used wholly by the United States by duly constituted agents or officers engaged, while using such gasoline, wholly in the service of the government. In other words, if the fuel is used on a mission partly for the government and partly for some personal purpose of the user, it is not in the exclusive use of the government and is, therefore, taxable. The mere fact that the gasoline is sold or distributed by an agency located on the reservation does not exempt such gasoline from taxation. An officer of the government buying gasoline for his own personal use—or partly for his own personal use—pays the same tax as does the individual citizen.
- C. All persons who purchase gasoline for use in motor vehicles on the highways of this state from any federal government storage located in the state of Arizona which gasoline is not for the exclusive use of the United States Government shall pay to the Officer in Charge of such storage, the Arizona five cent per gallon license tax on each gallon so purchased.
- D. Under provisions of Section 10 above, the Officer in Charge of such storage will on or before the 15th day of the month next succeeding the month in which such fuel was purchased, submit a written statement through proper channels to the Motor Vehicle Division, Arizona Department of Transportation, Phoenix, Arizona, showing the amount of such motor vehicle fuel so sold and such report shall be accompanied by a remittance of five cent per gallon to cover the Arizona license tax on such fuel.

R17-1-322: Motor vehicle tax refunds Repealed

- A. Application for refund of motor vehicle fuel tax paid upon motor vehicle fuel used in the state of Arizona other than in motor vehicles upon highways of the state of Arizona will not be received nor refund made unless the applicant therefor file in the office of the Motor Vehicle Division at Phoenix, Arizona:
 1. Duly verified list of equipment owned or operated by the applicant in which such motor vehicle fuel was used showing in case of rolling equipment, make, engine number and horse power, and in case of stationary equipment, number and horse power of engines and quantity and kind of lamps, stoves or other equipment used.
 2. Duly verified affidavit specifying equipment owned or operated by the applicant in which such motor vehicle fuel was used showing, in case of rolling equipment, make, engine number, horse power, hours operated, gallonage consumed of gasoline, distillate, aviation gasoline or other motor vehicle fuel as the case may be, and in case of stationary equipment, make, number, and horse power of engines, quantity and kind of lamps, stoves or other equipment used, number of hours operated, gallonage consumed of gasoline, distillate, aviation gasoline or other motor vehicle fuel consumed.

- a. The original invoices covering the purchase of such motor vehicle fuel shall be attached to said affidavit.
- b. Said affidavit shall state further that said original invoices cover the purchase of the gallonage listed and that none of the motor vehicle fuel in respect to which such affidavit is made, has been used to propel motor vehicles upon the highways, and shall show for what general purpose such motor vehicle fuel was used.
- B.** The list of equipment above provided to be filed shall remain of record, in the name of the person filing the same, who must report under oath additional equipment when and as acquired or operated.
- C.** No refund of tax paid on motor vehicle fuel shall be made other than on equipment listed with the Motor Vehicle Division, as provided in this order.
- D.** The lists of equipment and affidavits herein provided for shall be upon forms provided by the Motor Vehicle Division.

R17-1-323. ~~Exported motor vehicle fuel—tax refund~~ Repealed

- A.** Application for refund of motor vehicle fuel tax upon motor vehicle fuel exported from the state of Arizona will not be received nor refund made unless the applicant therefore files in the office of the Motor Vehicle Division at Phoenix, Arizona, Exportation Affidavit Form No. 70-0761, duly verified, stating:
 - 1. Gallonage claimed.
 - 2. That none of said gallonage was used in Arizona.
 - 3. The county from which exported.
 - 4. Place of export consignment.
- B.** There shall be attached to said Exportation Affidavit, Original Invoices covering purchase of the gallonage claimed, Motor Vehicle Fuel Exportation Certificate, Form No. 70-0763, and, in case of export to the Republic of Mexico, Export Declaration, United States Customs Service Form No. 7525.
- C.** The Motor Vehicle Fuel Exportation Certificate shall be signed by the applicant or his agent, and shall state:
 - 1. Number of said original invoice. (There must be a Motor Vehicle Fuel Exportation Certificate for each original invoice).
 - 2. Place of sale in Arizona.
 - 3. Date of sale.
 - 4. Name of distributor or vendor.
 - 5. Name and address of foreign purchaser and place where the fuel is to be used.
 - 6. The gallonage.
 - 7. That the gallonage was exported from the state of Arizona and is exempt from Arizona Motor Vehicle Fuel Tax.
- D.** If the exportation is to another state of the United States, the Motor Vehicle Fuel Exportation Certificate shall also be signed by the foreign consignee and shall state the name of the town in the foreign state nearest the boundary line.
- E.** The Export Declaration shall be issued and signed by the Distributor or Vendor in triplicate, and, in addition to the requirements of the United States Customs Service, shall state:
 - 1. Number of said original invoice. (Export Declarations must be so issued for each original invoice).
 - 2. The gallonage.
 - 3. Type and number of containers of fuel covered by the original invoice.
- F.** Said Exportation Affidavit and Motor Vehicle Fuel Exportation Certificates shall be upon forms supplied by the Motor Vehicle Division.
- G.** Exemption by distributors of motor vehicle fuel tax on fuel for foreign export is discontinued, and hereafter Motor Vehicle Fuel Exportation Certificate Form No. 131 will not be accepted from distributors in lieu of tax, and Distributors will be held for tax on all motor vehicle fuel, except upon sales to U.S. Government.

R17-1-333. ~~Unmanned self serve use fuel vending entity; records; tax collection; invoicing~~ Repealed

- A.** Definitions:
 - 1. "Account" means the authorization and the means to access the pumping facilities of an Unmanned Self-Serve Use Fuel Vending Entity (USSUFVE) to acquire use fuel for which the USSUFVE issues a periodic statement containing at least the purchaser's name, mailing address, date of each use fuel acquisition and the number of gallons of use fuel acquired.
 - 2. "Tax exempt use account" means an account created and maintained solely for the purpose of acquiring use fuel that will be consumed in a manner that is exempt from the tax imposed under the provision of A.R.S. Title 28, Chapter 9, Article 2.
 - 3. "Unmanned self serve use fuel vending entity" means a licensed Arizona fuel vending entity, commonly referred to as cardlock or keylock operations, where only pre-approved purchasers of use fuel have been issued cards or keys to identify the exclusive withdrawal of that particular purchaser and where no representative of the licensed vendor is on the premises to observe the withdrawal of use fuel from the vendor's storage and where volumes dispensed are measured by pump meters or by some other accurate recording device.
- B.** A vendor operating an unmanned self-serve use fuel vending entity must determine which self-serve purchasers are the holders of valid Arizona use fuel tax accounts, must record those tax license numbers for invoicing purposes and must

Notices of Proposed Rulemaking

- maintain for audit purposes complete records on every purchaser having access to the vendor's use fuel storage.
- C. A vendor operating an unmanned self-serve use fuel vending entity shall collect the Arizona use fuel tax on all sales of use fuel through that vending entity, unless the purchaser has established a tax-exempt use account in accordance with the provisions of subsection (E) of this rule.
 - D. A vendor operating an unmanned, self-serve, use fuel vending entity must comply with R17-1-330, R17-1-331, R17-1-332, and R17-1-334 provided, however, that in lieu of the language contained in section "A" of the "Arizona Use Fuel Information Block" referred to in R17-1-330(B)(5), either the word "cardlock," or the word "keylock," depending on the type of operation, will be preprinted therein.
 - E. A person who qualifies to purchase use fuel without the payment of tax to the vendor in accordance with the provisions of A.R.S. § 28-1555(C) may establish a tax-exempt use account with an unmanned self-serve use fuel vending entity. Use fuel acquired through the tax-exempt use account shall not be delivered into the fuel tank of a motor vehicle. If a person having a tax-exempt use account wants to purchase use fuel from the same unmanned self-serve use fuel vending entity for purposes which are not tax-exempt, the person shall establish a separate account with the unmanned self-serve use fuel vending entity. The tax-exempt use account shall require the use of different cards, keys, or other means to access the pumps than the taxable use account. To establish the tax-exempt use account, the purchaser shall provide the unmanned self-serve use fuel vending entity with an affidavit containing the following information:
 - 1. Legal name of purchaser.
 - 2. Mailing address of purchaser.
 - 3. Address of the place of business of the purchaser.
 - 4. Telephone number of the purchaser.
 - 5. A statement containing the following:
 - a. Each utilization of this account to acquire use fuel shall constitute certification that none of the use fuel acquired through the utilization of this account will be employed to propel a motor vehicle on the highways in this state.
 - F. The unmanned, self-serve, use fuel vending entity shall maintain the original affidavit for a period of at least three years after the last transaction on the account.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

[R07-227]

PREAMBLE

- | | |
|--|--|
| <u>1. Sections Affected</u>
R17-4-512 | <u>Rulemaking Action</u>
Amend |
| <u>2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):</u>
Authorizing statute: A.R.S. § 28-366
Implementing statute: A.R.S. § 28-907 | |
| <u>3. A list of all previous notices appearing in the Register addressing the proposed rule:</u>
Notice of Rulemaking Docket Opening: 13 A.A.R. 1053, March 23, 2007
Notice of Rulemaking Docket Opening: 13 A.A.R. 2451, July 6, 2007
Notice of Rulemaking Docket Opening: 13 A.A.R. 2530, July 13, 2007 (<i>in this issue</i>) | |
| <u>4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u>
Name: Celeste M. Cook, Administrative Rules Analyst
Address: Administrative Rule Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007
Telephone: (602) 712-7624 | |

Fax: (602) 712-3081
E-mail: ccook@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.mvd.azdot.gov/mvd/MVDRules/rules.asp.

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

This rulemaking action arises from a Five-Year Review Report approved by the Governor's Regulatory Review Council on February 3, 2004. The Division proposes to amend the existing child restraint systems rule to ensure conformity to Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.

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

None

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

Not applicable

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

ADOT, the Governor's Regulatory Review Council, and the Secretary of State's office will bear the costs related to this rulemaking, which should be minimal.

ADOT and Department of Public Safety will have a rule that is clear and easy to understand.

Both ADOT and the Department of Economic Security benefits because of the Child Passenger Restraint Fund (CPRF). A.R.S. § 28-907 allows for fines for non-compliance to be collected after the state adopts federal standards. These fines are placed in the CPRF, which is used by the Department of Economic Security to purchase child safety seats that may be loaned to people who cannot afford to buy them.

Businesses that sell child seats will benefit from purchases by DES using CPRF funds.

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:

See item #4.

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

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit a written faxed or e-mail comments, please contact the Administrative Rule Analyst listed in #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. If no request for an oral proceeding is made, the public record will close on August 13, 2007 at 5:00 p.m.

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 rule:

Not applicable

13. The full text of the rule follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 5. SAFETY

Section
R17-4-512. Child-restraint Systems in Motor Vehicles

ARTICLE 5. SAFETY

R17-4-512. Child-restraint Systems in Motor Vehicles

~~Child restraint systems shall comply with The Motor Vehicle Division incorporates 49 CFR 571.213, Federal Motor Vehicle Safety Standard number 213. 49 CFR 571.213, revised of the October 1, 2000, is incorporated by reference and on file with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. edition and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-0001, and is on file with the Division.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R07-229]

PREAMBLE

- 1. Sections Affected**
R20-5-121
- Rulemaking Action**
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. §§ 41-1003; 23-107(A)(1)
Implementing statute: A.R.S. § 3-1067
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 13 A.A.R. 2452, July 6, 2007
- 4. The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Nancy O. Johnson, Attorney
Legal Division, Industrial Commission of Arizona
Address: 800 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 542-5948
Fax: (602) 542-6783
E-mail: njohnson@ica.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
Under A.R.S. § 23-1067 the Industrial Commission of Arizona ("Commission") is directed to promulgate rules for determining the present value of any award that is commuted to a lump sum payment. In calculating the present value, the current rule determines the interest rate from a formula that is based on an average of U.S. Treasury interest rates at five points in time:
 - a. Close of business on May 15,
 - b. Close of business on the day before May 15,
 - c. Close of business on May 15 of the prior year,
 - d. The 12 month high interest rate, and
 - e. The 12 month low interest rate.The Commission has determined that the current interest rate calculation is too heavily weighted to the "close of business" on and the day before May 15. By substituting the current formula with the formula that uses the mean average of the three-month Treasury Bill interest rate over the past five years, the resultant rate is a more accurate and fair calculation. The proposed rule will determine the interest rate by calculating the mean average of the three-month Treasury Bill interest rate on December 31 of each of the five years prior to July 1st of the current year.
The proposed rule will also update the life expectancy table in the United States Life Tables, National Vital Statistics Report to reflect the most current table.
Finally, the proposed rule will allow the Commission to establish a new interest rate at least once a year. This change to the rule will effectively allow the Commission to implement the new interest rate calculation immediately instead of waiting until July 1, 2008.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed**

rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

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

Not applicable

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

Annual costs/revenues changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues.

The Commission will bear minimal to moderate costs for promulgating and enforcing the rules. Costs for promulgating the rules include staff time to write, review, and direct the rules through the rulemaking process.

Compared to the current rule, this rule change will provide a minimal to moderate increase to the lump sum amount paid to an employee, and thus would cost insurance carriers, self-insured employers, and the No Insurance Section of the Commission a minimal to moderate amount for each employee who requests and receives a lump sum commutation. The exact cost/benefit is difficult to ascertain at this time as the legislature has just passed HB 2185. This bill amends A.R.S. § 23-1067 to increase the maximum lump sum payment amount that is allowed from \$50,000 to \$150,000. This new legislation has been signed by the Governor and will take effect 90 days after the end of the 48th Legislature, first regular session.

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: Nancy O. Johnson, Attorney
Legal Division, Industrial Commission of Arizona

Address: 800 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-5948

Fax: (602) 542-6783

E-mail: njohnson@ica.state.az.us

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

The ICA has scheduled an oral proceeding on the proposed rulemaking:

Date: Thursday, August 16, 2007

Location: 800 W. Washington St.
Conference Room 308
Phoenix, AZ 85007

Time: 1:00 p.m.

The close of record is Thursday, August 16, 2007 at 5:00 p.m.

A person may also submit written comments on the proposed rules no later than 5:00 p.m., to the individuals listed in questions 4 and 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. Incorporation by reference and their location in the rules:

United States Life Tables, 2003, National Vital Statistics Reports, Vol. 54, Number 14, April 19, 2006, revised March 28, 2007, Table 1, located in R20-5-121(A).

13. The full text of the rule follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

Section

R20-5-121. Present Value and Basis of Calculation of Lump Sum Commutation Awards

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

R20-5-121. Present Value and Basis of Calculation of Lump Sum Commutation Awards

- A. The Commission shall calculate the present value of an award that is commuted to a lump sum under R20-5-122. The Commission shall not include in the present value calculation compensation paid before the filing of a lump sum commutation petition. The Commission shall use the filing date of a lump sum commutation petition to compute the present value of an award.
- B. The Commission shall calculate the present value of an award at least annually, whether payable for a period of months or based upon the life of the employee, using the United States ~~Abridged~~ Life Tables, ~~2002~~ 2003, National Vital Statistics Reports, Vol. ~~53~~ 54, Number ~~6~~ 14, April 19, 2006, revised March 28, 2007, Table 1 incorporated by reference, and discounted at the rate established by the Commission. This incorporation does not include any later amendment or edition of the incorporated matter. A copy of this referenced material is available for review at the Commission and may be obtained from the U.S. Department of Health and Human Services, Centers for Disease Control. The rate established by the Commission is based on ~~a the following formula: The mean average of the three-month Treasury Bill rate average at five points in time: for close of business on May 15, for close of business the day before May 15, for the close of business on May 15 of the prior year, a 12 month high, and a 12 month low, as shown in the Wall Street Journal for May 15 of the current year and the prior year, and the daily web site quotes of the Treasury Bill secondary market rates on December 31st of each of the five years prior to July 1st of the current year. The rate, once calculated, becomes is effective for one year starting the first day of July, of the current year until the Commission calculates a new rate under this subsection.~~ The discount rate is published in the minutes of the Commission meeting establishing the rate and is available upon request from the Commission.