



TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

This Chapter contains rule Sections that were filed to be codified in the Arizona Administrative Code between the dates of January 1, 2020 through March 31, 2020.

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Questions about these rules? Contact:

Department: State Land Department
 Administrative Procedures Manager
 Address: 1616 W. Adams Street
 Phoenix, AZ
 Telephone: (602) 542-2504
 Website: <https://land.az.gov/content/applicable-state-laws>

The Governor’s Regulatory Review Council can answer questions about expired rules in this Chapter:

Council: Governor’s Regulatory Review Council
 Address: 100 N. 15th Ave #402
 Phoenix, AZ 85007
 Phone: (602) 542-2058

The release of this Chapter in Supp. 20-1 replaces Supp. 18-1, 1-52 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

Authority: A.R.S. § 37-102 et seq.

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).

Editor's Note: The proposed summary action repealing R12-5-901 through R12-5-920 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rules. Sections in effect before the proposed summary action have been restored (Supp. 98-3).

Editor's Note: This Chapter contains rules which were adopted or amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1992, Ch. 297, § 6. Exemption from A.R.S. Title 41, Chapter 6 means that the Land Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Governor's Regulatory Review Council did not review these rules; the Land Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.

Title 12, Chapter 5, Articles 1 thru Article 23, were renumbered to bring the Chapter numbering into compliance with current format. For the old and new Section numbers, please refer to the introductory notes at the beginning of each Article in the table of contents or in the historical notes for the specific Sections.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Section R12-5-10, adopted effective August 2, 1994 (Supp. 94-3).

Article 1, consisting of Sections R12-5-101 thru R12-5-103, repealed effective August 2, 1994 (Supp. 94-3).

Article 1, consisting of Sections R12-5-01 thru R12-5-03, renumbered to Article 1, Sections R12-5-101 thru R12-5-103 (Supp. 93-3).

Table listing sections R12-5-101 through R12-5-109 with their respective titles and page numbers.

Table listing sections R12-5-205 through R12-5-222 with their respective titles and page numbers.

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Article 2, consisting of Sections R12-5-201 thru R12-5-218, made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

Article 2, consisting of Sections R12-5-201 thru R12-5-222, repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

Article 2, consisting of Sections R12-5-201 thru R12-5-222, adopted effective August 2, 1994 (Supp. 94-3).

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Article 12, consisting of Section R12-5-1201, adopted summary rules filed December 6, 1996; interim effective date of August 30, 1996, now the permanent effective date (Supp. 96-4).

Article 12, consisting of Section R12-5-1201, repealed by summary action with an interim effective date of August 30, 1996; filed with the Office of the Secretary of State August 8, 1996 (Supp. 96-3).

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Article 13, consisting of Sections R12-5-1301 and R12-5-1302, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

Article 13, consisting of Sections R12-5-1301 and R12-5-1302, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

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Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996, now the permanent effective date (Supp. 96-3).

The heading for Article 14 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

ARTICLE 15. REPEALED

Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

The heading for Article 15 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

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Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

Article 16, consisting of Sections R12-5-1601 thru R12-5-1612, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

Article 16, consisting of Sections R12-5-560 thru R12-5-564, renumbered to Article 16, Sections R12-5-1601 thru R12-5-1605; Sections R12-5-1605 thru R12-5-1612 renumbered from Article 16, Sections R12-5-570 thru R12-5-576 (Supp. 93-3).

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(Authority: A.R.S. § 37-213 et seq.)

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CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

R12-5-101. Definitions

- A. Unless the context otherwise requires, a word, term, or phrase that is defined in A.R.S. Title 27 or 37 has the same meaning when used in Articles 1 through 9, 11, 17 through 22, 24, and 25 of this Chapter.
- B. Except as otherwise provided in subsection (A), the following words, terms, and phrases apply to Articles 1 through 9, 11, 17 through 22, 24, and 25 of this Chapter.
1. "Best interest of the state" means best interest of the Trust.
 2. "Common mineral materials and products" means cinders, sand, gravel and associated rock, fill-dirt, common clay, disintegrated granite, boulders and loose float rock, waste rock, and materials of similar occurrence commonly used as aggregate road material, rip-rap, ballast, borrow, or fill for general construction and similar purposes.
 3. "Contiguous" means two parcels of land that have at least part of one side in common or have a corner touching.
 4. "Grantee" means the holder of a right-of-way and includes the holder of an approved assignment of a right-of-way other than an assignment for the purpose of granting a security interest.
 5. "Hearing officer" means the Commissioner or a hearing officer appointed by the Commissioner and includes the Deputy Commissioner or any officer of the Department.
 6. "Lease" means any validly executed document that 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.
 7. "Lessee" means the holder of a lease and includes the holder of an approved assignment of a lease other than an assignment for the purpose of granting a security interest, and a permittee or grantee of a right-of-way.
 8. "Lessor" means the Department.
 9. "Natural product" means any material or substance occurring in its native state that when extracted, is subject to depletion and includes water, vegetation, common mineral products and materials that are severable from the land, except geothermal resources and those substances subject to the mineral exploration permit and mineral leasing laws of this State.
 10. "Non-conflicted application" means an application for the use of State land that is not conflicted by one or more applications for the same use of the land filed within the time-frame for a conflicting application to be filed under A.R.S. § 37-284.
 11. "Party" means a person or agency named or admitted as a party in a proceeding or someone seeking to intervene and may include the Department.
 12. "Permit" means any Department-issued document that entitles the permittee to surface or subsurface use or occupancy of State land. "Permit" includes a validly assigned permit other than an assignment for the purposes of granting a security interest.
 13. "Permittee" means the holder of a permit and includes the holder of an approved assignment of a permit, where assignments are provided by law, other than an assignment for the purpose of granting a security interest.
 14. "Person" means a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or

any territory, state or country, or any political sub-division of this state that may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or association of persons.

15. "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.
16. "Right-of-way" means a right of use and passage over, through, or beneath the surface of State land, for an express purpose and to travel to a specific location.
17. "Special Land Use Permit" means a Department-issued document that entitles a permittee to occupy or use State lands for an express purpose, not otherwise expressly provided for by law, and for a specific duration.
18. "Sublease" means an agreement, approved by the Commissioner, between a lessee and a third person to lease the property where the lessee retains an interest in the lease.

Historical Note

Original rule, Ch. I (Supp. 76-4). Section R12-5-101 renumbered from Section R12-5-01 (Supp. 93-3). Section repealed, new Section adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-102. Computation or Extension of Time

- A. Computation of time. In computing any time period prescribed or allowed under this Chapter, except a time period prescribed under Article 2 of this Chapter, the Department shall exclude the day from which the designated time period begins to run. The computation of time includes intermediate Saturdays, Sundays, and legal holidays. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday. When the time period is 10 days or less, the Department shall exclude Saturdays, Sundays, and legal holidays.
- B. Extension of time. At the Commissioner's initiative, or upon request, the Commissioner may extend any time period to perform or complete any ordered or required action. The Commissioner shall extend a time period only if the person making a request shows good cause for the extension.

Historical Note

Original rule, Subchapter A, Ch. II (Supp. 76-4). Section R12-5-102 renumbered from Section R12-5-02 (Supp. 93-3). Section repealed effective August 2, 1994 (Supp. 94-3). New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-103. Records; Correction of Errors; Public Docket; Removal of Records

- A. Record. The Department shall stamp every document and other object filed in the Department to record date and time of receipt. A filed document or other object constitutes a part of the record and is available for public inspection, except as prohibited by statute, at any time during the office hours of the Department.
- B. Correction of errors. On the Commissioner's own initiative or upon request by a party, the Commissioner may correct a manifest typographical or clerical error in a decision, order, instrument, or other record of the Department resulting from oversight or omission. The Commissioner shall provide notice

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of any correction in the form the Commissioner deems appropriate.

- C. Public docket. A person may obtain a copy of a public docket, maintained by the Department pursuant A.R.S. § 37-102(F), listing the matters pending before the Department by requesting a copy at the Phoenix Office in person or by mail or e-mail. The Department shall charge to cover the costs of copying a public docket in accordance with A.R.S. § 39-121.01.
- D. Removal of papers. A person shall not remove an instrument, document, or other paper or object on file with the Department from the Department, except as authorized by the Commissioner, the Commissioner's duly appointed deputy or employee or by order of a court of competent jurisdiction.

Historical Note

Adopted effective May 13, 1977 (Supp. 77-3). Correction, omission from subsection (A) in Supp. 77-3 (Supp. 77-6). Section R12-5-103 renumbered from Section R12-5-03 (Supp. 93-3). Section repealed effective August 2, 1994 (Supp. 94-3). New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-104. Application Forms; Legal Status; Submission of Applications; Applications Confer No Rights

- A. Forms supplied. A person shall submit an application, report, or other document required by statute or this Chapter to be filed with the Department upon a form prescribed and furnished by the Department. The Department shall accept for filing other instruments, such as corporation papers, liens or mortgages, powers of attorney, affidavits of heirship, death certificates, and other legal documents.
- B. Required information as to legal status. A corporation, limited partnership, or association authorized to conduct business in this state that is applying to purchase, lease, or sublease State lands or any interest in State lands shall state in its application that it is authorized to conduct business in this state.
- C. Submission of application, report, document, or other instrument. A person shall submit an application, report, document, or other instrument to the Department's Phoenix Office to the attention of Public Records along with payment of the required fee.
- D. Application confers no rights. A pending application to lease, purchase, or use State land confers no rights to the applicant.
 1. The Department may allow a lessee who files a conflicted or non-conflicted application for renewal of an existing lease to remain in possession or continue to occupy or use the land in accordance with the provisions of the lease sought to be renewed until the application to renew is granted or denied. The Department shall grant permission for interim use if:
 - 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.
 2. A lessee who remains in possession with the Department's permission under this Section shall pay any rental or other monies owed, such as penalty and interest on delinquent rent or irrigation district assessments.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-105. Manner of Signing Documents before the Department

- A. A person shall sign a document requiring signature in the same manner as the person's name appears of record with the Department or in the manner in which the person is requesting the Department issue a new document.
- B. If a document is executed for the benefit of:
 1. One individual, the document shall be signed by that individual or by an authorized representative of the individual;
 2. More than one individual, the document shall be signed by each individual or by the individual's authorized representative; or
 3. A business entity or an association of any kind, the document shall be signed by an authorized representative of the entity or association.
- C. The Department shall not accept the signature of an authorized representative unless the individual, business entity, or association files with the Department written authority for the authorized representative to sign.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-106. Assignments; Subleases

- A. A person shall not assign or sublease any right, entitlement, or interest, in whole or in part, in State land, or possession, occupancy, or right to remove anything, in whole or in part, from State land unless:
 1. The person has made application for the assignment or sublease; and
 2. The Commissioner has approved the assignment or sublease in writing.
- B. In addition to the conditions and provisions of the lease sought to be subleased, any approved sublease is subject to further conditions and provisions as the Commissioner may determine are necessary to further the best interest of the Trust, including but not limited to provisions relating to ownership of improvements on the lease and disposition of proceeds relating to the improvements.
- C. The Department may cancel a lease if a sublessee violates a provision of a lease.
- D. The Department shall hold the lessee and sublessee jointly and severally liable for damages arising out of a violation of a provision of a lease.
- E. The Department shall not approve a sublease of a sublease for State land.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-107. Fees; Remittances

- A. A person shall pay fees and other remittances to the Department by cash, money order, bank draft, or check payable to the "Arizona State Land Department."
- B. A person shall pay all billing statements issued by the Department, whether relating to rent, royalty, or other monies owed to the Department, within 30 days of the date of issuance, unless otherwise specified on the billing statement. If payment does not arrive in the Department's Phoenix Office on or before the close of business on the due date, the Department shall assess penalty and interest as required by law.
- C. The Department is not responsible for any payment not personally hand delivered and receipted for by the Cashier in the Department's Phoenix Office. The Department shall not credit any payment not received.

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Historical Note

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-108. Predecision Administrative Hearing

The Commissioner may initiate a predecision administrative hearing to investigate an issue, gather information, or review facts to assist the Commissioner in the decision-making process before issuing a decision on any matter pending before the Department.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-109. Rejection of Hearing Request

The Commissioner shall reject any request for a hearing under A.R.S. Title 41, Chapter 6 that the Commissioner determines not to be subject to A.R.S. Title 41, Chapter 6.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

ARTICLE 2. PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS FOR PROTESTING AUCTIONS BEFORE THE ARIZONA STATE LAND COMMISSIONER

R12-5-201. Applicability

This Article applies to an administrative hearing resulting from a protest of an auction pursuant to A.R.S. § 37-301, hereinafter referred to in this Article as “a hearing.”

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-202. Appointment of Hearing Officer

- A. The Commissioner may serve as the hearing officer or may appoint a hearing officer to conduct a hearing under A.R.S. § 37-301.
- B. If a hearing officer, for any reason, cannot continue to preside at the hearing, the Commissioner shall appoint a new hearing officer.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-203. Ex Parte Communications

A party shall not communicate on matters substantive to the hearing, either directly or indirectly, with the hearing officer, the Commissioner, the Deputy Commissioner, or any member of the Commissioner’s staff involved in the decision-making process unless:

1. All parties are present; or
2. It is during a scheduled proceeding where an absent party fails to appear after proper notice under R12-5-210.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-204. Failure to Appear

If a party fails to appear at a hearing, the hearing officer may vacate the hearing or allow the appearing party to present evidence.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-205. Representation

A party may participate in a 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 political subdivision or unit of a political subdivision may appear through an employee.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-206. Notice of Hearing

- A. Upon determination by the Commissioner that a hearing will be held, the Department shall issue a notice of hearing that contains:
 1. A caption referencing the Department’s case number, a brief description of the matter to be heard, the name or names of the parties and their status, or both;
 2. The date, time, and place of the hearing;
 3. A reference to the particular sections of the statutes and rules under which the hearing is to be held;
 4. A short, plain statement of the matter to be heard;
 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; and
 7. Any other information required by statute or rule.
- B. An applicant for sale or long-term lease of State Trust land is a party to an administrative hearing conducted under A.R.S. § 37-301.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-207. Hearing Record

- A. After the notice of hearing is issued, the hearing file shall be available for inspection at the Department’s Public Records Office, Phoenix, during regular business hours.
- B. Hearings shall be electronically recorded or stenographically reported by the Department. The hearing officer shall designate the official record of the proceedings. If a hearing is recorded electronically, the tapes shall be available for review in the Department’s Public Records Office, Phoenix, during regular business hours. The cost for copies of tapes shall be paid by the person requesting them. The Department shall maintain the original transcript of the official record of the proceeding, if available, as part of the hearing file.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-208. Consolidation

When multiple protests of the same auction are pending before the Department, the Department may consolidate the protests into a single hearing.

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Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-209. Filing

All papers filed with the Department in a hearing shall be typewritten or legibly written on paper no larger than 8 1/2 by 11 inches, include the name and address of the party or individual filing the paper, be properly captioned and designate the title and case number, state the name and address of each party served with a copy, and 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 filed for delay.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-210. Service; Proof of Service

- A. After a notice of hearing is issued, a copy of every paper filed by a party, or person seeking to intervene, shall be served on all parties to the hearing, or the party's counsel if the party is represented, at the same time the paper is filed. Service is complete at the time of personal service or on the date mailed if served by certified or regular mail addressed to the last address of record in the hearing file.
- B. The following is evidence that service is complete:
 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 service;
 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 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 the notice of hearing decision and final order, either by personal service or by certified mail. The Department or a party shall serve all other papers by regular or certified mail or by personal service.
- 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 the Department, or, if no Assistant Attorney General is named, on the Attorney General, Civil Division, Chief Counsel, Natural Resources Section.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-211. Subpoenas

- A. The hearing officer may issue subpoenas for witnesses to appear and testify at the hearing or to produce books, records, documents, and other evidence, or both, on the hearing officer's own volition or at the request of a party.
- B. A request for a hearing subpoena shall be in writing, filed with the hearing officer, and served on each party at least seven days before the date set for hearing and state:
 1. The caption of the hearing, the case number, and the date, time, and place where the witness is expected to appear and testify;
 2. The name and address of the witness or custodian of records subpoenaed; and
 3. The documents, if any, subpoenaed.

- C. The hearing officer shall grant the request if the hearing officer determines there is reasonable need, such as relevant facts expected to be established by the person or document subpoenaed, and the production of documents is not unduly repetitious or burdensome.
- D. A party or person subpoenaed may file an objection to the subpoena with the hearing officer. The party or person shall file the objection within five days after service of the subpoena, or on the first day of the hearing, whichever is earlier.
- E. The party requesting the subpoena shall prepare the subpoena and cause it to be served upon the person to whom the subpoena is directed. A person who is not a party and is at least 18 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 hearing officer a certified statement of the date and manner of service and the name of the person served.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-212. Procedure at Hearing

- A. The hearing officer shall preside over the hearing, giving all parties the opportunity to testify, respond, present evidence, argument, witnesses, conduct examination and cross-examination, and submit rebuttal evidence. The hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. The hearing officer shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite questioning to the extent consistent with the disclosure of all relevant testimony and information.
- B. If all parties agree, the hearing officer may conduct all or part of the hearing by telephone or other electronic means, if each party has an opportunity to participate in the entire proceeding.
- C. A hearing is open to the public, except if the hearing is required to be closed according to an express provision of law. The Department shall make a hearing conducted by telephone or other electronic means available to 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.
- D. The hearing officer may exclude from participation or observation a person whose conduct at the hearing is disruptive or shows contempt for the proceedings.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-213. Evidence

- A. All witnesses shall testify under oath or affirmation. All parties shall have the right to present oral or documentary evidence and to conduct cross-examination as 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 determines to be irrelevant, immaterial, or unduly repetitious. The hearing officer shall admit the kind of

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evidence on which reasonably prudent people would rely, even if the evidence would be inadmissible in a civil court trial.

- B.** Unless otherwise ordered by the hearing officer, a party shall not present documentary evidence larger than 8 1/2 by 11 inches. The submitting party shall identify documentary exhibits by number or letter and party and shall furnish a copy of each exhibit to each party present. If evidence offered by a party appears in a larger work that contains other information, the party shall plainly designate the portion offered. If the evidence offered is in a volume of a length that would unnecessarily encumber the record, the hearing officer shall not receive the book, paper, or document in evidence but the evidence 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 is subject to appropriate and timely objection.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-214. Judicial Notice; Technical Facts

When conducting a hearing, the hearing officer may take notice of judicially cognizable facts as permitted under the Arizona Rules of Evidence. The Commissioner or the hearing officer may take judicial notice of generally recognized technical or scientific facts within the Commissioner's, the hearing officer's, or the Department's specialized knowledge. The Commissioner or the hearing officer may use experience, technical competence, and specialized knowledge in the evaluation of any information and evidence submitted in a hearing.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-215. Stipulations

Parties to a hearing may agree, in writing, to any issue addressed in the hearing, including matters of procedure, subject to the approval of the hearing officer. If approved by the hearing officer, an agreement on matters of procedure or substantive matters is binding upon the parties to the stipulation. The hearing officer may require presentation of evidence for proof of stipulated facts. No agreement by the parties on substantive matters is binding upon the Department unless incorporated into the decision of the Commissioner.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-216. Recommended Decision

If a hearing officer other than the Commissioner presides at a hearing, the hearing officer shall prepare a recommended decision for the Commissioner within 10 days of the close of the hearing, or no later than eight days before the auction date, whichever is earlier.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-217. Decision

The Commissioner's decision shall include separate findings of fact and conclusions of law. The Commissioner's decision shall also include policy reasons for the decision if it is an exercise of the Commissioner's discretion, including the reason for the remedy ordered.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-218. Rehearing of Decision

- A.** As specified A.R.S. § 37-301(C), a request for rehearing shall be filed with the State Land Commissioner, State Land Department, Phoenix, and shall specify the particular grounds for rehearing. A rehearing of the decision may be granted for any of the following reasons materially affecting the requesting party's rights:
1. Irregularity in the proceedings or any order or abuse of discretion that deprived the requesting party of a fair hearing;
 2. Misconduct of the Commissioner, Departmental employees, the hearing officer, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that 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; or
 7. The decision is not justified by the evidence or is contrary to law.

- B.** On review of the request for rehearing, the Commissioner may affirm the decision or grant a rehearing. 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 hearing may participate as parties at any rehearing.

Historical Note

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-219. Repealed**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-220. Repealed**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-221. Repealed**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-222. Repealed**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

ARTICLE 3. SELECTIONS, INVESTIGATIONS, CLASSIFICATIONS AND APPRAISALS**R12-5-301. Expired**

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Historical Note

Original rule, Subchapter D, Ch. II (Supp. 76-4). Section R12-5-301 renumbered from Section R12-5-50 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

ARTICLE 4. SALES**R12-5-401. Expired****Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-401 renumbered from Section R12-5-71 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

R12-5-402. Conditions for Filing Application

- A. An application shall cover only one section or subdivision thereof.
- B. When the application is made by one claiming a right to reimbursement for improvements placed upon state land, the applicant shall attach a list of the improvements placed or made upon said lands.
- C. The applicant to purchase state land shall deposit an amount of money sufficient to pay the expense incidental to bringing a parcel of land to sale when the Department determines that the benefit to be derived from the sale is less than the expense involved.
- D. An application to purchase state land cannot be withdrawn without the approval of the Commissioner.

Historical Note

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-402 renumbered from Section R12-5-72 (Supp. 93-3).

R12-5-403. Restrictions Subsequent to Filing Application to Purchase

No lessee may file any transfer, assignment, mortgage or application affecting the lands covered in their application to purchase.

Historical Note

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-403 renumbered from Section R12-5-73 (Supp. 93-3).

R12-5-404. Responsibility of the Purchaser

- A. The recording of a Certificate of Purchase and/or Patent with the County Recorder of the County in which the lands are located.
- B. Payment of the taxes, water assessments and other charges which may be assessed against the land.
- C. Protection of the lands against any loss or waste to or upon the lands.
- D. To maintain any right to the use of water appurtenant to the land against forfeiture or abandonment of the right.
- E. File a report with the State Land Commissioner of the sale of any sand, gravel, stone or other natural product from the land.
- F. Acquire the consent of the Department prior to granting a right-of-way on the land.

Historical Note

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-404 renumbered from Section R12-5-74 (Supp. 93-3).

R12-5-405. Evidence of Taxes and Assessments Being Paid; Extension of Time to Pay

- A. A holder of a Certificate of Purchase shall include, with the annual payments of principal and interest for the certificate of

purchase, proof that taxes and any other assessments have been paid for the current year.

- B. An extension of time to pay an annual installment of principal or interest shall be made in accordance with R12-5-102(B).

Historical Note

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-405 renumbered from Section R12-5-75 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4197, effective January 5, 2008 (Supp. 07-4).

R12-5-406. Assignment of a Certificate of Purchase

- A. The transfer of a Certificate of Purchase will be made only upon the filing of an "Application to Assign and Assumption of Certificate of Purchase" form which will be supplied by this Department.
- B. An application to assign and assumption of a Certificate of Purchase will not be approved:
 1. When the annual payments are found to be in arrears.
 2. When taxes are found to be in arrears.
 3. When the release or satisfaction of a lien or mortgage filed with the Department has not been submitted with said application.
 4. When affidavit of citizenship in the United States and/or statement of authorization to do business in the state of Arizona has not been submitted with said application.
- C. No portion, less than all of the lands covered in a Certificate of Purchase, can be assigned.

Historical Note

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-406 renumbered from Section R12-5-76 (Supp. 93-3).

R12-5-407. Expired**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-407 renumbered from Section R12-5-77 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

R12-5-408. Partial Patent

- A. As used in this Section, a "partial patent" means a patent for less than the entire tract covered under a Certificate of Purchase. The holder of a Certificate of Purchase applying to the Department for a partial patent of lands under a Certificate of Purchase, shall provide to the Department the following at the time of application:
 1. Appropriate filing fee as required under A.R.S. § 37-108(A)(9)(c).
 2. A copy of a receipt from the County Treasurer for the county where the land under application for partial patent is located, showing that the taxes are currently paid on both the parcel of land under application for partial patent and any lands remaining under the Certificate of Purchase.
 3. A written land legal description and a survey plat (drawing size 17" x 26") issued by a land surveyor, registered in Arizona, of the lands covered by the Certificate of Purchase, including the lands described in the application for partial patent. The written land legal description and the survey plat shall be provided in paper format and a digital format specified in the application.
 4. A proposed development plan showing the lands, including lands under the proposed partial patent, covered by the Certificate of Purchase and information as to how the proposed development plan will be implemented in compliance with City or County ordinances and regulations.

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The development plan shall contain proposed densities, unit breakdown, and approved or proposed zoning district classifications.

- B.** If the Commissioner deems it necessary, the Department shall require a tentative plat with a proposed development overlay, including the topography, infrastructure improvements, and existing structures of the lands under the Certificate of Purchase, including the lands under application for partial patent, as well as of those lands contiguous to all boundaries of the lands covered by the Certificate of Purchase.
- C.** The Department shall not accept an application that relates to a Certificate of Purchase for which the purchaser has failed to pay applicable fees or is in default as to payment of principal or interest, or in arrears on taxes.
- D.** Before issuing a partial patent, the Department shall determine that the remaining lands are of greater value than the unpaid balance of the Certificate of Purchase and that the remaining lands have development potential independent of the acreage that is sought to be patented. If the Commissioner determines that it is necessary to establish the value of the remaining lands, or the parcel sought to be patented, or both, the applicant shall provide, at the applicant's expense, the following:
1. An appraisal conducted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) as referenced in A.A.C. R4-46-401 or an economic analysis by the Department's appraisal staff or by a state-approved appraiser of the parcel sought to be patented or the lands remaining under the Certificate of Purchase, or both.
 2. An infrastructure assessment detailing service, capacity, and cost information for the remaining lands; and
 3. Any additional information the Department considers necessary to determine the adequacy of the value of the remaining lands as security for the balance of all remaining payments required to be made under the Certificate of Purchase after the partial patent is issued.
- E.** If the application or any of its attachments does not contain the information required by this Section, the Commissioner shall immediately provide written notice of the deficiency to the applicant. The Department shall allow 20 days, from the date on the written notice from the Commissioner, for the applicant to cure the deficiency. If additional time is needed to cure the deficiency, the applicant may request an extension of the time pursuant to R12-5-102. If the deficiency is not remedied in the time allowed, the application shall be deemed withdrawn.

Historical Note

Original rule, Subchapter C, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-408 renumbered from Section R12-5-78 (Supp. 93-3). Amended by final rulemaking at 14 A.A.R. 4524, effective January 31, 2009 (Supp. 08-4).

R12-5-409. Expired**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-409 renumbered from Section R12-5-79 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

R12-5-410. Expired**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-410 renumbered from Section R12-5-80 (Supp.

93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

R12-5-411. Expired**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-411 renumbered from Section R12-5-81 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

R12-5-412. Expired**Historical Note**

Adopted effective March 6, 1979 (Supp. 79-2). Section R12-5-412 renumbered from Section R12-5-82 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

Editor's Note: The following Section was amended by emergency rulemaking effective December 20, 2002 to November 18, 2003. The State Land Department filed a rulemaking package for the permanent Section October 8, 2003, without requesting an immediate effective date. The effective date of the permanent rule would have been December 7, 2003, creating a three-week "window" during which neither the emergency rule nor the amended permanent rule would have been in effect. To avoid this, the Department refiled the permanent rule with the Governor's Regulatory Review Council, this time requesting an immediate effective date. G.R.R.C. approved the refiled rule and filed it with the Secretary of State November 4, 2003, thereby resolving the issue (Supp. 03-4).

R12-5-413. Real Estate Broker Commissions

- A.** The Commissioner may offer a commission for the sale or long-term commercial lease of state land at public auction. In determining whether to offer a commission for the sale or long-term commercial lease of state land at public auction, the Commissioner shall consider the following factors:
1. The appraised value of the parcel being offered,
 2. The location and size of the parcel being offered,
 3. The terms of the sale or lease,
 4. The marketability of the land, and
 5. The best interest of the State Trust.
- B.** If a commission is offered for the sale or long-term commercial lease of state land at public auction, the Department shall pay the commission from the fees collected under A.R.S. § 37-108(A)(10)(a).
- C.** The Department shall publish the decision of the Commissioner to pay or not pay a commission for the sale or long-term commercial lease of state land and the amount and terms of the commission offered, if any, in the public notice of the auction.
- D.** Upon determination by the Commissioner that a commission will be offered on a sale or long-term commercial lease, a person holding an active real estate broker license in this state is eligible to receive the commission, from the Department, by registering with the Department the successful purchaser or lessee at public auction. A broker shall register himself or herself and the potential purchaser or lessee with the Department no later than three business days before the auction. The broker shall register in writing and include the following:
1. Name and address of the brokerage;
 2. Name and real estate license number of the broker and any real estate salesperson acting as an agent for the broker at the public auction;
 3. Name and address of the potential purchaser or lessee;
 4. Auction number, location, and parcel number of the land to be auctioned for sale or lease; and

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5. Signature of the broker or salesperson and the potential purchaser or lessee verifying that the broker or salesperson represents the potential purchaser or lessee and that together they have inspected the land to be auctioned for sale or lease.
- E. A broker shall submit registration meeting the requirements of subsection (D) by mail or hand-delivery to the Department's public counter, Phoenix, Arizona 85007. The Department deems registration received on the date postmarked if mailed or time-stamped if hand-delivered. A broker shall not register the following:
1. A potential purchaser or lessee who is registered with another broker for the same auction, or
 2. A governmental agency.
- F. The Department shall pay the commission to the broker representing the successful purchaser or long-term commercial lessee at the time of delivery of the certificate of purchase or patent, or lease, or after final disposition of any protests or appeals resulting from the auction, whichever occurs later.
- G. The Department shall not pay a commission to a broker if the Commissioner determines that the broker has violated this Section.
- H. For the purpose of this Section, the following definitions apply:
1. "Long-term commercial lease" means a lease granted on state land for commercial purposes to the highest and best bidder at public auction for a term in excess of 10 years, but not more than 99 years.
 2. "Commercial lease" means an agreement by which an owner of real property (lessor) gives the right of possession to another (lessee) for a specified period of time (term) and for a specified consideration (rent).

Historical Note

Adopted effective February 9, 1996 (Supp. 96-1). Section R12-5-413 amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 5151, effective December 20, 2002 for a period of 180 days (Supp. 02-4). Emergency rulemaking renewed under A.R.S. § 41-1026(D) at 9 A.A.R. 1963, effective May 23, 2003 for a period of 180 days (Supp. 03-2). Emergency rule repealed under A.R.S. § 41-1026(E); replaced by permanent Section R12-5-413 amended by final rulemaking at 9 A.A.R. 5038, effective November 4, 2003. For more information, see the Editor's Note preceding this Section (Supp. 03-4).

ARTICLE 5. LEASES**R12-5-501. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-501 renumbered from Section R12-5-100 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-502. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-502 renumbered from Section R12-5-101 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-503. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-503 renumbered from Section R12-5-102

(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-504. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-504 renumbered from Section R12-5-103 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-505. Time for Filing Conflicting Applications

- A. Unleased land. If an application is filed on unleased land, and a proposed lease, permit, or right-of-way document is offered to an applicant for review and signature, the Department shall not accept another application for the same purpose.
- B. Land under lease for the same purpose. The Department shall not accept a conflicting application for a lease unless the application is filed within the time prescribed by A.R.S. § 37-284.
- C. Land under permit for the same purpose where the use is exclusive. An applicant shall file a conflicting application for a permit on land for the same purpose within 60 days before expiration of the existing permit.
- D. For the purpose of this Article, conflicting applications are defined as two or more applications to lease State Trust surface land for the same purpose or two or more permit applications to use State Trust surface land for the same purpose.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-505 renumbered from Section R12-5-104 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

R12-5-506. Procedure in Processing Conflicting Applications

- A. If two or more applicants apply for a lease or permit on the same land for the same purpose, the Department shall send a Notice of Conflicting Applications to each applicant requiring each applicant to submit to the Department a statement of equities containing the basis of the applicant's claim to the lease or permit and to serve a copy upon the other applicants within 30 days from the date of the Department's Notice, unless the time is extended by the Department or by stipulation of the applicants. If an applicant fails to submit a statement of equities, the Department may examine evidence or records, or review testimony from a hearing conducted under subsection (E)(2) and make a decision regarding the conflicting applications. The Department shall make its decision regarding an application filed for lease or permit under this Section in the best interest of the Trust.
- B. An applicant shall have the statement of equities verified under oath before an officer authorized under the laws of this state to administer oaths, or sign the statement of equities accompanied by a certification under penalty of perjury that the information contained in the statement of equities is to the best of the applicant's knowledge and belief, true, correct, and complete. The statement of equities shall include information related to the factors considered under subsection (D).
- C. An applicant, within 10 days from the date of receipt of the statement of equities of another applicant, may file with the Department and if filed, shall serve upon other applicants, a response to the other applicant's statement of equities.
- D. In conducting an investigation and review, the Department shall consider the following factors:
1. An offer to pay more than appraised rental as an equity, if the Department determines not to go to bid on the conflict;

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2. Whether the applicant's proposed land use or land management plan is beneficial to the Trust;
 3. The applicant's access to or control of facilities or resources necessary to accomplish the proposed use;
 4. The applicant's willingness to reimburse the owner of reimbursable non-removable improvements;
 5. The applicant's previous management of land leases, land management plans, or any history of land or resource management activities on private or leased lands;
 6. The applicant's experience associated with the proposed use of land;
 7. Impact of the proposed use on future utility and income potential of the land;
 8. Impact to surrounding state land;
 9. Recommendations of the Department's staff; and
 10. Any other considerations in the best interest of the Trust.
- E.** After investigation and review of the statements of equities, the Department may:
1. Request additional information from an applicant;
 2. Conduct a hearing at the Department or another designated location at the earliest possible date, giving notice of time and place for hearing to all applicants;
 3. Award the lease or permit to an applicant;
 4. Reject all applications; or
 5. Proceed to bid according to A.R.S. § 37-284.
- F.** The bid process is as follows:
1. If the Department determines to proceed to bidding, the Department shall issue a Notice of Call for Bidding that states the time and place bids will be accepted including the minimum rental that will be accepted.
 2. The Notice shall specify the existence of a preferred right, if any. The Department shall include, with the Notice, a copy of the form of lease or permit that may be offered to the successful bidder. A bidder shall submit a written bid to the Department by 5:00 p.m. no later than 30 days from the date of the Notice. A bid shall be made on forms provided by the Department. The Department shall accept a bid form only with the original signature of the bidder. A bidder may either mail or deliver the bid in person to the Department.
 3. The Department shall not accept a bid from anyone other than an applicant named in the Notice of Call for Bidding.
 4. Unless subsection (F)(5) applies, the Department shall accept only one bid from each applicant. Once the bid is submitted, the Department shall not accept a second or substitute bid or any change to the original bid.
 5. If the bids of two or more applicants are the same, are also the highest bids offered, and there is no preferred right, the Department shall repeat the bid procedure under subsections (F)(1) and (2) with the following exceptions, until a single highest bid is submitted:
 - a. In a call for new bids, the Department shall establish a new minimum rental that equals the highest amount offered in the previous bidding.
 - b. The Department shall accept new bids only from the applicants who submitted the highest matching bids.
 6. The Department shall mail a Notice of Bid Results to all bidders. A bidder choosing to exercise a preferred right shall, within 15 days of the Department's issuance of the Notice of Bid Results, offer a bid matching the highest bid, in writing, on forms provided by the Department.
- G.** Nothing in this Section limits or diminishes the jurisdiction of the Department. This Section does not apply to an application for an oil or gas lease.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-506 renumbered from Section R12-5-105 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

R12-5-507. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-507 renumbered from Section R12-5-106 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-508. Application Confers No Right to Land

An application or permit for state land confers no right of occupancy, possession or use of said land until a lease or permit is issued thereunder or permission is granted in writing by the Commissioner. Provided, however, a prior lessee or permittee may occupy and use said land pending action on his application for renewal. In the event that the prior lessee or permittee should not be awarded a renewed lease or permit, the Commissioner may assess and collect from said lessee or permittee the reasonable value of the use of said land pending action upon the application to renew said lease or permit.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-508 renumbered from Section R12-5-107 (Supp. 93-3).

R12-5-509. Execution of Leases or Permits; Covenants; Effective Date and Completion of Lease or Permit

All leases and permits shall be signed by the lessee or permittee as provided by these rules and regulations and by the Commissioner or his Deputy, with the seal of the Department affixed thereto. All leases and permits shall contain such provisions, covenants, conditions and restrictions as may be prescribed by the Commissioner, hereinafter more particularly set forth under each type of lease. The effective date of the lease will be the date of application upon open land, or such other subsequent date as the Commissioner may prescribe. Upon lands previously leased, the date following the expiration date of the lease shall be the effective date; provided, that where the lands under lease have been reclassified, the effective date of the lease shall bear the date of such reclassification, if no appeal from reclassification is taken or if the Commissioner's decision is upheld if so appealed, or such other subsequent date as the Commissioner may prescribe.

Upon approval of the application to lease or permit and an appraisal or fixing of the rental value thereof, a lease or permit in duplicate will be mailed to the lessee or permittee, which lease or permit shall be signed in duplicate by the lessee or the permittee in the manner prescribed by these rules and regulations. Insert sheets which, when required, described the land being leased or for which permit is issued are a part of the lease or permit and shall be signed in the same manner as the lease or permit. A statement of the rental due and the permit or lease issuance fee will accompany the transmittal of the lease or permit. Upon the lease and permit and insert sheets, when required, being signed, they are to be returned to the Commissioner with the rental payment and lease or permit issuance fee in accordance with the statement rendered. When the lease or permit and insert sheets, when required, are received by the Commissioner, the same will be executed by the Commissioner as above provided and entered upon the records of the Commissioner. After execution by the Commissioner, one copy of the lease or permit, including the insert sheets when required, will be returned to the lessee or permittee with a receipt for the payment of rental.

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If the lease, permit and insert sheets, when required, are not executed by the lessee or permittee and returned to the Commissioner, together with the payment of the rental as indicated by the statement therefor forwarded with such instruments, within 60 days from the date of mailing by the Commissioner, the lease or permit will be declared to be null and void and of no force and effect, and the land will become open and available for leasing by other persons. Provided, however, that should the applicant object to the appraised rental value, he may appeal from said appraisal as provided by law and the rules and regulations of the Department to the Board of Appeals of the State Land Department without prejudice to his rights to the offered lease or permit.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-509 renumbered from Section R12-5-108 (Supp. 93-3).

R12-5-510. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-510 renumbered from Section R12-5-109 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-511. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-511 renumbered from Section R12-5-110 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-512. Assignments

- A.** A lessee or permittee of state lands not in default in his rentals and who has kept and performed all the conditions of his lease or permit may, but only with the written consent of the Commissioner, assign such lease or permit.
1. Application for assignment shall be made on the appropriate form prescribed by the Commissioner.
- B.** An application for assignment of a lease or permit made within the 30 days immediately preceding the end of any lease year of the pertinent lease or permit will not be accepted for filing by the Commissioner unless the next year's advance rentals have been made.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-512 renumbered from Section R12-5-111 (Supp. 93-3).

R12-5-513. Manner of Assignments

Except as otherwise provided by law or these rules and regulations, assignments may be for all or part of the lands covered by a lease or permit. An application for assignment by the lessee or permittee, together with an application for transfer and assumption of lease or permit shall be submitted upon forms furnished and approved by the Commissioner. The applications shall be accompanied by the required fees, together with the lease or permit being assigned. The application for such assignment and the application for transfer and assumption of a lease or permit shall be signed by the parties as provided in these rules and regulations and acknowledged before a notary public or other officer authorized to administer oaths. The Commissioner shall indicate on the application to assign and application for transfer and assumption of lease or permit his approval or disapproval of the application, which action shall be made of record by the Commissioner.

In the event the assignment is a partial assignment and only covers a part of the leased or permitted lands, the description of the lands

being transferred must be by legal subdivision or by metes and bounds based on an actual survey upon which acreage can be determined, together with a map or such survey if required by the Commissioner; otherwise no approval to said assignment and assumption will be granted by the Commissioner. An assignment may be only for a divided or undivided interest.

No assignment shall be made without the consent of all parties of record in the State Land Department in writing who may have a lien or encumbrance upon the lessee's or permittee's interest in said lease or permit.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-513 renumbered from Section R12-5-112 (Supp. 93-3).

R12-5-514. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-514 renumbered from Section R12-5-113 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-515. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Amended effective October 4, 1978 (Supp. 78-5). Section R12-5-515 renumbered from Section R12-5-114 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-516. Repealed**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-516 renumbered from Section R12-5-115 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

R12-5-517. Rentals

Rentals for leases and permits shall be as hereinafter fixed. All rentals must be paid annually in advance, except as may be provided in the lease or permit or otherwise authorized and directed in writing by the Commissioner.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-517 renumbered from Section R12-5-116 (Supp. 93-3).

R12-5-518. Rental Notices

If the rental is changed, the Commissioner shall notify the lessees and permittees at their last known address in the Commissioner's records; lessees and permittees shall be notified by the Commissioner of a change in rental, by sending a notice thereof by mail at least 30 days prior to the date upon which said rental is fixed by the Commissioner to be due, and any such notice shall be presumptively deemed to have been received on the day following which such notice is deposited in the U.S. Mail by the Commissioner. In all other cases, the Commissioner shall mail out rental notices which rents shall be paid within 30 days or on the due date whichever is the later; the Commissioner shall assume no responsibility if the notices are not acted upon.

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Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-518 renumbered from Section R12-5-117
(Supp. 93-3).

R12-5-519. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-519 renumbered from Section R12-5-118
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-520. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-520 renumbered from Section R12-5-119
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-521. Modification or Amendment of Existing Lease or Permit

No existing lease or permit shall be modified or amended for a term any different than the term set forth therein unless mutually agreed upon by the Commissioner and the lessee or permittee.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-521 renumbered from Section R12-5-120
(Supp. 93-3).

R12-5-522. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-522 renumbered from Section R12-5-121
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-523. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-523 renumbered from Section R12-5-122
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-524. Sale, Mortgage or Lien on Interest of Holder of Lease or Permit

The interest of the holder of any lease or permit shall be subject to sale, mortgage or other lien to the same extent as patented land. No contract of sale, mortgage or other lien shall become effective unless and until an executed or conformed copy thereof showing the recording data is filed with the Commissioner. When so filed, no assignment of the lease or permit affected shall be made without the consent of all parties. Upon the foreclosure of a contract of sale, mortgage or other lien filed with the Commissioner, the Commissioner shall assign the instrument in question to the party entitled thereto.

No action shall be taken by the Commissioner affecting the rights of the lienholder, mortgagee or contract purchaser or seller affecting the canceling, modification or declaration of the lien or permit to be forfeited without written notice to all parties in interest.

If a mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment, receives full satisfaction of a mortgage, deed of trust or other obligation evidence of which has been filed with the Commissioner, he shall, at the request of the person making satisfaction or the Commissioner file with the Commissioner a sufficient release or satisfaction of mortgage or deed of release of the mortgage or deed of trust or lien.

Filing of these documents in no way obligates the Commissioner to the terms of them.

The Commissioner may on his own initiative, or at the request of a lessee or permittee, request of any mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment who has filed with the Commissioner evidence of an obligation as set forth above, to notify the Department in writing as to the principal balance remaining due, if any, on such obligation; such request shall be made in writing and shall be mailed by the Commissioner to the last known address of record of such obligee -- the failure of such obligee to respond within 90 days from the date of receipt of such notice shall ipso facto be deemed as a consent by such obligee to any action that may be taken thereafter by the Commissioner with respect to any land covered by such mortgage, deed of trust, contract of sale; or other instrument evidencing an obligation.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-524 renumbered from Section R12-5-123
(Supp. 93-3).

R12-5-525. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-525 renumbered from Section R12-5-124
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-526. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-526 renumbered from Section R12-5-125
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-527. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-527 renumbered from Section R12-5-126
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-528. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-528 renumbered from Section R12-5-127
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-529. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-529 renumbered from Section R12-5-128
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-530. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-530 renumbered from Section R12-5-129
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-531. Expired

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Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-531 renumbered from Section R12-5-131 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-532. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-532 renumbered from Section R12-5-131 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-533. Trespass on State Land

- A.** Whoever knowingly and wilfully commits a trespass upon state lands, either by cutting down or destroying any timber or wood standing or growing thereon, or by carrying away any timber or wood therefrom, or by mowing, cutting, or removing any hay or grass thereof or therefrom or the grazing of livestock thereon, unless he shall have pending an application for the leasing of such lands, or by extracting or removing any oils, gases, coal, minerals, earth, rocks, fertilizer or fossils of any kind or description thereon or therefrom, or who, without right, injures or removes any building, fence or improvements thereon, or unlawfully occupies, plows or cultivates any of said lands, or negligently or wilfully exposes growing trees, shrubs, or undergrowth standing thereon to danger or destruction by fire, shall be guilty of a misdemeanor.
- B.** Whoever commits any trespass upon state lands, as above stated, shall also be liable in a civil action, brought in the name of the state in the county in which the trespass was committed, for three times the amount of the damage caused by such trespass, if the trespass was wilful, but for single damages only, if casual or involuntary. In the case of unfenced state land included within a fenced range, it shall be prima facie evidence of wilful trespass to permit the grazing of livestock thereon, unless the defendant shall have pending an application for the leasing of such lands. The damage referred to will be the rate per acre as found for the year for the appraised carrying capacities of the land. The Commissioner may also, without legal process, seize and take any product or property whatsoever unlawfully severed from such land, whether the same has been removed from such land or not, and may dispose of the product or property so seized in the manner prescribed by law for disposing of the products of state lands. The county officers of the several counties shall report to the Commissioner any trespass upon state lands which may come to their knowledge.
- C.** All lessees and permittees and holders of Certificates of Purchase are requested to inform the Commissioner in writing of any trespass committed on state lands, giving full information concerning such acts of trespass and by whom the same has been committed.
- D.** It shall be unlawful to utilize any type of motorized vehicle for travel on state trust lands except:
1. By the general public using public roads and highways that cross state trust lands;
 2. By lessees and permittees of the Department acting within the limits of their leases and permits, employees of public agencies acting within the scope of their duties, and any persons using military, fire, search and rescue, or law enforcement vehicles for emergency purposes; and
 3. By holders of valid Arizona hunting, fishing, or trapping licenses within the scope of such license:
 - a. On existing roads; or

- b. For cross-country travel without damaging croplands, improvements, or cultural or historic sites to pick up legally killed big game animals.
- E.** For the purpose of this Section, the following definitions apply:
1. "Cross-country travel" means travel over the countryside other than on existing roads.
 2. "Existing road" means any maintained or unmaintained way, road, highway, trail, or path that has been utilized for motorized vehicular travel and clearly shows or has a history of established vehicle use. A one-time use or a single set of vehicle tracks created by an off-highway vehicle does not constitute a road under this definition.
 3. "Motorized vehicle" means any vehicle deriving motive power from any source other than muscle or wind.
 4. "Public roads and highways" means the entire width between the boundary lines of every public road or highway maintained by the Federal Government, the state, the Department, or a city, town, or county if any part of the road or highway is generally open to the use of the public for purposes of vehicular travel.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-533 renumbered from Section R12-5-132 (Supp. 93-3). Amended effective May 20, 1994 (Supp. 94-2).

R12-5-534. Closing Land to Recreational Use

- A.** The Commissioner may close Trust land in a specific area to recreational use for any of the following purposes when the Commissioner determines that it is in the best interest of the Trust and this state to restrict recreational access to reduce liability to the state or protect the public:
1. Dust abatement: To abate dust caused by the unauthorized use of motorized or non-motorized off-road vehicles on Trust land;
 2. Human-caused hazardous environmental conditions: Conditions posing a risk to the public health or safety resulting from human-caused environmental hazards. Examples include illegal dumping of toxic or hazardous materials, leaking or abandoned underground storage fuel tanks, abandoned or unauthorized landfills, abandoned airfields used for pesticide or herbicide storage, abandoned mine workings, and other sites with similar characteristics;
 3. Naturally-occurring hazardous conditions: To reduce the risk from naturally-occurring conditions posing a risk to public health or safety. Examples include fissures, sink holes, and flood-damaged areas; or
 4. Damaged Trust lands: For protection or remediation of Trust lands that have been damaged by toxic or hazardous materials, mining, fires, off-road vehicles, or other human-caused or natural occurrences.
- B.** The Commissioner shall, by order, close land only to the extent necessary to prevent unauthorized recreational access, and shall specify the period of time deemed necessary for closure.
- C.** The Department shall post the order of Trust land closure to recreation in the Department's Public Records Room at 1616 W. Adams, Phoenix, AZ 85007 and in the Department's District Offices. The Department shall maintain evidence of public notice of Trust land closure in the Department's records.
- D.** For the purpose of this Section, the following definitions apply:
1. "Dust abatement" means to minimize the amount of particulate matter entrained into the air by requiring mea-

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asures to prevent or mitigate particulate matter creation or emissions.

2. "Environmental hazard" means a chemical, physical agent, biological toxin, or other pollutant that is present in the environment and that may cause human illness or injury.
3. "Remediation" means an environment cleanup or other method used to remove or contain hazardous materials, stabilize mining waste, stabilize soil damage, or restore rangeland or native vegetation.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-534 renumbered from Section R12-5-133 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3). New Section made by final rulemaking at 12 A.A.R. 481, effective April 8, 2006 (Supp. 06-1).

R12-5-535. Expired**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-535 renumbered from Section R12-5-134 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

ARTICLE 6. IMPROVEMENTS (RESERVED)**ARTICLE 7. SPECIAL LEASING PROVISIONS****R12-5-701. Repealed****Historical Note**

Adopted effective May 28, 1981 (Supp. 81-3). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-701 renumbered from Section R12-5-150 (Supp. 93-3). Section repealed by summary action with an interim effective date of February 4, 2000; filed in the Office of the Secretary of State January 11, 2000 (Supp. 00-1). Interim effective date of February 4, 2000 now the permanent effective date; filed in the Office of the Secretary of State August 1, 2000 (Supp. 00-3).

R12-5-702. Agricultural Leases

- A. Land subject to agricultural lease; term of lease
 1. All state lands classified as agricultural land are subject to agricultural leasing for such term as may be established by the Commissioner but in no event for a term of more than ten years.
 - a. The term of an agricultural lease of undeveloped agricultural land shall not exceed two years.
- B. Application for lease of lands not classified as agricultural. An application for an agricultural lease of lands not classified as agricultural shall be accompanied by an application for reclassification as provided by the general rules and regulations governing leasing of state lands.
- C. Application for agricultural lease
 1. Application for an agricultural lease shall be made upon the appropriate form as provided by the Department and in accordance with the general rules and regulations governing the leasing of state lands.
 - a. Each application shall be limited to the lands in one section or part thereof.
- D. Rental rates; appraisal
 1. No agricultural lease shall provide for a rental less than the appraised rental value of the leased land, and in no event a rental less than \$1.00 per acre per annum.
2. Minimum rental for each agricultural lease shall be \$10.00 per annum; provided, however, that the minimum rental of \$10.00 per annum shall apply to each section or portion thereof covered by the lease.
- E. Number of leases issued on farm unit
 1. Ordinarily, leases issued by the Department will combine into one lease, all contiguous and adjoining state agricultural lands within the lessee's farm unit.
 - a. It is recognized that such consolidation may work hardship on the lessee because of the resultant common due date of rentals.
 - i. A lessee thus affected and desirous of dividing his lease may make application to the Department to do so. Such application shall be in writing, setting forth the reasons therefor in such detail as to enable the Department to act with full knowledge of the circumstances.
 - ii. If such application is approved by the Department, division of the lease will be made in as reasonable a manner as possible, compatible with the best interests of the state.
- F. Agricultural lease form; provisions. Agricultural leases shall be made on the appropriate form provided by the Department, and shall contain such provisions and supplemental conditions as may be prescribed by the Commissioner in accordance with the provisions of the law and Department rules and regulations.
- G. Sequence of development and improvement of lands under agricultural development lease
 1. The first allowable acts of development on the leased premises under an agricultural development lease shall include only those necessary and incident to the acquisition of a water supply adequate for the development of the leased acreage.
 2. The placing of any improvement not necessary to the accomplishment of subsection (A) above shall not be approved until after the acquisition of such water supply has been accomplished or assured and in all cases only after proper application made and approval had in accordance with the provisions of the Department's rules and regulations in regard to permits to place improvements.
 3. When rules and regulations promulgated by state or federal regulatory agencies would affect state lands or crops grown thereon, and when, in his opinion, the best interests of the state would be so served, the State Land Commissioner may require the lessee to conform with these regulatory practices to prevent the deterioration of the soil or crops grown thereon. If the lessee fails to comply with the requirements of the Commissioner, the Commissioner may have the required remedial work accomplished and bill the lessee the amount due the Department. Failure by the lessee to pay for such remedial work will, after the proper notice, subject the lease to forfeiture for nonpayment and noncompliance.
- H. Application for renewal; right of renewal; developmental lease
 1. Application for renewal of an agricultural lease shall be made on the appropriate form provided by the Department and in accordance with the general rules and regulations governing leasing of state lands.
 - a. A separate application form shall be submitted for each section of land or portion thereof within the lease.
 - b. The filing fee for each application shall be the same as for an initial application.
 2. A preferred right of renewal of an agricultural development lease shall not extend to a lessee who has not

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acquired a water supply deemed by the Commissioner to be adequate.

3. Proper diligence on the part of the lessee toward complete agricultural subjugation and development of the land under lease shall be the measure for the Commissioner's determination as to whether renewal of an agricultural development lease is in the best interests of the State.

I. Application to assign lease

1. Application to assign and application for assumption of lease shall be made on the appropriate form provided by the Department and in accordance with the general rules and regulations governing leasing of state lands.
 - a. Upon approval of the application, the assignment will be noted on the lease and made of record in the Department.

Historical Note

Original rule, Art. III, Subchapter B, Ch. II (Supp. 76-4). Amended by emergency action effective June 20, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Section R12-5-702 renumbered from Section R12-5-151 (Supp. 93-3).

R12-5-703. Commercial Leases

- A.** Scope of commercial leasing rules. An applicant for a commercial lease shall be subject to the general leasing rules enumerated, *supra*. Such applicant shall also be subject to the commercial leasing rules set out, *infra*. In a commercial leasing situation where the general leasing rules and the commercial leasing rules conflict, the latter rules shall be controlling.
- B.** Lands subject to commercial lease. All state lands classified as suitable for commercial purposes are subject to a commercial lease. Unless it is deemed to be for the best interests of the state, it is not the policy of the State Land Department to allow and issue commercial leases which will seriously interfere with, damage, or break up operations of an established ranch or farm unit. There is no limit to the amount of commercial land that may be leased to any one individual, corporation, partnership or association.
- C.** Term of commercial lease. State lands suitable for commercial purposes may be leased for a period of not more than ten years without advertising, or subject to such lesser term as may be established by the Commissioner if he deems such lesser term to be in the best interests of the state.
- D.** Applications to lease state lands not classified as commercial. Applications to lease lands not classified as commercial shall be accompanied by a petition for reclassification as provided by the general leasing rules.
- E.** Application for commercial lease; application for commercial lease renewal. All applications for commercial leases and all applications for renewal of commercial leases shall be made on such form or forms as may from time to time be prescribed by the Commissioner and provided by the Commissioner. A commercial lease before the time of execution or renewal will be subject to the provisions and supplemental conditions and restrictions as may be added thereto and the provisions of law and these rules.
- F.** Additional conditions for commercial leases.
 1. Unless otherwise directed by the Commissioner in writing, the lessee shall:
 - a. Notify the Commissioner in writing as to the number of any license issued by the state Tax Commission of Arizona to the lessee, any sublessee, any concessionaire or any assignee; such notice shall also include the exact name in which license is issued.
 - b. Keep and maintain an accounting system satisfactory to the Commissioner.
 - c. Allow access to accounting records during business hours where the same are kept for the purpose of inspecting and auditing the same.
 - d. File with the Commissioner, if requested by the Commissioner, a statement of the total gross sales made for the period specified. Unless otherwise directed by the Commissioner, this report may be made by filing with the Commissioner the requested information on the form used by the state Tax Commission.
 - e. Acquire consent in writing from the Commissioner for any improvements made on the site.
 - f. Acquire consent in writing for moving buildings from other premises onto the leased premises. All buildings and structures shall be of acceptable construction.
 - g. Keep any gas, electric, power, telephone, water, sewer, cable television and other utility or service lines under ground unless prohibited by law.
 - h. File with the Commissioner, prior to the approval of any application to place improvements, plans and specifications showing the nature, location, cost, quality of proposed material, size, area, height, color, shape and design of the proposed improvements. The Commissioner may also require a perimeter survey of the leased premises upon which shall be shown the location of the completed improvements. The lessee shall also submit grading plans.
 2. The above conditions shall apply to any assignee, sublessee or concessionaire of the original lessee.
- G.** Maps required as part of application for commercial lease. The applicant shall furnish such information map of the lands to be leased as the Commissioner may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition, the Commissioner may require an aerial photograph or photographs of such lands as he may specify in a request therefor.
- H.** Minimum rental rates for commercial leases. No commercial lease shall provide for an annual rental of less than the appraised rental value of the land and in no event shall the rent be less than 5¢ per acre per annum or less than \$10.00 per annum per lease.
- I.** Division of leases. The State Land Commissioner may at any time divide a commercial lease into two or more separate leases when such division would, in the opinion of the Commissioner, facilitate administration and management of the subject lands or would result in separating one commercial use from another. The rent for the lease year in which such division is made shall be allocated to the separate leases.
- J.** Sublease of commercial lease by lessee. No commercial lessee shall sublet his lease without the written permission of the Commissioner. Approval of a sublease may be granted at the discretion of the Commissioner and shall be obtained by the lessee submitting for approval of the Commissioner the sublease executed in triplicate. Upon the approval by the Commissioner, two copies of the sublease, with the Commissioner's approval and any limitation to such approval endorsed by the Commissioner thereon will be returned to the lessee, one copy thereof being retained in the files of the Department.
- K.** Application to assign lease. Application to assign and application for assumption of lease and transfer shall be made upon such forms as may from time to time be prescribed by the Commissioner; upon the approval of the application, the action taken by the Commissioner will be noted upon the lease and made of record in the Department.

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- L.** Use of state lands; failure to use. No lessee or permittee shall use lands under permit or lease except for the uses and purposes specifically set forth in the lease or other such uses or purposes as may be subsequently authorized by the Commissioner in writing.
- M.** Rights of commercial lessee or permittee. All leases or permits granted by the Commissioner are only a license or permit to use the land described in the lease or permit for commercial purposes in a manner compatible with the terms of said lease or permit. The state of Arizona reserves the right to grant other leases or permits for the use of said lands or the removal of natural products therefrom.
- No lessee or permittee has the authority or right to issue any person any right to the use of said land or the removal of any products therefrom, but such right to use vests solely in the Commissioner and must be granted by the Commissioner in writing.

Historical Note

Original rule, Art. V, Subchapter B, Ch. II (Supp. 76-4).
Amended by adding subsection (N) as an emergency effective January 9, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired.
Readopted without change as an emergency effective June 16, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Section R12-5-703 renumbered from Section R12-5-152 (Supp. 93-3).

R12-5-704. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-704 renumbered from Section R12-5-153 (Supp. 93-3).
Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-705. Grazing Leases

- A.** Definitions. Unless the context otherwise requires, the words hereinafter defined shall have the following meaning when found in these rules, to wit:
1. "Grazing lands" means lands which can be used only for the ranging of animals.
 2. "Carrying capacity" or "average annual carrying capacity" means the average number of animal units which can be supported by a section of grazing land with due consideration for sustained production of the forage consistent with conservative range management.
 3. "A section of land" for appraisal of carrying capacity purposes means an area of land consisting of 640 acres.
 4. "Animal unit" means one weaned beef animal over six months of age, or one horse, five goats, or five sheep, or the equivalent thereof.
 5. "Average market price of cattle" means the average price by the hundredweight received during the calendar year under consideration by producers of cattle, exclusive of calves, in the states of Arizona, New Mexico, California, Utah, Nevada, Colorado, Wyoming, Montana, Idaho, Washington and Oregon, as determined by the Bureau of Agricultural Economics, United States Department of Agriculture, and, if that service is not available, from such sources as the Commissioner determines best to establish said price.
- B.** Qualifications to leasing grazing lands. Any person of the age of 21 years or over, a citizen of the United States, or who has declared an intention to become a citizen of the United States, or any firm, association or corporation which has complied

with the laws of the state, shall be qualified to lease state land for grazing purposes.

- C.** Applications for grazing lease and renewals. Application for a grazing lease shall be made upon Land Division form and an application for renewal thereof shall be made upon Land Division form in accordance with the general rules and regulations relating to the leasing of state lands. Only one section or subdivision thereof may be applied for on one application for an initial lease. Application for renewal of an existing lease may include an entire ranch unit or any part thereof; provided, however, the filing fees must be paid in the same manner as in the original application.
- An applicant for an initial lease shall fill out the form in complete detail. An applicant for a renewal of an existing lease, if he has an up-to-date and current statement of his holdings within the ranch unit used in connection with the lands sought to be leased, will not be required to fill out in detail answers to questions concerning his holdings appearing on the applicant form.
- D.** Land subject to grazing lease and term of lease. All state lands classified as grazing lands, not under lease, are subject to grazing lease for a period of not more than ten years without advertising, or for such lesser term as may be established by the Commissioner if he deems such lesser term to be to the best interests of the state. It is the policy of the Department not to offer open land for lease within an established ranch unit without first offering said lands to the owner or the person having control of the lands in such ranch unit. There is no limit to the amount of grazing land that may be leased to any one individual, corporation, partnership or association.
- E.** Application to lease lands not classified as grazing. Applications to lease lands not classified as grazing shall be accompanied by a petition for reclassification as provided by the general rules and regulations relating to the leasing of state lands.
- F.** Rental rates of grazing land; appraisal. No grazing lease shall provide for a rental of less than the appraised rate of the land, and in no event less than 2¢ per acre per annum, or a minimum of \$2.50 per annum per lease, said minimum of \$2.50 per annum per lease applying to one section or portion thereof. The Commissioner shall appraise all grazing land on the basis of its annual carrying capacity. The annual rental rate for grazing land shall be the amount found by multiplying the carrying capacity of the lands by the annual rental rate per animal unit. The annual rental rate per animal unit shall be 22% of the average market price of beef for the preceding year. The annual carrying capacity is determined by a field appraisal by the Department, and the basis for said appraisal is the average carrying capacity of the land over a ten-year period. Notice of the appraised rental of the land will be contained in the annual billing statement which will be sent to the lessee by registered mail unless he has previously signified his acceptance of said carrying capacity together with the Commissioner's final decision regarding the appraised rental. Prevailing annual rental schedules will be published annually and furnished each lessee at the time of mailing the notice of appraised rental. An appeal from any final decision of the Commissioner relating to the appraisal of lands may be taken to the Board of Appeals as provided in the general rules and regulations relating to state lands.
- G.** Number of leases issued on ranch unit. Leases issued by the Department will include all state grazing lands within the ranch unit in one lease unless a hardship results therefrom to the lessee, in which case the lessee may at his election divide the state lands in his ranch unit in not more than four separate leases in such a manner that lease rentals will not become due

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and payable at the same time but will be payable on an approximate quarterly or semi-annual basis. To divide a ranch unit it is necessary for the lessee to apply in writing or in person to the Department, supplying sufficient information in order that a division of the state lands in his ranch unit can be separated topographically or by an exact line. In such cases, instead of one lease covering all the state lands in a ranch unit being issued, additional leases may be issued with different dates of payment of rentals.

- H. Form of grazing lease and provisions thereof. The form of grazing lease offered by the Department to an applicant will be on Land Division form No. A-11 and will be subject to the provisions and supplemental conditions therein contained and such other conditions as may be added thereto and the provisions of law and these rules and regulations.
- I. Rights of grazing lessee. All grazing leases granted by the Commissioner are only a license to graze livestock and to use the land described in the lease in a manner compatible with the terms of the lease. The state of Arizona reserves the right to grant other forms of leases or permits for the use of said lands or the removal of natural products therefrom. No grazing lessee has the authority or right to issue to any person any rights to the use of said lands or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.
- J. Sublease or pasturage agreement. No grazing lessee shall sublet his lease, sell or lease pasturage of lands embraced in his lease without the written permission of the Commissioner. Approval of a sublease or pasturage agreement may be granted at the discretion of the Commissioner and shall be obtained by the lessee submitting for approval of the Commissioner the sublease or pasturage agreement executed in triplicate. Upon the approval by the Commissioner, two copies of the sublease or pasturage agreement, with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon, will be returned to the lessee, one copy thereof being retained in the files of the Department.
- K. Carrying capacity and application to exceed the same. No grazing lessee, sublessee or users under a pasturage agreement shall graze, without permission of the Commissioner, in excess of 110% of the carrying capacity as previously determined by the Commissioner upon state lands under lease within the exterior boundaries of any one ranch unit or units in the same general locality jointly operated. Approval to exceed the carrying capacity may be obtained by submitting a written request therefor. The request should contain the number of head of animals the lessee, sublessee or user desires to place upon the leased lands in excess of 110% of the carrying capacity, together with a statement as to how long the additional animals will remain upon the leased lands. If the Commissioner approves said request, the lessee, sublessee or user will be notified of such approval of increase in the carrying capacity and the period granted therefor. In the event of the approval of any such excess the Commissioner shall assess and collect the rental for such excess as provided by law and these rules and regulations.
- L. Cultivation and growing of crops on grazing land. State land under grazing lease is limited to the ranging of animals only and may be cultivated and crops grown thereon only with the approval of the Commissioner. Upon approval of the Commissioner the land may be cultivated and crops grown thereon provided such crops are forage crops in nature that are pastured by animals or, if severed from the land, are fed to animals upon the ranch unit. Under no circumstances may the lessee grow crops commercially under the provisions of a grazing lease. In the event any crops are grown with the

approval of the Commissioner which will be pastured or removed from the land for use at other times of the year upon the ranch unit, the carrying capacity will be adjusted in accordance with the forage crops grown.

- M. Cutting of timber, standing trees or posts. The lessee shall not cut or waste, nor allow to be cut or wasted, any timber or standing trees growing on the leased land without the written consent of the Commissioner, except for fuel for domestic uses or for the necessary improvements upon the land; provided, however, that nothing herein contained shall be construed to permit the cutting of saw timber for any purpose except with the written consent of the Commissioner.
Posts cut primarily from cedar, mesquite and juniper trees may be used for the erection and use of improvements by the lessee upon state lands without cost, provided the written consent of the Commissioner is first obtained. Such posts may not be used on other than state lands without payment therefor. The lessee is required to file an affidavit with the Department indicating the number of posts cut, the number used for improvement of state land and the number used on other than state lands or stockpiled for future use. At the time approval to cut posts is granted by the Commissioner, the price will be determined by him, which will be comparable to the price of posts from the United States Forest Service, and the price will be payable at the time the affidavit indicating the number of posts cut is filed with the Department. The Commissioner, or his representative, upon the granting of approval to cut posts, will from time to time visit the lessee to determine the number of posts cut. The Commissioner recognizes that the removal of cedars, mesquite and juniper trees from grazing lands is a conservation measure that will maintain or increase the range carrying capacity and that the removal of these trees in most cases would benefit state lands.
In the event the lessee does not desire to purchase the trees as above provided, the Commissioner, if he deems it for the best interest of the state, may sell the same under such terms and conditions that he may require.
A purchaser other than a lessee shall not injure the lessee's surface rights and improvements or interfere with the lessee's use of the land under lease to him and may be required to file a surety bond with the Commissioner in such amount and under such conditions as to indemnify the lessee for any damage which may result due to his removal of the trees.
- N. Application to assign lease. Applications to assign and application for assumption of lease and transfer shall be made upon Land Division form No. A-13-1 and in accordance with the general rules and regulations relating to the leasing of state lands. Upon approval of the application, the assignment of the lease will be made by the Commissioner upon the lease where indicated and made of record in the Department.
- O. Use of state lands; failure to use. No lessee or permittee shall use lands under lease or permit to him except for grazing purposes unless authorized by the Commissioner in writing.
Applications for a special use of lands under permit or lease to a lessee or permittee for purposes other than grazing shall be made in writing in triplicate, and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications to lease. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the lessee, one copy thereof being retained in the files of the Department.
Failure of any lessee or permittee to use the land for the purposes for which he holds a lease or permit, without having been authorized so to do by the Commissioner in writing, may,

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in the discretion of the Commissioner, subject said lease or permit to forfeiture or to cancellation as provided by law and these rules and regulations.

- P. Posting to prohibit hunting and fishing on state land. State land under lease or permit may not be posted to prohibit hunting and fishing without the consent of the Arizona Game and Fish Commission.

Historical Note

Original rule, Art. II, Subchapter B, Ch. II (Supp. 76-4).
Amended effective September 26, 1978 (Supp. 78-5).
Section R12-5-705 renumbered from Section R12-5-154 (Supp. 93-3).

R12-5-706. Expired**Historical Note**

Original rule, Art. IV, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-706 renumbered from Section R12-5-155 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

ARTICLE 8. RIGHTS-OF-WAY**R12-5-801. Rights-of-way****A. Definitions**

1. "Commissioner" means State Land Commissioner.
2. "Department" means State Land Department.
3. "Right-of-way" for the purpose of these rules means a right of use and passage over or through state land for such purpose as the Commissioner may deem necessary.
4. "Lease" means any lease on state land in existence at the time applicant applies for right-of-way, or granted thereafter for either surface or subsurface use.
5. "Patent" means a document used by the State Land Department to convey title to land.
6. "Site" means a reservoir for storage of water; a location for a dam, a power plant or an irrigation plant, and for other purposes for public uses. (Not to include workings for the removal of sand, gravel and other road materials.)

B. Miscellaneous rules

1. Scope. These rules and regulations are general rules implementing Article 10, Title 37-461, Arizona Revised Statutes, providing for grants of rights-of-way and sites for public purposes, and shall prevail over and supersede any existing policy or procedure of the Department to the extent that they are in conflict therewith.
2. State land subject to application. Any state-owned land shall be subject to application, provided that the proposed use does not unalterably conflict with other existing rights.

C. Application for right-of-way

1. Qualifications of applicant
 - a. Any citizen of the United States, partnership or association of citizens, or a corporation organized under the laws of the United States or any state or territory thereof, and who are authorized to transact business in the state, and any governmental agency of the state or political subdivision and municipal corporations thereof, may apply to the Department for a right-of-way on, over or through state land.
 - b. Application for right-of-way shall be made upon forms provided by the State Land Department.
2. Area covered by application and right-of-way. Separate application shall be made for each county crossed. Data for each section will be shown separately.
3. Information to be furnished by the applicant
 - a. The application for a right-of-way shall be in such form as the Commissioner may prescribe, shall be

filed with the Department by the applicant or by an authorized agent for the applicant, and shall be required to furnish the Department the following information as the Commissioner may prescribe.

- i. Name and address of applicant.
 - ii. Statement whether applicant is an individual, partnership or corporation, or governmental agency of the state or political subdivision and municipal corporation thereof.
 - iii. Statement of citizenship, when applicable.
 - iv. If a corporation:
 - (1) Name.
 - (2) State of incorporation.
 - (3) Arizona business address.
 - (4) Affirmation of authority to do business in Arizona.
 - v. Age and marital status, when applicable.
 - vi. Description, according to the public land survey of the land for which application is being made.
 - vii. Width of the right-of-way.
 - viii. The nature of the right-of-way (the right-of-way is temporary or permanent; the right-of-way requires exclusive use or to what extent; a right-of-way through a given area).
 - ix. A survey of the land for which application is being made showing distance and direction from a known cadastral survey point in each section.
 - x. Location of improvements or crops on land under application over which proposed routes of right-of-way will pass (information required in (ix) and (x) shall be conveyed by means of accurate plat or drawing accompanying the application form).
 - xi. The applicant shall furnish evidence from surface lessee and all other right holders in the land applied for giving consent to the new right-of-way or objection thereto.
- b. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the applicant to furnish such additional information as the Commissioner may deem necessary.
4. Rights of surface and subsurface lessees or permittees
 - a. The Commissioner has the right to grant rights-of-way without the consent of the surface or subsurface lessee.
 - b. When the applicant for a right-of-way and any existing right holder do not agree on the appraised value of damages to the right holder, the applicant for right-of-way may apply to the Commissioner to appraise the value of any improvements that may be injured or damaged. The cost of any such appraisal shall be paid by the applicant for right-of-way.
 - c. In cases where to utilize the right-of-way applied for, it is necessary to cut a fence belonging to the surface lessee or otherwise enter through a fence, the installation of a standard cattle guard or other facilities in accordance with such specifications as the Commissioner may prescribe, may be required by the Commissioner as a condition to the granting of the right-of-way.
 5. Filing application for right-of-way; fees; rejection; withdrawal
 - a. Each application filed with the Department shall be accompanied by a filing fee.

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- b. Each application filed shall first be checked for its completeness and when it meets the requirements shall be made of record in the Department.
 - c. Rental or other payment for each right-of-way shall be determined by the Commissioner after appraisal.
 - i. Rental for rights-of-way granted without public auction sale shall be determined by the Commissioner after appraisal.
 - ii. Rights-of-way for exclusive use or perpetual in nature (except rights-of-way granted to governmental agencies of the state or political subdivisions and municipal corporations thereof) shall be sold at public auction as provided under the laws for sale of state land after appraisal.
 - iii. Rights-of-way for governmental agencies of the state or political subdivisions and municipal corporations thereof may be granted by the Department for an indefinite period for so long as used for the purpose granted after full payment of the appraised value of the right-of-way has been made to the State Land Department.
 - (1) All appraisals of rights-of-way shall be established by the State Land Commissioner.
 - (2) The appraised value of the right-of-way shall be determined in accordance with the principles established in A.R.S. §§ 12-1122 and 37-132.
6. Right of applicant to use of land
- a. The filing of an application for a right-of-way shall not confer upon the applicant any right to use the area applied for.
 - b. A right of entry to map and survey or for any other purpose in the area to be applied for may be obtained from the Commissioner on forms provided by the Department.
7. Termination of use; abandonment
- a. When a right-of-way holder has no further use of the area, he may surrender the contract to the Commissioner.
 - b. The Commissioner may determine that a right-of-way is abandoned when the proper showing is made that the area under right-of-way is no longer needed or used for the purpose applied for.
 - c. The Commissioner shall give right-of-way holder 30 days to show cause why a right-of-way should not be cancelled. If within 30 days the right-of-way holder fails to correct the defect, the Commissioner may issue an order of abandonment.
8. Issuance of a right-of-way
- a. Upon the compliance by the applicant with the requirements set forth by the Commissioner, the right-of-way contract shall be issued.
 - b. The failure of the applicant to execute and return the right-of-way contract with all monies required within 60 days from the date of mailing by the Department, the Commissioner may issue a cancellation order for non-completion of the contract.
 - c. The date of the right-of-way contract shall commence on the date the contract is mailed by the Department to the applicant.
- D. Right-of-way**
1. Term of right-of-way. The term of the right-of-way shall be determined by the Department and shall be set forth on the right-of-way contract.
 2. Right-of-way rentals or other payments. The rental or any other payments required for rights-of-way shall be determined by the Commissioner after appraisal.
 3. Possession and right of use of right-of-way area. The right is granted for the use of the area described in the right-of-way contract subject to any existing prior rights and subject to any rights the Department shall grant hereafter.
 4. Provisions of the right-of-way
 - a. Every right-of-way contract shall provide for:
 - i. Payment to the Department of the amount established by the Commissioner after determination of the true appraised value.
 - ii. The installation and construction of necessary machinery, equipment and facilities with the right of removal within 90 days after expiration or termination of the right-of-way.
 - iii. Fencing and other protective requirements deemed necessary by the Commissioner.
 - iv. That the grantee shall restore the surface of the land within the right-of-way to a reasonable condition as required by the Commissioner.
 - v. That the grantee will indemnify, hold and save grantor harmless against all loss, damage, liability, expenses, costs and charges incident to or resulting in any way from the use, condition or occupation of the land.
 - vi. A statement of the purpose for which the right-of-way was granted.
 - vii. The right of the grantee to assign the right-of-way, provided that such an assignment shall not become effective until approved in writing by the Commissioner as being in the best interests of the state and until a copy thereof is filed with the Department.
 - viii. The right of termination of the right-of-way by the grantee at any time during its term by giving the Commissioner 30 days notice of termination in writing, provided that the grantee is not delinquent in any payments and has complied with all conditions on the date of termination.
 5. Assignment of right-of-way; sublease prohibited
 - a. Grantee of each right-of-way contract, if not in default of rental or other payments, and who has kept and performed all the conditions of his lease, may, with written approval of the Commissioner, assign the right-of-way.
 - i. Application for assignment, the assignment and the assumption of the right-of-way will be on such forms as the Commissioner may prescribe.
 - ii. An assignment shall not become effective unless and until it is approved by the Commissioner.
 - iii. The assignee shall succeed to all the rights and shall be subject to the obligations of the assignor.
 - iv. A sub-grant of the right-of-way contract is prohibited.
 6. Right-of-way renewal. Upon application to the Commissioner, not less than 30 days, nor more than 60 days prior to the expiration of the right-of-way contract, the grantee

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of a right-of-way contract, if he is not delinquent in the payment of rental or of monies due the State Land Department on the date of expiration of the contract, shall have a preferred right to renew the right-of-way contract bearing even date with the expiration of the old contract.

7. Bonds

- a. The Commissioner may require the grantee to post a cash deposit or surety bond to guarantee the payment of all monies due under the contract.
- b. The Commissioner may require the grantee to furnish bond, in a reasonable amount, to be fixed by the Commissioner, conditioned that the grantee will guarantee restoration of the surface of the land described in the contract to a reasonable condition, upon the termination of the right-of-way contract.
- c. The Commissioner may require the lessee to file with the Department a surety bond in the form, amount, and with surety approved by the Commissioner, conditioned upon prompt payment to the lessee of the surface, subsurface or otherwise of the state land covered by the right-of-way, for any loss to such owner or lessee from damage or destruction caused by the construction or use of the right-of-way, his or its agents, or employees, to grasses, forage, crops and improvements upon such land.
- d. Assignment of any or all of the right-of-way contract will not relieve the assignor of his obligation as principal under the bond. Release of the assignor's obligation under bond may be effected through the posting of a replacement bond by the assignee, but then only after approval by the Commissioner and subsequent notification of the release by the Commissioner in writing to the principal and surety.
- e. The Commissioner, in his discretion, may reduce or increase the principal amount of the bond.
- f. Immediately after determination by the Commissioner that full discharge of the conditions of the obligations under any bond has been effected, he will, in writing, notify the principal and surety held by the bond so that it may be formally terminated.
- g. Surety on the bond shall have the right to cancel the bond and be relieved of further liability after the period of notice, by giving 30 days' notice to the Department of its desire to so cancel.
 - i. Upon receipt of such notification, the Department will immediately notify the grantee by certified mail of the impending action by surety.
 - ii. Failure by the grantee to post a replacement bond before the expiration of the 30 days mentioned next above, shall constitute a default by the grantee and cause for cancellation of the right-of-way.

8. Principal payments. Each right-of-way granted to governmental agencies of the state or political subdivisions and municipal corporations thereof for exclusive use or perpetual use shall provide for payment of principal in the full amount of the appraised value as provided by the Commissioner after appraisal.

E. Reports

1. Report of improvements
 - a. Applications for and reports of improvements placed shall be presented to the Commissioner on forms provided by the Department.
 - b. Grantee of every right-of-way shall submit to the Department an application to place any improve-

ment to be placed on the right-of-way and shall secure written approval from the Commissioner to place the improvement before any work is commenced toward the improvement.

- c. The grantee shall report any completed improvements to the Commissioner and secure approval from the Commissioner.

Historical Note

Original rule, Art. VIII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-801 renumbered from Section R12-5-165 (Supp. 93-3).

R12-5-802. Reservoir, Dam, and Other Sites**A. Definitions**

1. "Site lease" shall mean a lease issued upon state lands by the Department for reservoir or dam sites primarily used for purposes other than stock watering on lands leased for grazing purposes, and power or irrigation plant sites requiring more width than general rights-of-way leases for transmission lines or canals, or for such other purposes not classified as commercial.
2. "Surface lessee" means the holder of a lease on the surface of any state land for grazing, agricultural, commercial, homesite or natural products.
3. "Subsurface lessee" means the holder of a lease on the subsurface of any state land for oil and gas, mineral or natural products.

- B.** Land subject to site lease and term of lease. All state lands are subject to site lease for a term of not more than ten years without advertising, or for such lesser term as may be established by the Commissioner if he deems such lesser term to be to the best interests of the state. Site leases in excess of ten years are required by law to be advertised and sold at public auction to the highest bidder.

No lease for a site will be granted where damage or injury to improvements owned by a surface or subsurface leaseholder would result from the granting of the site by the Department without giving rise to a cause of action by the owner of said improvements, unless compensation for the value or damage or injury to said improvements has first been determined and a settlement made.

- C.** Application for site lease. An application for a site lease shall be made upon Land Division form No. A-82, and in accordance with the general rules and regulations relating to the leasing of state lands.

The application shall be accompanied by a map showing in detail the survey of the site applied for, or, if not surveyed, a map of reasonable accuracy so that the site may be located upon the land itself by either a survey or protraction. The Commissioner reserves the right to require a survey to be made by a regularly licensed registered engineer or land surveyor at any time. The map need be of no particular scale but should be of sufficiently large enough scale that improvements upon the surface of the land applied for may be shown. The map is considered a part of the application to lease as a line of definite location which will bind the applicant in the same manner as the lease application itself to the statements made therein.

An application for a site lease over or across state lands, the surface or subsurface of which is leased and in use, should be accompanied by a statement from such surface or subsurface lessee that he has no objection to the granting of the site lease, or, if such consent cannot be obtained, a statement from the applicant stating the reasons why such consent has not been obtained.

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- D.** Renewal application for site lease. Application for renewal of a site lease shall be made upon Land Division form No. A-13-3 and in accordance with the general rules and regulations relating to state lands.

If the applicant has not used the land for the purpose for which the initial lease was granted to him, he must state in detail reasons therefor unless he has obtained from the Commissioner authorization in writing for such non-use as required by law and the rules and regulations of the Department.

- E.** Rights of surface and subsurface lessees. Under the law the Commissioner has the right to grant sites without the consent of the surface or subsurface lessee. However, in many instances the surface or subsurface lessee owns improvements upon the lands desired for a site lease and these improvements are protected by law. In the event the site applicant and the surface or subsurface lessee are unable to arrive at the value of any improvements which may be injured or damaged by the grant of a site lease and the consent of the surface or subsurface lessee cannot be secured, the Commissioner may, if it is to the best interest of the state, appraise the improvements as provided by law and grant the lease upon evidence of tender to the owner of improvements of the appraised value of the same. The owner of the improvements may appeal from the appraisal of the improvements to the Appeal Board of the Department as authorized by law and these rules and regulations.
- F.** Rental. No site lease shall provide for an annual rental of less than the appraised rental value of the land and in no event for less than 5¢ per acre per annum or a minimum of \$10.00 per annum per lease.
- G.** Form of site lease and provisions thereof. The form of site lease offered by the Department to an applicant will be on Land Division form No. A-83 and will be subject to the provisions and supplemental conditions therein contained, and such other conditions as may be added thereto, and the provisions of law and these rules and regulations.
- H.** Effect of a site lease. No lessee shall use lands under lease to him except for site purposes unless authorized by the Commissioner in writing.
- Applications for a special use of lands under lease to a lessee for purposes other than which the lease was issued shall be made in writing in triplicate and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications to lease. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the lessee, one copy thereof being retained in the files of the Department.
- Failure of any lessee to use the land for the purposes for which he holds a lease, without having been authorized so to do by the Commissioner in writing, may, in the discretion of the Commissioner, subject said lease to forfeiture or to cancellation as provided by law and these rules and regulations.
- I.** Rights of site lessee. All leases granted by the Commissioner are only a license to use the land described in the lease for site purposes in a manner compatible with the terms of said lease. The state reserves the right to grant other leases for the use of said lands or the renewal of natural products therefrom. No site lessee has the authority or right to issue to any person any right to the use of said land or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.

Historical Note

Original rule, Art. X, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-802 renumbered from Section R12-5-166 (Supp. 93-3).

R12-5-803. Expired**Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section R12-5-803 renumbered from Section R12-5-167 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

ARTICLE 9. EXCHANGES**R12-5-901. Scope of Rules**

These rules apply only to exchange of state land under the provisions of A.R.S. §§ 37-604 to 37-608, inclusive, and shall prevail over and supersede any existing policy or procedure to the extent that they are in conflict therewith.

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-901 renumbered from Section R12-5-179 (Supp. 93-3). R12-5-901 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-901 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

R12-5-902. Definitions

Unless the context otherwise requires:

1. "Commissioner" means the State Land Commissioner.
2. "Selection board" means that board composed of the Governor, the State Land Commissioner and the Attorney General, as authorized by A.R.S. § 37-202.
3. "Private owner" means any individual person, firm, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, or any group acting as a unit, but does not include the government of the state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.
4. "Department" means the State Land Department.

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-902 renumbered from Section R12-5-180 (Supp. 93-3). R12-5-902 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-902 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

R12-5-903. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-903 renumbered from Section R12-5-181 (Supp. 93-3). R12-5-903 repealed by summary action with an interim

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effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-903 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-904. Application

The application shall be prepared and filed on such forms as the Department may from time to time prescribe. The application shall set forth such information as is required by law and these rules, including but not limited to the following: the name, age, and residence of the applicant; a description of all lands sought to be exchanged, which description shall be technically competent, definite, susceptible of only one interpretation, and furnish sufficient information for the identification of the land on the ground; the number of acres contained in the lands of applicant offered in exchange, and applicant's estimated value thereof; the number of acres contained in the state lands applied for in exchange, and applicant's estimated value thereof; a list of permanent improvements on the lands to be exchanged, applicant's estimated value thereof and the description of the location thereof in such manner as to facilitate the location thereof on the ground; a description of any leasehold interest in the land to be exchanged or ownership of any improvements thereon, together with the name and address of any such claimant; accompanying agreements, if any, with the leaseholder or owner of improvements on the lands to be exchanged shall be attached to the application and filed therewith.

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-904 renumbered from Section R12-5-182 (Supp. 93-3). R12-5-904 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-904 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

R12-5-905. Expired**Historical Note**

No original number assigned (Supp. 76-4). Emergency repeal filed September 26, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired, text of original rule placed back into effect December 27, 1990. Section R12-5-905 renumbered from Section R12-5-183 (Supp. 93-3). R12-5-905 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-905 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-906. Expired**Historical Note**

No original number assigned (Supp. 76-4). Emergency repeal filed September 26, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired, text of original rule placed back into effect December 27, 1990. Section R12-5-906 renumbered from Section R12-5-184 (Supp. 93-3). R12-5-906 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-906 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-907. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-907 renumbered from Section R12-5-185 (Supp. 93-3). R12-5-907 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-907 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-908. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-908 renumbered from Section R12-5-186 (Supp. 93-3). R12-5-908 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-908 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-909. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-909 renumbered from Section R12-5-187 (Supp. 93-3). R12-5-909 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-909 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-910. Maps and Photographs

The applicant shall furnish such map or maps of the lands to be exchanged, coded as to ownership in a suitable manner, as the

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Department may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition the Department may require an aerial photograph or photographs of such lands as it may specify in a request therefor.

Historical Note

No original number assigned (Supp. 76-4). Section R12-5-910 renumbered from Section R12-5-188 (Supp. 93-3). R12-5-910 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-910 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

R12-5-911. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-911 renumbered from Section R12-5-189 (Supp. 93-3). R12-5-911 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-911 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-912. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-912 renumbered from Section R12-5-190 (Supp. 93-3). R12-5-912 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-912 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-913. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-913 renumbered from Section R12-5-191 (Supp. 93-3). R12-5-913 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-913 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-914. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-914 renumbered from Section R12-5-192 (Supp. 93-3). R12-5-914 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-914 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-915. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-915 renumbered from Section R12-5-193 (Supp. 93-3). R12-5-915 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-915 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-916. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-916 renumbered from Section R12-5-194 (Supp. 93-3). R12-5-916 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-916 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-917. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-917 renumbered from Section R12-5-195 (Supp. 93-3). R12-5-917 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-917 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-918. Controversy as to Title or Leasehold Rights

The Commissioner may in his discretion hold in suspension or reject any application to exchange where it is found that title or leasehold rights in any of the land conveyed thereby are in controversy. The Department will not become a party to any controversy between different claimants to any of the land sought to be exchanged.

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No original number assigned (Supp. 76-4). Section R12-5-918 renumbered from Section R12-5-196 (Supp. 93-3) R12-5-918 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-918 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

R12-5-919. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-919 renumbered from Section R12-5-197 (Supp. 93-3). R12-5-919 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-919 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-920. Expired**Historical Note**

No original number assigned (Supp. 76-4). Section R12-5-920 renumbered from Section R12-5-198 (Supp. 93-3). R12-5-920 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-920 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-921. Expired**Historical Note**

Adopted effective September 22, 1978 (Supp. 78-5). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-921 renumbered from Section R12-5-199 (Supp. 93-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 764, effective July 31, 2017; filed in the Office March 22, 2018 (Supp. 18-1).

ARTICLE 10. EXPIRED

Article 10, consisting of Sections R12-5-1001 through R12-5-1012, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1001. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1001 renumbered from Section R12-5-200

(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1002. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1002 renumbered from Section R12-5-201 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1003. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1003 renumbered from Section R12-5-202 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1004. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1004 renumbered from Section R12-5-203 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1005. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1005 renumbered from Section R12-5-204 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1006. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1006 renumbered from Section R12-5-205 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1007. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1007 renumbered from Section R12-5-206 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1008. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1008 renumbered from Section R12-5-207 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1009. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1009 renumbered from Section R12-5-208 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1010. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1010 renumbered from Section R12-5-209

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(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1011. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-1011 renumbered from Section R12-5-210 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

R12-5-1012. Expired**Historical Note**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-1012 renumbered from Section R12-5-211 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

ARTICLE 11. SPECIAL USE PERMITS**R12-5-1101. Policy; Use of Lands**

It is the policy of the Commissioner in the administration of state lands to permit, where practical, the beneficial use thereof for special purposes not specifically provided for by existing law or the rules and regulations of the Land Division and the leasing of state lands. Permits for such special use will not be issued, however, in any case where the provisions of existing state land laws may be invoked.

The contemplated use must not be in conflict with any federal or state laws.

An applicant must state in his application the use to which he intends to put the lands and he will not be permitted to devote them to any other use unless he secures an additional permit.

1. Qualifications of applicants. Any person of the age of 21 years or over, a citizen of the United States or who has declared an intention to become a citizen of the United States or any firm, association or corporation which has complied with the laws of the state, shall be qualified to apply for a special use permit.
2. Application for special use permit; renewal thereof; application fee. An application for general special use permit shall be made on Land Division form. Such application shall describe with particularity the land applied for, and shall state in detail the use to which the applicant intends to put the lands and the period for such use.
A renewal of a general special use permit shall be made on Land Division form.
If an applicant for renewal of a special use permit has not used the land for the purpose for which the initial permit was granted him, he must state in detail reasons therefor unless he has obtained from the Commissioner authorization in writing for such non-use as required by law and these rules and regulations.
3. Form of special use permit. The form of a general special use permit will be prepared by the Department and will be subject to the provisions and supplemental conditions therein contained and the provisions of law and these rules and regulations.
4. Term of permit. A special use permit shall not be issued for a period to exceed ten years or such lesser term as may be established by the Commissioner if he deems such lesser term to be in the best interest of the state.
An application for an initial special use permit shall not be approved for a period of longer than two years.
Unless it is deemed to be for the best interest of the state, it is not the policy of the Department to allow and issue a special use permit which will seriously interfere with the

operations of an established lessee or permittee holding a lease or permit from the Department to the surface or sub-surface rights to the land.

5. Minimum fee. No special use permit shall provide for an annual fee for less than appraised rental value of the land and in no event for less than 5¢ per acre per annum or a minimum of \$10.00 per annum per permit.
6. Failure to use land for purposes authorized. Any permittee who shall fail to use the land for the purpose for which he holds a permit during the term of his permit, unless for good cause such failure has been authorized or ratified by the Commissioner in writing, may subject his permit to forfeiture or cancellation as provided by law and these rules and regulations.
7. Rights of permittee. All permits granted by the Commissioner are only a license or permit for the use of the land described in the permit for the purpose for which the permit is issued and in a manner compatible with the terms of said permit. The Commissioner reserves the right to grant other permits for the use of said lands for the removal of natural products therefrom. No permittee has the authority or right to issue to any person any right to the use of said land or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.
8. Use of state lands. No permittee shall use lands under permit to him except for the purpose for which the permit is issued, unless authorized by the Commissioner in writing.
Applications for a special use of lands under permit to a permittee for purposes other than which the permit was issued shall be made in writing in triplicate, and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications for permit. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the permittee, one copy thereof being retained in the files of the Department. Failure of any permittee to use the land for the purposes for which he holds a permit, without having been authorized to do so by the Commissioner in writing, may, in the discretion of the Commissioner, subject said permit to forfeiture or to the cancellation as provided by law and these rules and regulations.
9. Advertising displays on state lands without permits unauthorized. The erection or maintenance on state lands of advertising displays, without permission, is unauthorized by law. Any person erecting or maintaining one or more advertising displays on state lands, except under authority of a permit issued by the Commissioner as hereinafter provided, shall be deemed a trespasser.
10. Advertising displays defined. The words "advertising displays" as used in this Article shall include structures of any kind with or without lighting effects erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever, including statuary, may be placed for advertising purposes but shall not include:
 - a. Official notices or advertisements posted by or under the direction of any public or court officer in the performance of his official duties;
 - b. Danger, precautionary and information signs erected by officials of the Federal Government or officials

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- of the state or any subdivision thereof, or any non-profit organization in the state, relating to the premises, or warning of the conditions of travel on a highway, or of forest fires, or road symbols, or speed limits, and including all civil defense directional signs;
- c. Highway markers or signs relating to any city, town, village or historic place or shrine;
 - d. Notice of any railroad, bridge, ferry, or other transportation or transmission company necessary for the direction or safety of the public;
 - e. Official signs, notices or symbols for the information of aviators, as to location, direction or landings, and conditions affecting safety in aviation;
 - f. Signs containing 16 square feet or less bearing an announcement of any town, village or city, or non-profit association, or chamber of commerce, advertising itself, or local industries, buildings, meetings, or attractions, but not advertising any particular individual or corporation engaged in business for a profit; providing not more than one sign bearing the same or similar announcement shall be placed on any one approach to the city or village involved;
 - g. Signs erected by Red Cross authorities relating to Red Cross Emergency Station.
11. Applications for advertising display permits. Applications for permits must be executed upon Land Division form No. A-73-3. Each application must contain a sufficient recital of the facts relative to the advertising display, including its size and lighting effect, if any, to enable its substantial production from the description. A sketch showing the location on which the display is to be placed with respect to adjacent physical features should be furnished. The application should identify the highway or other medium of travel along which it is proposed to erect the display and should give the distance and direction of the site, measured by highway travel, to the nearest cities or towns. If the land on which it is desired to place the display has been surveyed, its description should be given in terms of the public land surveys.
 12. Fees and rentals for advertising display permits
 - a. A fee of \$1.00 must accompany each application for an advertising display permit.
 - b. The initial and annual charges for advertising displays shall be as follows: not less than 10¢ per annum for each square foot of sign surface and not less than \$2.50 per annum for each display. The amount of the charge, subject to such minima, will be fixed by the Commissioner, which in no event will be less than the appraised rental value for such use.
 - c. Due consideration will be given in fixing the amounts to all pertinent facts and circumstances, including the charges made for corresponding privileges on privately owned lands similarly situated.
 - d. When conflicting applications are filed, due consideration will be given to the showing of each applicant and such action will be taken as is deemed to be warranted by the facts and circumstances.
 13. Form of advertising display permit and terms. Special use permits to erect and maintain advertising displays on state lands may be issued by or under authority of the Commissioner on forms provided by the Department, or, in his discretion, will be issued on Land Division form and will be subject to the provisions and supplemental conditions therein contained and to such other conditions as may be added thereto, and the provisions of law and these rules and regulations. The term thereof shall be for periods of not exceeding ten years and the permits will be revocable in the discretion of the Commissioner at any time.
 14. Renewal of advertising display permits. An advertising display permit issued pursuant to these rules and regulations may be renewed, in the discretion of the Commissioner, upon the filing of an application for renewal not more than 60 nor less than 30 days prior to its expiration.
 15. Identification of authorized advertising displays. Each advertising display erected or maintained under a permit issued pursuant to these rules and regulations shall, for convenient identification, have the serial number of such permit marked or painted thereon.
 16. Unauthorized advertising displays
 - a. Persons who heretofore have erected advertising displays on state lands must either obtain permits to continue such displays, if authorized by these rules and regulations, or must remove the displays as promptly as possible.
 - b. Where an unauthorized advertising display on state land is found, the Commissioner will take appropriate steps to secure its removal, unless the owner obtains a permit. The owner, if known, will be given notice in writing of the requirements. Displays erected without permission prior to January 1, 1953, must be removed within three months from and after the date of the approval of these rules and regulations, unless application for a permit is made within that period. Displays erected prior to January 1, 1953, for which applications for permits are made but for which permits are refused, and unauthorized displays thereafter erected must be removed within such reasonable time as may be fixed by the Commissioner. If the owner fails to remove the display within the time allowed, it may be removed by the Commissioner and the owner will be held liable to the Department for expenses incurred in removing it. If the owner is unknown, or cannot be found, the display may be removed by the Commissioner without notice. A registered letter addressed to the owner at his last known place of residence, if returned unclaimed, will be considered sufficient service of notice.
 17. Restrictions on advertising displays
 - a. No advertising display shall be permitted which, in the opinion of the Commissioner, would mar the landscape, hide road intersections or crossing, or which, in his opinion, is otherwise objectionable.
 - b. No advertising display shall be affixed to, or painted on any tree or rock situate on state lands or on any other natural object on such lands.
 - c. All advertising displays shall conform to the applicable state laws and local ordinances or regulations.

Historical Note

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4).
 Emergency amendment filed September 26, 1990,
 adopted effective September 27, 1990, pursuant to A.R.S.
 41-1026, valid for only 90 days (Supp. 90-3). Emergency
 expired. Section R12-5-1101 renumbered from Section
 R12-5-241 (Supp. 93-3).

ARTICLE 12. FEES**R12-5-1201. Administrative Fees**

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The State Land Department shall charge the following fees for:

Application Type	Fee
Agricultural and Grazing – New (per section or fraction thereof)	\$150
Agricultural and Grazing – Renew	\$200
Commercial – New (10 years or less)	\$1,000
Commercial – New - long-term (more than 10 years)	\$2,000
Commercial – Renew (includes homesite)	\$1,000
Appraisal for long-term leases and land sales	Actual cost
Complete Assignment to an entity 100% controlled by assignor or family member	\$500
Partial assignment for long-term Commercial Lease only – (more than 10 years)	\$2,500
All other assignments	\$1,000
Application to Place Improvement	\$150
Application to Place Improvement without Prior Approval	\$200
Application for Land Treatment	\$150
Special Land Use Permits – New or Renew	\$300
Non-commercial Sovereign Land Boat Dock / Launch Ramp Permit	\$100
Application to Amend General	\$100
Sublease	\$200
Amendments for Commercial Lease – 10 years or less	\$500
Amendments for Commercial Lease – long-term (more than 10 years)	\$1,000
Lease Reinstatement	\$300
Replacement of lost documents	\$50
Certified copy of documents	\$10 + \$1 per page
Returned check	\$20
Miscellaneous filings: Power of Attorney, Probate Documents and Divorce Documents	\$50
Mortgage, Deed of Trust	\$50 per lease
Bond for conservation or purchase applications for conservation purposes	\$1,000
Right of Way – New or Renew	\$500
Right of Way – Amendment	\$100
Temporary Right of Entry	\$100
Application to Purchase	\$2,000
Certificate of Purchase (Issuance)	\$1,000
Patent (Issuance)	\$200
Application for Partial Patent	\$1,000
Natural Products – Commercial - Wood Products	\$200
Natural Products – Incidental Use Permit	\$200
Natural Products – Water	\$500
Mineral Materials	\$500
Minerals	\$500
Mineral Exploration (New or Renew)	\$500
Oil & Gas (New or Renew)	\$500
Geothermal	\$500
Recreational Annual Use - Individual	\$15

Application Type	Fee
Recreational Permits (Group) Less than 5 days, Less than 20 people	\$15
Recreational Annual Use - Immediate Family Unit (Two adults and children under the age of 18)	\$20
Urban Planning Classification	\$1,000
Urban Planning Development	\$1,000

Historical Note

Adopted as an emergency effective July 31, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Permanent rule adopted effective November 1, 1984 (Supp. 84-6). Section R12-5-301 repealed, new Section adopted by emergency action and filed September 26, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired, text of original Section placed back into effect December 27, 1990. Section R12-5-1201 renumbered from Section R12-5-301 (Supp. 93-3). R12-5-1201 repealed by summary action with an interim effective date of August 30, 1996; filed in the Office of the Secretary of State August 8, 1996 (Supp. 96-3). Adopted summary rules filed December 6, 1996; interim effective date of August 30, 1996 now the permanent effective date (Supp. 96-4). New Section made by exempt rulemaking at 17 A.A.R. 813, effective April 22, 2011 (Supp. 11-2).

ARTICLE 13. REPEALED

R12-5-1301. Repealed

Historical Note

Section R12-5-1301 renumbered from Section R12-5-501 (Supp. 93-3). R12-5-1301 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1302. Repealed

Historical Note

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1601 renumbered from Section R12-5-560 (Supp. 93-3). R12-5-1302 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

ARTICLE 14. REPEALED

The heading for Article 14 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

ARTICLE 15. REPEALED

The heading for Article 15 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

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ARTICLE 16. REPEALED**R12-5-1601. Repealed****Historical Note**

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1601 renumbered from Section R12-5-560 (Supp. 93-3). R12-5-1601 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1602. Repealed**Historical Note**

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1602 renumbered from Section R12-5-561 (Supp. 93-3). R12-5-1602 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1603. Repealed**Historical Note**

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1603 renumbered from Section R12-5-562 (Supp. 93-3). R12-5-1603 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1604. Repealed**Historical Note**

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1604 renumbered from Section R12-5-563 (Supp. 93-3). R12-5-1604 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1605. Repealed**Historical Note**

Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1605 renumbered from Section R12-5-564 (Supp. 93-3). R12-5-1605 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1606. Repealed**Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1606 renumbered from Section R12-5-570 (Supp. 93-3). R12-5-1606 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996;

interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1607. Repealed**Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1607 renumbered from Section R12-5-571 (Supp. 93-3). R12-5-1607 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1608. Repealed**Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1608 renumbered from Section R12-5-572 (Supp. 93-3). R12-5-1608 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1609. Repealed**Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1609 renumbered from Section R12-5-573 (Supp. 93-3). R12-5-1609 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1610. Repealed**Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1610 renumbered from Section R12-5-574 (Supp. 93-3). R12-5-1610 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1611. Repealed**Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1611 renumbered from Section R12-5-575 (Supp. 93-3). R12-5-1611 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1612. Repealed**Historical Note**

Adopted effective November 25, 1977 (Supp. 77-6). Section R12-5-1612 renumbered from Section R12-5-576 (Supp. 93-3). R12-5-1612 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996;

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interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

ARTICLE 16.1. RENUMBERED

Article 16.1, consisting of Sections R12-5-570 thru R12-5-576, renumbered to Article 16, Sections R12-5-1606 thru R12-5-1612 (Supp. 93-3).

ARTICLE 17. REPEALED AND EXPIRED**R12-5-1701. Repealed****Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1701 renumbered from Section R12-5-600 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1702. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1702 renumbered from Section R12-5-601 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1703. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1703 renumbered from Section R12-5-602 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1704. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1704 renumbered from Section R12-5-603 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1705. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1705 renumbered from Section R12-5-604 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1706. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1706 renumbered from Section R12-5-605 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1707. Expired**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1707 renumbered from Section R12-5-606 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 1652, effective January 31, 2012 (Supp. 12-2).

R12-5-1708. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1708 renumbered from Section R12-5-607 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1709. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1709 renumbered from Section R12-5-608 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1710. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1710 renumbered from Section R12-5-609 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1711. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1711 renumbered from Section R12-5-610 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1712. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1712 renumbered from Section R12-5-611 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1713. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1713 renumbered from Section R12-5-612 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1714. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1714 renumbered from Section R12-5-613 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1715. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1715 renumbered from Section R12-5-614 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1716. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1716 renumbered from Section R12-5-615 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1717. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1717 renumbered from Section R12-5-616 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1718. Repealed

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Historical Note

Original rule, Ch. V (Supp. 76-4). Section R12-5-1718 renumbered from Section R12-5-617 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1719. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1719 renumbered from Section R12-5-618 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1720. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1720 renumbered from Section R12-5-619 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1721. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1721 renumbered from Section R12-5-620 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1722. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1722 renumbered from Section R12-5-621 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1723. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1723 renumbered from Section R12-5-622 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1724. Repealed**Historical Note**

Original rule, Ch. V (Supp. 76-4). Section R12-5-1724 renumbered from Section R12-5-623 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

ARTICLE 18. MINERAL LEASES**R12-5-1801. Definitions**

Unless the context otherwise requires:

1. "Commissioner" means the State Land Commissioner.
2. "Contiguous" means adjoining and having at least part of one side in common.
3. "Department" means the State Land Department.
4. "Geochemical surveys" means surveys on the ground for mineral deposits by the proper application of principles and techniques of the science of chemistry as they relate to the search for and the discovery of mineral deposits.
5. "Geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.
6. "Geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physi-

cal differences between rock types or discontinuities in geological formations.

7. "Lessee" means the holder of any lease issued pursuant to the provisions of these rules and regulations and includes the holder of an approved assignment of such lease.
8. "Mineral" means all natural inorganic substances that may be extracted from the earth, and includes mineral compounds and mineral aggregates, natural building stone, saline deposits, and such organic substances as coal and guano, but does not include petroleum and related hydrocarbon gases or other natural gases.
9. "Mining" means extracting mineral from the earth, but shall not include any activity carried on after the mineral has been detached from the earth and has reached the natural or original surface of the earth.
10. "Qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.
11. "Shipping" means the transportation of extracted mineral, after mining, to the place of processing or sale.

Historical Note

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1801 renumbered from Section R12-5-701 (Supp. 93-3).

R12-5-1802. Expired**Historical Note**

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1802 renumbered from Section R12-5-702 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

R12-5-1803. Expired**Historical Note**

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1803 renumbered from Section R12-5-703 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

R12-5-1804. Expired**Historical Note**

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1804 renumbered from Section R12-5-704 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

R12-5-1805. Lease for Mineral Claim

- A. Term of lease. Every mineral lease of state land shall be for a term of 20 years.
- B. Lessee's right of possession and enjoyment. Every mineral lease shall confer the right:
 1. To extract and ship minerals from the claim located within planes drawn vertically downward through the exterior boundary lines thereof, provided:
 - a. That in case of each lease of a claim located pursuant to the provisions of subsection (C) of these rules and regulations (Type A claim), the lease shall confer extralateral rights, in the discovery vein only, as follows:

Exclusive right of possession and enjoyment of the vein, lode, or ledge throughout its entire depth, the top or apex of which lies inside the surface lines of the claim extended downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the verti-

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- cal side lines of such surface locations. But the right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of the location, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. Nothing in this subsection shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.
2. To use as much of the surface as required for purposes incident to mining.
 3. Of ingress to and egress from other state lands, whether or not leased for purposes other than mining.
 - a. Proposed routes of ingress and egress over state lands, preferably reflecting agreement on the part of the lessees concerned, shall be subject to final approval by the Commissioner. Construction of roadways shall not be initiated by the mineral claimant or lessee until such approval is had.
- C. Provisions of mineral lease
1. Every mineral lease of state lands shall provide for:
 - a. The annual performance of not less than \$100.00 worth of labor or of improvements made upon each claim or group of contiguous claims in common ownership. The annual expenditure shall become due and shall be performed during the year commencing at the expiration of one year from the date of location at 12:00 o'clock meridian and during each year thereafter.
 - i. The term "labor" shall include, without being limited to, geological, geochemical and geophysical surveys conducted by qualified experts and verified by a detailed report filed with the Commissioner which sets forth fully
 - (1) the location of the work performed in relation to the point of discovery and boundaries of the claim,
 - (2) the nature, extent and cost thereof,
 - (3) the basic findings therefrom, and
 - (4) the name, address, and professional background of the persons conducting the work.

Such surveys, however, may not be applied as labor for more than two consecutive years or for a total of more than five years on any one mining claim, and each such survey shall be non-repetitive of any previous survey of the same claim.
 - ii. Improvements mentioned in (A)(1) above shall be limited to those necessary and incident to mining or which develop, or tend to develop, mineral.
 - iii. Proof of annual labor on each claim shall be filed with the Commissioner, in such form as the Commissioner may prescribe, within 90 days after expiration of the period provided for its performance.
 - b. The fencing of all shafts, prospect holes, adits, tunnels and other dangerous mine workings for the protection of livestock.
 - c. The construction of necessary improvements and installation of necessary machinery and equipment with the right to remove it upon expiration, termination or abandonment of the lease, if all the monies owing to the state under the terms of the lease have been paid.
 - d. The cutting and use of timber and stone upon the claim, not otherwise appropriated, for fuel, construction of necessary improvements, or for drains, roadways, tramways, supports, or other necessary purposes.
 - e. The right of the lessee and his assigns to transfer the lease.
 - f. Termination of the lease by the Commissioner upon written notice specifically setting forth the default for which forfeiture is declared, and preserving the right of the lessee to cure the default within a period of not less than 30 days.

Notices of termination shall be mailed to the address of record of the lessee. Such notice shall set forth the default and inform the lessee of the time and place he may appear before the Commissioner to show cause why the lease should be restored to good standing.
 - g. Termination of the lease by the lessee at any time during its term by giving the Commissioner 30 days' notice of termination in writing; provided, the lessee is not delinquent in the payment of rent or royalty to the date of termination.
- D. Lease rental. The rental for a lease of a mineral claim on state lands shall be \$15.00 per annum, payable in advance at the time of application for lease and at the beginning of each yearly period thereafter.
- E. Royalty
1. Every mineral lease of state land shall provide for payment to the state by the lessee of a royalty of 5% of the net value of the minerals produced from the claim. The net value shall be deemed to be the gross value after processing, where processing is necessary for commercial use, less the actual cost of transportation from the place of production to the place of processing, less costs of processing and taxes levied and paid upon the production thereof. In case of minerals not processed for commercial use, the net value shall be the gross proceeds, or gross value, at the place of sale or use, less the actual cost of transportation from the place of production to the place of sale or use, less taxes, if any, levied and paid upon the production thereof.
 2. In the case of limestone, silica, shale, and clay manufactured into building materials, the royalty shall be 3¢ per gross short ton of material removed. The 3¢ per ton royalty shall be based upon the average regional wholesale price of the building material so manufactured over the 12-month period immediately preceding June 14, 1958. The royalty shall be adjusted at the end of each five-year period thereafter in direct proportion to the decrease or increase in the five-year average of the average yearly regional prices for such building materials over the preceding five-year period, providing the decrease or increase amounts to 10% or more of the previous base price.
 3. In case of sand, rock and gravel to be used in the construction of roads, buildings or other structures, the royalty shall be 5¢ per cubic yard.
 - a. As used as a basis of classification for royalty purposes, the word "rock" means the granular material coarser than gravel, and usually associated with natural deposits of sand and gravel.

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4. The minimum rental paid for each year shall be credited upon royalties which may become due during the year.
- F.** Assignment of lease. The lessee of each mineral claim, if not in default of rent or royalty, and who has kept and performed all the conditions of his lease, may with the written approval of the Commissioner assign his lease. Application for assignment and assignments will be in such form as the Commissioner may require.
- G.** Renewal. Upon application to the Commissioner, not less than 30 nor more than 60 days prior to the expiration of the lease, the lessee of mineral lands, if he is not delinquent in the payment of rental or royalty on the date of expiration of the lease, shall have a preferred right to renew the lease bearing even date with the expiration of the old lease for a term of 20 years.
- H.** Sub-leases. No sub-lease shall be valid without the written permission of the Department.
- I.** Lease, reserved mineral interest; bond
1. Each mineral lease of the state's reserved mineral interest, resulting from sale of state land, shall contain such special conditions and terms as are necessary to the protection of the pertinent patentee or contract purchaser of state lands, or their successors in interest and the state of Arizona, against damage to lands, livestock, water, crops or other tangible improvements on lands held by such patentee or contract purchaser and suffered by the reason of the use or occupation of such land by the lessee.
 - a. Lease applicant will be required to execute a bond in a reasonable principal amount, conditioned upon payment for such damage.
 - b. Failure by lease applicant to post bond within 30 days after notice of such requirement has been served by the Department shall be deemed to constitute forfeiture of right to the lease.

Historical Note

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-1805 renumbered from Section R12-5-705
(Supp. 93-3).

R12-5-1806. Records and Reports

- A.** Annual lease report. An annual report shall be submitted by the lessee of each mineral claim showing any and all work performed, improvements made, the cost thereof, and such other information as the Commissioner may require. The report, covering the mining operation in general, shall be filed with the Commissioner within 90 days after expiration of the period provided for the performance of annual labor, shall be incorporated with the report of that labor and shall be in such form as the Commissioner may prescribe.
- B.** Monthly production report. A monthly report of production shall be submitted by the lessee of each mineral claim within 15 days after the end of the month in which production is first had and before the 15th of each succeeding month for the month immediately preceding, unless otherwise ordered by the Commissioner. Any negative report subsequent to the initial production report shall be submitted unless waived by the Commissioner. The report shall be in such form as the Commissioner may prescribe and shall contain such information as the Commissioner may require, including, but not limited to, information regarding amounts of mineral extracted, use, or sold, the costs of shipping and processing, and the monetary returns therefrom.
- C.** Records. Each lessee of a mineral claim shall make and keep appropriate books and records covering the mining, shipping, processing and selling of mineral from the claim. The Commissioner or his representative shall have the right at all times during the existence of each lease of a mineral claim, and for

six months thereafter, to make such reasonable examination of such books, records or other material as may be necessary to obtain information desired.

Historical Note

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-1806 renumbered from Section R12-5-706
(Supp. 93-3).

R12-5-1807. Relating to Mineral Reservations

- A.** Definitions. Unless the context otherwise requires:
1. "Commissioner" means the State Land Commissioner.
 2. "Department" means the State Land Department.
 3. "Reserved minerals" means those minerals, hydrocarbons and other substances as defined in A.R.S. § 37-231, subsection (E).
- B.** Scope and authority. These rules and regulations are for the protection of the patentee or contract purchaser of state lands, sold under the authority granted by A.R.S. § 37-231, subsection (E), or their successors in interest, and the state of Arizona, against damage to the lands, livestock, water, crops, or other tangible improvements on lands held by such patentee or contract purchaser, and suffered by reason of the use or occupation of such lands by lessees or permittees engaged in mining and oil and gas exploration and development under leases or permits executed by the Department.
- C.** Nature of mineral reservation. In accordance with the provisions of A.R.S. § 37-231, wherein the state of Arizona reserves and retains all oil, gas, other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description, together with all uranium, thorium, or any other material determined to be peculiarly essential to the production of fissionable materials, and the exclusive right thereto, on, in, or under such land regardless of any sale of its lands and the subsequent issuance of any instrument conveying title thereto, the State Land Department, for, and on behalf of the state of Arizona, at the same time reserves the right to sever and ship the reserved minerals therefrom; at the same time recognizing its responsibility to properly provide for the protection of the purchaser against damage to his lands and certain improvements on the lands held by him as provided by law.
- D.** Surface and subsurface use. A lessee or permittee engaged in mining and oil and gas exploration and development under leases or permits executed by the Department shall have the right to reasonable use of so much of the surface or subsurface of the lands of a patentee or contract purchaser as may be necessary for the conduct of operations to explore for, sever and remove the reserved minerals under such leases or permits, provided that the Commissioner in his discretion may require a lessee or permittee to, first, secure the written consent or waiver of the patentee or contract purchaser; or, second, pay to the patentee or contract purchaser the damages to the lands, livestock, water, crops, or other tangible improvements under agreement; or, third, in lieu of either of the foregoing provisions, post with the Department prior to his entry upon the lands, a cash deposit or surety bond, in an amount to be fixed by the Commissioner, conditioned upon payment to the patentee or contract purchaser for all such damage caused by lessee or permittee.

Historical Note

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4).
Section R12-5-1807 renumbered from Section R12-5-707
(Supp. 93-3).

ARTICLE 19. PROSPECTING PERMITS**R12-5-1901. Definitions**

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- A. "Commissioner" means State Land Commissioner.
- B. "Date of issuance of permit" means the 15th day after approval of the designated land by the Commissioner.
- C. "Department" means State Land Department.
- D. "Exploration" means activity conducted upon the state land covered by an exploration permit to determine the existence or nonexistence of a valuable mineral deposit, including but not limited to geological, geochemical or geophysical surveys conducted by qualified experts, and drilling, sampling and excavation, together with the costs of assay and metallurgical testing of samples from such land.
- E. "Geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits.
- F. "Geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.
- G. "Geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations.
- H. "Mineral" means all natural inorganic substances that may be extracted from the earth and includes mineral compounds and aggregates, natural building stone, saline deposits, and such organic substances as coal and guano but does not include petroleum and related hydrocarbon gases or other natural gases.
- I. "Qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.
- d. If a corporation:
- Name.
 - State of incorporation.
 - Arizona business address.
 - Affirmation of authorization to do business in Arizona.
- e. Age and marital status.
- f. Description according to the public land survey of the land for which application is being made.
- g. Location of mineral locations, claims or leases on the land under application.
- h. Location of abandoned underground or other major workings on the land under application.
- i. Location of proposed roadways within the area under application and of proposed of ingress and egress over other state land concerned.
- j. Location of improvements or crops on land under application, or on land over which proposed routes of ingress and egress pass. (Information required in (g), (h), and (i) above, shall be conveyed by means of a reasonably accurate plat, or drawing, accompanying the application form.)
2. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the furnishing by the applicant of such additional information as may appear to him to be necessary or desirable, either generally or specifically, for the proper administration of the law governing prospecting permits.
- D. Filing application for permit; fee; time of filing
- Each application filed with the Department shall be accompanied by payment to the Department of a failing fee of \$15.00.
 - Each application so filed that meets the requirements of (A), (B), and (C)(1) above shall be stamped by the Department with the time and date it is filed with the Department and, upon being so stamped, shall have a priority over any other application for a permit involving the same state land which may be filed with the Department subsequent to such time and date.
 - 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, provided the requirements of (A), (B), and (C)(1) have been met.
 - When two or more applications are delivered to the mail room of the Department in the same mail, the applications shall be deemed to have been simultaneously filed.
 - Each application not meeting the requirements of (A), (B), and (C)(1) above shall be rejected by the Department.
- E. Withdrawal from mineral location of lands under application. The open state land involved in a filed and time-stamped application for permit shall be deemed withdrawn from mineral location at the time the application is stamped and shall remain so withdrawn so long as the application is pending.
- F. Adjudication of rights; notice to applicant; issue of permit
- Not less than 30 days, nor more than 45 days from the filing of the application with the Department, provided there is no prior application for a mineral exploration permit involving the same state land then pending before the Department, or if such prior application is then pending but is subsequently cancelled, not more than 15 days after it is cancelled, the Department shall mail to the applicant, by registered or certified mail at the address shown on the application, a written notice designating:

Historical Note

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1901 renumbered from Section R12-5-731 (Supp. 93-3).

R12-5-1902. Expired**Historical Note**

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1902 renumbered from Section R12-5-732 (Supp. 93-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 297, effective January 31, 2012; filed in the Office January 11, 2017 (Supp. 17-1).

R12-5-1903. Application for Permit

- A. Qualifications of applicant. Any citizen of the United States, partnership or association of citizens, or a corporation organized under the laws of the United States or any state or territory thereof, and authorized to transact business in the state, may apply to the Commissioner for a mineral exploration permit on state land.
- B. Area covered by permit application. Separate application shall be made for each mineral exploration permit. A permit may include one or more of the rectangular subdivisions of 20 acres, more or less, or lots of state land in any one section of the public land surveys.
- C. Information to be furnished by the applicant
- The application for permit shall be in such form as the Commissioner may prescribe, shall be in writing, signed by the applicant or an authorized agent or attorney for the applicant, and shall contain the following information:
 - Name and address of applicant.
 - Statement whether applicant is an individual, partnership or corporation.
 - Statement of citizenship.

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- a. The state land described in the application which, at the time the application was filed with the Department, was open to entry and location as a mineral claim or claims upon discovery of a valuable mineral deposit thereon,
 - b. The amount of rental required to be paid for the mineral exploration permit, and
 - c. Whether a bond will be required as a condition to issuance of such permit.
2. If, within 15 days after the mailing of such notice, the applicant shall pay to the Department as rental for the permit, the amount of \$2.00 per acre for each acre of state land designated in the notice and shall file with the Department the bond, if any, required as a condition to issuance, the Commissioner shall issue to the applicant a mineral exploration permit for the state land designated in the notice.
- G. Default by applicant; cancellation of application.** Upon failure of the applicant for a mineral exploration permit to make the payment or furnish the required bond within the period of 15 days, as provided in (F) above, the application shall be deemed cancelled, of no further effect and the filing fee forfeited.
- H. Simultaneous filings; conflicts; adjudication of priority**
1. In the event it is determined by the Department that two or more applications for a mineral exploration permit have been filed at the same time, as indicated by the time-stamp, and that the applications include one or more rectangular subdivisions of 20 acres, more or less, or lots of state land which are identical, a conflict of priority shall exist as to such identical land.
 2. Resolution of conflicts of priority shall be by drawing held by the Department not less than ten, nor more than 20 days after the simultaneous filing. Ample notice by registered mail of conflict and drawing shall be given each applicant involved. The drawing shall be conducted in such a manner as to resolve the order of priority of filing between or among the simultaneously filed applications, and suitable notice of the determined order of priority shall be given to each such applicant by the Department.
- I. Right of applicant to use of land.** The filing of an application for a mineral exploration permit shall not confer upon the applicant any greater right to use of the land under application than that held before such filing.

Historical Note

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1903 renumbered from Section R12-5-733 (Supp. 93-3).

R12-5-1904. Expired**Historical Note**

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1904 renumbered from Section R12-5-734 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

R12-5-1905. Conversion of Permitted Acreage to Mineral Lease

Application for lease.

1. Following discovery of a valuable mineral deposit upon the state land covered by a mineral exploration permit with a rectangular subdivision of 20 acres, more or less,

or lot of the public land survey, the permittee may apply to the Commissioner for a mineral lease upon state land so contained.

- a. For the purpose of the application and any mineral lease issued pursuant to such application, such rectangular subdivision or lot shall constitute a mineral claim without extra-lateral rights and shall be deemed to have been located as of the date of filing the application for mineral lease.
2. The application for mineral lease shall be on a form provided by the Commissioner and shall be accompanied by:
 - a. Lease application fee of \$25.00 per lease.
 - b. Advance annual rental of \$15.00 per claim.
 - c. A plat, to scale, accurately showing location of the claim properly tied in to known U.S. Public Survey corner monuments to properly identify the land claimed.
 - d. A reasonably accurate drawing showing the proposed route of ingress and egress over other state land concerned.
 - e. Evidence, in a form acceptable to the Commissioner, constituting the applicant's proof of a valuable mineral deposit within the bounds of the claim. Final determination as to such proof shall be made by the Commissioner from the evidence submitted or by any other means at his disposal.
 3. Ordinarily, both the application to lease, and the lease, shall be on the basis of one application per claim and one lease per claim. However,
 - a. The Commissioner may permit the acceptance of applications embracing more than one claim provided the claims are contiguous and further provided, that prior arrangement for such consolidation has been made and approval had; and
 - b. The Commissioner may permit or cause consolidation of claims for lease purposes to the extent consistent with required Departmental administrative procedures. Any consolidation thus effected shall not alter the provisions of subsection (2) above.
 4. From and after the date of issuance of a mineral lease, the mineral claim or claims covered by such mineral lease shall be deemed to be excluded from the prospecting permit.

Historical Note

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1905 renumbered from Section R12-5-735 (Supp. 93-3).

ARTICLE 20. COMMON MINERAL MATERIALS AND NATURAL PRODUCTS**R12-5-2001. Definitions**

- A. "Common mineral materials" includes cinders, sand, gravel and associated rock, fill-dirt, common clay, disintegrated granite, boulders and loose float rock, waste rock and materials of similar occurrence commonly used as aggregate road material, rip-rap, ballast, borrow, fill, for general construction and for similar purposes.
- B. "Natural products" includes all other products severed from the land including, but not limited to, water and plants but shall not include geothermal resources and those substances subject to the mining prospecting permit and leasing laws of Arizona.

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- C. "Royalty" means the monetary consideration representing the true appraised value of the common mineral materials of natural products.
- D. For the purposes of any common mineral materials sales agreement, unless otherwise stated, the following terms shall have these meanings.
1. "Ton" is 2,000 pounds.
 2. A "cubic yard" is a measurement of material that will fill a container that measures 1 yard by 1 yard by 1 yard and when a cubic yard is to be converted to tons industry accepted measures of conversion will be used.
 3. "Annual production" is the number of tons of material that the Department determines is a reasonable amount to be extracted from the site in any 12-month period.
 4. "Unit royalty rate" is the amount of money to be paid by the buyer to the Department for each ton of common mineral materials extracted.
- H. Rehearings and appeals. The right to a rehearing or an appeal from an intermediate or final order of the Department, Commissioner or Board of Appeals from any action taken pursuant to this Article, shall be as authorized by the law pertaining to the conduct of the Department, Commissioner and Board of Appeals, the general rules pertaining to such rehearings and appeals and such right is neither enlarged nor diminished by this Article.

Historical Note

Former Section R12-5-772 repealed as an emergency effective October 31, 1977, new Section R12-5-772 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-772 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2002 renumbered from Section R12-5-772 (Supp. 93-3).

Historical Note

Former Section R12-5-771 repealed as an emergency effective October 31, 1977, new Section R12-5-771 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-771 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2001 renumbered from Section R12-5-771 (Supp. 93-3).

R12-5-2002. Miscellaneous Rules

- A. Scope. These rules are promulgated pursuant to authority vested in the State Land Department by statute and provide for the disposition of common mineral products and natural products in conformance with the enabling Act and Arizona Constitution. These rules and regulations shall supersede any existing rules or procedures of the Department under this Chapter.
- B. Application of rules. As applicable, these rules shall govern the sale of all common mineral materials and natural products.
- C. State land subject to application to purchase. Any state-owned land containing deposits or accumulations of common mineral materials and natural products shall be subject to application for sale thereof it being understood that the state reserves the right to refuse to authorize the sale of common mineral materials or natural products on its lands.
- D. Location prohibited. Common mineral materials and natural products are not subject to location as a claim, application for prospecting permit or to application for a mineral lease, as provided by Title 27, Chapter 2, Articles 3 and 4 of the Arizona Revised Statutes. The right to enter upon state land for the purpose of exploring and testing of common mineral materials is reserved by the Department.
- E. Nature of agreement. A common mineral materials or natural products sales agreement is an agreement by virtue of which the holder may enter designated state trust lands and recover, extract, use, store, remove and dispose of the materials or natural products designated in the sales agreement, as set forth in R12-5-775(B), R12-5-778, and R12-5-779.
- F. Area of activity. The agreement entitles the holder to pursue any permitted activity on or within the premises as determined by boundaries drawn vertically downward through the exterior boundaries of the premises.
- G. Environmental protection. At any time during the course of the agreement, the Department may require the purchaser to employ new or other conservation measures in addition to any required at the time of purchase. Any such requirement shall not affect the royalty or minimum annual guarantee requirement.
- R12-5-2003. Application for Purchase**
- A. Qualification of applicant. Any citizen, or one who has declared his intention to become a citizen, of the United States, partnership, or association of citizens, or a corporation organized under the laws of the United States or any state, or territory thereof, and authorized to transact business in the state, and any agency of the state of Arizona or any political subdivision thereof may apply to the Department to purchase common mineral materials or natural products.
- B. Area covered by application. A separate application shall be made for each common mineral materials or other natural products sale that relates to land in a different section or to non-contiguous parcels within a section. The size of any area subject to sale shall be determined by the Department in order to further the best interests of the state, and may represent consolidated applications.
- C. Information to be furnished by the applicant.
1. The application to purchase shall be in such form as the Commissioner may prescribe, shall be filed with the Department by the applicant or an authorized agent for the applicant, and shall contain the following information:
 - a. Name and address of applicant.
 - b. Statement whether applicant is an individual, partnership or corporation or agency of the state or political subdivision thereof.
 - c. Statement of citizenship, when applicable.
 - d. If a corporation:
 - i. Name.
 - ii. State of incorporation.
 - iii. Arizona business address.
 - iv. Affirmation of authorization to do business in Arizona.
 - e. Age and marital status, when applicable.
 - f. Description, according to the public land survey, of the land for which application is being made.
 - g. Location of mineral claims or leases on the land under application.
 - h. Location of abandoned mineral workings or common mineral materials pits on the land under application.
 - i. Location of proposed roadways within the area under application and of proposed routes of ingress and egress over other state land.
 - j. Location of improvements or crops on land under application or on land over which proposed routes of ingress and egress pass (information required in (g) through (j) herein shall be conveyed by means of a

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reasonably accurate plat or drawing accompanying the application form).

2. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the applicant to furnish such additional information, either generally or specifically, as the Commissioner may deem necessary for the proper administration of the law governing sales of common mineral materials or other natural products.
- D.** Filing application for sale. Each application filed with the Department shall be accompanied by the filing fee provided by law and an application for commercial lease of whatever portion, if any, of the lands covered by the sale application upon which the applicant intends to undertake related commercial activities, place permanent improvements or otherwise use the surface.

Historical Note

Former Section R12-5-773 repealed as an emergency effective October 31, 1977, new Section R12-5-773 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-773 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2003 renumbered from Section R12-5-773 (Supp. 93-3).

R12-5-2004. Exploration Permits

Common mineral materials and natural products, exploration, permits.

1. Scope. Following receipt of an application to purchase, the Department may issue permits to any person to explore for common mineral materials or natural products which are subject to sale.
2. Issuance of permits. Such permits will be issued only for limited entry into designated areas for the purpose of exploring or testing for common mineral material or natural products.
3. Non-assignability of permits. Such permits are non-assignable and subject to control stipulations by the Department.
4. No reimbursable improvements will be authorized or recognized by the Department in connection with any activity pursuant to an exploration permit.
5. Filing an application for sale shall entitle an applicant to an exploration permit without payment of further fees; any other person wishing to explore must pay a sum equal to the application fee.
6. All related state land must be restored after exploration and before sale by the exploring person(s).

Historical Note

Former Section R12-5-774 repealed as an emergency effective October 31, 1977, new Section R12-5-774 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-774 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2004 renumbered from Section R12-5-774 (Supp. 93-3).

R12-5-2005. Use of Land

- A.** Rights of applicant. Except as may be provided by an exploration permit duly issued pursuant to R12-5-774, the filing of an application for a common mineral material or other natural products sale shall not confer upon the applicant any greater right to the use of the land under application or to the common mineral materials or other natural products therein than were held by the applicant before filing.

- B.** Rights of Buyer. The Buyer shall have the right to use as much of the surface of the premises as is reasonably necessary for the extraction, severance, temporary storage, removal and disposition of the materials from the premises, including the right to wash, screen, crush, sort or otherwise mechanically process those materials, together with the right of ingress to and egress from the premises across other state lands along designated routes approved by the Department. The right herein granted shall be perfected by Buyer obtaining the commercial lease referred to in R12-5-773(D).
- C.** Use by other than Buyer; assignability of Buyer's rights. No one other than the employees or officers of the Buyer or those of an independent contractor engaged in the performance of a written contract with the Buyer shall have the right to enter upon the premises to perform any act permitted Buyer under the sales agreement. However, Buyer may assign its interest upon the prior written approval of the Department upon a form provided for such.
- D.** No reimbursable improvements shall be authorized or recognized by the Department no matter by whom or for what purpose constructed insofar as the Buyer of a common mineral materials or natural products agreement is concerned. The Buyer shall have 90 days following the expiration or termination of the agreement, provided Buyer has performed all acts to be performed by it to remove any improvements; further provided that such removal does not interfere with the land being returned to an acceptable condition. Otherwise, any such improvements shall be deemed abandoned to the trust. Nothing in this provision, however, shall interfere with any right to reimbursement for improvements which Buyer might have by virtue of its status as a lessee of the Department.

Historical Note

Former Section R12-5-775 repealed as an emergency effective October 31, 1977, new Section R12-5-775 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-775 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2005 renumbered from Section R12-5-775 (Supp. 93-3).

R12-5-2006. Notice and Conduct of Competitive Sales

- A.** Nature
1. All sales of common mineral materials and natural products, except to governmental agencies, shall be by public auction.
 2. Common mineral materials or natural products may be sold to governmental agencies without public auction on terms specified by the Commissioner, provided that the materials or products are sold at their true appraised value and that they are to be used for governmental purposes.
- B.** Sales notice. Public notice of sale at public auction for common mineral materials or natural products shall be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state Capitol and in a newspaper of general circulation published regularly nearest the location of the interest to be sold and with the same formality as required for the sale of land.
- C.** Conduct of sales. A representative of the Department shall conduct the public auction in a manner as consistent as possible as that provided for sales of land. Specifically, bidding shall be conducted in the following manner:
1. Bidding shall be by voice bid but no bid will be considered or recorded which is not higher than the highest preceding bid, except the initial bid may be for the unit royalty rate established in the notice of sale.

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2. No bid shall be accepted for less than the unit royalty rate established in the notice of sale and the Department reserves the right to reject any or all bids, if determined by it to be in the best interests of the state.
 3. Before a final bid at public auction is accepted, bidder must present to the auctioneer the amount of money that represents the minimum required in the notice of sale. The successful bidder shall have an additional 30 days from the date of sale in which to pay such additional sums, post such bonds and complete whatever other requirements may be required. Failing to do so will result in the abandonment of such sums already paid to the Department as liquidated damages and the freeing of the Department to reconsider such other bidders as the proper recipient of the sales agreement.
- D. Execution of agreement**
1. Upon approval by the Department of the successful bid for a common mineral materials or other natural products sale, the Department, by mail, will tender the sales agreement to the Buyer for its signature and simultaneously will notify it of the bond coverage required by the Department as a condition of issuing the sales agreement and will further state the execution fee required by law.
 - a. When the executed sales agreement is filed with the Department by the Buyer and the Buyer has posted the bond or bonds required as a condition of issuance of the agreement, and the agreement has been signed by the Commissioner, the agreement will be in full force and effect.
 - b. The date of commencement of the agreement will be the date of sale.
- Historical Note**
- Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2006 renumbered from Section R12-5-776 (Supp. 93-3).
- R12-5-2007. Common Mineral Materials**
- A.** Material to be specified. Common mineral materials sales agreements will recite the material or materials covered by such agreements and the rights of Buyers will pertain only to such materials as specified in the agreement.
1. It is understood that flora will necessarily be distributed by Buyer's activities, but such disturbance shall be minimal and the Department may so direct Buyer's activities to assure such minimal disturbance.
 2. Buyer shall not be entitled to keep, give, sell or otherwise dispose of any flora on the premises unless the agreement so provides, in which event such flora shall have been appraised by or for the Department and a separate price therefore set forth in the agreement.
 3. This agreement shall confer the right on the Buyer to extract groundwater from the land area subject to the sale for the purposes stated in R12-5-772, subsection (E) and R12-5-775, subsection (B), and purposes incidental or related thereto which uses and purposes shall be set forth in the Notice of Sale and which shall have been a factor in the establishment of the minimum acceptable unit royalty rate however, groundwater may be separately noted for sale in which event the notice of sale shall specifically so provide.
 4. The granting of a right to extract groundwater shall not constitute a representation or guarantee by the Department that there is any groundwater available at any level or any quality for extraction.
 5. Any right to extract groundwater conferred hereby is subject to any and all limitations and provisions existing in law or regulation of any agency including any such applicable other regulation of this Department.
- 6.** Nothing herein shall affect any right to the use of groundwater which buyer might otherwise possess by virtue of being a lessee of the Department or having otherwise acquired a groundwater permit through Public Auction Sale by the Department.
- B.** Advertising of sale. The advertising of sale of common mineral materials shall state the location by legal description of the tract or tracts on which the material is being offered, the kind of material, the term, the time and place of auction, the unit, the minimum unit royalty rate, minimum annual production, total bid deposit required, bond requirements, the office where additional information may be obtained and such additional information as the Department may deem necessary.
1. When the materials to be sold on a basis other than the standard one set forth in these rules, the notice of sale shall so state in specific detail.
- C.** Appraisals. Common mineral materials to be sold will be appraised by the Department when the materials are in their undisturbed natural condition ("in situ") using acceptable appraisal standards. The appraisal will determine the minimum unit royalty rate and minimum annual production.
- D.** Annual royalty. Until any reappraisal goes into effect, the annual royalty shall be the higher of
1. The minimum annual royalty as determined by the bidding process as provided in R12-5-777(E),
 2. The number of units of material extracted multiplied by the unit royalty rate.
- Upon reappraisal, subsections (D)(1) and (2) shall be adjusted to reflect the reappraisal.
- a. The minimum annual royalty payment shall be due and payable in advance on the anniversary of the agreement. Royalty for any material extracted, severed or disposed of in excess of the minimum annual production shall be due and payable in advance on the anniversary of the agreement. Royalty for any material extracted, severed or disposed of in excess of the minimum annual production shall be due and payable monthly within 30 days after billing by the State Land Department.
 - b. Minimum annual royalty payments shall be applied as a credit to payment for materials for which payment must be made, provided, however, that monies so advanced and not credited against payments for materials shall become the sole property of the state upon termination or expiration of the agreement.
 - c. For purposes of determining minimum annual royalty payment due in any particular year:
 - i. Multiply the original minimum annual royalty by the number of years of the agreement;
 - ii. Subtract the royalties thus far paid by (i);
 - iii. Divide (ii) by the years remaining and that will give the minimum annual royalty for the year in question.
 - d. In no event will the minimum royalty be less than 5% of the original minimum annual royalty.
- E.** Bids. Unless otherwise provided by the Commissioner and specifically published in the notice of sale, all bids shall be by the unit royalty rate.
1. In determining the minimum annual royalty, the Department shall multiply the unit royalty rate bid by the successful bidder times the minimum annual production which shall be determined solely by the Department and set forth in the notice of sale.

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- F. Reappraisals. The royalty rate established initially shall remain fixed for the first two years of the agreement. For each subsequent year the Department may reappraise in the following manner:
1. No later than 60 days before the end of any anniversary date, the Department may reappraise the material to determine the unit rate and/or the acceptable minimum annual royalty; that reappraisal shall be effective for the second year following the one in which the reappraisal is made.
 2. The Department shall notify the Buyer within 30 days of the reappraisal and Buyer shall be obligated for payments based on such reappraisal for the second year following the one in which the reappraisal is made. If any proper appeal is taken by Buyer and not concluded before the effective date of the reappraisal, the prior royalty shall be paid, with any necessary adjustment being made immediately upon the conclusion of such appeal.
 3. The Department is not obligated to reappraise in any particular year and its failure to do so merely means the last appraisal results shall remain in effect until a proper reappraisal is made.
- G. Provisions of the agreement
1. Term
 - a. The term of a common mineral material sales agreement shall not be for more than 20 years.
 - b. The Department will set the term of each sales agreement in such manner as to best utilize the resources and provide an economically sound term compatible with the law, the best interest of the trust and of the state.
 2. For contract administration and sales-related expenses, a charge of 2% will be added to the minimum annual royalty and to royalties paid for production in excess of minimum annual production.
 3. The royalty provisions shall be set forth in the agreement.
 4. All common mineral materials removed from the premises shall be measured by volume, weight or truck tally or a combination of these methods or any other form of measurement the Department determines to be to the best interest of the state.
 5. Buyer's conduct on premises
 - a. The Buyer will conduct its operations in a workmanlike manner at all times, to protect the premises and soils thereof and including, but not limited to:
 - i. Keeping the premises free of all litter, junk or debris;
 - ii. Taking precautions as necessary to protect the safety of persons or property upon the premises;
 - iii. Complying with all flood control regulations which may be applicable to the premises;
 - iv. Fencing all dangerous workings for the protection of humans and livestock;
 - v. Complying with all other rules and regulations prescribed from time to time by the Department or any other agency having jurisdiction over the premises or the activities.
 - b. Upon termination of the agreement, the Buyer will restore the surface of the premises to a reasonable condition in accordance with good mining practices, such restoration to include:
 - i. The sloping of side banks of the excavation resulting from the operation to a grade of not more than one foot vertical for each two feet of horizontal distance, unless otherwise specified by the Department;
 - ii. The backfilling into the excavation of all unused waste materials and overburden resulting from the operation, and the leveling of such backfill to a reasonably uniform depth on the floor excavation, unless otherwise specified by the Department;
 - iii. The removal and restoration of the surface of any new haul roads constructed on state land by Buyer, which roads the Department does not elect to retain, any such election of retention to be made in writing.
 - c. The Buyer will indemnify, hold and save harmless, the state of Arizona, the Department and all of their officers and employees, against all loss, damage, liability, expense, costs and charges incident to or resulting in any way from use, condition or occupation of the premises.
6. Transfers
- a. The Buyer, with prior approval of the Commissioner, may assign the agreement.
 - b. The application for assignment and the assignment and assumption of the agreement will be on such forms as the Department may prescribe.
 - c. Assignment shall not relieve the Buyer from any duties under the agreement but the assignee shall succeed to all of the rights and be jointly and severally liable, along with the assignor, to all of the obligations existing under the agreement dating from its inception.
 - d. No transfer of the Buyer's interest or any portion thereof is authorized except as specifically provided in these rules.
7. Termination of sales agreement
- a. Upon 30 days' written notice to Buyer, the Department may terminate the agreement for the failure or neglect of the Buyer to perform any of its provisions, including those specified by these rules. Failure to pay royalties when due is such a failure of performance.
 - b. Notices of termination shall be mailed to the address of record at the Department of the Buyer. Such notice shall set forth the reason for the termination.
 - c. Provided Buyer is not in default in any of the terms and conditions of the agreement, the Buyer shall have the right to terminate the agreement upon any annual anniversary date thereof by giving the Seller not less than 30 days' prior notice in writing of Buyer's intention to do so.
8. Upon termination or expiration of the agreement, Buyer shall have 90 days, provided it has fully performed under the agreement, to remove any stockpiled material on the premises. The Commissioner may, if the Buyer so requests in writing within ten days before the expiration of any such removal period, or extension thereof, grant a further extension not to exceed 60 days and provided that the cumulative removal period, along with extensions, shall not exceed 210 days. If the Buyer has not fully performed or fails to remove the stockpiled material within that specified time, such material will be deemed abandoned to the Trust. Any subsequent buyer of material on the portion of the premises on which stockpiled will succeed to its ownership and pay the Department the new Buyer's royalty rate therefor upon removal.
9. The agreement shall not provide for any renewal thereof.

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10. Bonds

- a. The Commissioner may require the Buyer to post a cash deposit or surety bond to guarantee the performance of the sales agreement and the payment of all monies due the state under the sales agreement.
- b. Restoration and surface damage bond
 - i. The Commissioner shall require the Buyer to furnish bond, in a reasonable amount, to be fixed by the Commissioner, conditioned that the Buyer will guarantee restoration of the surface of the land described in the sales agreement to a reasonable condition in accordance with good mining practices, upon termination of the sales agreement.
 - ii. The Commissioner shall also require the Buyer to include in the above bond an amount set by the Department as a surety bond in the form, amount, and with surety approved by the Commissioner, conditioned upon prompt payment to the owner or lessee of the surface of state land covered by the common mineral materials sales agreement, or across which the common mineral materials Buyer exercises the right of ingress, for any loss to such owner or lessee for damage or destruction caused by the common mineral materials Buyer or Buyer's agents or employees, to grasses, forage, crops and improvements upon such land.
 - iii. Assignment of the sales agreement will not relieve the assignor of his obligation as principal under the bond. Release of the assignor's obligation under the bond may be effected through the posting of a replacement bond by the assignee, but only after approval by the Commissioner in lieu of a replacement bond, the bonding company may furnish a bond rider form changing the name of principal.
 - iv. The Commissioner, in his discretion reasonably exercised, may reduce or increase the principal amount of any bond.
 - v. After determination by the Commissioner that full discharge of the conditions of the obligation under any bond has been effected, he will, in writing, notify the principal and surety held by the bond so that it may be formally terminated.
 - vi. Surety on the bond shall have the right to cancel the bond and be relieved of future liability, but not previous liability after the period of notice, by giving 30 days' notice to the Buyer and the Department of its desire to so cancel. Failure by the Buyer to post a replacement bond before the expiration of the 30 days, mentioned next above, shall constitute a default by the Buyer and cause for cancellation of the sales agreement.

11. Records and reports

- a. A monthly report of production (either affirmative or negative) shall be submitted by the Buyer of each common mineral materials sales agreement within 15 days after the end of the month in which his sales agreement was issued, and by the 15th of each month thereafter.
- b. The report shall be in such form as the Commissioner shall prescribe and shall contain such information as the Commissioner shall require, including,

but not limited to, the type, volumes, weights and classifications of the common mineral materials removed or disposed of.

- c. Each Buyer shall make and keep an accurate account of all operations, showing the sales, prices, dates, purchasers and the total amount of material disposed or removed from the subject premises.

Historical Note

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2007 renumbered from Section R12-5-777 (Supp. 93-3).

R12-5-2008. Natural Products -- Groundwater

When the law permits and the Department believes it consistent with the best interests of the state, groundwater may be sold at public auction in the same manner and subject to the same forms, insofar as possible, as are common mineral materials.

Historical Note

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2008 renumbered from Section R12-5-778 (Supp. 93-3).

R12-5-2009. All Other Natural Products

When the Department believes it consistent with the best interests of the state, natural products other than groundwater may be sold at public auction in the same manner and subject to the same terms, insofar as possible, as are common mineral materials.

Historical Note

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2009 renumbered from Section R12-5-779 (Supp. 93-3).

ARTICLE 21. OIL AND GAS LEASES**R12-5-2101. 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 with all required attachments. 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.

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2101 renumbered from Section R12-5-781 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1). New Section made by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

R12-5-2102. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2102 renumbered from Section R12-5-782 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2103. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2103 renumbered from Section R12-5-783 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E)

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at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2104. Application for Noncompetitive Lease; 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 application for a noncompetitive oil and gas lease. State lands under a single oil and gas lease application shall not exceed 2,560 acres which shall be the maximum acreage of state lands 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 state 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 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 Section R12-5-2105.

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2104 renumbered from Section R12-5-784 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

R12-5-2105. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2105 renumbered from Section R12-5-785 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 290, effective January 15, 2020 (Supp. 20-1).

R12-5-2106. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2106 renumbered from Section R12-5-786 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 290, effective January 15, 2020 (Supp. 20-1).

R12-5-2107. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2107 renumbered from Section R12-5-787 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2108. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2108 renumbered from Section R12-5-788 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E)

at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2109. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2109 renumbered from Section R12-5-789 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2110. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2110 renumbered from Section R12-5-790 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2111. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2111 renumbered from Section R12-5-791 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2112. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2112 renumbered from Section R12-5-792 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2113. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2113 renumbered from Section R12-5-793 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2114. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2114 renumbered from Section R12-5-794 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

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.

1. Within 30 days of opening of sealed bids, the Department, subject to its right to reject a bid, shall award the lease to the highest qualified bidder. The Department shall give notice of its decision, by certified mail, to the applicants.
2. The Department shall send a lease offer to the successful bidder. The successful bidder shall execute the leases and pay the first year's rental, within 30 days from receipt of the lease offer.
3. If two or more tracts, where the acreage does not exceed more than two sections of land, are awarded to any bidder

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the tracts may, if not otherwise prohibited by law, be included in a single lease.

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2115 renumbered from Section R12-5-795 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

R12-5-2116. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2116 renumbered from Section R12-5-796 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2117. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2117 renumbered from Section R12-5-797 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2118. Cooperative and Unit Agreements

A lessee seeking the Commissioner's approval of a cooperative or unit agreement under A.R.S. § 27-557, shall comply with the following procedure and requirements.

1. 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:
 - a. A copy of a plat map showing the area to be included in the cooperative or unit agreement;
 - b. Structural and geological information that supports the land to be included in the cooperative or unit agreement; and
 - c. 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.
2. A cooperative or unit agreement does not affect the leasehold of any leased state lands outside of the cooperative or unit area. The cooperative or unit agreement does not affect leaseholds within the cooperative or unit area unless the lessees' land is committed to the cooperative or unit area pursuant to A.R.S. §§ 27-557 or 27-531 et seq.

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2118 renumbered from Section R12-5-798 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

R12-5-2119. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2119 renumbered from Section R12-5-799 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E)

at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2120. Surrender

A lessee may surrender to the Department a lease or any part of a lease, but not less than an approximate 40 acre parcel. A lessee shall surrender the lease or a part of a lease to the Department by submitting to the Department one copy of the lease and any monies owed.

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2120 renumbered from Section R12-5-800 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

R12-5-2121. Expired**Historical Note**

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2121 renumbered from Section R12-5-801 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

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.

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2122 renumbered from Section R12-5-802 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

ARTICLE 22. GEOTHERMAL RESOURCES**R12-5-2201. Definitions**

In these rules and regulations the following terms shall have the meaning herein given:

1. "Commission" means the Oil and Gas Conservation Commission.
2. "Completion" or "completed well" means a well that has produced or is capable of producing geothermal resources or has been determined to be a dry hole, temporarily abandoned or plugged and abandoned, or has been readied for other phases of exploitation.
3. "Department" means the State Land Department.
4. "Environment" means the sum total of all the external conditions which may act upon an organism or community, to influence its development or existence.
5. "Geothermal area" means the same general surface area which is underlain or reasonably appears to be underlain by one or more formations containing geothermal resources.
6. "Geothermal resources" means:
 - a. All products of geothermal processes embracing indigenous steam, hot water and hot brines.
 - b. Steam and other gases, hot water and hot brines resulting from water, other fluids or gas artificially introduced into geothermal formations.
 - c. Heat or other associated energy found in geothermal formations, including any artificial stimulation or induction thereof.
 - d. Any mineral or minerals, exclusive of fossil fuels and helium gas, which may be present in solution or in association with geothermal steam, water or brines.

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7. "Lease" means a geothermal resources development lease issues for state lands pursuant to the provisions of this Article.
8. "Lessee" means the holder of a lease or any assignee of an original lease or part thereof.
9. "Operator" means any person drilling, maintaining, operating, pumping or in control of any well, and includes the owner, when any well is or has been or is about to be operated or under the direction of the owner.
10. "Owner" means and includes the operator when any well is operated or has been operated or is about to be operated by any person other than the owner.
11. "Person" means and includes any individual, firm, association, corporation or any other group or combination acting as a unit.
12. "Waste" means any physical waste including, but not limited to, underground waste resulting from the inefficient, excessive or improper use of dissipation of reservoir energy or resulting from the location, spacing, drilling, equipping, operation or production of a geothermal resources well in such a manner that reduces or tends to reduce the ultimate economic recovery of the geothermal resources within a reservoir, and surface waste resulting from the inefficient storage or utilization of geothermal resources and the location, spacing, drilling, equipping, operation or production of a geothermal resources well in such a manner that causes or tends to cause the unnecessary or excessive surface loss or destruction of geothermal resources obtained or released from the reservoir.
13. "Well" means any well drilled in search of geothermal resources or any development well on lands in areas proved to be underlain by one or more formations containing geothermal resources or reasonably presumed to contain geothermal resources or any well drilled for information purposes, or any producing well or reentered abandoned well used for the injection of fluids into the geothermal formation or disposition of fluids into non-geothermal formations, or any well drilled for the purpose of stimulating the heat of a formation or for the creation of heat in a formation by nuclear or any other form of energy.
14. "Known Geothermal Resource Area (KGRA)" means an area in which the geology, nearby discoveries, competitive interests, and other indicia would, in the opinion of the Department, engender a belief in the people who are experienced in the subject matter that the prospects for the extraction of geothermal resources are sufficient to warrant expenditures of money for that purpose.

Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-850 repealed, new Section R12-5-850 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2201 renumbered from Section R12-5-850 (Supp. 93-3).

R12-5-2202. Expired**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-851 repealed, new Section R12-5-851 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2202 renumbered from Section R12-5-851 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2203. Expired**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-852 repealed, new Section R12-5-852 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2203 renumbered from Section R12-5-852 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2204. Terms of Lease

- A. If, after the expiration of the ten year primary term or the additional two-year period provided for in A.R.S. § 27-6710, this lease is maintained in force and effect by the production of geothermal resources in paying quantities and the production shall cease, this lease shall continue in force and effect provided lessee pays the rentals provided for in these rules and conducts operations on the lands with reasonable diligence for the purpose of restoring the paying production of geothermal resources from the lands. In the event paying production of geothermal resources from the lands is restored within one year from the date of cessation of production, this lease shall remain in full force and effect.
- B. If geothermal resources in paying quantities are discovered on the lands covered by this lease or on lands joined therewith in a cooperative or pooled unit, while the lease is in full force and effect, but lessee is unable to produce any geothermal resources because of lack of transportation, processing or generating facilities, the lease shall be extended beyond the primary term of ten years from year to year, but not to exceed a period of three years, by payment of a shut-in geothermal resources royalty of \$2.00 per acre per year, payable in advance annually on the anniversary date of the lease, and if the payment is made it will be considered geothermal resources are being procured and produced in paying quantities from the leased premises for such year.

Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-853 repealed, new Section R12-5-853 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2204 renumbered from Section R12-5-853 (Supp. 93-3).

R12-5-2205. Expired**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-854 repealed, new Section R12-5-854 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2205 renumbered from Section R12-5-854 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2206. Expired**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-855 repealed, new Section R12-5-855 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2206 renumbered from Section R12-5-855 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2207. Expired**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-856 repealed, new Section R12-5-856 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2207 renumbered from Section R12-5-856 (Supp. 93-3).

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93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2208. Expired**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-857 repealed, new Section R12-5-857 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2208 renumbered from Section R12-5-857 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2209. Surface Use

- A.** Geothermal resources lessees shall have the right to use so much of the surface of the lands as may be reasonably necessary for the conduct of their operations under the leases.
- B.** Surface rights to include:
1. Prospecting, exploration drilling and production.
 2. Right to construct and maintain all roads, communication lines, pipelines, reservoirs, storage tanks, pumping stations, or other structures reasonably necessary to the production thereof, to the extent such construction is compatible with existing and future surface use of the land, as determined by the State Land Commissioner.

However, the lessee shall be liable for unnecessary or excessive damage caused by lessee, in the judgment of the Department, to the state's interest in the surface, or to the interest of a surface lessee, if any, and the Department may require the lessee at any time to execute a bond in a reasonable principal amount as determined by the Department conditioned upon payment for all such damage. If the lessee and a surface lessee cannot agree upon the amount of damages caused by lessee, such damages shall be appraised by the Department or its agent and appeal from the judgment of the Department may be taken as provided by law.

Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-858 repealed, new Section R12-5-858 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2209 renumbered from Section R12-5-858 (Supp. 93-3).

R12-5-2210. Environmental Protection and Conduct of Operations

- A.** All lessees and operators shall comply with all applicable Arizona environmental statutes as now in effect or as hereafter enacted or amended, and all applicable rules and regulations. In addition, lessee must comply with all federal environmental statutes and regulations.
- B.** Lessee or operator shall be subject to liability for any excessive or unnecessary damage to the surface of the ground and improvements thereon, and is charged to conduct operations so as not to pollute surface or subsurface waters on the lands covered by the lease or on neighboring lands.
- C.** In addition, operations shall be conducted so as to prevent pollution to the air, noise pollution, compliance with the Arizona Antiquities Act and acts providing for the protection of native flora and fauna.

Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-859 repealed, new Section R12-5-859 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2210 renumbered from Section R12-5-859 (Supp. 93-3).

R12-5-2211. Cooperative and Unit Agreements

Commitment of leases of state lands to cooperative or unit agreements shall be conditioned on the following procedure and requirements which shall be submitted at time of application.

1. There shall be submitted to the Department two copies of a plat showing the area to be unitized, together with such geophysical and geological information as will tend to support the delineation of a geothermal resource area. The information so furnished shall be held confidential by the Department until released by the applicant or applicants.
2. There shall 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 unit area, the standard form of unit agreement of the United States should be followed.
3. After determination by the Department that it is for the best interest of the state to permit a lessee to participate in a cooperative or unit agreement for the development and operation of a geothermal resource area, the Department may grant approval therefor when a request for such approval is submitted.
4. A cooperative or unit agreement shall not affect the leasehold of any leased state lands lying outside of the unit area, and shall not be effective as to the leaseholds lying within the unit area unless the lessees thereof and the then approved operating interests shall subscribe to such an agreement.
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.

Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-860 repealed, new Section R12-5-860 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2211 renumbered from Section R12-5-860 (Supp. 93-3).

R12-5-2212. Expired**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-861 repealed, new Section R12-5-861 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2212 renumbered from Section R12-5-861 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2213. Expired**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-862 repealed, new Section R12-5-862 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2213 renumbered from Section R12-5-862 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2214. Expired**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-863 repealed, new Section R12-5-863 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2214 renumbered from Section R12-5-863 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2215. Expired

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Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-864 repealed, new Section R12-5-864 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2215 renumbered from Section R12-5-864 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2216. Abandonment -- Other Uses

As provided for in A.R.S. § 27-667(C) any well drilled for geothermal resource which has penetrated fresh water zones may be disposed of as a fresh water well subject to the following conditions:

1. State's lessee must file written request for such use with the Department.
2. Condition of the hole must be such that plugging back to fresh water zone can be safely accomplished.
3. Must meet the requirements of the rules and regulations of the Department pertaining to such use.
4. Must meet the requirements of the Commission's rules and regulations pertaining to disposal of groundwater.

Historical Note

No original number assigned (Supp. 76-4). Former Section R12-5-865 repealed, new Section R12-5-865 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2216 renumbered from Section R12-5-865 (Supp. 93-3).

R12-5-2217. Expired**Historical Note**

No original number assigned (Supp. 76-4). Former Section R12-5-866 repealed, new Section R12-5-866 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2217 renumbered from Section R12-5-866 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2218. Renumbered**Historical Note**

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2218 renumbered from Section R12-5-867 (Supp. 93-3).

R12-5-2219. Renumbered**Historical Note**

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2219 renumbered from Section R12-5-868 (Supp. 93-3).

R12-5-2220. Renumbered**Historical Note**

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2220 renumbered from Section R12-5-869 (Supp. 93-3).

R12-5-2221. Renumbered**Historical Note**

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2221 renumbered from Section R12-5-870 (Supp. 93-3).

R12-5-2222. Renumbered**Historical Note**

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2222 renumbered from Section R12-5-871 (Supp. 93-3).

R12-5-2223. Renumbered**Historical Note**

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2223 renumbered from Section R12-5-872 (Supp. 93-3).

R12-5-2224. Renumbered**Historical Note**

No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2224 renumbered from Section R12-5-873 (Supp. 93-3).

ARTICLE 23. BOARD OF APPEALS**R12-5-2301. Definitions**

Unless the context requires otherwise, in this Article:

1. "Appellant" means the person that files a notice of appeal with the Clerk under A.R.S. § 37-215.
2. "Board" means the Land Department Board of Appeals appointed by the Governor under A.R.S. § 37-213(A).
3. "Chairperson" means the Chairperson or, in the Chairperson's absence or by designation, the Vice-chairperson of the Board.
4. "Clerk" means the person designated by the Board to handle administrative matters for the Board.
5. "Commissioner" means the State Land Commissioner appointed under A.R.S. § 37-131, or the Commissioner's designee.
6. "Department" means the State Land Department.
7. "Good cause" means a reason that the Board determines is substantial enough to afford a legal excuse.
8. "Party" has the same meaning as prescribed in A.R.S. § 41-1001.
9. "Person" means an individual, limited liability company, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, group acting as a unit, and any department, agency, or instrumentality of the state or a political subdivision.

Historical Note

Adopted effective September 9, 1983 (Supp. 83-5). Section R12-5-2301 renumbered from Section R12-5-901 (Supp. 93-3). Former Section R12-5-2301 renumbered to R12-5-2315, new Section R12-5-2301 adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2302. Notice of Appeal

- A. A person that files a notice of appeal under A.R.S. § 37-215 shall ensure that the notice is written and contains a clear and concise statement of the grounds for appeal and the specific relief requested.
- B. If a notice of appeal regards a final decision of the Commissioner relating to classification or appraisal of lands or improvements, the person filing the notice of appeal shall file it with the Commissioner under this Article.
- C. If a notice of appeal regards a final decision of the Commissioner not relating to classification or appraisal of lands or improvements, the person filing the notice of appeal shall file it with the Department under A.R.S. Title 41, Chapter 6, Article 10.

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Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2303. Notice of Hearing

- A. Setting a hearing date. Within 10 days after receipt of a notice of appeal under A.R.S. § 37-215 and R12-5-2302(B), the Clerk shall set a date for the hearing.
- B. Service of a notice of hearing. At least 30 days before a hearing, the Clerk shall serve notice of the hearing, by certified mail or personal service, to the appellant, Department, and all other parties to the appeal.
- C. Contents of a notice of hearing. The Clerk shall ensure that a notice of hearing contains a statement:
 1. Identifying the Board, parties, and matters asserted;
 2. Establishing the date, time, and place of the hearing;
 3. Identifying the legal authority and jurisdiction under which the hearing is to be held;
 4. Advising the parties of the requirements of R12-5-2305; and
 5. Referencing the particular statutes and rules involved.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 88, effective February 17, 2003 (Supp. 02-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2304. Prehearing Disclosure

- A. Witnesses and exhibits. At least 15 days before the hearing date, each party shall:
 1. File with the Clerk:
 - a. A list of all witnesses who may be called to testify on behalf of the party, and
 - b. Eight copies of all documentary exhibits to be offered on behalf of the party; and
 2. Serve upon each other party a copy of the list of witnesses and a list of all exhibits to be offered on behalf of the party.
- B. The Board shall exclude the testimony of a witness and the admission of an exhibit not disclosed under subsection (A), unless the Board determines that admission of the evidence is in the interest of fairness and justice.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2305. Continuances

- A. General. The Chairperson may, for good cause, continue or reschedule a hearing on the Chairperson's own motion, application of a party, or stipulation of the parties.
- B. Application for continuance.
 1. Filing. To obtain a continuance of a hearing, a party shall file an application for continuance with the Clerk and serve a copy of the application on all parties no later than 10 days before the scheduled hearing. For good cause, the Chairperson may allow a party to file and serve an application for continuance less than 10 days before the scheduled hearing.
 2. Contents. A party filing an application for continuance shall ensure that the application states why the continuance is requested, why a stipulation from adverse parties was not obtained, and the amount of time requested.

3. Response and reply. An opposing party may file and serve a response within five days after service of an application for continuance. The Board shall permit a reply that is filed and served within five days after the response is served.

- C. Stipulations. The parties may stipulate to a continuance. The Board shall accept a stipulation that is filed no later than 72 hours before the time scheduled for the hearing.
- D. Time limits. Unless the parties agree, the Board shall not grant a continuance if granting the continuance causes the hearing not to be conducted in compliance with A.R.S. § 37-215(C).

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Typographical correction made to A.R.S. reference in R12-5-2305(E) (Supp. 96-3). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2306. Computation of Time; Additional Time After Service by Mail

- A. Computation. To compute any period prescribed or allowed by this Article or order of the Board, the day of the act, event, or default after which the period begins to run is not included. The last day of the period is included, unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and legal holidays are excluded in the computation.
- B. Service by mail. If a party has a right or is required to do some act or proceed within a prescribed period after service of a notice or other paper and if the notice or paper is served by mail, five calendar days are added to the prescribed period.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2307. Service of Documents Other than Subpoenas

- A. Method of service. Unless otherwise specified in this Article, a person shall serve a document other than a subpoena by:
 1. Personal service with receipt or certificate of delivery,
 2. Legible fax with confirmed receipt, or
 3. Regular mail.
- B. Service on attorney. If a party has appeared through an attorney, service upon the attorney is deemed service upon the party.
- C. Time of service. Service is made at the time a document is:
 1. Personally served;
 2. Faxed to the number contained in Board's records for the person being served; or
 3. Deposited in the United States mail, postage prepaid, in a sealed envelope addressed to the person being served, at the person's address of record.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2308. Subpoenas

- A. Issuance of a subpoena. Upon written application of a party or on the Chairperson's own motion, the Chairperson may issue a subpoena requiring the attendance and testimony of a witness, production of documentary or other tangible evidence, or both.
- B. Specificity required. A party that applies for a subpoena to compel production of documentary or other tangible evidence

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shall ensure that the application specifically identifies the books, papers, documents, or other evidence to be produced.

- C. Service of a subpoena. A party that applies for a subpoena shall ensure that the subpoena is personally served. The person serving a subpoena shall provide proof of service by filing with the Board a certified statement of the date and manner of service and the name of the person served.
- D. Objection to a subpoena. A party or the person served with a subpoena who objects to the subpoena, or a portion of the subpoena, may file a written objection with the Board. The person filing an objection shall:
 1. File it within five days after service of the subpoena or at the beginning of the hearing, whichever occurs first; and
 2. Ensure that the objection states why the subpoena is unreasonable or oppressive or how the desired testimony or evidence may be obtained by an alternative method.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2309. Motions

- A. Generally. A party that requests an order or other relief from the Board shall file a motion. Unless made during a hearing, a motion shall be made in writing at least 10 days before the hearing. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion and the relief or order sought.
- B. Response to motion; reply. A party may file a response to a pre-hearing motion within five days after service of the pre-hearing motion. The responding party shall serve the response on the moving party. The moving party may file a reply within five days after service of the response.
- C. Affidavits. If a party makes a motion that relies on facts that are neither apparent in the record nor subject to official notice, the party shall support the motion by affidavit or other satisfactory evidence.
- D. Rulings on motions. The Board shall consider a pre-hearing motion on the written materials submitted by the parties, unless the Chairperson directs otherwise. The Chairperson may rule on a procedural motion. The Board shall rule on a non-procedural motion.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2310. Hearing

- A. Recording of hearing. The Board shall ensure that a hearing record is made by tape recorder or stenographer.
- B. Order of appearance. The Chairperson shall designate the order in which parties introduce their evidence.
- C. Improper conduct. It is improper conduct to fail to comply with an order of the Chairperson or to disrupt a hearing. A person who engages in improper conduct shall be excluded from the hearing if the Chairperson determines that exclusion is necessary to facilitate the hearing.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2311. Evidence

- A. Generally. A witness at a hearing shall testify under oath or affirmation. To encourage a full and true disclosure of the facts, the Chairperson shall ensure that all parties have the

right to present oral or documentary evidence and conduct cross-examination. The Chairperson shall admit evidence that the Chairperson determines is relevant, probative, and material and rule upon offers of proof. The Chairperson shall exclude evidence the Chairperson determines is irrelevant, immaterial, or unduly repetitious.

- B. Evidence. The Chairperson may conduct a hearing in an informal manner without adherence to the rules of evidence required in judicial proceedings.
- C. Official notice. The Board may take official notice of any matter than might be judicially noticed by a superior court of Arizona or any matter that is peculiarly within the knowledge of the Board as an expert body.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2312. Objection to Decision by Chairperson

If any member of the Board objects to a decision made by the Chairperson under this Article, the Board member may request that the Board vote on the matter in question and the Chairperson shall submit the matter to a vote of the Board.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2313. Ex Parte Communications

- A. Prohibitions. A party shall not communicate, directly or indirectly, orally or in writing, with a member of the Board about any substantive issue relating to a proceeding before the Board unless:
 1. All parties are present, either personally or by an attorney;
 2. It is during a scheduled proceeding where an absent party fails to appear after proper notice; or
 3. It is by written motion with a copy to all parties.
- B. Record. A Board member who receives an ex parte communication shall place in the public record of the proceeding:
 1. A copy of the ex parte communication if the communication is written; or
 2. A summary of the substance of the ex parte communication if the communication is oral.
- C. Action by Board. Upon receipt of an ex parte communication by a member of the Board, the Board, to the extent consistent with the interests of justice, may require the party making the ex parte communication to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by the violation.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2314. Decision of the Board

- A. Time limit. Unless the parties stipulate otherwise, the Board shall render its final decision within 60 days after the hearing.
- B. Contents. The Board shall include findings of facts and conclusions of law, separately stated, in the Board's decision.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2315. Rehearing or Review of Decision

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- A.** Generally. Except as provided in subsection (G), within 30 days after service of notice of a final decision issued by the Board, a party may file with the Board a written motion for rehearing or review of the decision. A party is not required to file a motion for rehearing or review of a decision to exhaust the party's administrative remedies. A party may seek judicial review of the Board's final decision under A.R.S. Title 12, Chapter 7, Article 6.
- B.** Amendment of motion; response; oral argument. A party may amend a motion for rehearing or review at any time before the Board rules on the motion. Another party may file a response to a motion for rehearing or review within 10 days after service of the motion or amended motion. A party shall ensure that a motion or response is supported by a memorandum discussing legal and factual issues. Oral argument may be requested by either party or the Board.
- C.** Grounds for rehearing or review. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; or
 6. The findings of fact or decision is not justified by the evidence or is contrary to law.
- D.** Affirmation or modification of decision; grant of rehearing or review. The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (C). The Board shall specify with particularity the grounds for an order modifying a decision or granting a rehearing or review. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- E.** Board-initiated rehearing or review. Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of the decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in a motion. The Board shall specify with particularity the grounds on which a rehearing or review is granted under this subsection.
- F.** Affidavits. When a party bases a motion for rehearing or review upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Chairperson for a maximum 10 days for good cause or by written stipulation of the parties. The Board may permit a party to file a reply affidavit.
- G.** Exigency. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare 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.
- H.** Time limits. The Board shall rule on a motion for review or rehearing within 90 days after it is filed. If the Board grants a rehearing or review, the Board shall conduct the rehearing or review within 90 days after issuing the order granting the rehearing or review.

Historical Note

Adopted effective September 9, 1983 (Supp. 83-5). Section R12-5-2301 renumbered from Section R12-5-901 (Supp. 93-3). Section R12-5-2315 renumbered from R12-5-2301 and amended effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

ARTICLE 24. EXPIRED

Article 24, consisting of R12-5-2401 through R12-5-2405, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2401. Expired**Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2402. Expired**Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2403. Expired**Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2404. Expired**Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2405. Expired**Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

ARTICLE 25. CLASSIFYING TRUST LANDS AS SUITABLE FOR CONSERVATION PURPOSES**R12-5-2501. Petition**

- A.** A petition to nominate trust land suitable for conservation purposes may be filed at the Arizona State Land Department during regular business hours. The petition shall be made on a form provided by the Department.
- B.** A petitioner shall nominate Trust lands in a manner consistent with and only for lands considered eligible under A.R.S. § 37-311, et seq.
- C.** A petitioner shall include the following information in a petition to nominate trust land suitable for conservation purposes:

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1. A legal description of the land and a map that identifies the Township (T), Range (R), section, land description, acreage and county where the land is located. (Example: T1N, R3E, Section 17, SWNW, 40 acres, Maricopa County);
 2. A statement of proposed conservation uses of the land;
 3. A statement of why the land is suitable for conservation purposes with reference to the criteria identified in R12-5-2502(A);
 4. A statement of the existing surface uses on the land and how each existing use is affected both physically and economically by the proposed conservation use;
 5. An identification of the local jurisdiction in which the land is located;
 6. A statement of the local governing authority's comprehensive plan designation and existing zoning for the land and how the proposed conservation use is or is not consistent with the comprehensive plan and zoning;
 7. A statement of the positive and negative physical and economic impacts on the local community nearest the land;
 8. A statement of who or what entity will likely manage the land if, after the land is reclassified as suitable for conservation purposes, the land is approved for lease or purchase for conservation purposes; and
 9. A statement of any known mineral potential, including sand and gravel, of the lands.
5. Wildlife habitat:
 - a. Existence of sufficient acreage and habitat quality to support populations of endangered, threatened, or other particular species;
 - b. Interconnection between the land under petition and nearby public lands for wildlife movement;
 - c. Diversity of plant communities or biodiversity of plant or animal species;
 - d. Habitat condition, whether intact or degraded; or
 - e. Distance from an existing or proposed roadway, utility line, or urban development;
 6. Other:
 - a. Geologic and topographic features:
 - i. Existence of a significant wash, slope, or other topographic feature;
 - ii. Existence of a unique rock outcropping, formation or other unusual geologic feature; and
 - iii. Known soil conditions unsuitable for development purposes;
 - b. Watershed integrity: Relationship of the land to maintenance of the integrity of one or more watersheds;
 - c. Floodplain management: Impact of the 100-year floodplain on the land;
 - d. Surface water and groundwater:
 - i. Existence of a spring or other wetland;
 - ii. Occurrence of perennial or intermittent stream flow; and
 - iii. Potential for groundwater recharge.
 - e. Long-term viability of the land for conservation management:
 - i. Viability of the land based on its size, configuration, and location for successfully conserving the resources it seeks to protect; and
 - ii. Relationship of conservation of the land to resolving wildland fire issues, particularly in the urban-wildland interface;
 - f. Local, regional, or other planning considerations:
 - i. Relationship between the proposed conservation designation and adopted local and regional plans and policies; and
 - ii. Relationship of the land to other federal, state, local, or private land trust preserves, holdings, or plans;
 - g. Recreation:
 - i. Existence of or proposed trail-based or other low impact recreation opportunities; and
 - ii. Existence of direct access to or from adjacent public or private lands used for recreational purposes;
 - h. Accessibility:
 - i. Public accessibility and nature of that accessibility to the land; and
 - ii. Impact of accessibility, based on the purpose of conservation of the land;
 - i. Scientific education:
 - i. Historic use of the land for scientific research purposes; and
 - ii. Opportunities for scientific education;
 - j. Types of multiple use:
 - i. Multiple use potential of the land; and
 - ii. Impact of specific multiple uses on the land;
 - k. Resource production preservation:
 - i. Existence of grazing lands under petition that a conservation designation may help to protect;

Historical Note

Adopted effective March 5, 1998 (Supp. 98-1).

R12-5-2502. Reclassification

- A.** Criteria: Reclassification of state lands as suitable for conservation purposes shall be in the best interest of the Trust as determined by the Commissioner. The Commissioner and the Conservation Advisory Committee may consider any or all of the following criteria in evaluating whether the nominated land should be reclassified as suitable for conservation purposes:
1. Open space: Existence of substantially undisturbed open space values that make the land's conservation an asset to the community or to other adjacent developable state trust land;
 2. Unique scenic beauty:
 - a. Existence of a natural community landmark such as a significant mountain vista; or,
 - b. Existence of a scenic vista on to or through the land under petition from nearby major roadways or pathways, in addition to the mere existence of undeveloped open space;
 3. Wildlife and vegetation:
 - a. Existence of significant vegetation or wildlife, both native to the region and worthy of protection due to the relative lushness, health and diversity of the vegetation or the number and diversity of the wildlife;
 - b. Existence of endangered, threatened, or protected plants or endangered or threatened wildlife species as identified under federal or state laws;
 - c. Existence of significant stands of a signature plant characteristic of the location;
 4. Cultural resources:
 - a. Existence of a prehistoric or historic archaeological site;
 - b. Existence of a historic structure; or
 - c. Comparative costs of mitigation, data recovery, or preservation compared to potential revenue production of the land;

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- ii. Existence of prime agriculture areas under petition that a conservation designation may help to protect; and
- iii. Protection of the resource production component (such as grazing, agriculture, mining, and timber) of the local or regional economy;
- l. Relationship to other state trust lands:
 - i. Proximity to other state trust lands;
 - ii. Development capability of adjacent state trust lands; and
 - iii. Anticipated timing of development activity on adjacent state trust lands;
- m. Preexisting protections: Existence of any federal, state, or local law requiring protection by existing lessee of proposed conservation values;
- n. Tourism: Impact on local or regional tourism;
- o. Benefit to the Trust: Whether and for what reason reclassification is in the best interest of the Trust;
- B. Multiple Petitions:** If multiple petitions are received and the Commissioner determines that reclassification is in the best interest of the Trust, the Commissioner may reclassify the land with the conservation purpose stated in one or more than one of the petitions, or the Commissioner may reclassify the land without stating a conservation purpose.
- C. Management Plan:** Upon reclassification, the Commissioner may require a party to submit a management plan to allow existing and conservation uses to be coordinated in a manner that will protect both existing uses and conservation and open space values.

Historical Note

Adopted effective March 5, 1998 (Supp. 98-1).

R12-5-2503. Bond

- A.** Under A.R.S. § 37-312(D), a petitioner shall submit a bond in an initial amount of \$1,000 with a petition to nominate trust land suitable for conservation purposes. The bond shall be a surety bond or a cashier's check. The State Land Commissioner may require an additional bond amount under A.R.S. § 37-312 if the processing costs of the petition are estimated to exceed the initial bond amount based on the following factors:
 - 1. **Planning Costs:** Planning involves review, consideration, and evaluation of:
 - a. Evidence and testimony presented at public hearing;
 - b. Physical and economic impact on other land owned or controlled by the current lessee or on the local community;
 - c. Existing holding leases, existing planning permits, and development plans in progress;
 - d. Input from local planning and zoning agencies and regional planning authorities;
 - e. Mineral potential, including sand and gravel; and
 - f. Consistency with the Enabling Act, the State Constitution, and Arizona Revised Statutes;
 - 2. **Notice:** Development and mailing of a notice of intent to classify lands suitable for conservation purposes and a notice of public hearing to:
 - a. Existing lessees;
 - b. Local planning and zoning agencies and regional planning authorities;
 - c. Owners of property within 300 feet of the land;
 - d. Persons who have requested notice of classification of lands suitable for conservation under A.R.S. § 37-311, et seq., with the Department; and
 - e. Affected state agencies;
 - 3. **Advertisement:** Notice of public hearing for six publications in a newspaper of general circulation in the county where the land is located;
 - 4. **Public Hearing:** Receipt and processing of oral and written testimony regarding the proposed reclassification including, but not limited to, review, consideration, and evaluation of testimony, as well as the costs of meeting facility and equipment rental.
- B.** Upon reclassification of all or a portion of the land as suitable for conservation purposes, the successful petitioner shall forfeit the initial and any additional bond amounts to the state under A.R.S. § 37-312(D).

Historical Note

Adopted effective March 5, 1998 (Supp. 98-1).