

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

1. **Sections Affected**
R7-2-802
- Rulemaking Action**
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 15-203(A) and 15-272(B), (C), and (D)
Implementing statute: A.R.S. §§ 15-203(A) and 15-272(B), (C), and (D)
3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Corinne L. Velasquez, Administrator
Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007
Telephone: (602) 542-5057
Fax: (602) 542-3046
4. **An explanation of the rule, including the agency's reason for initiating the rule:**
The State Board of Education is proposing to amend R7-2-802 to delete the procedures and requirements outlined for conducting hearings before the Board related to noncompliance with the Uniform System of Financial Records. The State Board recently adopted R7-2-701 et seq., which rules set forth the procedures and requirements for the conduct of hearings. Upon adoption of the proposed amendment to R7-2-802, hearings related to noncompliance with the USFR will be conducted pursuant to R7-2-701 et seq.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**
It is not anticipated that the rule changes will have any economic, small business, or consumer impact. Hearings are currently being held before the Board related to noncompliance with the USFR and, with the proposed amendment, hearings will continue to be held pursuant to A.R.S. § 15-272. The proposed amendment will require hearings held pursuant to R7-2-802 to be held in accordance with R7-2-701 et seq. and consistent with A.R.S. Title 41, Chapter 6.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement is:**
Name: Corinne L. Velasquez, Administrator
Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007
Telephone: (602) 542-5057

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Fax: (602) 542-3046

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

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

Date: April 28, 1997
Time: 1:30 p.m.
Location: State Board of Education
1535 West Jefferson, Room 417
Phoenix, Arizona 85007
Nature: Public hearing

Written comments may be submitted on or before 5 p.m. on April 28, 1996, to the contact person listed above.

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

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

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

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 8. COMPLIANCE

- R7-2-802. ~~Hearing Procedure for Determining School District Compliance with the Uniform System of Financial Records~~

ARTICLE 8. COMPLIANCE

- R7-2-802. ~~Hearing Procedure for Determining School District Compliance with the Uniform System of Financial Records~~

A. Upon receipt of a report from the Auditor General that a school or school district has failed to comply with the Uniform System of Financial Records within 90 days after having received a notice of noncompliance from the Auditor General, the State Board of Education ("Board") shall review the Auditor General's report to determine whether the school or school district is in noncompliance.

B. When the Board determines that a school or school district is in noncompliance with the Uniform System of Financial Records, it shall give written notice to the school or district of its determination. The written notice shall advise the school or district of the following:

1. The Superintendent of Public Instruction shall withhold distribution of state funds to the school or district until such time as the Auditor General reports compliance with the Uniform System of Financial Records unless a hearing is requested by the school or district.
2. The school or district has 10 days from the receipt of the written notice of noncompliance by the Board to submit a written request for a hearing.
3. If the school or district makes a timely request for a hearing, the hearing will be held within 30 days of receipt of the district's request to the Board unless an extension of time is granted by the Board pursuant to the hearing procedures specified in R7-2-701 et seq.

C. Following a timely request for a hearing as provided in subsection (B) of this rule, the Board shall schedule a formal hearing and shall give the district notice of the hearing as provided in A.R.S. § 41-1009(A) and (B).

~~D. Hearings held pursuant to this rule shall be conducted as provided in A.R.S. § 41-1010.~~

~~E.C. The Board's decision~~

1. The Board shall determine whether the school or school district was in compliance with the Uniform System of Financial Records within 90 days after having been informed of noncompliance by the Auditor General, and whether the district is in compliance with the Uniform System of Financial Records at the time of the hearing.
2. A decision by the Board shall be determined by a majority of the members of the Board and shall be based upon substantial evidence.
3. ~~A decision shall be rendered within 30 days after the hearing.~~
4. ~~Within 30 days after a decision is reached, copies of the written decision shall be served upon the parties personally or by certified mail.~~
5. ~~The parties shall have the opportunity to provide proposed findings of fact and conclusions of law to the Board at or before the time of the hearing before the Board.~~

~~F. Rehearing procedure~~

1. Any party aggrieved by a decision rendered by the Board may file with the Board, not later than 15 days after service of the decision, a written motion for rehearing of the time decision, specifying the particular grounds therefor.
2. A motion to alter or amend a decision or order shall be filed not later than 15 days after service of the decision.
3. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board.
4. A response may be filed within 10 days after service of such motion by any other party or by the Attorney General.
5. The Board may require the filing of written memoranda upon the issues raised in the motion and may provide for oral argument.
6. The Board may consolidate the hearing to consider the motion for rehearing with the requested rehearing.

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- 7. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights!
a. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order, or abuse of discretion, whereby the moving party was deprived of a fair hearing;
b. Misconduct of the Board or the prevailing party;
c. Accident or surprise which could not have been prevented by ordinary prudence;
d. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
e. Excessive or insufficient penalty;
f. Error in the admission or rejection of evidence or other errors of law occurring in the administrative hearing;
g. The decision is not justified by the evidence or is contrary to law.
8. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in paragraph (7).

- An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
9. Not later than 15 days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reasons for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds on which the order was based.
10. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 days after such service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days, by the Board for good cause shown, or by the parties by written stipulation. The Board may permit a reply affidavit by the moving party.

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

- 1. Sections Affected: R15-5-403, R15-5-404, R15-5-406; Rulemaking Action: Amend, Amend, Amend.
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific): Authorizing statutes: A.R.S. §§ 42-105 and 42-1303; Implementing statute: A.R.S. § 42-1310.13.
3. The name and address of agency personnel with whom persons may communicate regarding the rule: Name: Ernest Powell, Tax Analyst; Address: Tax Research and Analysis Section, Department of Revenue, 1600 West Monroe, Phoenix, Arizona 85007; Telephone: (602) 542-4672; Fax: (602) 542-4680.
4. An explanation of the rule, including the agency's reason for initiating the rule: The rules provide guidance in the application of transaction privilege tax to persons engaged in business under the amusement classification. The Department is proposing to amend the rules to incorporate legislative changes and to conform to current rule-making guidelines.
5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state: Not applicable.
6. The preliminary summary of the economic, small business, and consumer impact: Identification of the rulemaking: In 1994, the Arizona Legislature enacted A.R.S. § 42-1310.13(B)(1) that provides a deduction from the tax base under the amuse-

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ment classification for the gross income from membership fees, which provide for the right to use a health or fitness establishment or a private recreational establishment. Health or fitness establishment is defined under A.R.S. § 42-1310.13 and private recreational establishment is defined under A.R.S. § 42-1310.13(C)(2). The Department is proposing to amend R15-5-406 to incorporate this legislative change.

In addition, the Department is proposing to amend the rules to conform to current rulemaking guidelines.

Summary of the Economic, Small Business, and Consumer Impact Statement:

It is expected that the benefits of the rules will be greater than the costs. The amendment of these rules will benefit the public by making the rules conform to current rulemaking guidelines which will make the rules clearer and easier to understand. In addition, the amendment of R15-5-406 will benefit the public by making the rule conform with the current statutes. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

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

Name: Ernest Powell, Tax Analyst
Address: Tax Research and Analysis Section
Department of Revenue
1600 West Monroe
Phoenix, Arizona 85007
Telephone: (602) 542-4672
Fax: (602) 542-4680

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

Oral proceedings at which members of the public may appear and make comments regarding the rules or the economic, small business, and consumer impact statement will occur as follows:

Date: April 21, 1997
Time: 9:30 a.m.
Location: Department of Revenue
1600 West Monroe
Large Conference Room, B1 Floor
Phoenix, Arizona
Nature: Public hearing

A person may submit written comments regarding the proposed rule by submitting the comments no later than 5 p.m., April 21, 1997, to the person listed above.

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

Not applicable.

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

None.

11. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 4. SALES TAX — AMUSEMENTS AMUSEMENT CLASSIFICATION

R15-5-403. Amusement Machines Devices
R15-5-404. Other Income
R15-5-406. Health or Fitness Establishments and Private Club
recreational Recreational facilities Establishments

ARTICLE 4. SALES TAX — AMUSEMENTS AMUSEMENT CLASSIFICATION

R15-5-403. Amusement Machines Devices
Gross proceeds of sales or gross income ~~income~~ from the operation of coin-operated and other machines devices which provide amusement is ~~are~~ included in the tax base taxable under the amusement this classification. Examples of such devices include: devices that play prerecorded music record players, electronic games, pinball games, and billiard tables.

1. The tax base from the business of operating amusement devices taxable income from the operation is the gross

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amount received from the amusement devices without deduction for commissions paid, rental cost for the equipment, or other expenses.

2. The Liability for payment of the tax rests with the operator of the machines. For purposes of this rule, "operator" shall mean the individual having direct control of the funds generated by the amusement machines devices shall pay the tax to the Department.

R15-5-404. Other Income

Gross receipts from the sale of programs, souvenirs, or any other items of tangible personal property are shall be included in the tax base taxable under the retail classification.

R15-5-406. Health or Fitness Establishments and Private club ~~Recreational recreational Establishments facilities~~

- A. The operator of a "health or fitness establishment" or a "private recreational establishment", as defined in A.R.S. § 42-1310.13(C), shall exclude from the tax base under the amusement classification all gross proceeds of sales or gross income from membership fees and initiation fees which provide for the right to use the establishment, or any portion of the establishment, for 28 days or more, and fees charged for the use of the establishment by bona fide accompanied guests of members. Any other fees for the use of a health or fitness establishment or a private recreational establishment, or any portion of such an establishment, are included in the tax base of the amusement classification.

- B. The Department shall not consider the gross proceeds of sales or gross income derived from other businesses that are on the premises of a health, fitness, or recreational business when determining whether a health, fitness, or recreational business meets the qualifications of a "health or fitness establishment" or a "private recreational establishment" if the other businesses are separate and independent from the health, fitness, or recreational business. Whether the other businesses are separate and independent depends upon the facts in each case. The Department considers several factors in making this determination including but not limited to the following:

1. Whether the business is open to both members and non members;
2. Whether the primary purpose of the business is closely related to the primary purpose of the health, fitness, or recreational business;
3. Whether the business could exist without the health, fitness, or recreational business;
4. Whether the business shares assets or employees with the health, fitness, or recreational business. Private clubs operating recreational facilities, such as golf courses, tennis courts, and swimming pools, which are open and available to the public at large, are subject to tax on income from fees and charges for such facilities. When these charges are included as part of the membership dues, such income is not taxable.