



Ariz. Admin. Code § 12-5-801

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Section 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

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

- 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

- 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.
- b.** Each application filed shall first be checked for its

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.

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

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.

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 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.

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

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 improvement 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.

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Original rule, Art. VIII, Subchapter B, Ch. II (Supp. 76-4). Section

R12-5-801 renumbered from Section R12-5-165 (Supp. 93-3).

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