

**NOTICES OF PROPOSED RULEMAKING
Initiated After January 1, 1995**

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register*.

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY EXAMINERS

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R4-24-101	Amend
R4-24-105	Amend
R4-24-106	Amend
R4-24-109	Amend
R4-24-201	Amend
R4-24-202	Amend
R4-24-203	Amend
R4-24-204	Amend
R4-24-301	Amend
R4-24-302	Amend

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

Authorizing statute: A.R.S. § 32-2004(B)
Implementing statutes: A.R.S. §§ 32-2022, 32-2025, and 32-2041(E)

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

Name: Janice Stille, Executive Director
Address: Board of Physical Therapy Examiners
1400 West Washington, Suite 230
Phoenix, Arizona 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093

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

Throughout the rules, "physical therapy attendant" has been amended to read "physical therapy assistant or aide" to conform with wording used in the Board's statutes and to references that are used in the profession. The proposed amendments to R4-24-101 are to add definitions of 3 terms that used in the rules. Other amendments to this rule are to correct grammar and to clarify language.

Amendments to R4-24-105, R4-24-106, R4-24-109, and R4-24-301 are to correct grammar and to clarify language.

Amendments to R4-24-201 are to clarify that documentation that foreign-educated applicants submit to the Board to determine the sufficiency of their education must be prepared by a credentialing agency. Other amendments to this rule include deleting the language that is duplicative of the Board's statutes, adding the requirement that applicants notify the Board of address changes, and changing grammar and clarifying language.

Amendments to R4-24-202 are to delete language that is duplicative of the Board's statutes and to set forth the passing score on the licensure examination.

Amendments to R4-24-203 are to correct grammar, make the rule clearer, and add the requirement that licensees notify the Board of address changes.

Amendments to R4-24-204 include simplifying the fee structure for examinations and reducing the fee for reinstating a licensee from \$150 to \$75. Specifically, the examination fee structure is being amended to eliminate having 5 different fees depending upon whether the applicant was taking the physical therapist exam, the physical therapist assistant exam, being reexamined, or was an out-of-state applicant. The proposed amendment has one exam fee of \$225.

Arizona Administrative Register
Notices of Proposed Rulemaking

The amendments to the fee rule also include charging a nominal fee of \$5 for a copy of the Board's statutes and rules. One paragraph of this rule that was merely informational about what the application fee covered was deleted.

R4-24-302 was amended to include the word "assistant" and delete "attendant", to correct grammar, and to require licensees to provide information to the Board about the assistants or aides that they are supervising.

The adoption of these proposed rule amendments will benefit applicants and licensees by making them clear, concise, and understandable, and in conformance with current standards and statutes.

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:**

This impact of these proposed rule amendments, which is minimal, will be on applicants and licensees. Language changes regarding the examination passing score are consistent with national standards in the profession and meet the goal of the Federation of State Boards of Physical Therapy to have criterion-referenced passing scores be the accepted method of examination scoring in all jurisdictions.

Requiring applicants and licensees to notify the Board of address changes has a very minor impact on those who must comply, compared with the time and effort involved by the Board in locating applicants or licensees who have not provided updated information.

The change in examination fee to \$225 for all examinees is justified by the increased cost of administering the exam. This rule has not been amended for over 5 years. The economic impact on applicants is minimal because they are universally employed after graduating and obtaining their license due to the demand for physical therapists.

The requirement that licensees provide information to the Board about the assistants or aides that they are supervising is a minimal reporting requirement and helps the Board keep track of the fewer than 100 physical therapy assistants currently in Arizona.

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:**

Name: Janice Stille, Executive Director
Address: Board of Physical Therapy Examiners
1400 West Washington, Suite 230
Phoenix, Arizona 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093

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:**

Date: December 5, 1995
Time: 1:30 p.m.
Location: Board of Physical Therapy Examiners
1400 West Washington
Second Floor Conference Room
Phoenix, Arizona 85007
Nature: Board of Physical Therapy Examiners meeting.

Public oral comment hearing on the proposed rules is as follows:

Date: October 23, 1995
Time: 9 a.m.
Location: Board of Physical Therapy Examiners
1400 West Washington
Second Floor Conference Room
Phoenix, Arizona 85007

A person may request information about the public comment hearing or the proceeding at which the Board will adopt, amend, and repeal proposed rules by contacting 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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

- R4-24-101. Definitions
R4-24-105. Investigation of ~~violations~~ Complaints
R4-24-106. Hearing Procedures
R4-24-109. Rehearing of Review of Board Decisions

ARTICLE 2. LICENSING PROVISIONS

- R4-24-201. Applications
R4-24-202. Examinations Scores
R4-24-203. Renewal of License and Address Changes
R4-24-204. Fees and photocopy charges

ARTICLE 3. REGULATORY PROVISIONS

- R4-24-301. Professional Practice
R4-24-302. Delegation of Tasks to Physical Therapist Assistants, and Aides and attendants

ARTICLE 1. GENERAL PROVISIONS

R4-24-101. Definitions

~~In these rules, unless the context otherwise requires, the following definitions of terms shall apply:~~

1. "Accredited physical therapy education program" or "physical therapy assistant program" means a program which ~~that~~, at the time of the applicant's graduation therefrom, was approved by an agency recognized by either the U.S. Department of Education or the Council on Post-secondary Accreditation to accredit physical therapy or physical therapy assistant programs.

"Credentials evaluation" means a written evaluation by International Consultants of Delaware (ICD) or International Credentialing Associates (ICA), or an evaluation that is equivalent to ICD's or ICA's done by another credentialing agency that has reviewed a foreign-educated applicant's education to determine whether the foreign-educated applicant's education is substantially equivalent to that of an applicant from an accredited physical therapist education program, pursuant to A.R.S. § 32-2027(A).

"Criterion-referenced passing point" means the passing score on the licensure examination as determined by the Professional Examination Service's method of scoring. The Professional Examination Service is the entity that administers and scores the examination.

"Federation of State Boards of Physical Therapy" means the national organization that is comprised of boards throughout the United States that credential physical therapists and is the organization that developed the national physical therapy examination.

2. "Good moral character" means ~~the~~ a person has not been convicted of a felony relating to the practice of physical therapy within 5 years, or a misdemeanor relating to the practice of physical therapy involving moral turpitude within 2 years, prior to filing a license application.
3. "Initial evaluation" means the assessment of the patient's physical condition, complaint, and objective findings, with regard to the patient's diagnosis, if any, to ascertain the patient's need for physical therapy and whether further consultation with the referring practitioner, if any, or other

health care practitioner is necessary before the physical therapy plan of treatment is devised and implemented.

4. "Licensee" means a person licensed by the state as a physical therapist.
5. "On-site supervision" means the responsible licensee, when supervising the provision of direct patient care, is on the premises and physically available within a reasonable amount of time, based on the condition of the patient, the experience of the assistant or aide and the type of therapy provided.
6. "Physical therapy assistant or aide or attendant" means a person who assists under the on-site supervision of a physical therapist, who has been trained by the physical therapist, and who performs procedures commensurate with the assistant's or aide's or attendant's training.
7. "Remedial measures" means successful completion of a program of study as recommended by the Board.
8. "Substantially similar" for purposes of A.R.S. § 32-2023(A) means that an applicant who files for licensure by endorsement has graduated from an accredited physical therapy education program, has passed the national licensing examination recognized by the Board at the time the applicant passed the examination in accordance with the Arizona standards then in effect with the passing point required by the Board at the time the examination is taken, and is in good standing in all states in which the applicant is or has been licensed.
9. "Suspension" means removal of license for a period not to exceed 3 years.

R4-24-105. Investigation of violations Complaints

- A. Any person may file a complaint with the Board. Official complaint forms may be obtained from the Board office. If an official complaint is not used, the The complaint shall contain the following information: the name of the licensee complained about; the name and address of the person filing the complaint, unless the complainant desires anonymity; the nature of the complaint; whether the person filing the complainant has contacted any other organizations or the licensee concerning the complaint; the licensee's response, if any; the details of the complaint with pertinent dates and copies of any relevant documents; an expression of the willingness or unwillingness on the part of the person filing the complaint whether the complainant is willing to testify in a legal at a hearing. The complaint may be signed or filed anonymously.
- B. The president, or designee, shall inform the licensee of the complaint and request a written response from the licensee to be submitted to the Board within 10 days. On request, the licensee shall furnish any records which that are pertinent to the complaint. If further investigation is required, the The Board may hire an investigator to continue the conduct investigation investigations. The investigator shall submit a written report of all findings to the Board.

R4-24-106. Hearing Procedures

- A. Informal interview
1. Notice of the informal interview shall contain the following information:
- a. The time, date, and place of the interview;

Arizona Administrative Register
Notices of Proposed Rulemaking

- b. An explanation of the informal nature of the proceeding;
 - c. The licensee's right to appear with or without legal counsel;
 - d. A short description of the subject of the interview;
 - e. The licensee's right to a formal hearing in place of the informal interview.
2. During an informal interview, the following procedure shall be used:
- a. Introduction of the Board members present,
 - b. Swearing in of licensee and witnesses,
 - c. Optional opening comment by Board or staff,
 - d. Optional opening comment by licensee,
 - e. Questioning and/or examination of the licensee and witnesses,
 - f. Optional closing statement by licensee,
 - g. Board deliberations,
 - h. Decisions and order of the Board.
- B. Formal hearing**
1. In a contested case, all parties shall have an opportunity to be heard after reasonable notice.
 2. Notice shall be served personally or by registered mail not less than 30 days prior to the hearing date.
 3. The president of the Board may continue, reschedule, or extend the hearing for the performance of acts required by law or the Board.
- C. Records**
1. All hearings shall be mechanically or stenographically recorded.
 2. Transcripts may be prepared at the request and expense of the Board or any party to a hearing.
 3. Parties who request transcripts shall pay transcription costs.
- 6. Error in the admission or rejection of evidence or other errors of law in the original hearing; or**
- 7. A decision that is not justified by the evidence or is contrary to law.**
- D. The Board may affirm or modify the decision, or grant a rehearing to any or all of the parties. The rehearing may cover all or part of the issues for any of the reasons set forth above. An order granting a rehearing shall particularly state the grounds for granting the rehearing, and the rehearing shall cover only the grounds stated.**
- E. No later than 10 days after making a decision, the Board may order a rehearing on its own initiative for any of the reasons stated in subsection (C). After giving notice to the parties or their counsel, the Board may grant a motion for rehearing not stated in the motion. In either case, the order granting a rehearing must specifically state the grounds for the rehearing.**
- F. When a motion for rehearing is based upon affidavits, the affidavits shall be served with the motion. An opposing party may serve opposing affidavits within 10 days of service of the original affidavits. This 10-day period may be extended up to an additional 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.**
- G. If in a particular decision the Board makes specific findings that immediate effectiveness of a decision is necessary for the preservation of public health and that rehearing or review is impracticable, unnecessary, or contrary to public interest, the decision may be issued as final without opportunity for rehearing or review. If a decision is issued as final in this way, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decision.**

R4-24-109. Rehearing or Review of Board Decisions

- A. Except as provided in subsection (G), any party to a disciplinary action before the Board who is aggrieved by the decision rendered in the action may file with the Board a written motion for rehearing or review. The motion shall be filed within 10 days after service of the decision and shall particularly state the grounds for the motion. For purposes of this subsection, a decision is considered served when personally delivered or sent by certified mail to the ~~parties'~~ party's last known residential or business address.**
- B. A motion for rehearing or review ~~under this Rule~~ may be amended at any time before it is ruled upon by the Board. A response may be filed to a motion or amended motion by any other party, within 10 days of service of the motion or amended motion. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.**
- C. A rehearing or review of a decision may be granted for any of the following causes materially affecting the moving party's rights:**
1. Irregularity in the administrative proceedings of the Board or the prevailing party, or any order or abuse of discretion which deprived the moving party of fair hearing;
 2. Misconduct of the Board or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties or disciplinary action;

ARTICLE 2. LICENSING PROVISIONS

R4-24-201. Applications

- A. Applications for licensure shall be accompanied by the application fee, an official transcript from an accredited program, an examination application or endorsement form, and official test scores. Foreign-educated applicants shall submit a credentials evaluation prepared by International Consultants of Delaware (ICD) or International Credentialing Associates (ICA) or another credentialing agency that prepares a credentials evaluation equivalent to ICD or ICA. Applications shall be made only on official application forms, ~~which may be obtained from the Board office and shall contain the following information:~~**
1. Name and address of applicant;
 2. Date of birth;
 3. Social security number (optional);
 4. Post-high school education;
 5. Professional experience;
 6. List of states in which applicant has worked as a physical therapist;
 7. Date and location of professional examination, if previously taken;
 8. ~~Credentials evaluation if foreign educated;~~
 98. History of any conviction ~~of or~~ a violation of federal, state, or local ~~statutes~~ laws or rules, other than for minor traffic violations; and
 109. A certification that the application is complete and accurate.
- B. Examination applications shall be accompanied by the examination fee and received by the Board at least 45 days prior to the examination date. ~~Official~~**

Arizona Administrative Register
Notices of Proposed Rulemaking

examination Examination applications may be obtained from the Board office.

~~C.~~ If the Board determines that an application is incomplete or unacceptable and the applicant disagrees, the applicant, on request, shall be granted a hearing to determine the status of the application. The hearing shall be conducted pursuant to Title 41, Chapter 6, Article 1, Arizona Revised Statutes.

~~DC.~~ The Board shall require each Each applicant to shall complete a questionnaire on the state statutes and rules applicable to physical therapy. This questionnaire shall be mailed with each application and shall be completed and returned with the application.

~~D.~~ Applicants shall notify the Board, in writing, within 10 days of a change of address to be used by the Board.

R4-24-202. Examinations Examination Scores

~~A.~~ An applicant may not take the licensure examination more than twice without approval of the Board. Such approval may be granted only upon proof of remedial measures taken by the applicant. An applicant who fails to pass only a portion of the examination may retake only those portions and not the entire examination.

~~B.~~ A passing score on the licensure examination shall be 1.5 standard deviation below the mean, or better, the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy as established by the examination service for each exam. Each section of the examination shall be evaluated and scored independently. An applicant who fail to score at least 1.5 standard deviation below the mean on any section shall retake and pass that section in order to be eligible for licensure. This passing point shall be set to equal a scaled score of 600 based on a scale ranging from 200 to 800.

R4-24-203. Renewal of Licensure and Address Changes

~~A.~~ Each license Licenses is are responsible for renewal renewing of his or her their licenses at the end of each 2-year period. Failure on the part of the Board to inform a licensee of license expiration is not a defense in cases of delinquency or lapse shall not justify or excuse a licensee's nonrenewal or untimely renewal.

~~B.~~ Renewal payments may be made by mail in the form of a by cashier's check, money order, or personal check. Payment may also be made or in person at the Board office by cashier's check, money order, personal check, or cash.

~~C.~~ Each licensee who renews his or her a license shall receive a receipt and registration card, which that signifies that the license is current and valid.

~~D.~~ Licensees shall notify the Board, in writing, within 10 days of a change of address to be used by the Board.

R4-24-204. Fees and photocopy charges

~~A.~~ The Board shall charge the following fees relating to licensure and examinations:

1. Original license Application application fee - \$100
2. Examinations Examination or each re-examination for a
 - a. Initial physical therapist or physical therapist assistant examination - ~~\$125~~225
 - b. Re-examination (two or more sections) - \$125
 - c. Re-examination (one section) - \$75
3. Administering examinations for out-of-state applicants
 - a. Physical therapist examination - \$50
 - b. Physical therapist assistant examination - \$30
4. Original license:
 - a. Twelve months or more - \$75
 - b. Less than 12 months - \$50
5. Biennial renewal - \$75
6. Duplicate license - \$10

7.6. Reinstatement - \$15075

~~B.~~ If an applicant is unable to take the examination at the time announced, the applicant shall so notify the Board in writing not less than two weeks prior to the date set and the Board shall refund to the applicant 80 percent of the examination fee paid by the applicant.

~~C.~~ The application fee covers the cost of reviewing and verifying information in the application and issuance and renewal of a temporary license to applicants who are found to have met the requirements of A.R.S. § 32-2026 or of a probationary permit to applicants who are found to have met the requirements of A.R.S. § 32-2027.

~~D.B.~~ The Board shall charge the following fees for copies of public records:

1. For commercial purposes: \$.25 per name and address and \$15 per hour of search time.
2. For noncommercial purposes: \$.25 per page.
3. Requests for copies of public records shall be accompanied by a notarized statement of the purpose for which the documents are requested and prepayment of fees. Official request forms may be obtained from the Board office.

~~C.~~ The Board may charge \$5 for each copy of its statutes and rules booklet.

ARTICLE 3. REGULATORY PROVISIONS

R4-24-301. Professional Practice

~~A.~~ The licensee shall provide the referring practitioner, if any, with any information that will may assist in the determination of an accurate diagnosis.

~~B.~~ The licensee shall be responsible for and shall not delegate the:

1. Initial written evaluation of for each patient;
2. Planning of each patient's treatment program and determining which elements of the program may be delegated to an assistant, or aide, or attendant;
3. Periodic written re-evaluation, including observation, and written documentation of the treatment program and of the patient's progress;
4. Written evaluation discharge summary of the patient and his or her the patient's response to the treatment at the termination of the treatment program.

R4-24-302. Delegation of Tasks to Physical Therapist Assistants, and Aides, and Attendants

~~A.~~ The A licensee shall not delegate to a less qualified person any service which that requires the skill, knowledge, and judgment of a licensed physical therapist.

~~B.~~ Adequate supervision by a licensee of assistants, or aides, or attendants includes the following:

1. Evaluation of the performance of delegated responsibilities and assigned tasks by assistants, and aides, and attendants;
2. Instruction and training of assistants and aides and attendants in required skills, which include including written documentation of the instruction and training, and of periodic re-evaluation of the performance of delegated tasks by the assistants and aides and attendants;
3. On-site supervision of no more than a combination of 3 assistants, or aides, or attendants engaged in direct patient care;
4. Verification that an assistant graduated from a Board-approved, accredited, physical therapy education program.

Notices of Proposed Rulemaking

C. Within 10 days of undertaking the supervision of a physical therapist assistant or aide, a licensee shall provide written notice to the Board of the name, address, place of employment, and education verification of each assistant and

aide. C.D. The supervising physical therapist is responsible for all physical therapy care given by assistants, and aides and attendants.

NOTICE OF PROPOSED RULEMAKING

Editor's Note: This Notice of Proposed Rulemaking should have been published in the August 25, 1995, issue of the Register. The Secretary of State's Office accepts full responsibility for the delay in publication and apologizes for any inconvenience it may have caused. Because of the delay, the hearing dates as originally scheduled have been changed. Please note the changes in question #8 of the Preamble.

TITLE 10. LAW

CHAPTER 3. DEPARTMENT OF LAW
CIVIL RIGHTS DIVISION

PREAMBLE

1. Sections Affected

- Article 4
R10-3-401
R10-3-402
R10-3-403
R10-3-404
R10-3-405
R10-3-406
R10-3-407
R10-3-408
R10-3-409
R10-3-410
R10-3-411
R10-3-412
R10-3-413

Rulemaking Action

- New Article
New Section

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

Authorizing statute: A.R.S. §§ 41-192(B)(2) and 41-1492.06(A) and (B).
Implementing statute: A.R.S. §§ 41-1492 through 41-1492.12 for R10-3-410 through R10-3-413.
The authority of the Attorney General to adopt the proposed rules is set forth in A.R.S. §§ 41-192(B)(2) and 41-1492.06(A) and (B), which specifically require the Attorney General to adopt rules that are consistent with Titles II and III of the federal Americans with Disabilities Act, 42 USC 12101 through 12213 and its implementing regulations 28 CFR 35 and 36, and 36 CFR 1191.

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

Name: Robbin M. Coulon, Assistant Attorney General, Civil Rights Section
Address: Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007
Telephone: (602) 542-5263 (Phoenix) or (520) 628-6500 (Tucson)
Fax: (602) 542-1275 (Phoenix) or (520) 628-6530 (Tucson)

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

R10-3-401 through R10-3-413 are being proposed to implement the provisions of the Arizonans with Disabilities Act ("the Act"), (A.R.S. §§ 41-1492 through 41-1492.12.). A.R.S. § 4-1492.06(A) requires all rules adopted by the Attorney General to be consistent with and not exceed the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the Americans with Disabilities Act. In an effort to make these rules consistent with the federal regulations, the Attorney General incorporated the federal rules by reference in R10-3-401 through R10-3-404, with several applicable definitions and certain amendments. Those provisions of R10-3-404 which amend Sections of 28 CFR 36, Appendix A, adopt the "preferred" standard set forth in the federal regulations rather than the minimum standard. R10-3-405 through R10-3-413 were adopted to establish the Attorney General's operational procedures for enforcing the provisions of the Act.

Arizona Administrative Register
Notices of Proposed Rulemaking

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 to a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact, and solicitation of comments on the summary:

The Attorney General incorporated the applicable federal regulations by reference to ensure that the rules comply with A.R.S. § 4-1492.06 and do not exceed the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the Americans with Disabilities Act. The same individuals, public entities, commercial facilities, places of public accommodation, and private providers of public transportation services that were impacted by the adoption of Titles II and III of the Americans with Disabilities Act and its implementing regulations will be impacted by the adoption of R10-3-401 through R10-3-413, with the following exceptions:

R10-3-404(B)(1) and (4): Preliminary review of economic impact does not indicate that costs of this parking design would outweigh the benefits to persons with disabilities. There may be minimal costs associated with restriping parking spaces and passenger-loading zones.

R10-3-404(B)(2), (5), and (6): These provisions adopt the "preferred" standard rather than the minimum standard. There may be some minimal economic impact on those individuals, public entities, commercial facilities, places of public accommodation, and private providers of public transportation services that have complied with the minimum standard set forth in the federal regulations. There may be minimal costs associated with extending clear floor or ground space allowances ranges to wheelchairs, extending the minimum clear width of food service lines, and extending reach ranges and clear aisle spaces in libraries.

R10-3-404(B)(3): This provision should have little to no economic impact because it adopts the Arizona building industry standard for door surfaces (10 inches) rather than the federal standard (12 inches). Individuals, public entities, commercial facilities, and places of public accommodation who have complied with the building industry standard regarding door surfaces will not have to make any modifications.

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:

Name: Robbin M. Coulon, Assistant Attorney General, Civil Rights Section
Address: Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007
Telephone: (602) 542-5263
Fax: (602) 542-1275

8. The time, place, and nature of the proceedings for the adoption of the rule:

The hearings originally scheduled for September 27 and 29, 1995, have been cancelled due to a delay in publication of this Notice of Proposed Rulemaking by the Secretary of State's Office. The new schedule of hearings is as shown below.

Written comments will be accepted at the address listed above until October 27, 1995. Public hearings to receive oral comments regarding this proposal will be held as follows:

Date: October 27, 1995
Time: 1 p.m.
Location: Attorney General's Office
Capitol Center
15 South 15th Avenue
Basement- Conference Room B
Phoenix, Arizona 85007
Telephone Accessibility: (602) 542-8619

Date: October 24, 1995
Time: 1 p.m.
Location: County/City Public Works Building
201 North Stone
Conference Room C
Tucson, Arizona 85701

Date: October 27, 1995
Time: 2 p.m.
Location: Adult Center
245 North Thorpe Road
Flagstaff, Arizona 86001

Arizona Administrative Register
Notices of Proposed Rulemaking

Date: October 27, 1995
Time: 1 p.m.
Location: County Administrator Building
Board of Supervisors Auditorium
198 South Main
Yuma, Arizona 85364

Individuals who wish to make oral comments by telephone may call (602) 542-8619 on October 27, 1995, from 1 p.m. to 4 p.m. during the time set for the Phoenix public hearing.

The Attorney General follows Title II of the Americans with Disabilities Act. The Attorney General does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking or otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services) to participate in the above scheduled hearings, or who require this information in an alternate form, may contact the Phoenix Office of the Civil Rights Division.

To request accommodation to participate in the public comment process or to obtain this notice in large print, Braille, or on audiotape, contact Joanne Granville at (602) 542-5263 (Voice); (602) 542-5002 (TDD); 1275 West Washington, Phoenix, Arizona 85007. Requests should be made as soon as possible so that the Attorney General's Office will have sufficient time to respond.

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

A.R.S. § 41-1492.06(A) and (B) require the Attorney General to hold a reasonable number of public hearings at locations throughout the state prior to adoption of R10-3-401 through R10-3-413. A.R.S. § 41-1492.06(B) also states that all rules adopted under the Arizonans with Disabilities Act shall not exceed the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the Americans with Disabilities Act.

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

R10-3-401(A)(1) incorporates by reference 28 CFR 35.

R10-3-401(A)(2) incorporates by reference 28 CFR 36 and accompanying Appendix A (the "Americans with Disabilities Act Accessibility Guidelines").

R10-3-401(A)(3) incorporates by reference those provisions of 36 CFR 1191 and accompanying appendix that relate to specified public transportation services by a private entity.

R10-3-402 incorporates by reference 28 CFR 35.104 and 28 CFR 36.104.

R10-3-402 incorporates by reference 28 CFR 35.130(b)(4), 35.133, 35.135, 35.150, 35.151, and 35.163.

11. The full text of the rules follows:

TITLE 10. LAW

**CHAPTER 3. DEPARTMENT OF LAW
CIVIL RIGHTS DIVISION**

**ARTICLE 4. THE ARIZONANS WITH DISABILITIES
ACT**

- R10-3-401. Adoption of Federal Regulations: Application
- R10-3-402. Definitions
- R10-3-403. Nondiscrimination on the Basis of Disability by Public Entities
- R10-3-404. Nondiscrimination on the Basis of Disability by Places of Public Accommodations and in Commercial Facilities
- R10-3-405. Complaints
- R10-3-406. Amendment of Complaints
- R10-3-407. Notification of the Complaining Person
- R10-3-408. Notification of Respondent
- R10-3-409. Answer to a Complaint
- R10-3-410. Investigations
- R10-3-411. Access to Investigative Files
- R10-3-412. Conciliation
- R10-3-413. Reasonable Cause Determinations

**ARTICLE 4. THE ARIZONANS WITH DISABILITIES
ACT**

- R10-3-401. Adoption of Federal Regulations: Application**
- A. Adoption of federal regulations**
1. The provisions of 28 CFR 35, set forth in R10-3-403, adopted July 26, 1991, and no further amendments, relating to Title II of the Americans with Disabilities

Act, are hereby adopted, incorporated by reference, and are on file with the Office of the Arizona Attorney General Civil Rights Division, the Office of the Arizona Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035.

2. The provisions of 28 CFR 36 and accompanying Appendix A (referred to as the "Americans with Disabilities Act Accessibility Guidelines"), adopted July 26, 1991, and no further amendments, relating to Title III of the Americans with Disabilities Act, with the exception of 36.601 through 36.608, are hereby adopted, incorporated by reference, and are on file with the Office of the Arizona Attorney General Civil Rights Division, the Office of the Arizona Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035.
 3. The provisions of 36 CFR 1191 and accompanying appendix, adopted September 6, 1991, and no further amendments, relating to specified public transportation services by a private entity, are hereby adopted, incorporated by reference, and are on file with the Office of the Attorney General Civil Rights Division, the Office of the Arizona Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035.
- B. Application. The regulations of 28 CFR 35 and 36 and 36 CFR 1191 and accompanying appendices incorporated by**

Arizona Administrative Register
Notices of Proposed Rulemaking

subsection (A) of this Section shall apply to all persons, public entities, places of public accommodation, commercial facilities, and specified public transportation services by private entities governed by A.R.S. § 41-1492 et seq.

R10-3-402. Definitions

The definitions in 28 CFR 35.104 and 36.104 are incorporated by reference with the following exceptions:

1. "Act" or "the Act" means the "Arizonans with Disabilities Act" or "AzDA", A.R.S. § 41-1492 et seq.
2. "ADAAG" means the Appendix A to 28 CFR 36 referred to as the "Americans with Disabilities Act Accessibility Guidelines."
3. "Attorney General" means the "Arizona Attorney General."
4. "National" means "State of Arizona."
5. "Respondent" means a person, public entity, commercial facility, or public accommodation against whom a complaint has been filed alleging a violation of the Arizonans with Disabilities Act.

R10-3-403. Nondiscrimination on the Basis of Disability by Public Entities

28 CFR 35.130(b)(4), 35.133, 35.135, 35.150, 35.151, and 35.163, adopted July 26, 1991, and no further amendments, relating to public entities, are hereby adopted, incorporated by reference, and are on file with the Office of the Arizona Attorney General Civil Rights Division, the Office of the Arizona Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035.

R10-4-404. Nondiscrimination on the Basis of Disability by Places of Public Accommodations and in Commercial Facilities

A. 28 CFR 36.508(a), as incorporated in these rules, is amended to read:

"Except as otherwise provided in this Article, this rule shall become effective 90 days following approval by the Attorney General, pursuant to A.R.S. § 41-1044."

B. Appendix A to 28 CFR 36, as incorporated in these rules, is amended as follows:

1. Section 4.2.3.5(b) of Appendix A to 28 CFR 36, is amended to read:

"PARKING SPACES AND PASSENGER LOADING ZONES. Design and construction. All required accessible parking spaces shall be designed and constructed in accordance with Sections 4.6.2 through 4.6.6. The vertical clearance of such spaces shall comply with 4.1.2.5(b). When the number of parking spaces is utilized as a means of determining building square footage, then each accessible space shall be counted as 1.5 standard parking spaces."

2. Section 4.2.4.1 of Appendix A to 28 CFR 36 is amended to read:

"SPACE ALLOWANCES AND REACH RANGES. Clear Floor or Ground Space for Wheelchairs.

Size. The clear floor or ground space required to accommodate a single stationary wheelchair and occupant shall be 30 inches by 48 inches (760 mm by 1200 mm) minimum."

3. Section 4.13.12 of Appendix A to 28 CFR 36 is amended to read:

"DOORS. Door Surface. The bottom 10 inches (255 mm) of all doors except automatic doors, power-assisted doors, and sliding doors shall have

a smooth uninterrupted surface to allow the door to be opened by a wheelchair footrest without creating a trap or hazardous condition. When narrow stile and rail doors are used, smooth panel, 10 inches (255 mm) high minimum, extending the full width of the door, shall be installed on the push side(s) of the door which will allow the door to be opened by a wheelchair footrest without creating a trap or hazardous condition."

4. Section 4.6.3 of Appendix A to 28 CFR 36 is amended to read:

"PARKING SPACES AND PASSENGER LOADING ZONES. Parking spaces. All accessible parking spaces shall not be less than 132 inches (3350 mm) in width. A single accessible parking stall shall have on its right side an adjacent access aisle not less than 60 inches (1525 mm) in width. Two accessible parking spaces may share an access aisle. Parking access aisles shall lead directly to a curb ramp and shall be part of the accessible route to the building or facility entrance. Parked vehicle overhangs shall not reduce the clear width of an accessible route of travel. A vertical clearance of 98 inches (2400 mm) minimum shall be provided at accessible parking spaces and along at least one vehicle access route to such parking spaces.

All accessible parking spaces shall be prominently outlined on all 4 sides and shall have the International Wheelchair Symbol displayed on the ground within each space. The access aisle shall be included with the outlined area and identified by cross-hatching/stripping. The color scheme of the accessible parking space shall contrast with that of the surrounding regular parking spaces."

5. Section 5.5 of Appendix A to 28 CFR 36 is amended to read:

i. **BUILDING ACCESSIBILITY.** In the assembly area of dining and drinking establishments, food service lines shall have a minimum clear width of 42 inches. Tray slides shall be mounted no higher than 34 inches above the floor. If self-service shelves are provided, at least 50% of each type must be within reach range of a person using a wheelchair.

ii. **RESTAURANTS AND CAFETERIAS.** Food Service Lines. Food service lines shall have a minimum clear width of 42 inches (1065 mm). Tray slides shall be mounted no higher than 34 inches (865 mm) above the floor (see Fig. 53). If self-service shelves are provided, at least 50% of each type must be within reach ranges specified in Sections 4.2.5 and 4.2.6."

6. Section 8.4 of Appendix A to 8 CFR 36 is amended to read:

i. **BUILDING ACCESSIBILITY.** In the assembly area of a library, a minimum clear aisle space of 36 inches at card catalogs and magazine displays shall be provided. Reach height shall comply with this Rule with a height of 18 inches - 48 inches (455 mm to 1220 mm).

ii. **LIBRARIES.** Card Catalogs and Magazine Displays. Minimum clear aisle space at card catalogs and magazine displays shall comply with

Arizona Administrative Register
Notices of Proposed Rulemaking

Fig. 55. Reach range shall be between 18-48 inches (455-1220 mm)."

R10-3-405. Complaints

- A.** Any person or the Attorney General may file a complaint with the Attorney General no later than 180 days after an alleged discriminatory act or practice in violation of A.R.S. §§ 41-1092.01 - 41-1492.05 or 41-1492.10 - 41-1492.11. The complaint may be filed with the assistance of any person or organization authorized to act on behalf of the complaining person.
- B.** A complaint may be filed against any person alleged to be engaged, to have engaged, or about to be engaged, in a discriminatory act or practice in violation of A.R.S. §§ 41-1492.01 - 41-1492.05 or A.R.S. §§ 41-1492.10 - 41-1492.11.
- C.** A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to the accessibility of any public building, public accommodation, commercial facility, or public transportation service, if that person, acting within the scope of his or her authority as an employee or agent of the directing or controlling person, is engaged, or has engaged, or is about to engage, in a violation of A.R.S. § 41-1492 et seq.
- D.** A person may file a complaint in person with, or by mail to: Attorney General, Civil Rights Section, 1275 West Washington, Phoenix, Arizona 85007, or Attorney General, Tucson Office, Civil Rights Section, 402 Congress West, Tucson, Arizona 85701, or such alternate or additional offices as the Attorney General may establish.
- E.** A person may provide information stating a violation of the Arizonans with Disabilities Act by telephone to the Attorney General. The Attorney General shall reduce the information provided by telephone to writing on a complaint form and send the form to the complaining person to be signed and affirmed.
- F.** Each complaint must be in writing and must be signed and affirmed by the complaining person filing the complaint. The affirmation shall state: I declare under penalty of perjury that the foregoing is true and correct.
- G.** The Attorney General shall accept any written statement which substantially sets forth the allegations of a discriminatory act or practice under the Arizonans with Disabilities Act. Personnel in the Civil Rights Division Section shall provide appropriate assistance in filling out complaint forms and in filing a complaint.
- H.** Each complaint shall contain substantially the following information:
1. The name and address of the complaining person;
 2. The name and address of the respondent;
 3. A description and the address of the public entity, commercial facility, public accommodation, or public transportation that is involved, if appropriate;
 4. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory act or practice.
- I.** Except as provided in R10-3-405(A)(5), a complaint is filed when it is received by the Attorney General's Office.
- J.** A complaint is timely filed if, within the 180-day period for the filing of complaints, written information identifying the parties and describing generally the alleged discriminatory act or practice is filed as provided in R10-3-405(A)(4).
- K.** Where a complaint alleges a discriminatory act or practice that is continuing, the complaint will be timely if filed within 180 days of the last alleged occurrence of that practice.

- L.** Failure to file an administrative complaint pursuant to this Section does not prevent an aggrieved person from bringing a civil action in Superior Court pursuant to A.R.S. § 41-1492.08.

R10-3-406. Amendment of Complaints

- A.** Complaints may be amended. Amendments may be used:
1. To cure technical defects or omissions, including failure to sign or affirm a complaint;
 2. To clarify or add to the allegations in a complaint; or
 3. To join additional or substitute respondents.
- B.** Except for the purposes of notifying respondents under R10-3-405(D), amended complaints shall relate back to the original filing date.

R10-3-407. Notification of the Complaining Person

Upon the filing of a complaint, the Attorney General shall serve a notice upon each complaining person on whose behalf the complaint was filed. The notice shall:

1. Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;
2. Include a copy of the complaint;
3. Advise the complaining person of the time limits applicable to complaint processing and of the procedural rights and obligations of the complaining person under this Article;
4. Advise the complaining person of his or her right to commence a civil action under A.R.S. § 41-1492.08 in an appropriate court, not later than 2 years after the occurrence or termination of the alleged discriminatory act or practice or the breach of a conciliation agreement entered into under this Article;
5. Advise the complaining person that retaliation against the complaining person or any other person of a complaint or because the person testified, assisted, or participated in an investigation or conciliation under this Article, is a discriminatory act or practice that is prohibited by A.R.S. § 41-1492.10.

R10-3-408. Notification of Respondent

A. Within 20 days of the filing of a complaint or the filing of an amended complaint, the Attorney General shall serve a notice on each respondent. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory act or practice upon which the complaint is based, may be joined as an additional or substitute respondent by service of a notice on the person within 10 days of the notification.

B. The notice shall:

1. Identify the alleged discriminatory act or practice upon which the complaint is based and include a copy of the complaint;
2. State the date that the complaint was accepted for filing;
3. Advise the respondent of the time limits to file a response and of the procedural rights and obligations of the respondent;
4. Advise the respondent of the complaining person's right to commence a civil action under the Act in an Arizona Superior Court at any time within 2 years after the occurrence or termination of the alleged discriminatory act or practice;
5. If the person is not named in the complaint but is being joined as an additional or substitute respondent, explain the basis for the Attorney General's belief that the joined person is properly joined as a respondent;

Arizona Administrative Register
Notices of Proposed Rulemaking

6. Advise the respondent that retaliation against any person because the person made a complaint or testified, assisted, or participated in an investigation or conciliation under this Section is a discriminatory act or practice that is prohibited under A.R.S. § 41-1492.10

R10-3-409. Answer to a Complaint

- A. The respondent may file an answer not later than 10 days after receipt of the notice described above. The answer must be signed and affirmed by the respondent. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct."
- B. An answer may be amended at any time during the pendency of the investigation.

R10-3-410. Investigations

- A. Upon the filing of a complaint, the Attorney General shall initiate an investigation to:
1. Obtain information concerning the events or transactions that relate to the alleged discriminatory act or practice identified in the complaint;
 2. Document policies or practices of the respondent involved in the alleged discriminatory act or practice raised in the complaint;
 3. Develop factual data necessary for the Attorney General to make a determination whether reasonable cause exists to believe that a discriminatory act or practice has occurred or is about to occur, and to take other actions provided by A.R.S. § 41-1492.09.
- B. Issuance of interrogatories. During the course of investigation, any member of the Attorney General's Office may cause to be issued interrogatories upon any party or witness to the proceedings.
1. Interrogatories issued pursuant to the provision shall require that the person addressed answer the interrogatories under oath.
 2. Interrogatories issued pursuant to this provision shall be answered and returned to the Attorney General's Office within 14 days of receipt of the interrogatories.
 3. Any person served with interrogatories issued pursuant to this provision may request of the Attorney General's Office a reasonable extension of time in which to answer the interrogatories. In no event shall the Attorney General's Office grant an extension of time which will exceed 21 days from the original date upon which said interrogatories were due. In computing any time period under this provision, such computation shall be governed by Rule 6A, Arizona Rules of Civil Procedure, A.R.S. Volume 16.
- C. Taking of evidence - investigation. In connection with the investigation of a complaint filed under the Act, the Attorney General's Office or its duly authorized employees shall at all reasonable times have access to, for the purpose of examination, and have the right to copy any evidence of any person being investigated, provided such evidence relates to unlawful practices covered by the Act and is relevant to the complaint under investigation.
- D. For the purpose of investigations conducted by the Attorney General:
1. The Attorney General's Office may issue a subpoena compelling the attendance and testimony of witnesses or requiring the production for examination or copying of documents, provided such evidence relates to unlawful practices covered by the Act and is relevant to the complaint which is the subject matter of the hearing or investigation. Within 5 days after the service of a subpoena on any person requiring the production of any

evidence in his or her possession or under his or her control, such person may petition the Attorney General's Office to revoke, limit, or modify the subpoena. The Attorney General's Office shall revoke, limit, or modify such subpoena if, in its opinion, the evidence required does not relate to unlawful acts or practices covered by the Act, is not relevant to the complaint which is the subject matter of the hearing or investigation, does not describe with sufficient particularity the evidence whose production is required, or is unduly burdensome or oppressive. Any member of the Attorney General's Office, or any agent designated by the Attorney General's Office, may administer oaths or affirmations, examine witnesses, and receive such evidence.

2. Any person appearing before the Attorney General's Office shall have the right to be represented by counsel.
3. The Superior Court, upon application by the Attorney General's Office or by the person subpoenaed, shall have jurisdiction to issue an order:
 - a. Requiring such person to appear before the Division, or its duly authorized agent, there to produce evidence relating to the matter under investigation if so ordered; or
 - b. Revoking, limiting, or modifying the subpoena or conditioning issuance of the subpoena upon payment of costs or expenses incurred to comply with the subpoena if, in the court's opinion, the evidence required does not relate to unlawful acts or practices covered by the Act, is not relevant to the complaint which is the subject matter of the hearing or investigation, does not describe with sufficient particularity the evidence whose production is required, or is unduly burdensome or oppressive.
4. Any failure to obey such order of the court may be punished by such court as a contempt.

- E. Taking of Testimony - Mechanical Recording. A taking of testimony pursuant to R10-3-405(F)(4) may be recorded by other than stenographic means, including but not limited to tape recording.
- F. Authority to Issue Subpoenas. A subpoena issued pursuant to A.R.S. § 41-1403 shall be issued by a designate of the Attorney General.
- G. Modification or Revocation of Subpoena. When the party subpoenaed petitions the Attorney General's Office pursuant to A.R.S. § 41-1403(B)(1) for revocation or modification of the subpoena, the decision to grant or deny the petition shall be made by the Chief Counsel of the Civil Rights Division.
- H. Subpoenas Requested by Complaining Parties or Respondents. The Attorney General's Office will not issue an investigative subpoena on behalf of a person filing a complaint, a person on whose behalf a complaint was filed, or a Respondent.
- I. When the Attorney General determines that the alleged discriminatory acts or practices contained in a complaint are pervasive or institutional in nature or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will affect a large number of persons, the Attorney General shall identify the complaint for systemic processing. This determination can be based on the information in the complaint or on information gathered in an investigation. Systemic proceedings shall focus not only on facts involved in the alleged discriminatory act or practice that is the subject of the complaint but also on related policies,

Arizona Administrative Register
Notices of Proposed Rulemaking

procedures, and matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the Act.

- I. The investigation shall remain open until the reasonable cause or no reasonable cause determination has been made or a conciliation agreement is executed and approved.
- K. At the end of each investigation under A.R.S. § 41-1492.09, the Attorney General shall prepare a final investigative report.

R10-3-411. Access to Investigative Files [Reserved]

R10-3-412. Conciliation

- A. During the period beginning with the filing of the complaint and ending with the filing of a civil action or the dismissal of the complaint by the Attorney General, the Attorney General shall, if feasible, attempt to conciliate the complaint.
- B. In conciliating a complaint, the Attorney General shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person and take such action as will assure the elimination of discriminatory acts or practices, or their prevention or reoccurrence.
- C. Where the rights of the complaining party and the respondent can be protected and the prohibitions with respect to the disclosure of information can be observed, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.
- D. The terms of a settlement of a complaint shall be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interest of the complaining person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in A.R.S. § 41-1492.09(C).
- E. The agreement must be executed by the respondent, the complaining person, and the Attorney General. The Attorney General shall approve the agreement and, if the Attorney General is the complaining person, shall execute the agreement, only if:
 - 1. The complaining person and the respondent agree to the relief accorded the aggrieved person, and
 - 2. The provisions of the agreement will adequately vindicate the public interest.
- F. The Chief Counsel may file a civil action under A.R.S. § 41-1492.09 if the complaining person and the respondent have executed a conciliation agreement that has not been approved by the Attorney General.
- G. The following types of relief may be sought (without limitation) for complaining persons in conciliation:
 - 1. Monetary relief in the form of damages, including compensatory damages and attorney fees;
 - 2. Equitable relief including but not limited to the provision of an auxiliary aid or service, modification of a policy, practice, or procedure, and an order to alter facilities to make these facilities readily accessible to and usable by individuals with disabilities to the extent that alteration is required by A.R.S. § 41-1492.02.
- H. The provisions which may be sought for vindication of the public interest (without limitation) include:
 - 1. Elimination of discriminatory acts or practices, procedures, policies, and rules;

- 2. Prevention of future discriminatory acts or practices;
- 3. Remedial affirmative action activities to overcome discriminatory acts or practices;
- 4. Reporting requirements;
- 5. Monitoring and enforcement activities;
- 6. Civil penalties against the covered person or entity in an amount of not more than \$5,000.00 for a first violation and \$10,000.00 for any subsequent violation

- I. The conciliation agreement may provide for binding arbitration of the dispute arising from the the complaint. Arbitration may award appropriate relief as described in R10-3-412(G) and (H). The complaining person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.
- J. The Attorney General shall terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with the Attorney General; the complaining person or the respondent fail to make a good faith effort to resolve any dispute; or the Attorney General finds, for any reason, that voluntary agreement is not likely to result.
- K. Where the complaining person has commenced a civil action under an Act of Congress or a state law seeking relief from the alleged discriminatory act or practice and the trial in the action has commenced, the Attorney General will terminate conciliation unless the court specifically directs the Attorney General to continue conciliation.
- L. Except as otherwise provided by the Act or this rule, nothing that is said or done in the course of conciliation under this Section shall be made public without the written consent of the persons concerned.
- M. The Attorney General has authority to review compliance with the terms of any conciliation agreement and shall file civil action pursuant to A.R.S. § 41-1492.09(B), if there is reasonable cause to believe that a respondent has breached a conciliation agreement.

R10-3-413. Reasonable Cause Determinations

- A. If a prior conciliation agreement has not been executed by the complaining person and the respondent, and approved by the Attorney General, the Attorney General shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory act or practice has occurred or is about to occur. Any determination will be based solely on the facts concerning the alleged discriminatory act or practice provided by the complaining person and respondent and otherwise disclosed during the investigation. In making a reasonable cause determination, the Attorney General shall consider whether the facts concerning the alleged discriminatory act or practice are sufficient to warrant the initiation of a civil action in the Arizona Superior Court.
- B. If the Attorney General determines that reasonable cause exists, the Attorney General shall immediately issue a finding on behalf of the complaining person.
- C. If the Attorney General determines that no reasonable cause exists, the Attorney General shall:
 - 1. Issue a short and plain written statement of the facts upon which the Attorney General has based the no-reasonable-cause determination; and
 - 2. Dismiss the complaint.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R18-2-102	Amend
R18-2-210	Amend
R18-2-327	Amend
R18-2-333	Amend
R18-2-901	Amend
R18-2-1101	Amend
Appendix A	New Appendix

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

Authorizing statute: A.R.S. § 49-104
Implementing statute: A.R.S. § 49-425

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

Name: Amy Wainright, Rule Development Specialist
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809
Telephone: (602) 207-2225
Fax: (602) 207-2251

Name: Martha Seaman, Rule Development Section Manager
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809
Telephone: (602) 207-2222
Fax: (602) 207-2251

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

The Arizona Department of Environmental Quality (ADEQ) is proposing to update its current air quality rules regarding New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) in order to obtain delegated authority to enforce recent federal regulations. The federal regulations implement Sections 111 and 112 of the Clean Air Act Amendments of 1990.

These federal standards are designed to reduce air pollution generated by stationary sources. NSPS regulates emissions of the 6 criteria pollutants (carbon monoxide, ozone, oxides of nitrogen, lead, sulfur dioxide, and particulate matter). NESHAP regulates emissions of the 189 hazardous air pollutants (HAPs) listed in the Clean Air Act, Section 112.

This rulemaking updates through July 1, 1995, the portions of federal rule that the state wishes to have the authority to enforce. Several portions, such as those governing radionuclides, are not adopted by ADEQ since they are enforced by the Radiation Regulatory Agency.

This proposed rulemaking also updates other ADEQ rules that incorporate by reference sections of the Code of Federal Regulations (CFR), as well as updating testing methods and emission factors.

Specifically, the following matters are proposed to be incorporated by reference:

New Source Performance Standards (NSPS) for Automobile and Light-duty Truck Surface Coating Operations (40 CFR 60, Subpart MM): Amended on October 11, 1994 (59 Fed. Reg. 51383). This revised NSPS does not reflect a change in the basis of the standard for coatings but reflects a better understanding of the performance of the prime coating system and prime coat materials upon which the standard was originally based. The intended effect of this NSPS, according to EPA, is to require all new, modified, and reconstructed prime coat operations at automobile and light-duty truck assembly plants to use the best demonstrated system of continuous emission reduction considering costs, non-air quality health, environmental and energy impacts. The revised NSPS is consistent with the performance of the best demonstrated prime coating system and prime coat materials.

New Source Performance Standards (NSPS), 40 CFR 60, Appendix A: Amended on December 6, 1994 (59 Fed. Reg. 62924). The amended federal appendix adds Method 25E - Determination of Vapor Phase Organic Concentration in Waste Samples.

National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Source Categories: General Provisions (40 CFR 63, Subpart A): Promulgated on March 16, 1994 (59 Fed. Reg. 12408). The General Provisions in Part 63 codify general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the 189 hazardous air pollutants (HAPs) listed in Section 112 of the Clean Air Act. Standards for individual source categories are

Arizona Administrative Register
Notices of Proposed Rulemaking

being developed separately and are codified in other subparts of Part 63. When sources become subject to standards established for individual source categories, the sources also must comply with the requirements of the General Provisions, except when specifically overridden by the standards. The federal rulemaking also included changes to the General Provisions for 40 CFR 60 and 61, where appropriate, to make them consistent with Part 63.

National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry (Also known as "Hazardous Organic NESHAP" or "HON") (40 CFR 63, Subparts F, G, H, and I): Promulgated on April 22, 1994 (59 Fed. Reg. 19402); and amended on June 6, 1994; September 20, 1994; October 24, 1994; October 28, 1994; January 27, 1995; and April 10, 1995. The rule applies to production of 386 out of approximately 660 chemical substances produced by synthetic organic chemical manufacturing industries (SOCMI) as commercial products. To be subject to the rule, a chemical process must be located at a major source (a plant site that collectively emits more than 10 tons per year of any one hazardous air pollutant (HAP) or more than 25 tons per year of multiple HAPs). In addition, to be subject, this process must also manufacture one or more SOCMI chemicals listed in the rule and have an organic HAP as either: (1) a product, by-product, co-product, or intermediate; or (2) a reactant.

National Emission Standards for Hazardous Air Pollutants: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR 63, Subpart N): Promulgated January 25, 1995 (60 Fed. Reg. 4948) and amended on May 24, 1995. Nationally, there are an estimated 1,500 hard chromium electroplating facilities, 2,800 decorative chromium electroplating facilities, and 700 chromium anodizing facilities that will be affected by the federal regulation. Hard chromium electroplated parts include large cylinders and industrial rolls used in construction equipment and in printing presses; decorative chromium-plated parts include appliances such as toasters, various hand tools, and automotive parts; anodized parts include miscellaneous aircraft parts, including wings and landing gears. The vast majority of the facilities covered by this rule electroplate parts for other industry manufacturers. The Maximum Achievable Control Technology (MACT) for chromium electroplaters and anodizers is designed to limit the emissions of hexavalent chromium, a known carcinogen. This rule will cover all processes that plate metals with chromium using bath type process tanks.

National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities (40 CFR 63, Subpart O): Promulgated December 6, 1994 (59 Fed. Reg. 62585). Sources affected by the rule include medical equipment suppliers, pharmaceuticals, other health-related industries, spice manufacturers, large libraries, large museums and archives, and contract sterilizers. Products that are sterilized with ethylene oxide include medical equipment, spices, cosmetics, and pharmaceuticals. Libraries, museums, and archives use ethylene oxide as a fumigant to control insects and microorganisms on fragile historical materials, although many of these entities in Arizona have phased out the use of ethylene oxide, due to its potential for adverse health effects.

National Emission Standards for Hazardous Air Pollutants: Industrial Process Cooling Towers (40 CFR 63, Subpart Q): Promulgated September 8, 1994 (59 Fed. Reg. 46339). Industrial process cooling towers remove heat from chemical and industrial processes. Water treatment chemicals, such as chromium, are added to cooling tower waters to protect equipment and piping from corrosion, and to control algae growth in the tower. Chromium emissions are released into the atmosphere from the cooling tower during the cooling process. Sources, such as petroleum refineries, chemical manufacturing plants, and primary metal producers, that operate industrial process cooling towers, using chromium-based water treatment chemicals, will be affected by the regulation. Industrial process cooling towers that are used exclusively for cooling, heating, ventilation, and air conditioning systems, which are referred to as comfort cooling towers, are not covered by this rule.

National Emission Standards for Hazardous Air Pollutants: Gasoline Distribution Facilities (Stage 1) (Bulk Gasoline Terminals and Pipeline Breakout Stations) (40 CFR 63, Subpart R): Promulgated December 14, 1994 (59 Fed. Reg. 64303), and amended on June 26, 1995. Gasoline bulk terminals and pipeline breakout stations transfer and store gasoline (and other petroleum products) as it is distributed from petroleum refineries to service stations and gasoline bulk plants. Air toxics are released from these facilities during gasoline tank truck and rail car loading, gasoline storage, and from vapor leaks from pumps, valves, and other equipment in gasoline service. Nationally, the regulation will reduce emissions of approximately 10 air toxics that are found in gasoline vapor by 2,300 tons annually, including benzene and toluene. Air toxics emissions are harmful to public health and the environment. The rule will also reduce emissions of volatile organic compounds (VOCs) by over 38,000 tons annually, nationwide. The VOC emissions contribute significantly to ground-level ozone or smog. The federal regulation will result in energy savings of 10 million gallons of gasoline per year nationally from collecting or preventing gasoline evaporation.

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning (40 CFR 63, Subpart T): Promulgated on December 2, 1994 (59 Fed. Reg. 61801) and amended on December 30, 1994, and June 5, 1995. The federal regulation employs a combination of equipment and operational practices. The standards for all batch vapor and in-line units are based on Maximum Achievable Control Technology (MACT) as EPA found no justification for using Generally Available Control Technology (GACT) for area sources. Standards for batch cold cleaning machines are based on GACT. The standards for halogenated HAP solvent cleaning machines apply to each individual solvent cleaning machine that uses any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform, or any combination of these halogenated HAP solvents, in a total concentration that is greater than 5% by weight.

National Emission Standards for Hazardous Air Pollutants: Epoxy Resins Production and Non-Nylon Polyamides Production (40 CFR 63, Subpart W): Promulgated March 8, 1995 (60 Fed. Reg. 12670). The federal regulation limits emissions of hazardous air pollutants (HAPs) from existing and new facilities that manufacture epoxy resins and non-nylon polyamide resins. The standards are based on the EPA's determination of July 16, 1992 (57 Fed. Reg. 31576) that epoxy resins and non-nylon polyamide resins manufacturing generate significant emissions of certain HAPs, primarily epichlorohydrin.

National Emission Standards for Hazardous Air Pollutants: Secondary Lead Smelting (40 CFR 63, Subpart X): Promulgated June 23, 1995 (60 Fed. Reg. 32587). The rule will affect secondary lead smelters that use blast, reverberatory, rotary, or electric smelting furnaces to recover lead metal from scrap lead, primarily from used lead-acid automotive-type batteries.

National Emission Standards for Hazardous Air Pollutants: Magnetic Tape Manufacturing Operations (40 CFR 63, Subpart EE): Promulgated December 15, 1994 (59 Fed. Reg. 64593). Nationally, of the 25 plants that manufacture magnetic tape, 14 are estimated to be major sources of air toxics and thus affected by the regulation. At least one such source is located in Arizona. Types of products made by this industry include audio and video cassettes and computer diskettes. The industry is geographically widespread across the country. The MACT for magnetic tape manufacturing operations is designed to limit the emissions of a number of federal HAPs, including those in the wastewater stream if they are part of the tape manufacturing process.

Arizona Administrative Register
Notices of Proposed Rulemaking

The update in this proposed rulemaking to **R18-2-210** includes the designation of the non-attainment areas for Bullhead City and Payson for PM10 (particulate matter measuring 10 microns or less) (58 Fed. Reg. 67341, December 21, 1993).

The updates to **R18-2-327** cover amendments to the certification of continuous emissions monitors under the federal Acid Rain Program (40 CFR 75, Subpart C). EPA has revised and clarified the existing certification procedures, specifically including loss of provisional certification, audit decertification, certification and use of backup monitors, and notifications for recertification. The amendments to R18-2-327 also incorporate the newest edition of EPA publication "AP-42" which contains the emissions factors relied on by ADEQ.

The update to **R18-2-333** covers minor technical corrections to the federal Acid Rain Permitting program described in 40 CFR 72. New **Appendix 2** includes all test methods currently relied upon by ADEQ. This Appendix represents a collection of test methods already incorporated elsewhere in A.A.C. Title 18, Chapter 2, with the addition of federal test methods found in 40 CFR 51, Appendix M. This year's federal update to Part 51, Appendix M, was **Test Method 205**, designed to be used to verify the performance and accuracy of gas dilution systems during a field test. It was promulgated on May 30, 1995 (60 Fed. Reg. 28052) and is a flexible alternative to some of the test methods required under 40 CFR 60.

In **R18-2-102**, the incorporation by reference date for all other miscellaneous references to 40 CFR is being amended to July 1, 1995. This reflects changes in text, grammar corrections, spelling corrections, and other changes that are not substantial in nature.

Effective Date: This rule package does not contain a date certain for taking effect. However, as a practical matter, the federal standards incorporated by reference in this rulemaking are already effective as federal law. Enforcement authority by ADEQ will be effective only after the public hearings and public comment period described in this Preamble, and only after adoption of these rules by ADEQ and approval by the Governor's Regulatory Review Council.

Docket Location: Materials relevant to this rulemaking are contained in ADEQ Rule Docket No. Air-13. The docket is located on the 8th Floor at the Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona. The docket may be inspected from 8 a.m. to 5 p.m., Monday through Friday.

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 to a political subdivision of this state:

Not applicable. The 3 counties having jurisdiction over air pollution separately from ADEQ, pursuant to A.R.S. Title 49, (Maricopa County, Pima County, and Pinal County) will each incorporate by reference the same rules incorporated in this rulemaking, at a later time.

6. The preliminary summary of the economic, small business, and consumer impact, and solicitation of comments on the summary:

The purpose of adopting the federal regulations for NSPS and NESHAPs is to meet the criteria for federal delegation to ADEQ to implement and enforce these standards. When the standards are embodied in state rule, they are implemented and enforced by state personnel. There is no added impact to regulated entities. The primary duty of enforcement simply shifts from the EPA to ADEQ. Federal NSPS and NESHAP regulations are enforceable in Arizona under federal law on the effective date of the regulations, regardless of whether they are adopted as state rule.

State adoption of effective federal regulations does not impose standards or requirements on private entities. Therefore, the economic impact to the regulated community from the state adoption of these rules is zero. The cost to ADEQ is negligible. This is because ADEQ expects to continue its enforcement of all incorporated federal regulations and the addition of these few is not expected to add any additional measurable impacts. On the contrary, it would add complexity and some administrative cost to selectively not enforce one particular subset of federal regulations and instead to establish a partnership with EPA so that EPA could manage those enforcement actions.

Substantial benefits are realized when primary regulatory authority rests with the state as opposed to the federal government, both for the regulated community and the general public. There is usually better communication and improved understanding when facilities work with state regulators rather than with federal authorities, since they are more likely to meet in person and to understand specific business and geographic circumstances. Enforcement by the state allows more efficient processing of permits, complaints, and other related issues.

The benefits of state versus federal regulatory authority are magnified with respect to small businesses, since ADEQ has an easily accessible Small Business Assistance Program for air quality, which the EPA does not have in this state.

There is no direct impact on consumers, due to the analysis given above.

ADEQ solicits commentary on this economic analysis, in order to make any needed corrections before the final adoption of the rule package, later this fall.

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:

Name: Amy Wainright, Rule Development Specialist
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809
Telephone: (602) 207-2225
Fax: (602) 207-2251

Name: Martha Seaman, Rule Development Section Manager
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809
Telephone: (602) 207-2222
Fax: (602) 207-2251

Arizona Administrative Register
Notices of Proposed Rulemaking

8. The time, place, and nature of the proceedings for the adoption of the rule:

Oral proceedings will be conducted on:

Date: October 23, 1995

Time: 10 a.m.

Location: Department of Environmental Quality
Public Meeting Room
3033 North Central Avenue
Phoenix, Arizona

The close of record for written comments is October 25, 1995, at 5 p.m.

Call (602) 207-4795 for special assistance pursuant to the Americans with Disabilities Act.

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 locations in the rules:

R18-2-102, R18-2-210, R18-2-327, R18-2-333, R18-2-901, R18-2-1101, and Appendix 2.

11. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL**

ARTICLE 1. GENERAL PROVISIONS

R18-2-102. Incorporated Materials

**ARTICLE 2. AMBIENT AIR QUALITY STANDARDS;
AREA DESIGNATIONS; CLASSIFICATIONS**

R18-2-210. Attainment, Nonattainment, and Unclassifiable
Area Designations

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-327. Annual Emissions Inventory Questionnaire

R18-2-333. Acid Rain

**ARTICLE 9. NEW SOURCE PERFORMANCE
STANDARDS**

R18-2-901. Standards of Performance for New Stationary
Sources

**ARTICLE 11. FEDERAL HAZARDOUS AIR
POLLUTANTS**

R18-2-1101. National Emission Standards for Hazardous Air
Pollutants (NESHAPs)

Appendix 2. ~~Repealed Test Methods and Protocols~~

ARTICLE 1. GENERAL PROVISIONS

R18-2-102. Incorporated Materials

The following documents are incorporated by reference and are on file with the Office of the Secretary of State and the Department:

1. The Department's "Arizona Testing Manual for Air Pollutant Emissions," amended as of March 1992 (and no future editions).
2. All ASTM test methods referenced in this Chapter as of the year specified in the reference (and no future amendments). They are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103-1187.
3. All parts of the CFR referenced in this Chapter. They are published in 40 CFR, amended as of July 1, 1991 1995 (and no future amendments), except as otherwise

~~specifically provided in R18-2-210, R18-2-901 and R18-2-1101.~~ They are available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328.

4. The U.S. Government Printing Office's "Standard Industrial Classification Manual, 1987" (and no future editions).

**ARTICLE 2. AMBIENT AIR QUALITY STANDARDS;
AREA DESIGNATIONS; CLASSIFICATIONS**

**R18-2-210. Attainment, Nonattainment, and Unclassifiable
Area Designations**

40 CFR 81.303 as amended as of July 1, 1992 1995 (and no future editions) is incorporated herein by reference and is on file with the Department of Environmental Quality and the Office of Secretary of State.

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-327. Annual Emissions Inventory Questionnaire

- A. Every source subject to a permit requirement under this Chapter shall complete and submit to the Director an annual emissions inventory questionnaire. The questionnaire is due by March 31 or 90 days after the Director makes the inventory form available, whichever occurs later, and shall include emission information for the previous calendar year. These requirements apply whether or not a permit has been issued and whether or not a permit application has been filed.
- B. The questionnaire shall be on a form provided by the Director and shall include the following information:
 1. The source's name, description, mailing address, contact person and contact person phone number, and physical address and location, if different than the mailing address.
 2. Process information for the source, including design capacity, operations schedule, and emissions control devices, their description and efficiencies.
 3. The actual quantity of emissions from permitted emission points and fugitive emissions as provided in the permit, including documentation of the method of

Arizona Administrative Register
Notices of Proposed Rulemaking

measurement, calculation, or estimation, determined pursuant to subsection (C), of the following regulated air pollutants:

- a. Any single regulated air pollutant in a quantity greater than one ton or the amount listed for the pollutant in subsection (97)(a) of the definition of "significant" in R18-2-101, whichever is less.
 - b. Any combination of regulated air pollutants in a quantity greater than 2 1/2 tons.
- C. Actual quantities of emissions shall be determined using the following emission factors or data:
1. Whenever available, emissions estimates shall either be calculated from continuous emissions monitors certified pursuant to 40 CFR 75, Subpart C and referenced appendices, ~~as published in the Federal Register on January 11, 1993 (and no later editions) which is incorporated herein by reference, and is on file with the Department and the Secretary of State,~~ or data quality assured pursuant to Appendix F of 40 CFR 60.
 2. When sufficient data pursuant to subsection (C)(1) is not available, emissions estimates shall be calculated from data from source performance tests conducted pursuant to R18-2-312 in the calendar year being reported or, when not available, conducted in the most recent calendar year representing the operating conditions of the year being reported.
 3. When sufficient data pursuant to subsection (C)(1) or (C)(2) is not available, emissions estimates shall be calculated using emissions factors from EPA Publication No. AP-42 "Compilation of Air Pollutant Emission Factors", Volume I: Stationary Point and Area Sources, ~~Fourth Fifth Edition, supplements A through F, 1985 1995,~~ U.S. Environmental Protection Agency, Research Triangle Park, N.C. ~~(GPO Order No. 055-000-00251-7),~~ (and no future editions) which is incorporated herein by reference and is on file with the Department of Environmental Quality and the Office of Secretary of State. AP-42 can be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, telephone (202) 783-3238, or by downloading the document from the EPA Technology Transfer Network, computer modem number (919) 541-5742, setting 8-N-1, VT100 or ANSI.
 4. When sufficient data pursuant to subsections (C)(1) through (C)(3) is not available, emissions estimates shall be calculated from material balance using engineering knowledge of process.
 5. When sufficient data pursuant to subsections (C)(1) through (C)(4) is not available, emissions estimates shall be calculated by equivalent methods approved by the Director. The Director shall only approve methods that are demonstrated as accurate and reliable as the applicable method in subsections (C)(1) through (4).
- D. Actual quantities of emissions calculated under subsection (C) shall be determined on the basis of actual operating hours, production rates, in-place process control equipment, operational process control data, and types of materials processed, stored, or combusted.
- E. An amendment to an annual emission inventory questionnaire, containing the documentation required by subsection (B)(3), shall be submitted to the Director by any source whenever it discovers or receives notice, within 2 years of the original submittal, that incorrect or insufficient information was submitted to the Director by a previous questionnaire. If the incorrect or insufficient information

resulted in an incorrect annual emissions fee, the Director shall require that additional payment be made or shall apply an amount as a credit to a future annual emissions fee. The submittal of an amendment under this subsection shall not subject the owner or operator to an enforcement action or a civil or criminal penalty if the original submittal of incorrect or insufficient information was due to reasonable cause and not willful neglect.

- F. The Director may require submittal of supplemental emissions inventory questionnaires for air contaminants pursuant to A.R.S. §§ 49-422, 49-424, and 49-426.03 through 49-426.08.

R18-2-333. Acid Rain

- A. The following subparts of 40 CFR 72, Permits Regulation, and all accompanying appendices, adopted as of July 1, ~~1993 1995~~, are incorporated by reference. These standards are on file with the Office of the Secretary of State and with the Department and shall be applied by the Department.
1. Subpart A - Acid Rain Program General Provisions.
 2. Subpart B - Designated Representative.
 3. Subpart C - Acid Rain Applications.
 4. Subpart D - Acid Rain Compliance Plan and Compliance Options.
 5. Subpart E - Acid Rain Permit Contents.
 6. Subpart F - Federal Acid Rain Permit Issuance Procedures.
 7. Subpart G - Acid Rain Phase II Implementation.
 8. Subpart H - Permit Revisions.
 9. Subpart I - Compliance Certification.
- B. When used in 40 CFR 72, "Permitting Authority" means the Department of Environmental Quality and "Administrator" means the Administrator of the United States Environmental Protection Agency.
- C. If the provisions or requirements of the regulations incorporated pursuant to this Section conflict with any of the remaining portions of this Title, the regulations incorporated pursuant to this Section shall apply and take precedence.

ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS

R18-2-901. Standards of Performance for New Stationary Sources

Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS) and all accompanying appendices, adopted as of July 1, ~~1993 1995~~, and no future editions, ~~except for adoption dates as specified below,~~ are incorporated by reference. These standards are on file with the Office of the Secretary of State and with the Department and shall be applied by the Department.

1. Subpart A - General Provisions.
2. Subpart D - Fossil-Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
3. Subpart Da - Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
4. Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.
5. Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.
6. Subpart E - Incinerators.
7. Subpart Ea - Municipal Waste Combustors.
8. Subpart F - Portland Cement Plants.
9. Subpart G - Nitric Acid Plants.

Arizona Administrative Register
Notices of Proposed Rulemaking

10. Subpart H - Sulfuric Acid Plants.
11. Subpart I - Hot Mix Asphalt Facilities.
12. Subpart J - Petroleum Refineries.
13. Subpart K - Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
14. Subpart Ka - Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
15. Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
16. Subpart L - Secondary Lead Smelters.
17. Subpart M - Secondary Brass and Bronze Ingot Production Plants.
18. Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
19. Subpart Na - Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
20. Subpart O - Sewage Treatment Plants.
21. Subpart P - Primary Copper Smelters.
22. Subpart Q - Primary Zinc Smelters.
23. Subpart R - Primary Lead Smelters.
24. Subpart S - Primary Aluminum Reduction Plants.
25. Subpart T - Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
26. Subpart U - Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
27. Subpart V - Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
28. Subpart W - Phosphate Fertilizer Industry: Triple Superphosphate Plants.
29. Subpart X - Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
30. Subpart Y - Coal Preparation Plants.
31. Subpart Z - Ferroalloy Production Facilities.
32. Subpart AA - Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
33. Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
34. Subpart BB - Kraft Pulp Mills.
35. Subpart CC - Glass Manufacturing Plants.
36. Subpart DD - Grain Elevators.
37. Subpart EE - Surface Coating of Metal Furniture.
38. Subpart GG - Stationary Gas Turbines.
39. Subpart HH - Lime Manufacturing Plants.
40. Subpart KK - Lead-Acid Battery Manufacturing Plants.
41. Subpart LL - Metallic Mineral Processing Plants.
42. Subpart MM - Automobile and Light Duty Truck Surface Coating Operations.
43. Subpart NN - Phosphate Rock Plants.
44. Subpart PP - Ammonium Sulfate Manufacture.
45. Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.
46. Subpart RR - Pressure Sensitive Tape and Label Surface Coating Operations.
47. Subpart SS - Industrial Surface Coating: Large Appliances.
48. Subpart TT - Metal Coil Surface Coating.
49. Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.
50. Subpart VV - Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
51. Subpart WW - Beverage Can Surface Coating Industry.
52. Subpart XX - Bulk Gasoline Terminals.
53. Subpart AAA - New Residential Wood Heaters.
54. Subpart BBB - Rubber Tire Manufacturing Industry.
55. Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
56. Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.
57. Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries.
58. Subpart HHH - Synthetic Fiber Production Facilities.
59. Subpart III - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
60. Subpart JJJ - Petroleum Dry Cleaners.
61. Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
62. Subpart LLL - Onshore Natural Gas Processing; SO₂ Emissions.
63. Subpart NNN - Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
64. Subpart OOO - Nonmetallic Mineral Processing Plants.
65. Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.
66. Subpart QQQ - VOC Emissions From Petroleum Refinery Wastewater Systems.
67. Subpart RRR - Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes (58 FR 45962, August 31, 1993).
68. Subpart SSS - Magnetic Tape Coating Facilities.
69. Subpart TTT - Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
70. Subpart UUU - Calciners and Dryers in Mineral Industries.
71. Subpart VVV - Polymeric Coating of Supporting Substrates Facilities.

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

- A. Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs) and all accompanying appendices, adopted as of July 1, 1993 ~~1995~~, and no future editions, ~~except for adoption dates as specified below,~~ are incorporated by reference. These standards are on file with the Office of the Secretary of State and with the Department and shall be applied by the Department.
1. Subpart A - General Provisions.
 2. Subpart C - Beryllium.
 3. Subpart D - Beryllium Rocket Motor Firing.
 4. Subpart E - Mercury.
 5. Subpart F - Vinyl Chloride.
 6. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.

Arizona Administrative Register
Notices of Proposed Rulemaking

7. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
 8. Subpart M - Asbestos.
 9. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
 10. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
 11. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
 12. Subpart V - Equipment Leaks (Fugitive Emission Sources).
 13. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
 14. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
 15. Subpart FF - Benzene Waste Operations.
- B. Except as provided in R18-2-1102, the following subparts of 40 CFR 63, NESHAPs for Source Categories and all accompanying appendices, adopted as of July 1, 1993 1995, and no future editions, ~~except for adoption dates as specified below~~, are incorporated by reference. These standards are on file with the Office of the Secretary of State and with the Department and shall be applied by the Department.
1. Subpart A - General Provisions.
 - 1-2. Subpart B - Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j) (59 FR 26429, May 20, 1994).
 - 2-3. Subpart D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants (58 FR 62543, November 29, 1993).
 4. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
 5. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

6. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
7. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
- 3-8. Subpart L - National Emission Standards for Coke Oven Batteries (58 FR 57911, October 27, 1993).
- 4-9. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (58 FR 49376, September 22, 1993 and 58 FR 66289, December 20, 1993).
10. Subpart N - Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
11. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
12. Subpart O - Industrial Process Cooling Towers.
13. Subpart R - Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
14. Subpart T - Halogenated Solvent Cleaning.
15. Subpart W - Epoxy Resins Production and Non-Nylon Polyamides Production.
16. Subpart X - Secondary Lead Smelting.
17. Subpart EE - Magnetic Tape Manufacturing Operations.

A2. APPENDIX 2. REPEALED TEST METHODS AND PROTOCOLS

The following test methods and protocols are approved for use as directed by the Department pursuant to this Chapter. These standards are incorporated by reference as of July 1, 1995 (and no future amendments), except for incorporation dates specifically provided. These standards are on file with the Department and with the Office of the Secretary of State.

1. 40 CFR 51, Appendix M.
2. 40 CFR 60, all appendices.
3. 40 CFR 61, all appendices.
4. 40 CFR 63, all appendices.
5. 40 CFR 75, all appendices.
6. The Department's "Arizona Testing Manual for Air Pollutant Emissions," amended as of March 1992 (and no future editions).

Corrections to Notices of Proposed Rulemaking

**CORRECTIONS TO NOTICES OF PROPOSED RULEMAKING
Initiated After January 1, 1995**

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register*.

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.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

Correction: The Board of Cosmetology (4 A.A.C. 10) submitted a Notice of Proposed Rulemaking which appeared in the July 28, 1995, issue of the *Register* (1 A.A.R. 1195). In that Notice, the close of record was listed as September 16, 1995. The Board is extending this date.

The new close of record is November 3, 1995.

The Board will continue to accept written and oral comments on the proposed rules until October 16, 1995, at 5 p.m.

TITLE 10. LAW

**CHAPTER 1. DEPARTMENT OF LAW
ATTORNEY GENERAL'S OFFICE**

The Notice of Proposed Rulemaking which was published in the September 1, 1995, issue (1 A.A.R. 1481) was published a week later than it should have been. The Secretary of State's Office takes full responsibility for the error and apologizes for any inconvenience.

Because of the delay in publication, the hearing on the proposed rules scheduled for September 28, 1995, is cancelled. A new hearing date has been scheduled as follows:

Date: October 24, 1995
Time: 2 p.m.
Location: Attorney General's Office
South Conference Room
Capitol Center Building
15 South 15th Avenue, Third Floor
Phoenix, Arizona 85007

The Attorney General follows Title II of the Americans with Disabilities Act. The Attorney General does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking or otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services) to participate in the public comment process, or who require this information in an alternate form, may contact Elizabeth Stewart at (602) 542-8331 (Voice); (602) 542-5002 (TDD); 1275 West Washington, Phoenix, Arizona 85007. Requests should be made as soon as possible so that the Attorney General's Office will have sufficient time to respond.