

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R3-2-906 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 3-107(A)(1)
Implementing statute: A.R.S. § 3-710(F)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 1545, April 16, 2004 (in this issue)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Sherry D. Blatner, Rules Analyst
Address: Arizona Department of Agriculture
1688 W. Adams, Room 235
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: sherry.blatner@agric.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rules:**
This rulemaking is undertaken to provide consistent regulation of the egg industry under the Department's statutory authority. It is anticipated that A.R.S. § 3-715(K) will be repealed by the Legislature this Session. The rule currently provides an exemption from a penalty for persons qualifying under the current provisions of the statute. The Department is attempting to coordinate changes to the rule with the pending statutory change.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**
A. *The Arizona Department of Agriculture.*
The Department will incur modest expenses related to educating staff and the regulated community on the amendments.

Notices of Proposed Rulemaking

The Department may cite additional persons for violations under R3-2-906(A)(1)(d) as a result of this amendment. Money received from violations noted during inspection is deposited into the State Egg Inspection Fund (A.R.S. § 3-717). The Department may realize a small increase in deposits to the Fund.

B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

An Arizona egg dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location will be subject to a penalty for selling grade AA or grade A eggs after the expiration date on the carton, case, or container. Previously, an exemption existed under A.R.S. § 3-715(K). Violation can result in a warning for a first violation, \$50 for a second violation, and \$100 for a third or greater violation.

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

Name: Sherry D. Blatner, Rules Analyst
Address: Arizona Department of Agriculture
1688 W. Adams, Room 235
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: sherry.blatner@agric.state.az.us

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

An oral proceeding is not scheduled for this proposed rule. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 5:00 p.m. on May 17, 2004.

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

None

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

None

13. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

Section
R3-2-906. Violations and Penalties

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

R3-2-906. Violations and Penalties

- A.** A dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location, is subject to the penalties in subsection (B) for any of the following violations:
1. Category A:
 - a. Making a false or misleading statement relating to advertising or selling eggs and egg products;
 - b. Acting as a dealer, producer-dealer, producer, or manufacturer without a valid license;
 - c. Selling shell eggs with an incorrect or incomplete expiration date, or without an expiration date;
 - d. Selling grade AA or grade A eggs after the expiration date on the carton, case, or container, ~~unless the eggs are exempt under A.R.S. § 3-715(K);~~
 - e. Failing to maintain records and reports required by this Article;
 - f. Failing to label a carton, case, or container with one size, one grade, and one brand name;
 - g. Moving eggs or an egg case, carton, or container with a warning tag or notice, or removing a warning tag or notice without permission from the Director;
 - h. Refusing to submit egg or egg product, an egg case, carton, container, subcontainer, lot, load, or display of eggs to inspection; or
 - i. Refusing to stop, at the request of an authorized representative of the Department, any vehicle transporting eggs or egg products.
 2. Category B:
 - a. Extending the expiration date of shell eggs as defined in A.R.S. § 3-701(10); or
 - b. Advertising, representing, or selling out-of-state eggs as local eggs.
 3. Category C:
 - a. Failing to ensure that shell eggs for human consumption are kept refrigerated at an ambient temperature not higher than 45° F;
 - b. Failing to ensure that frozen egg products for human consumption, labeled for storage at 0° F or below, are kept under refrigeration at a temperature of 0° F or lower; or
 - c. Failing to ensure that liquid egg products for human consumption are kept refrigerated at a temperature not higher than 40° F.
- B.** Any violation of this Article or of A.R.S. Title 3, Chapter 5, Article 1 not listed in subsection (A) is subject to a Category A civil penalty.
- C.** Under A.R.S. § 3-739, the civil penalty for a violation of subsection (A) is:

Number of Violations	Category A	Category B	Category C
1	Warning	Warning	Warning
2	\$50	\$50	\$100
3	\$100	\$100	\$200
4		\$150	\$400
5		\$200	\$500
6		\$250	
7		\$300	

ing is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 17, 2004
Time: 1:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Nature: Public Hearing

Date: May 17, 2004
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701
Nature: Public Hearing

Date: May 17, 2004
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Public Hearing

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

None

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

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section

R9-22-1003. Cost Avoidance

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-22-1003. Cost Avoidance

- A. AHCCCS shall cost avoid a claim if AHCCCS establishes the probable existence of first- or third-party liability or has information that establishes that first- or third-party liability exists.
- B. When the amount of first- or third-party liability is determined, AHCCCS or a contractor, when reimbursing a non-contracting provider, shall pay no more than the difference between the Capped Fee-For-Service Schedule amount and the amount of the first- or third-party liability.
- C. The requirement to cost avoid applies to all AHCCCS-covered services under Article 2 of this Chapter, unless otherwise specified in this Section. The following parties shall take reasonable measures to identify potentially legally liable first- or third-party sources:
 1. AHCCCS,
 2. A provider,
 3. A non-contracting provider, and
 4. A member.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

- 1. Sections Affected**

R9-28-901	Amend
R9-28-911	Amend
R9-28-913	New Section
R9-28-914	New Section
R9-28-915	New Section
R9-28-916	New Section
R9-28-917	New Section
R9-28-918	New Section
R9-28-919	New Section
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 36-2903.01, and 36-2915
Implementing statute: A.R.S. §§ 36-2903, 36-2903.01, 36-2915, and 36-2916
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

R9-28-901 and R9-28-911 were approved by G.R.R.C. in March 2004, but will not be effective until May 2, 2004.
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115
Email Address: proposedrules@ahcccs.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

AHCCCS is amending and creating new rules to implement TEFRA liens under 42 U.S.C. 1396p.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No studies were reviewed.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

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

Implementing TEFRA liens allows AHCCCS to increase recoveries from the real property of ALTCS members, which could result in a significant dollar amount.
- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4580
Fax: (602) 253-9115
Email Address: proposedrules@ahcccs.state.az.us

Proposed rule language will be available on the AHCCCS web site www.ahcccs.state.az.us the week of March 29, 2004. Please send written comments to the above address by 5:00 p.m., May 17, 2004. E-mail will be accepted.

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

Date: May 17, 2004
Time: 1:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Nature: Public Hearing

Date: May 17, 2004
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701
Nature: Public Hearing

Date: May 17, 2004
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Public Hearing

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

None

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

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section	
R9-28-901.	Definitions
R9-28-911.	<u>Estate Recovery and Undue Hardship</u>
R9-28-913.	<u>TEFRA Liens-General</u>
R9-28-914.	<u>TEFRA Liens-Affected Members</u>
R9-28-915.	<u>TEFRA Liens-Prohibitions</u>
R9-28-916.	<u>TEFRA Liens-AHCCCS Notice of Intent</u>
R9-28-917.	<u>TEFRA Liens and Estate Recovery-Member's Request for a State Fair Hearing</u>
R9-28-918.	<u>TEFRA Liens-Recovery</u>
R9-28-919.	<u>TEFRA Liens-Release</u>

ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-28-901. Definitions

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following ~~definition definitions apply~~ apply to this Article:

1. “Consecutive days” means days following one after the other without an interruption based on discharge.
2. “Estate” has the meaning in A.R.S. § 14-1201.
3. “File” means the date that AHCCCS receives a request for a state hearing under R9-28-917, as established by a date stamp on the request or other record of receipt.
4. “Member” means a person eligible for AHCCCS covered services under A.R.S. Title 36, Chapter 29, Article 2.
5. “Permanently institutionalized” means continually residing in a nursing facility, ICF/MR, or other medical institution defined in 42 CFR 435.1009, for 90 consecutive days.
6. “Place” means an action that AHCCCS takes to record a lien on a member's property with the court judicial system.
7. “Recover” means that AHCCCS takes action to collect from a lien.
8. “TEFRA lien” means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982.

R9-28-911. Estate Recovery and Undue Hardship

A. Any recovery of a claim by AHCCCS against a member's estate shall be made:

1. Only after the death of the individual's surviving spouse;
2. Only after a time when there exists no surviving minor child under age 21; and
3. Only when there exists no child who is AHCCCS eligible under Title XVI of the Social Security Act as blind or permanently disabled as defined in 42 U.S.C. 1382c.

A.B. AHCCCS shall waive the recovery of funds a claim against a member's estate because of undue hardship if either any of the following situations exist:

1. ~~When estate assets include real property or both real and personal property. There is property in the estate, and the property is listed as residential property by the Arizona Department of Revenue or County Assessor's Office, and the heir or devisee:~~

When the estate includes real property, which is listed as residential property by the Arizona Department of Revenue or County Assessor's Office, and the heir or devisee:

- a. Owns a business that is located at the residential property, and:
 - i. The business was in operation at the residential property for at least 12 months preceding the death of the member;
 - ii. The business provides more than 50 percent of the heir or devisee's livelihood; and
 - iii. The recovery of the property would result in the heir losing the heir or devisee's means of livelihood; or
 - b. Currently resides in the residence, and:
 - i. Resided there at the time of the member's death,
 - ii. Made the residence his or her primary residence for the 12 months immediately preceding the death of the member; and
 - iii. Owns no other residence; or
2. When the estate assets contain personal property only, and:
 - a. The heir or devisee's annual gross income for the household size is less than 100 percent of the Federal Poverty Level (FPL). New sources of income such as employment or Social Security that may not have yet been received, shall be included in determining the household's annual gross income; and
 - b. The heir or devisee does not own a home, land, or other real property.
 3. AHCCCS shall not grant an undue hardship if personal property assets are available to pay all of or a portion of the AHCCCS claim.

C. Subsections A and B are not applicable to TEFRA liens.

D. AHCCCS shall exempt the following income, resources, and property of American Indians AI and Alaska Natives AN from estate recovery:

1. Income and resources from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and U.S. Claims Court;
2. Ownership interest in trust or non-trust property;
3. Income left as a remainder in an estate derived from protected property that was either collected by an AI, or by a Tribe or Tribal organization and distributed to an AI;
4. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources; and
5. Any other ownership interests in or usage rights that have unique religious, spiritual, traditional, and cultural significance or rights that support subsistence or a traditional life style according to applicable Tribal law or custom.

R9-28-913. TEFRA Liens-General

- A.** Purpose. The purpose of a TEFRA Lien is to allow AHCCCS to place a lien on an AHCCCS member's real property before the member is deceased.
- B.** Life estates and beneficiary deeds. Except for members under R9-28-915, a TEFRA lien shall be placed against a member's real property interest held in a life estate or beneficiary deed created before or after the member's eligibility. Except for member under R9-28-918, a recovery shall be enforced against the remainder beneficiary following the member's death or upon transfer of the property.
- C.** Recovery. As provided under R9-28-918, recovery of a TEFRA lien shall be made under R9-28-910.

R9-28-914. TEFRA Liens-Affected Members

Except for members under R9-28-915, AHCCCS shall place a TEFRA lien against the real property of all members who are:

1. Receiving ALTCS services.
2. 55 years of age or older, and
3. Permanently institutionalized according to this Article.

R9-28-915. TEFRA Liens-Prohibitions

AHCCCS shall not place a TEFRA lien against a member's home so long as one of the following individuals is lawfully residing in the member's home:

1. Member's spouse.
2. Member's child who is under the age of 21 years.
3. Member's child who is blind or permanently and totally disabled under Section 1614 of the Social Security Act, or
4. Member's sibling who has an equity interest in the home and who was residing in the member's home for at least one year immediately before the date the member was admitted to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1009.

R9-28-916. TEFRA Liens-AHCCCS Notice of Intent

- A.** Time-frame. At least 30 days prior to filing a TEFRA lien, AHCCCS shall send the member or member's representative a Notice of Intent.
- B.** Content of the Notice of Intent. The Notice of Intent shall include the following information:
 1. A description of a TEFRA lien and the action that AHCCCS intends to take.
 2. How a TEFRA lien affects a member's property.
 3. The legal authority for filing a TEFRA lien.
 4. The time-frames and procedures involved in filing a TEFRA lien.
 5. The member's right to request a State Fair Hearing, and
 6. The process and time-frames for requesting a State Fair Hearing.

R9-28-917. TEFRA Liens and Estate Recovery-Member's Request for a State Fair Hearing

- A.** A member may request a State Fair Hearing based on:
 1. AHCCCS' Notice of Intent to place a TEFRA lien.
 2. AHCCCS' failure to cease efforts to recover a TEFRA lien within 30 days of receiving notice from the member or the representative of the member's estate of the applicability of R9-28-918 or R9-28-918.
 3. AHCCCS' denial of a request to waive estate recovery because of undue hardship, or
 4. AHCCCS' failure to cease efforts to recover against the estate within in 30 days of receiving notice from the representative of the estate of the applicability of R9-28-911(A).
- B.** A request for a State Fair Hearing shall be in writing, submitted to and received by AHCCCS, no later than 30 days after the date of the action listed in R9-28-911(A).
- C.** Hearings regarding AHCCCS' intent to place a TEFRA lien shall be conducted under Title 9, Chapter 34, Article 1.

R9-28-918. TEFRA Liens-Recovery

- A.** AHCCCS shall seek to recover a TEFRA lien upon the sale of the real property subject to the lien. However, AHCCCS shall not seek to recover the TEFRA lien or attempt recovery against any real property subject to the TEFRA lien at any time that the member is survived by the member's:
 1. Spouse.
 2. Child under the age of 21.
 3. Child who is eligible to participate in the State program established under Title XVI of the Social Security Act as blind or permanently and totally disabled, or
 4. Child who is blind or disabled as defined under 42 U.S.C. 1382c.
- B.** AHCCCS shall not recover a TEFRA lien on an individual's home so long as the member is survived by:
 1. A sibling of the member who currently resides in the deceased member's home and who was residing in the member's home for a period of at least one year immediately before the date of the member's admission to the nursing facility, ICF/MR or other medical institution as defined under 42 CFR 435.1009; or
 2. A child of the member resides in the deceased member's home who:

Notices of Proposed Rulemaking

- a. Was residing in the member's home for a period of at least two years immediately before the date of the member's admission to the nursing facility, ICF/MR or other medical institution as defined under 42 CFR 435.1009, and
 - b. Provided care to the member which allowed the member to reside at home rather than in an institution.
- C.** To determine if a child of the member provided care under subsection (B)(2), AHCCCS shall require the following information:
- 1. Physician's statement that describes the member's physical condition and service needs for the previous two years;
 - 2. Verification that the child actually lived in the member's home;
 - 3. Statement from the child providing the services;
 - 4. Statement from the member receiving the services; and
 - 5. Statement from physician, friend, or relative as witness to the care provided.

R9-28-919. TEFRA Liens-Release

AHCCCS shall issue a release of a TEFRA lien within 30 days of:

- 1. Satisfaction of the lien, or
- 2. Notice when the member is discharged from the nursing facility, ICF/MR or other medical institution defined under 42 CFR 435.1009, and the member returns home.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 3. DEPARTMENT OF TRANSPORTATION
HIGHWAYS**

PREAMBLE

1. Sections affected:

Article 5
R17-3-501
R17-3-502
R17-3-503
R17-3-504
R17-3-505
R17-3-506
R17-3-507
R17-3-508
R17-3-509
R17-3-702
Exhibit 1
Exhibit 2
Exhibit 3
Exhibit 4
Exhibit 5
Exhibit 6
Exhibit 7
Exhibit 8
Exhibit 9

Rulemaking Action:

New Article
New Section
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal

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. § 28-366
Implementing statutes: A.R.S. §§ 28-7045; 28-7053, 28-7054

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

Notice of Rulemaking Docket Opening: 10 A.A.R. 1547, April 16, 2004

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

Name: Wendy S. LeStarge, Manager
Address: Maintenance Permits Services
Arizona Department of Transportation
206 S. 17th Avenue, MD 004R

Notices of Proposed Rulemaking

Phoenix, AZ 85007

Telephone: (602) 712-4142

Fax: (602) 712-3380

E-mail: wlestarge@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters, at www.dot.state.az.us/ABOUT/rules/index.htm.

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

The Arizona Department of Transportation ("ADOT") is authorized to regulate any type of activity (or encroachment) within the state highway right-of-way. This rulemaking concerns the requirements, procedures, and conditions to obtain an encroachment permit to conduct any type of activity within the state highway right-of-way. This rule-making arises from proposed agency action in the 5-year review report approved by the Governor's Regulatory Review Council on May 2, 2000 (F-00-0402).

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

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

Not applicable

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

The economic impact of having an encroachment permit program is substantial. ADOT incurs substantial costs for administering the program, but the alternative could limit any access or a change to a state highways or ADOT right-of-way. ADOT's nine Engineering Districts issue encroachment permits for the jurisdictions they oversee. ADOT issued approximately 2,633 permits in FY 2004. The Districts employ a total of 23 employees to review, administer, and issue encroachment permits. However, numerous other ADOT employees can be involved in the review process, depending on the type of encroachment.

Encroachment permits vary from a banner for a local parade encroaching in the ADOT right-of-way airspace to a multi-million dollar construction project installing a major commercial complex next to a state highway, including additional turning lanes and utility installation. Various entities can request encroachment permits, including individuals, contractors, political subdivisions, and federal agencies.

ADOT's rules will create restrictions on the permittee obtaining a permit. However the benefit is to obtain some type of access or perform some type of activity in the ADOT right-of-way without endangering the permittee or the traveling public, and without damaging state property.

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

Name: Wendy S. LeStarge

Address: Arizona Department of Transportation,
206 S. 17th Avenue, Mail Drop 004R
Phoenix, AZ 85007

Telephone: (602) 712-4142

Fax: (602) 712-3380

E-mail: wlestarge@dot.state.az.us

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

No oral proceeding is schedule for this rulemaking. Written, faxed, e-mail comments, or requests for an oral proceeding may be made by contacting the person listed in #4 between 8:00 a.m. and 4:30 p.m., Monday through Friday. If no oral proceeding is requested, the public comment period shall continue for 30 days from this notice's publication date. This rulemaking's public record will close at 4:30 p.m. on May 17, 2004.

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

None

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

Not applicable

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 3. DEPARTMENT OF TRANSPORTATION
HIGHWAYS**

ARTICLE 5. ~~RESERVED~~ HIGHWAY ENCROACHMENTS AND PERMITS

Section

<u>R17-3-501.</u>	<u>Definitions</u>
<u>R17-3-502.</u>	<u>Applicability</u>
<u>R17-3-503.</u>	<u>Who Can Apply for an Encroachment Permit</u>
<u>R17-3-504.</u>	<u>General Application Procedures</u>
<u>R17-3-505.</u>	<u>Supporting Documentation</u>
<u>R17-3-506.</u>	<u>Encroachment Permit Requirements</u>
<u>R17-3-507.</u>	<u>Review Procedures</u>
<u>R17-3-508.</u>	<u>Unauthorized Encroachments; Enforcement Actions</u>
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ARTICLE 7. HIGHWAY ENCROACHMENTS AND PERMITS

Section

<u>R17-3-702.</u>	<u>Encroachments in highway rights-of-way</u>
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ARTICLE 5. ~~RESERVED~~ HIGHWAY ENCROACHMENTS AND PERMITS

A.R.S. §§ 28-7045, 28-7053, and 28-7054 grant authority to the Arizona Department of Transportation to control and protect the state highways and state highway rights-of-way. This Article explains and implements the procedure of how a person or entity requests permission to access or use a state highway right-of-way in the form of an encroachment permit.

R17-3-501. Definitions

In this Article, unless otherwise defined, these terms have the following meanings:

- “Abutting property” means real property or interest in real property bordering a state highway right-of-way.
- “Adopt-a-highway” means a Department program that allows a group of persons access to a state highway right-of-way to conduct litter pickup on a designated portion of the state highway.
- “Airspace” means the space above real property.
- “Applicant” means a person or entity seeking to obtain an encroachment permit.
- “Department” means the Arizona Department of Transportation.
- “District Office” means one of the Department's Engineering and Maintenance district offices.
- “Encroachment” means any use of, intrusion upon, or construction of improvement within a state highway right-of-way by any person or entity other than the Department for any purpose, temporary or fixed, other than public travel authorized by state statute.
- “Encroachment owner” means the person or entity responsible for creating or maintaining an encroachment on a state highway right-of-way.
- “Encroachment permit” means a written approval granted by the Department for construction of a fixed or temporary improvement within a state highway right-of-way, or for any activity requiring the temporary use of or intrusion upon a state highway right-of-way.
- “Engineering stationing” means the Department identification system to identify the location of a state highway feature.
- “Improvement” means any constructed facility or object, or alteration to any existing physical facility or object, or change in the elevation, slope, or drainage of a state highway right-of-way.
- “Permittee” means a person or entity to whom the Department issues an encroachment permit, and who is responsible for meeting the obligations, responsibilities, and specifications stated in the encroachment permit.
- “Right-of-way” means the real property or interest in real property on which state transportation facilities and appurtenances to the facilities are constructed or maintained.
- “Special event” means any temporary organized or supervised activity that could affect the normal operation of a state highway.
- “State highway” has the meaning prescribed in A.R.S. § 28-101(47).

R17-3-502. Applicability

A. A person or entity shall not encroach on a state highway right-of-way without obtaining an encroachment permit.

B. Only the following types of encroachments qualify for a Department encroachment permit:

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1. Access improvements to abutting properties, consistent with subsection (C)(6);
 2. Utility construction and maintenance, including underground and overhead;
 3. Drainage improvements;
 4. Airspace encroachments, such as overhanging signs, awnings, and banners;
 5. Landscaping;
 6. Special events;
 7. Removing or improving an existing encroachment;
 8. Rest area coffee breaks;
 9. Change in the principal activity or function of an abutting property where an access or utility encroachment has been constructed;
 10. Adopt-a-highway;
 11. Activities performed to compile information about physical features in the highway right of way;
 12. Traffic control unrelated to the types of encroachments listed above for specific incidents, such as hazardous material removal, accident clean-up, or check points by government enforcement; and
 13. For such uses as the Director specifies.
- C.** An encroachment not listed under subsection (B) is ineligible to qualify for an encroachment permit and is an unauthorized encroachment. An unauthorized encroachment also includes:
1. Outdoor advertising signs, except as an overhang in subsection (B)(4);
 2. Parking areas;
 3. Sales of any service or thing;
 4. Bicycling, walking, horseback riding, or other activities prohibited under A.R.S. § 28-733;
 5. Any commercial or industrial activity; or
 6. Access to undeveloped property abutting a state highway, unless the applicant demonstrates a plan for:
 - a. Immediate development through such items as construction plans or building permits, or
 - b. Continuing maintenance of the undeveloped property.
- D.** A new owner of an existing permitted encroachment shall apply for an encroachment permit in the new owner's name within 30 days from the date of purchase of the abutting real property.

R17-3-503. Who Can Apply for an Encroachment Permit

- A.** Any person or entity, other than the Department, seeking an encroachment upon a state highway right-of-way shall apply to the Department for an encroachment permit.
- B.** Any person or entity is eligible to apply for an encroachment permit, except for an encroachment involving:
1. Access, only an abutting property owner is eligible to apply.
 2. Landscaping and aesthetic enhancements, only an abutting property owner or a political subdivision is eligible to apply.
 3. Utility installation, only an ultimate owner who will be responsible for maintenance and liability of the utility after it is put into service is eligible to apply. An ultimate owner includes a utility company, improvement district, political subdivision, or abutting property owner. A contractor or developer may apply if the contractor or developer demonstrates sufficient proof that an ultimate owner has approved plans and agrees it will obtain an encroachment permit as a new owner upon completion of the utility installation.

R17-3-504. General Application Procedures

- A.** An applicant shall obtain an encroachment permit application form from the District Office serving the Department's district in which the proposed encroachment is located.
- B.** An applicant shall include the following information on a District Office's encroachment permit application:
1. Name, address, city, state, zip code, telephone number, and signature of encroachment owner;
 2. Name, address, city, state, zip code, telephone number, and signature of applicant, if different from encroachment owner;
 3. Applicant's legal relationship to encroachment owner;
 4. City nearest to the proposed encroachment;
 5. Location of proposed encroachment from the nearest milepost (in feet), including state highway route number, side of highway, and engineering stationing (if applicable); and
 6. Purpose of proposed encroachment, as listed in R17-3-702(B), and a description of the proposed work or activity in the right-of-way.
- C.** By signing an application, an applicant or encroachment owner, or both, agree to accept the following general obligations and responsibilities:
1. Assume all legal liability and financial responsibility for the encroachment activity for the duration of the permit;
 2. Be responsible for any repair or maintenance work to the encroachment for the duration of the permit;
 3. Comply with the Department's traffic control standards;

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4. Obtain written approval from the abutting property owner if the encroachment encroaches on abutting property;
5. Upon notice from the Department, repair any aspect or condition of the encroachment that causes danger or hazard to the traveling public;
6. Remove the encroachment and restore the right-of-way to its original or better condition if the Department cancels the encroachment permit, thereby terminating all rights under the permit;
7. Reimburse the Department for costs incurred or deposit with the Department money necessary to cover all costs incurred for activities related to the encroachment, such as inspections, restoring the right-of-way to its original or better condition, or removing the encroachment;
8. Notify a new owner to apply for an encroachment permit, as required by R17-3-702(D);
9. Apply for a new encroachment permit if the use of the permitted encroachment changes;
10. Keep a copy of the encroachment permit at the work site or site of encroachment activity;
11. Construct the encroachment according to plans that the Department approves as part of the final permit;
12. Obtain required permits from other government agencies or political subdivisions;
13. Assume legal liability if evicted by the abutting property owner or an owner with any interest in the property abutting the state highway; and
14. Remove any defective materials, or materials that fail to pass the Department's final inspection, and replace with materials as the Department specifies.

R17-3-505. Supporting Documentation

An applicant for an encroachment permit shall provide supporting documentation relevant to the type of encroachment activity and necessary to allow the Department to analyze the proposed encroachment's impact on the state highway and right-of-way, using such criteria as:

1. Whether the proposed encroachment is for commercial or residential access;
2. The proposed encroachment's impact on roadway features within the right-of-way;
3. The amount of traffic the proposed encroachment will generate;
4. Duration of the proposed encroachment;
5. The proposed encroachment's impact on disrupting traffic or changing traffic patterns;
6. The surrounding terrain and physical features of the right-of-way and the abutting property; and
7. The number, size, and intended use of any buildings that would be accessed via the proposed encroachment.

R17-3-506. Encroachment Permit Requirements

- A.** An encroachment permit consists of the materials submitted by an applicant under R17-3-704 and R17-3-705, and additional requirements from the Department as described in subsection (B). An encroachment permit will list in detail the requirements with which the permittee shall comply in order to perform the requested encroaching activity. Some of the requirements are general and apply to every encroachment permit. Others are specific to a particular encroachment activity.
- B.** The Department shall set encroachment permit requirements to:
 1. Maintain the integrity of the Department's right-of-way and transportation facilities;
 2. Mitigate the risk to traffic safety;
 3. Improve traffic movement, efficiency, and capacity;
 4. Mitigate adverse drainage on state property or abutting property affecting state property;
 5. Mitigate environmental impacts;
 6. Mitigate maintenance costs to transportation facilities;
 7. Mitigate potential liability for the Department or the state; and
 8. Mitigate potential harms to national or state security.
- C.** By accepting an encroachment permit, a permittee agrees to the requirements described in the permit. If the permittee disagrees with the requirements, the permittee shall return the permit immediately to the District Office.

R17-3-507. Review Procedures

- A.** The Department shall conduct an administrative completeness review and substantive review of an application for an encroachment permit under A.R.S. §§ 41-1072 through 41-1077 and R17-1-102.
- B.** The Department shall decide whether to grant an encroachment permit based solely on the documents and information before the Department.
- C.** Decision.
 1. The Department shall approve an encroachment permit if:
 - a. The proposed encroachment use is lawful.
 - b. The applicant provides complete and accurate information.
 - c. The proposed encroachment use qualifies under R17-3-702(B), and
 - d. The applicant agrees to comply with the Department's requirements as set out in the permit.
 2. The Department shall deny an encroachment permit application if:

- a. The proposed encroachment use is unlawful.
 - b. The applicant provides incomplete or inaccurate information.
 - c. The proposed encroachment use does not qualify under R17-3-702(B), or
 - d. The permittee disagrees with the requirements of the permit.
3. An applicant may appeal the Department's denial decision on an encroachment permit application as prescribed in R17-3-709.

R17-3-508. Unauthorized Encroachments; Enforcement Actions

- A.** An encroachment is unauthorized if:
1. A permittee fails to comply with the permit requirements.
 2. A permittee provides false or inaccurate information on the encroachment permit application.
 3. A person or entity fails to obtain an encroachment permit.
 4. The encroachment is unauthorized under R17-3-702(C).
- B.** An encroachment owner shall remove any unauthorized encroachment at the owner's own cost.
- C.** After considering the totality of the circumstances and in consultation with the Office of the Attorney General, the Department may refer a matter to the Office of the Attorney General according to A.R.S. §§ 28-7053 and 28-7054 for:
1. Enforcement against the owner of an unauthorized encroachment, or
 2. Recovery of costs from the encroachment owner for the Department removing an unauthorized encroachment if the encroachment owner fails to remove the unauthorized encroachment.

R17-3-509. Hearings

The Department shall inform an applicant or permittee of the hearing procedures when the Department:

1. Denies an application for an encroachment permit, or
2. Determines that an encroachment is unauthorized.

ARTICLE 7. HIGHWAY ENCROACHMENTS AND PERMITS

~~R17-3-702. Encroachments in highway rights-of-way~~

- A.** ~~Purpose and authority:~~
1. ~~Purpose. In order to adequately control highway rights-of-way, prevent their abuse, and unauthorized use, the Director herein wishes to prescribe the above referenced rule.~~
 2. ~~Authority A.R.S. § 28-108(19). "The Director shall: . . . 19. Exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes and prescribe such rules and regulations regarding such use as he deems necessary to prevent the abuse and unauthorized use of such highways and routes."~~
- B.** ~~Scope. The rules and regulations herein established include permit application procedures, permit processing procedures, initial placement, adjustment, relocation, reconstruction and replacement for use of state highway rights-of-way.~~
- C.** ~~Encroachment permit application procedures:~~
1. ~~Completed ADOT applications shall be sent to the appropriate district engineer. The district engineer is responsible within the district for all phases of implementing the control of encroachment permits from the initial application, review, approval, construction and final inspection.~~
 2. ~~Plans required. Applicants shall submit a set of plans indicating highway route number, mileposts, highway engineering stations, and physical features such as buildings, bridges, culverts, poles and other stationary landmarks necessary to adequately describe the location. Permit applicants are encouraged to employ competent design professionals such as registered professional engineers or architects when preparing plans of a complex nature. Permit applications shall include four sets of plans on primary and secondary highways and five sets on interstate highways. Commonly used construction standards are included as Exhibit Numbers 1-9.~~
 3. ~~Each application reviewed. All permit applications are initially submitted to the respective districts. Only when necessary, will the districts route them to the appropriate department, for comments. The findings will be forwarded to the district office for final evaluation and issuance. A copy of the permit is sent to Maintenance Permits Services for filing as well as for quality control, i.e., review for uniformity and consistency in compliance with ADOT standards, specifications and special requirements in the issuance of permits. No work is to be performed until the permit is approved. All work is to be in accordance with Arizona Department of Transportation standards.~~
 4. ~~Time limit. Ninety calendar days will be the normal time allowed for completion of construction. Time limits beyond 90 days' time may be granted as determined by the Arizona Department of Transportation.~~
 5. ~~Time extension. Applicants may apply for a time extension beyond the allotted time indicated on the permit by contacting the District office. If work has changed, a reapplication may be required.~~
 6. ~~Transfer of permits. Permits are transferable upon sale of ownership provided new owner furnishes the Arizona Department of Transportation with a notification within 30 days after date of sale. It is the obligation of the permittee to notify the new owner of the necessity to apply for a change of ownership.~~
 7. ~~Bonding.~~

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- a. Performance bonds or other assurance of construction may be required to ensure faithful performance of a permittee's obligation. The amount shall be equal to one half the amount of the cost of the work or any other possible financial loss to the state (as determined by the district engineer).
 - b. The performance bonds shall be executed by the applicant as principal with a corporation duly authorized to transact surety business in the state of Arizona. The bond shall be in favor of the Arizona Department of Transportation, shall be continuous in form, and shall be limited to the face amount of the bond irrespective of the number of years the bond is in force. The bond shall be released upon satisfactory performance and acceptance of the work or may be cancelled after the applicant has provided other security satisfactory to the Arizona Department of Transportation which will cover obligations that remain.
 - c. In instances where an applicant is issued numerous small permits throughout the year, he may post a continuing bond to cover work under more than one permit. The continuing bond shall be of a value sufficient to cover all work under construction by the permittee at any time and shall be satisfactory to the district engineer.
 - d. The bonding requirement may be waived when it can be determined by the district engineer that adequate protection is provided the Department to ensure satisfactory completion of the construction.
8. Access:
- a. No access will be granted where access control rights have been legally established unless waived by the state engineer in accordance with FHWA standards.
 - b. Access to abutting property from within interstate or other freeway rights of way where permitted will be limited to:
 - i.a. Frontage roads except the merging entrance and exit ramp areas which will be subject to traffic engineering evaluation.
 - ii.b. Intersecting or nearby public roads and streets within interstate rights of way. At interchanges control for connections to the crossroad is normally effected beyond the ramp terminals by purchasing of access rights. Such control should extend along the crossroads beyond the ramp terminal 100 feet or more in urban areas and 300 feet or more in rural areas subject to traffic engineering evaluation.
 - c. Access from within primary, secondary or other conventional highway rights of way will be permitted in accordance with appropriate standards. (See Exhibits 1, 2 and 7.)
 - d. Median openings may be allowed on divided highways except interstate or other freeways provided they conform to Arizona Department of Transportation policy regarding the design and spacing of such openings. This policy will be provided applicants upon request.
 - e. Permits shall be only for the construction of new turnouts and driveways or changing the location of an existing driveway. They shall not be issued for the purpose of providing a parking area or for servicing of vehicles on highway right of way.
 - f. Joint driveways may become desirable for landowners of adjacent properties to require a joint driveway to service both properties. If this is the case, only one of the two adjacent landowners need apply for the access permit but a notarized written mutual agreement, signed by all parties involved, must accompany the application form.
9. Signs. On-premise signs, displays, canopy, awning, or devices may be erected on structures occupying highway right-of-way airspace, but shall be limited to those indicating ownership and type of on-premise activities and shall be constructed in accordance with Arizona Department of Transportation Standards. (See Exhibit 9.) No portion of the structure support is allowed within highway right of way.
10. Landscaping:
- a. The Highway roadside is an integral unit of a total highway facility. The term "roadside" generally refers to the area between the outer edge of the roadway and the right-of-way boundary. These include all unpaved areas within the right of way.
 - b. All plans and specifications shall be sufficiently complete and detailed for easy analysis, cost estimating and compliance inspection and shall be submitted in accordance with "Roadside Development Landscaping Permit Guidelines" available to applicants upon request.
 - c. Permit applicants or their professional consultants may be required to discuss and coordinate landscape plans with the roadside development services prior to permit approval.
 - d. Plans shall be designed to select plant materials appropriate for the intended use and location, to arrange plants for optimum effect, and to ensure reasonable maintenance within the capability of the proposed permittee. Permit application will be reviewed for consideration of the factors which can affect the safe and efficient operation of the highway facility. It will be the responsibility of the permit applicant to assure that all landscaping is maintained after construction.
 - e. A clear line of sight must be maintained at all highway intersections and entrances; therefore, all plantings in this zone must be limited to an ultimate height of 30 inches or less.
 - f. Plants shall not be used where they may encroach upon drainage ways and impede their functional value or increase maintenance. It shall be the responsibility of the permit applicant to assure that all landscaping is maintained after construction.

11. Hydraulics. At the discretion of the district engineer the following information shall be submitted by permit applicants when any changes are made in drainage conditions:
 - a.1. A narrative report including a description of the existing drainage conditions, the proposed revisions and the effect of the proposed changes on existing conditions;
 - b.2. Maps and/or drawings sufficient to show all pertinent features of the proposed modifications. This may include site maps, drainage area maps, contour maps, grading plans, structure profiles, channel profiles, etc.;
 - c.3. Hydrologic and hydraulic calculations when applicable for design discharge, headwater elevations, tailwater elevations, flow depths and flow velocities in channels.
 12. Utilities. All use permits will be in accordance with the Arizona Department of Transportation Guide for Accommodating Utilities on Highway Rights-of-Way. If applicant has a utility agreement with Arizona Department of Transportation, this agreement shall be included with the application. Utility plans shall adequately show such features as pavement and right of way lines in relation to their proposed facilities. Plans shall clearly indicate any existing utilities in the area. (See Exhibit 8.) If plan symbols are used that are not standard, they shall be defined on the plans submitted.
 13. Fences, gates and cattle guards. Applicants shall be responsible for assuring that stock do not enter upon the highway while modifying or installing fence, gates or cattle guards. Back fences shall be maintained in a stockproof condition. (See Exhibits 5 and 6.)
 14. Jack or bore. Pipes, conduit or other utilities shall be jacked or bored through beneath paved areas. Pits may be placed in the median for boring, jacking or driving of pipes or conduits under divided roadways. The pit areas shall be completely fenced or barricaded and placed at a minimum distance of thirty feet from the edge of shoulder. Pavement cuts shall be considered only when jacking, boring or other alternatives are proven impractical and then only when approved by the district engineer. (See Exhibits 3 and 4.)
- D.** Parades, motion pictures. Parade and motion picture requests shall be made in writing with an accompanying sketch and submitted directly to the appropriate district engineer. The request shall include:
1. Location;
 2. Purpose;
 3. Time—date and hour;
 4. Length of time;
 5. Traffic control;
 6. Traffic reroute;
 7. A statement holding the Arizona Department of Transportation harmless in the event of any damage to persons or property which is caused by the event.
- E.** Temporary signs or banners, including Christmas decorations. No temporary signs, banners or Christmas decorations shall be attached to any traffic control device, nor shall any such signs, banners or decorations interfere with operation of such devices. Requests for temporary signs or banners shall be made in writing and submitted directly to the appropriate district engineer. The request shall include:
1. Location;
 2. Height of sign or banner across highway (18 minimum);
 3. Size of sign or banner and wording;
 4. Inclusive dates sign or banner will hang;
 5. A statement holding the Arizona Department of Transportation harmless in the event of any damage to persons or property which is caused by this event;
 6. Legend.
- F.** Traffic control and detours. Traffic shall be protected at all times in accordance with the Arizona Department of Transportation Traffic Control Manual. All signs, placement of signs, barricades, lights, and necessity of flagmen shall be the responsibility of the Permittee.
- G.** Minimum setback:
1. 50 MPH or greater design speed:
 - a. Minimum setback of a fixed object from the edge of the traffic lane should be 30 feet unless one of the following reasons will allow for a lesser distance:
 - i. Cuts of 3 to 1 or steeper—obstacles are allowed 10 feet behind the point of vertical intersection (P.V.I.) at the toe of the slope.
 - ii. Where concrete barriers, walls, abutments, or other rigid obstructions are used—fixed objects may be placed 4 feet behind the obstructions.
 - iii. Where flexible guardrail (box beam, w-beam, or cable) is used 6 to 20 feet behind the face of the guardrail, depending upon the type.
 - iv. Where there are barrier curbs (5" or more vertical face) near a traveled lane—6 feet behind the face of the curb; adjacent to a parking lane—no definite setback distance.
 - b. Where limited right-of-way or the necessity for planting would result in less clearance, all factors in the particu-

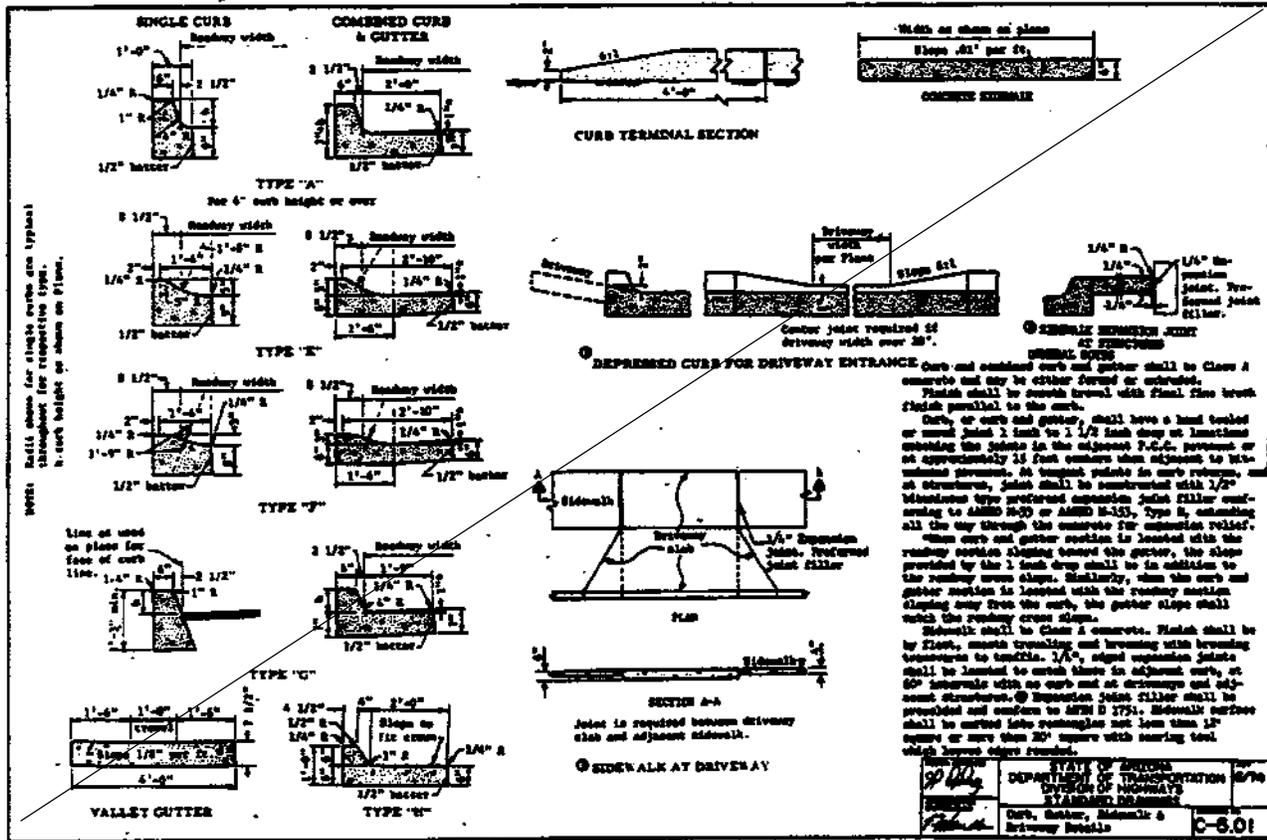
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- lar problem area should be weighed to decide if a special exception is warranted.
2. 50 MPH or less design speed:
 - a. Minimum setback of a fixed object from the edge of the traffic lane may be 25 feet unless one of the reasons set forth under paragraph (1) will allow for a lesser distance.
 - b. On curves, adequate sight distance for the design speed of the highway must be maintained.
- H.** Rest area coffee breaks. Free coffee is allowed in rest areas for which donations may be accepted but not required if the following conditions are met:
1. The activity must be conducted for the expressed purpose of improving the safety of the highway travel and not as an advertisement of any organization or activity.
 2. The applicant must be a nonprofit organization with a concern for automotive, highway or driver safety.
 3. The activity must be carried on solely within the rest area apart from any ramp or other surface used for the movement of vehicles. The intent is to assure an absolutely safe operation. Permission will not be granted for such activity at rest areas where the activity could cause a backup along the ramps to the main lanes of the highway.
 4. The activity must have the approval of the appropriate DOT District Engineer and must meet other requirements of state law:
 - a. Applicant shall specify the rest area to be utilized on interstate or primary highways including route number and milepost. If on a divided highway with dual rest areas, both shall be utilized. This is to promote highway safety by alleviating the need of vehicles to cross the median illegally.
 - b. Specific time and date that a "safety break" is to be in operation shall be stated by the applicant.
 - c. In order to provide the least rest area interruption, the district shall designate the location to be utilized for the coffee break facility.
 - d. Applicants must submit a sketch indicating the location, legend and size for any proposed signs. The district engineer shall have authority over type, size up to the maximum as stated in subdivision (v) below, and location of signs on or off the right of way.
 - e. A letter for each request must state that the applicant agrees to abide by the following requirements:
 - i. The state accepts no liability for such activities.
 - ii. There shall be no impeding of traffic or normal use of the rest area.
 - iii. Erection and removal of all signs will be at no cost to the state.
 - iv. After the specified time for the activity has terminated, the applicant will be given 24 hours to remove all signs.
 - v. The maximum size of signs shall be limited to a rectangular 4' x 8' or one with an equivalent area.
 - vi. Any connection to rest area power shall be done in full compliance with OSHA safety requirements. The use of electrical cords outside the area of the facility will not be permitted.
 - vii. The connector to the rest area power source shall be so placed that it does not constitute a hazard to the public nor be an inconvenience to them. Permittee shall use only the connector furnished by the state. If no power is available, the permittee shall provide his own.
 - viii. Applicant shall be responsible for cleaning the site following use. Failure to do so will result in the district billing applicant for costs.
 - ix. No tools other than those manufactured for use on water faucets shall be used to secure water from rest area facilities.
 - x. Approval for requests will be made on a first come, first served basis; however, requests will not be accepted earlier than 45 days nor later than 7 days before the first date of proposed service. No formal permit will be issued; however, a letter of responses will originate from the appropriate district engineer with copies to the appropriate maintenance highway crew supervisor, DPS Office and maintenance permit engineer. The letter may also contain additional specific conditions for use of that particular rest area.
- I.** City-issued state permits. When authorized by maintenance agreements with Arizona Department of Transportation, cities may issue permits to use state highway right-of-way. A city authorized to issue state highway permits is required to use state standard permit forms and follow such general state policies regarding encroachments as may be specified by Arizona Department of Transportation. State design standards may be modified in cases where city standards of design are more restrictive than state requirements, in which case city standards of design will be followed.
- J.** Maintenance responsibility. The adjacent property owners having access to a state highway shall be fully responsible for the maintenance of their driveway including the portion from the highway right-of-way line to the outside edge of the highway shoulder or curbline. This maintenance responsibility includes the removal of snow and ice and keeping the portion within the highway right of way in a safe condition for the general public. The owner shall be responsible for the maintenance of ditches, pipes, catch basins, grates, poles, gates, aerial wires, buried cables and other structures or installations placed in connection with encroachment permits. The owner will be given ten days notice to perform the required maintenance. After this period, the Director may then perform the required maintenance, and the owner shall be liable for the costs of such maintenance. If an emergency exists wherein there is an immediate hazard to the highway, the Director may perform the required remedial maintenance, and the owner shall be liable for all such costs incurred. The owner shall

be responsible for any revisions or improvements required as a result of changed conditions of use after the permit is issued and/or after construction is completed, upon the direction of the Arizona Department of Transportation.

- ~~K.~~ ~~Unauthorized encroachments. A.R.S. § 28-1870 defines misuse of public highways or airports. Use of state highway rights-of-way shall be limited to authorized uses herein described. Any other uses will be permitted only by specific approval by the Director of Transportation. Owners of unauthorized property located in the state highway right-of-way will be notified that they are in violation of state law. If the encroachment has not been removed within the time prescribed, the Director may remove the unauthorized encroachment, and the owner shall be liable for the cost of such removal.~~
- ~~1. The following encroachments or uses of state highway rights of way will normally not be permitted:
 - ~~a. Advertising signs;~~
 - ~~b. Parking areas;~~
 - ~~c. Sales of any article, service, or thing;~~
 - ~~d. Bicycle, walking, equestrian or other activities on urban freeways;~~
 - ~~e. Any commercial or industrial activity.~~~~
 - ~~2. None of the above uses of state highway right of way will be permitted except for applications in special circumstances, and the use in no way conflicts with safe and efficient highway uses nor with highway maintenance or other authorized activities. Permits will always need to be acquired for these encroachments.~~
- ~~L.~~ ~~Traffic hazards and permits. No permit shall be issued for any encroachment if it creates a traffic hazard. Applicants will adhere to the manual on Uniform Traffic Control Devices (copy of which is on file with the Secretary of State), R17-3-01 (repealed). No work shall be allowed without a properly approved permit.~~

EXHIBIT 1



Arizona Administrative Register / Secretary of State
 Notices of Proposed Rulemaking

EXHIBIT 2

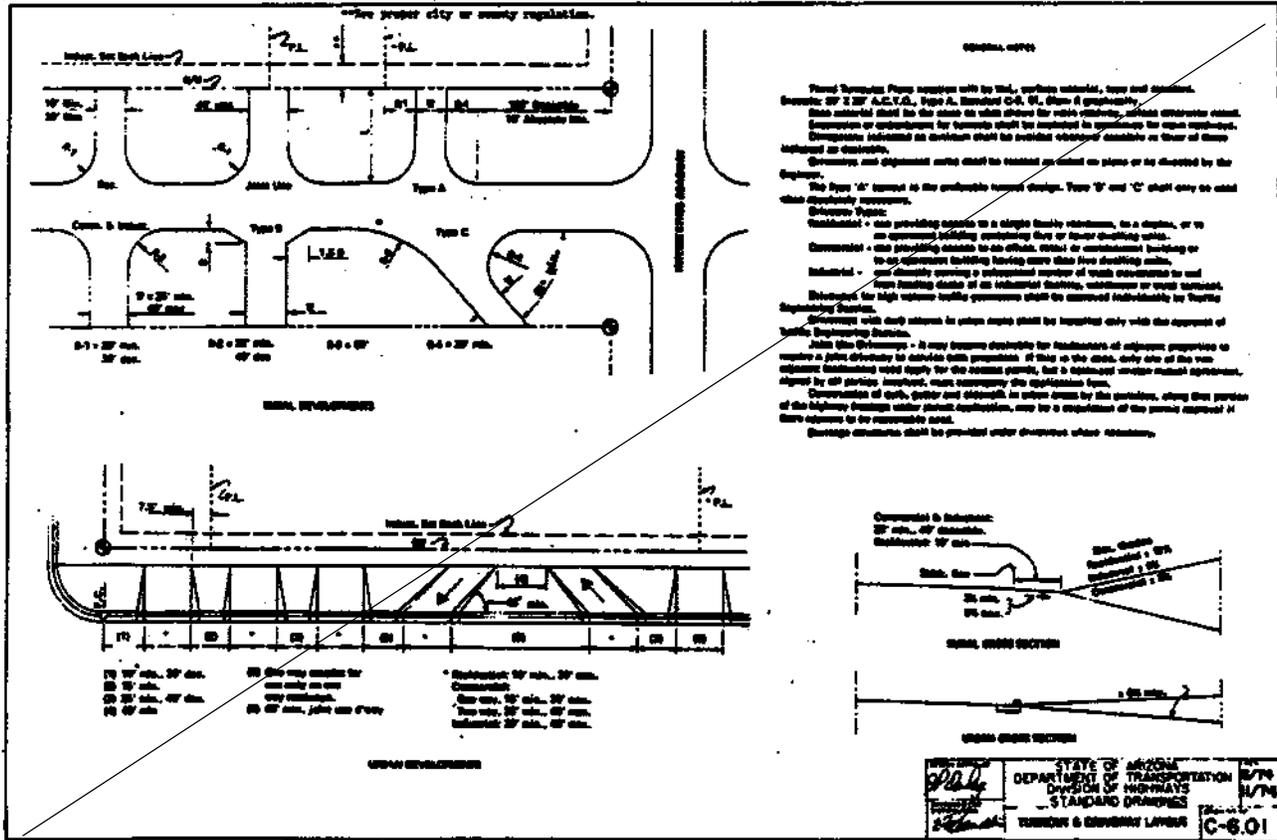


EXHIBIT 3

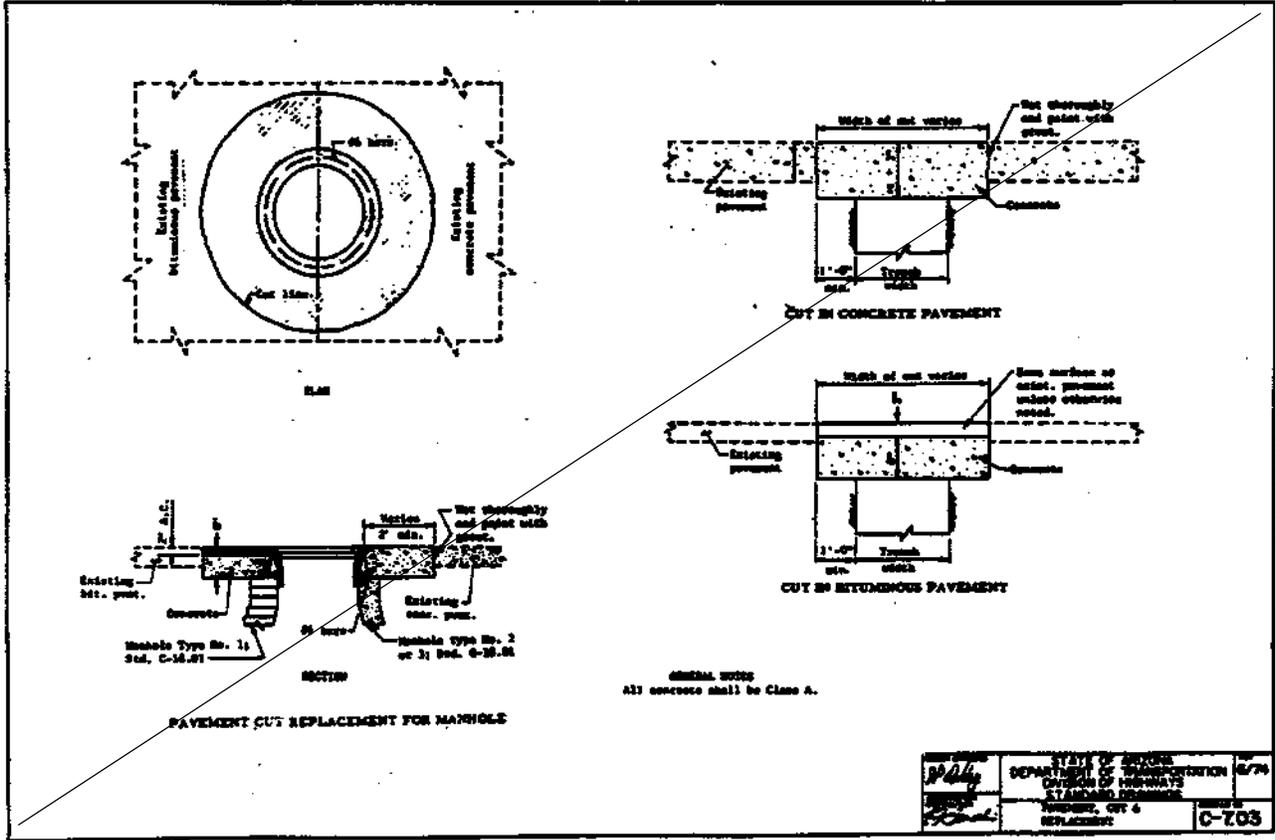


EXHIBIT 4

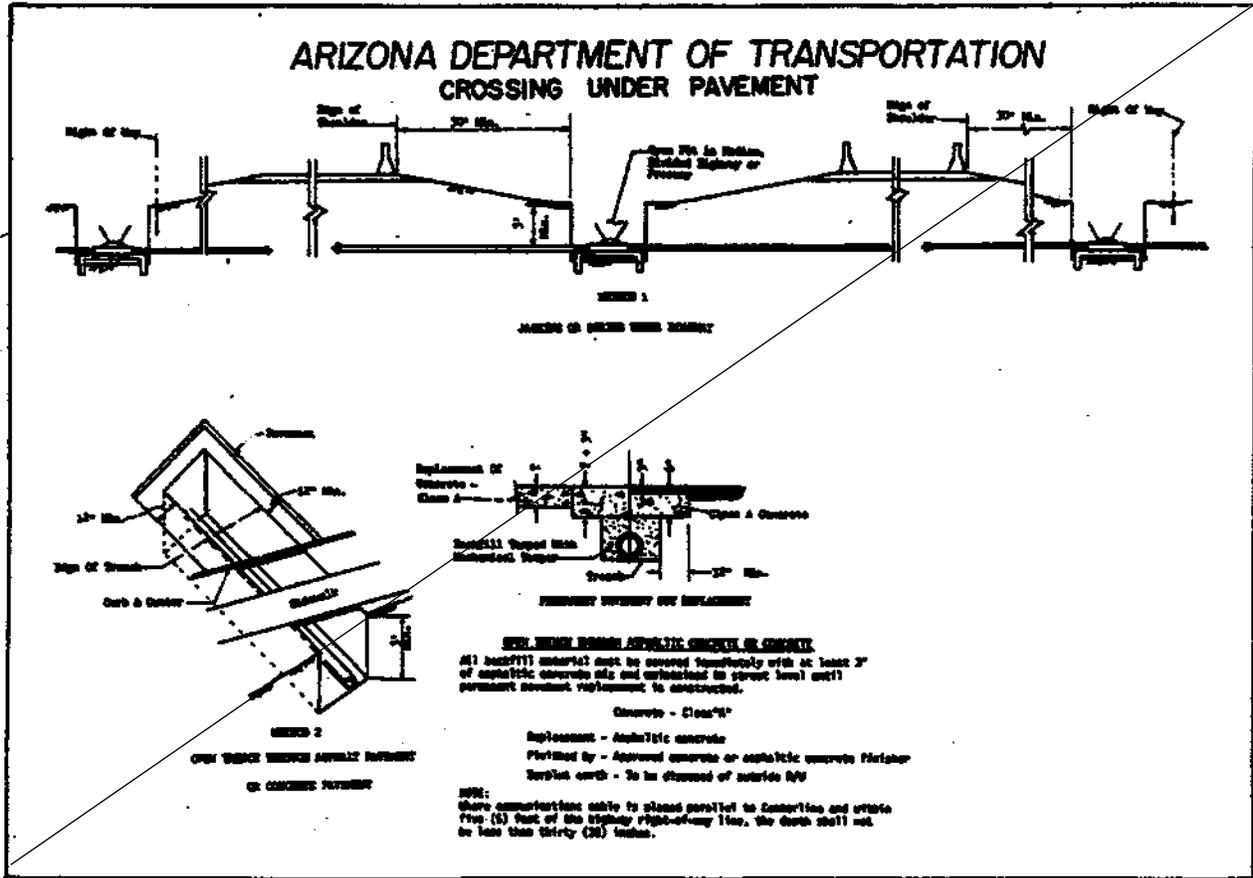
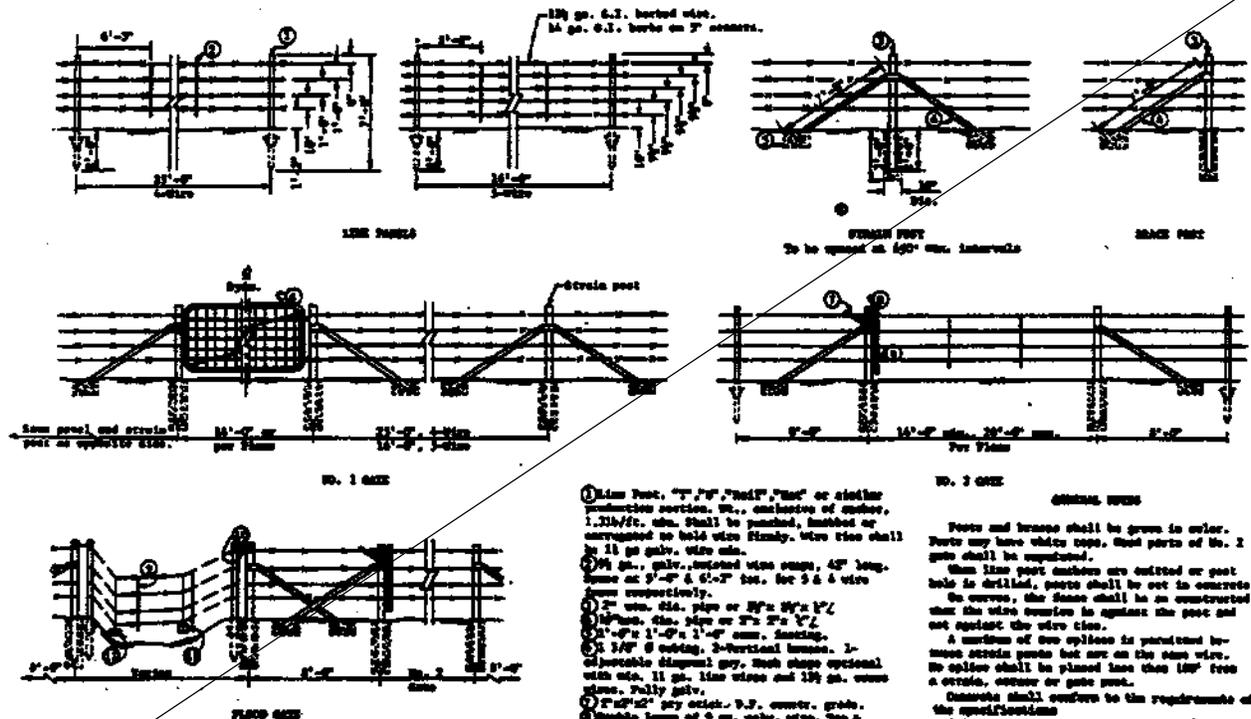


EXHIBIT 6



① Strain posts with braces shall be installed at all corners, angles exceeding 15° and fence intersections. There shall be a brace from the post to the ground in each fence panel attached to the strain post. The first line post from each strain post shall be installed at a maximum distance of 8 ft.

- ① Line Post: "T", "P", "Half", "End" or similar production section. W... outside of corner, 1.25/ft. etc. Shall be punched, lashed or arranged to hold wire firmly. Wire ties shall be 11 ga galv. wire min.
- ② 1/4" dia. galv. coated wire caps, 4" long. Same as 2'-0" & 4'-0" for 3 & 4 wire fence respectively.
- ③ 2" x 2" dia. pipe or 2" x 2" x 1/2" galv. pipe or 2" x 2" x 1/2" galv. pipe.
- ④ 1 1/2" x 1'-0" x 1'-0" corr. lashing.
- ⑤ 1 1/2" x 1'-0" x 1'-0" corr. lashing. 1- adjustable diagonal guy. Each stage optional with wire, 11 ga. line wire and 12 1/2 ga. corner brace. Fully galv.
- ⑥ 2" x 2" galv. pipe. P.P. corner grade.
- ⑦ Double loop of 9 ga. galv. wire. Top 2 wires.
- ⑧ 2" x 2" x 4'-0" E.F. corner grade.
- ⑨ Single loop, 7 ga. galv. wire.
- ⑩ 36-35 lb. steel cap wt. As alternate, use 7" x 7" x 7" corr. steel cap wt. to double and enclosed 9 ga. wire loop hanger.

NO. 2 CASE
GENERAL NOTES
 Posts and braces shall be given in color. Posts may have white tops. End posts of No. 2 case shall be unpainted.
 When line post anchors are omitted or post hole is drilled, posts shall be set in concrete. On curves, the fence shall be so constructed that the wire remains in against the post and not against the wire ties.
 A section of one cylinder is positioned between struts panels but not on the same wire. No splice shall be placed less than 18" from a corner, corner or gate post.
 Corners shall conform to the requirements of the specifications.
 Tolerances on distance between ground and bottom wire at any point equals 2"

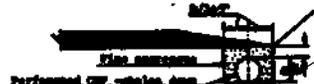
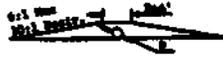
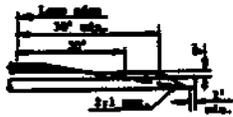
DATE	STATE OF ARIZONA	BY
1/1/74	DEPARTMENT OF TRANSPORTATION	1/74
	DIVISION OF HIGHWAYS	1/74
	STANDARD DRAWINGS	
	FENCE & GATES, LINE	
	STEEL POST	C-12.01

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

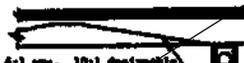
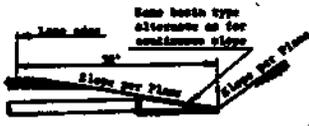
EXHIBIT 7



REINFORCEMENT INSTALLATION
 Divided Hwy. - 2 Way Hwy. Similar



NOTE
 Not required when pipe projection is processed by guard rail



Sag Location

Continuous Slope Location

TRAFFIC - SAFE RISE INSTALLATION



Dia. or Span	Installation Type		
	Projection	Handrail	Low Section
12" - 18"	12" or 18"	12" or 18"	12"
18" - 24"	18" or 24"	18" or 24"	18"
24" - 30"	24" or 30"	24" or 30"	24"
30" - 36"	30" or 36"	30" or 36"	30"
36" - 42"	36" or 42"	36" or 42"	36"
42" - 48"	42" or 48"	42" or 48"	42"
48" - 54"	48" or 54"	48" or 54"	48"
54" - 60"	54" or 60"	54" or 60"	54"
60" - 66"	60" or 66"	60" or 66"	60"
66" - 72"	66" or 72"	66" or 72"	66"
72" - 78"	72" or 78"	72" or 78"	72"
78" - 84"	78" or 84"	78" or 84"	78"
84" - 90"	84" or 90"	84" or 90"	84"
90" - 96"	90" or 96"	90" or 96"	90"
96" - 102"	96" or 102"	96" or 102"	96"
102" - 108"	102" or 108"	102" or 108"	102"
108" - 114"	108" or 114"	108" or 114"	108"
114" - 120"	114" or 120"	114" or 120"	114"
120" - 126"	120" or 126"	120" or 126"	120"
126" - 132"	126" or 132"	126" or 132"	126"
132" - 138"	132" or 138"	132" or 138"	132"
138" - 144"	138" or 144"	138" or 144"	138"
144" - 150"	144" or 150"	144" or 150"	144"
150" - 156"	150" or 156"	150" or 156"	150"
156" - 162"	156" or 162"	156" or 162"	156"
162" - 168"	162" or 168"	162" or 168"	162"
168" - 174"	168" or 174"	168" or 174"	168"
174" - 180"	174" or 180"	174" or 180"	174"
180" - 186"	180" or 186"	180" or 186"	180"
186" - 192"	186" or 192"	186" or 192"	186"
192" - 198"	192" or 198"	192" or 198"	192"
198" - 204"	198" or 204"	198" or 204"	198"
204" - 210"	204" or 210"	204" or 210"	204"
210" - 216"	210" or 216"	210" or 216"	210"
216" - 222"	216" or 222"	216" or 222"	216"
222" - 228"	222" or 228"	222" or 228"	222"
228" - 234"	228" or 234"	228" or 234"	228"
234" - 240"	234" or 240"	234" or 240"	234"
240" - 246"	240" or 246"	240" or 246"	240"
246" - 252"	246" or 252"	246" or 252"	246"
252" - 258"	252" or 258"	252" or 258"	252"
258" - 264"	258" or 264"	258" or 264"	258"
264" - 270"	264" or 270"	264" or 270"	264"
270" - 276"	270" or 276"	270" or 276"	270"
276" - 282"	276" or 282"	276" or 282"	276"
282" - 288"	282" or 288"	282" or 288"	282"
288" - 294"	288" or 294"	288" or 294"	288"
294" - 300"	294" or 300"	294" or 300"	294"
300" - 306"	300" or 306"	300" or 306"	300"
306" - 312"	306" or 312"	306" or 312"	306"
312" - 318"	312" or 318"	312" or 318"	312"
318" - 324"	318" or 324"	318" or 324"	318"
324" - 330"	324" or 330"	324" or 330"	324"
330" - 336"	330" or 336"	330" or 336"	330"
336" - 342"	336" or 342"	336" or 342"	336"
342" - 348"	342" or 348"	342" or 348"	342"
348" - 354"	348" or 354"	348" or 354"	348"
354" - 360"	354" or 360"	354" or 360"	354"
360" - 366"	360" or 366"	360" or 366"	360"
366" - 372"	366" or 372"	366" or 372"	366"
372" - 378"	372" or 378"	372" or 378"	372"
378" - 384"	378" or 384"	378" or 384"	378"
384" - 390"	384" or 390"	384" or 390"	384"
390" - 396"	390" or 396"	390" or 396"	390"
396" - 402"	396" or 402"	396" or 402"	396"
402" - 408"	402" or 408"	402" or 408"	402"
408" - 414"	408" or 414"	408" or 414"	408"
414" - 420"	414" or 420"	414" or 420"	414"
420" - 426"	420" or 426"	420" or 426"	420"
426" - 432"	426" or 432"	426" or 432"	426"
432" - 438"	432" or 438"	432" or 438"	432"
438" - 444"	438" or 444"	438" or 444"	438"
444" - 450"	444" or 450"	444" or 450"	444"
450" - 456"	450" or 456"	450" or 456"	450"
456" - 462"	456" or 462"	456" or 462"	456"
462" - 468"	462" or 468"	462" or 468"	462"
468" - 474"	468" or 474"	468" or 474"	468"
474" - 480"	474" or 480"	474" or 480"	474"
480" - 486"	480" or 486"	480" or 486"	480"
486" - 492"	486" or 492"	486" or 492"	486"
492" - 498"	492" or 498"	492" or 498"	492"
498" - 504"	498" or 504"	498" or 504"	498"
504" - 510"	504" or 510"	504" or 510"	504"
510" - 516"	510" or 516"	510" or 516"	510"
516" - 522"	516" or 522"	516" or 522"	516"
522" - 528"	522" or 528"	522" or 528"	522"
528" - 534"	528" or 534"	528" or 534"	528"
534" - 540"	534" or 540"	534" or 540"	534"
540" - 546"	540" or 546"	540" or 546"	540"
546" - 552"	546" or 552"	546" or 552"	546"
552" - 558"	552" or 558"	552" or 558"	552"
558" - 564"	558" or 564"	558" or 564"	558"
564" - 570"	564" or 570"	564" or 570"	564"
570" - 576"	570" or 576"	570" or 576"	570"
576" - 582"	576" or 582"	576" or 582"	576"
582" - 588"	582" or 588"	582" or 588"	582"
588" - 594"	588" or 594"	588" or 594"	588"
594" - 600"	594" or 600"	594" or 600"	594"
600" - 606"	600" or 606"	600" or 606"	600"
606" - 612"	606" or 612"	606" or 612"	606"
612" - 618"	612" or 618"	612" or 618"	612"
618" - 624"	618" or 624"	618" or 624"	618"
624" - 630"	624" or 630"	624" or 630"	624"
630" - 636"	630" or 636"	630" or 636"	630"
636" - 642"	636" or 642"	636" or 642"	636"
642" - 648"	642" or 648"	642" or 648"	642"
648" - 654"	648" or 654"	648" or 654"	648"
654" - 660"	654" or 660"	654" or 660"	654"
660" - 666"	660" or 666"	660" or 666"	660"
666" - 672"	666" or 672"	666" or 672"	666"
672" - 678"	672" or 678"	672" or 678"	672"
678" - 684"	678" or 684"	678" or 684"	678"
684" - 690"	684" or 690"	684" or 690"	684"
690" - 696"	690" or 696"	690" or 696"	690"
696" - 702"	696" or 702"	696" or 702"	696"
702" - 708"	702" or 708"	702" or 708"	702"
708" - 714"	708" or 714"	708" or 714"	708"
714" - 720"	714" or 720"	714" or 720"	714"
720" - 726"	720" or 726"	720" or 726"	720"
726" - 732"	726" or 732"	726" or 732"	726"
732" - 738"	732" or 738"	732" or 738"	732"
738" - 744"	738" or 744"	738" or 744"	738"
744" - 750"	744" or 750"	744" or 750"	744"
750" - 756"	750" or 756"	750" or 756"	750"
756" - 762"	756" or 762"	756" or 762"	756"
762" - 768"	762" or 768"	762" or 768"	762"
768" - 774"	768" or 774"	768" or 774"	768"
774" - 780"	774" or 780"	774" or 780"	774"
780" - 786"	780" or 786"	780" or 786"	780"
786" - 792"	786" or 792"	786" or 792"	786"
792" - 798"	792" or 798"	792" or 798"	792"
798" - 804"	798" or 804"	798" or 804"	798"
804" - 810"	804" or 810"	804" or 810"	804"
810" - 816"	810" or 816"	810" or 816"	810"
816" - 822"	816" or 822"	816" or 822"	816"
822" - 828"	822" or 828"	822" or 828"	822"
828" - 834"	828" or 834"	828" or 834"	828"
834" - 840"	834" or 840"	834" or 840"	834"
840" - 846"	840" or 846"	840" or 846"	840"
846" - 852"	846" or 852"	846" or 852"	846"
852" - 858"	852" or 858"	852" or 858"	852"
858" - 864"	858" or 864"	858" or 864"	858"
864" - 870"	864" or 870"	864" or 870"	864"
870" - 876"	870" or 876"	870" or 876"	870"
876" - 882"	876" or 882"	876" or 882"	876"
882" - 888"	882" or 888"	882" or 888"	882"
888" - 894"	888" or 894"	888" or 894"	888"
894" - 900"	894" or 900"	894" or 900"	894"

MINIMUM CLEARANCE FOR VEHICLE INSTALLATION

GENERAL NOTES
 Any required label and/or color protection shall be as called for on plans.
 See also: C-12.00 and remaining C-13.00 series standards.

 STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION DIVISION OF HIGHWAYS STANDARD DRAWINGS TITLE CURB INSTALLATION C-13.01	1/7/01
	1/7/01

EXHIBIT 8

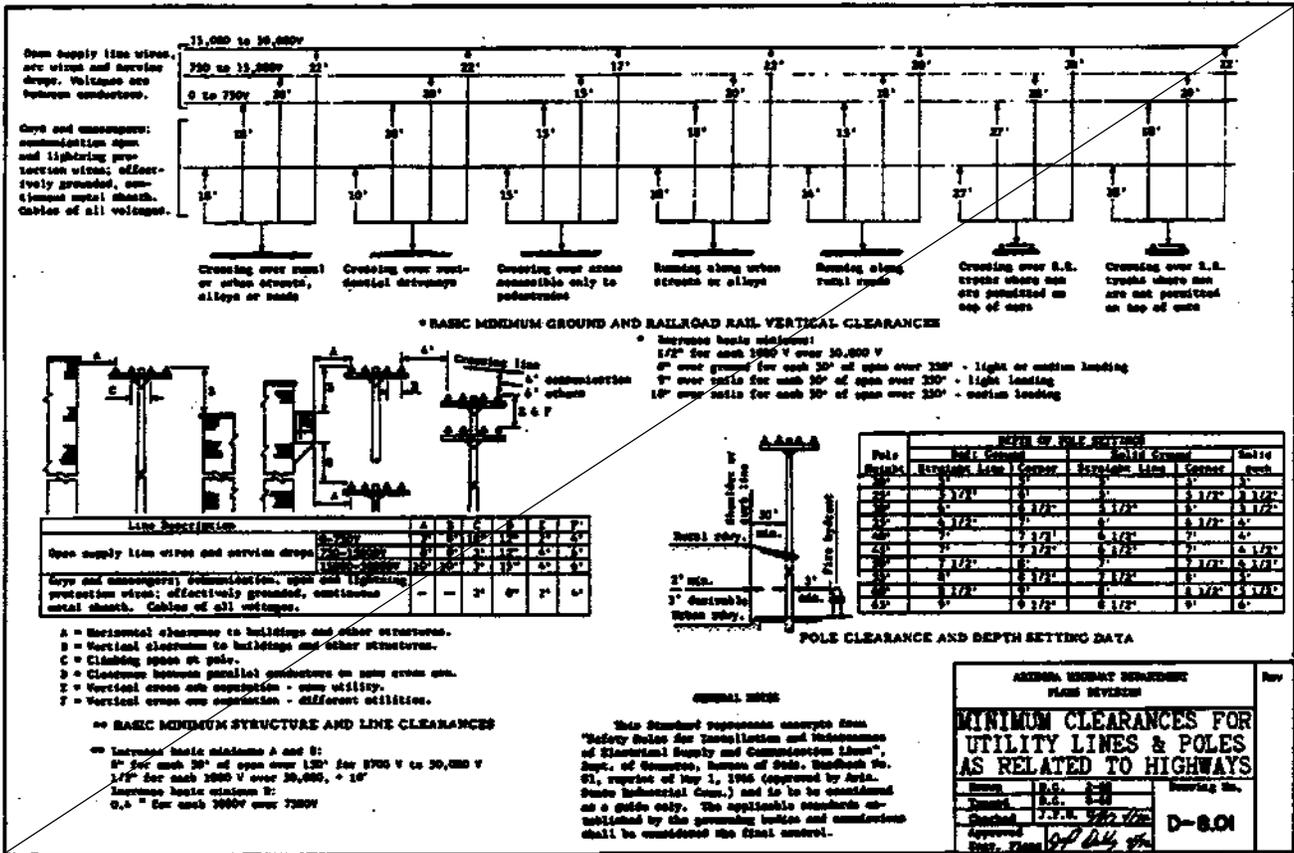


EXHIBIT 9

