

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

[R05-300]

PREAMBLE

- 1. Sections Affected**

R4-30-201	<u>Rulemaking Action</u>
R4-30-204	Amend
R4-30-214	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. § 32-106(A)(1), (3), and (4)
Implementing statute: A.R.S. § 32-122.01(A)(2) and (3) and (B)(2) and (3)
- 3. The effective date of the rules:**

October 1, 2005
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R 4271, October 22, 2004
Notice of Proposed Rulemaking: 11 A.A.R. 1403, April 15, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Julie Ruff
Address:	Arizona State Board of Technical Registration 1110 W. Washington St., Suite 240 Phoenix, AZ 85007
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Fax:	(602) 364-4931
E-mail:	julie.ruff@btr.state.az.us
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**

Current statutes permit licensure for architects, engineers, geologists, and landscape architects after eight years of education, experience, and completion of required examinations.

Current rules require completion of eight years of education and experience before an applicant is considered qualified to take the required examinations.

The rule changes:

 - Permit application and approval to take the required examination for architect, engineer, geologist, and landscape architect applicants after 72 months of education and experience;
 - Separate applications for examination from applications for licensure;
 - Make it possible for an applicant to meet all requirements for registration at the eight year level without waiting to take the examination;
 - Clarify the Board's ability to recognize national exam scores not administered by the Board;
 - Clarify that communication between applicants and national councils about exams administered by outside agencies is between the applicant and the examining agency;
 - Clarify that Home Inspectors are not included in those groups using multi-division exams and division scoring;

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- Clarify the review process for Board administered exams;
- Clarify that non-board administered exams are controlled by the exam administrators;
- Add minimum hourly requirements for education areas for architect registration.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did 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

8. 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

9. A summary of the economic, small business, and consumer impact:

There are significant positive economic impacts for applicants who complete required testing before reaching the required eight years of education and experience. By beginning the testing process at the 72 month education and experience level, the applicant has an opportunity to determine whether there is a need for additional education or experience in specific areas by an evaluation of his or her examination results and may take steps to gain additional knowledge in areas of weakness and still complete the examination before reaching the 96 month education and experience level required for registration.

Early completion of the examination process allows the applicant to meet all registration requirements at the eight year level rather than begin the examination process at that education and experience level. The positive economic impact is the difference in the applicant's salary for the period of time that it takes the applicant to complete the examination process.

There are moderate positive impacts on small businesses and consumers due to a larger pool of qualified registrants.

There are no significant impacts on other government agencies.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor format and grammatical changes were made at the request of the Governor's Regulatory Review Council staff.

11. A summary of the comments made regarding the rules and the agency response to them:

There were no comments on the rules.

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

None

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

Not applicable

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ARTICLE 2. REGISTRATION PROVISIONS

Section

- R4-30-201. ~~Professional~~ Registration as an Architect, Assayer, Engineer, Geologist, Landscape Architect, or Land Surveyor
- R4-30-204. Examinations
- R4-30-214. Architect Registration

ARTICLE 2. REGISTRATION PROVISIONS

R4-30-201. ~~Professional~~ Registration as an Architect, Assayer, Engineer, Geologist, Landscape Architect, or Land Surveyor

- A. An applicant for ~~professional~~ registration as an architect, assayer, engineer, geologist, landscape architect, or land surveyor shall submit an original and one copy of a completed application package for professional registration that contains the following:
1. Evidence of successful completion of the current national professional examination or waiver of the examination pursuant to A.R.S. § 32-126 and R4-30-203 in the category, and branch if applicable, for which registration is sought. Applicants shall arrange to have their examination results sent directly to the Board from the applicable testing agency holding the examination results;
 2. ~~The information set forth in subsections (B)(1) through (15); and~~ Name, residence address, mailing address if different from residence, and telephone number, of the applicant;
 3. Date of birth and social security number of the applicant;
 4. Citizenship or legal residence of the applicant;
 5. Category, and branch of engineering if applicable, for which the applicant is seeking registration;
 6. A detailed explanatory statement and documentation, regarding:
 - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction;
 - b. Refusal of any professional or occupational registration, certification, or license to the applicant by any state or jurisdiction;
 - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant;
 - d. Any alias or other name used by the applicant; and
 - e. Any conviction of the applicant for a felony or misdemeanor, other than a minor traffic violation.
 7. State or jurisdiction in which the applicant holds any other professional or occupational registration, certification, or license, type of registration, certification or license number, year granted, how registration, certification, or license was granted (by examination, education, experience, or reciprocity), and the number of examination hours taken by the applicant;
 8. State or jurisdiction in which the applicant has pending an application for any type of professional or occupational license, registration, or certification, type of license, registration or certification being sought, and the status of the application;
 9. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution the applicant attended;
 10. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended, unless previously provided to the Board pursuant to R4-30-204;
 11. Name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought; dates of employment; applicant's title; description of the work performed; and number of hours worked per week, unless previously provided to the Board pursuant to R4-30-204;
 12. Names and addresses of immediate supervisors in past and present employment in the category for which registration is sought. An applicant who has been working in the category for which registration is sought for 10 or more years shall provide the names and address of all immediate supervisors during the most recent 10-year period. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought, unless previously provided to the Board pursuant to R4-30-204;
 13. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
 14. Certificate of Experience Record and Reference Forms from the applicant's present and past immediate supervisors, unless previously provided to the Board pursuant to R4-30-204. The applicant shall also provide Certificate of Experience Record and Reference Forms from additional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board;
 15. Evidence of successful completion, or waiver by the Board, of the applicable in-training examination, unless previously provided to the Board pursuant to R4-30-204. An applicant for registration who has successfully completed an in-training examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an architect or landscape architect may take the in-training examination at the same time as the professional examination. An applicant seeking professional registration as an assayer, engineer, geologist or land surveyor shall pass the applicable in-training examination before admission to the professional examination;

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16. Certification that the information provided to the Board is accurate, true and complete; and
3.17. The applicable fee.

- B.** An applicant who wishes to sit for professional examination shall submit an original and one copy of a completed application for professional examination, and provide the following:
- 1- Name, residence address, mailing address if different from residence, and telephone number of the applicant;
 - 2- Date of birth and social security number of the applicant;
 - 3- Citizenship or legal residence;
 - 4- Category, and branch of engineering if applicable, for which the applicant is seeking registration;
 - 5- A detailed explanatory statement, regarding:
 - a- Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction;
 - b- Refusal of any professional or occupational registration, certification, or license by any state or jurisdiction;
 - e- Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant;
 - d- Any alias or other name used by the applicant; and
 - e- Any conviction for a felony or misdemeanor, other than a minor traffic violation.
 - 6- State or jurisdiction in which any other professional or occupational registration, certification, or license is held, type of registration, certification, or license, number, year granted, how registration, certification, or licensure was granted (that is, by examination, education, experience, or reciprocity), and the number of examination hours taken by the applicant;
 - 7- Name of the state or jurisdiction, the type of professional or occupational registration, certification, or license the applicant is seeking, and the current status of any professional or occupational application for registration, certification, or license pending in any state or jurisdiction;
 - 8- Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution the applicant attended.
 - 9- Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended.
 - 10- Name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought; dates of employment; applicant's title; description of the work performed, and number of hours worked per week;
 - 11- Names and addresses of immediate supervisors in past and present employment in the category for which registration is sought. Applicants who have been working in the category for which registration is sought for 10 or more years shall provide the names and addresses of all immediate supervisors during the most recent ten year period. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three additional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought;
 - 12- A release authorizing the Board to investigate the applicant's education, experience, moral character and repute;
 - 13- Certificate of Experience Record and Reference Forms from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record and Reference Forms to additional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board;
 - 14- Evidence of successful completion, or waiver by the Board, of the applicable in-training examination. An applicant for professional registration, who has successfully completed an in-training examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona, shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an architect or landscape architect may take the in-training examination at the same time as the professional examination. An applicant seeking professional registration as an assayer, engineer, geologist, or land surveyor shall pass the applicable in-training examination before admission to the professional examination;
 - 15- Certification that the information provided to the Board is accurate, true, and complete.
- B.** If an applicant does not have the required education and experience for registration, the Board may, upon request of the applicant, hold the application for a period of time that does not exceed one year from the date the application is filed with the Board. All time-frames adopted pursuant to Title 41, Chapter 6, Article 7.1 are suspended during the above-referenced time.
- C.** An applicant holding a certificate of qualification issued by one of the national registration bodies recognized in R4-30-203(B) shall arrange to have the record forwarded to the Board by the national registration body. If the forms provided by the national registration body contain all the information described in A.R.S. § 32-122.01 and subsection (B) (A), the Board may accept the forms in lieu of requiring the applicant to furnish the information directly to the Board.

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- D. The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee for evaluation. If the application for registration is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be registered in the field for which the application was filed, the Board staff or committee shall recommend that the Board certify the applicant as eligible ~~to take the examination, or if exempt from examination pursuant to statute or rule, as eligible for registration~~. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for ~~examination or registration~~, the Board staff shall make a further investigation of the applicant. The Board staff and committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for ~~examination or registration~~.
- E. The Board may ~~permit an applicant who has successfully satisfied the requirements of an intern development program approved by the Board to qualify for an appropriate examination~~ accept documentation that an applicant has passed a written national examination in the area for which registration is sought from a national council of which the Board is a member or a professional association approved by the Board.
- F. The Board shall not accept an application for registration renewal unless the applicant has responded to the questions on the application relating to good moral character and other misconduct and signed the application for renewal. The Board shall return an incomplete application to the applicant which may result in assessment of a delinquent renewal fee ~~under R4-30-106~~.
- G. An applicant may withdraw an application for registration by written request to the Board. Any fee paid by the applicant is non-refundable. If an applicant withdraws an application, the Board shall close the file. An applicant whose file has been closed and who later wishes to apply for professional registration shall submit a new application package to the Board pursuant to R4-30-201 and R4-30-202.

R4-30-204. Examinations

- A. An applicant with at least 72 but less than 96 months of required education and experience who wishes to sit for the professional examination for architecture, assaying, engineering, geology, landscape architecture, or land surveying shall submit an original and one copy of a completed application package for professional examination that contains the following:
 - 1. Name, residence address, mailing address if different from residence, and telephone number, of the applicant;
 - 2. Date of birth and social security number of the applicant;
 - 3. Citizenship or legal residence;
 - 4. Category, and branch of engineering if applicable, for which the applicant is seeking registration;
 - 5. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution the applicant attended;
 - 6. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended;
 - 7. Evidence of 72 months of required education or experience in the category for which registration is sought. The name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought; dates of employment; applicant's title; description of work performed; and number of hours worked per week;
 - 8. Names and addresses of immediate supervisors in past and present employment in the category for which registration is sought. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three additional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought;
 - 9. A release authorizing the Board to investigate the applicant's education and experience;
 - 10. Certificate of Experience Record and Reference Forms from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record and Reference Forms from additional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board;
 - 11. Evidence of successful completion, or waiver by the Board, of the applicable in-training examination. An applicant who has successfully completed an in-training examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an architect, or landscape architect may take the in-training examination at the same time as the professional examination. An applicant seeking professional registration as an assayer, engineer, geologist, or land surveyor shall pass the applicable in-training examination before admission to the professional examination;
 - 12. Certification that the information provided to the Board is accurate, true, and complete; and
 - 13. The applicable fees.
- B. An applicant with at least 96 months of required education and experience who wishes to sit for the professional examina-

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tion for architecture, assaying, engineering, geology, landscape architecture, or land surveying may submit a combined application for examination and registration that contains the information required in subsection (A) and R4-30-201, and shall pay the applicable fee.

- C.** The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee for evaluation. If the application for examination is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible to take the examination, the Board staff or committee shall recommend that the Board certify the applicant as eligible to take the examination or exempt from the examination requirement. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for examination, the Board staff shall make a further investigation of the applicant.
- A.D.** ~~All examinations~~ An examination administered by the Board shall be given at the times and places determined by the Board. Once the Board approves an applicant to sit for any a Board-administered examination, the applicant shall communicate all questions and concerns regarding extensions and refunds to the applicable testing agency Board. The applicant shall make any request for additional time or other special examination accommodation to the Board within a reasonable time before the examination date. The Board shall not refund any examination fee paid to a testing agency.
- B.E.** An applicant who fails to achieve a passing grade on any division of any examination administered by the Board may request re-examination by notifying the Board in writing of the applicant's desire to re-take the examination and paying the appropriate applicable examination fee. An applicant who re-takes any examination shall advise the Board of any changes in the information provided under R4-30-201(B) subsection (A) of this Section and R4-30-202(B) within 30 days from the date of the change. The Board shall close an applicant's file if the Board does not receive written confirmation from the applicant of the applicant's desire to re-take the Board-administered examination within one year from the request for re-examination. An applicant whose file has been closed and who later wishes to apply for professional registration examination shall submit a new examination application package to the Board pursuant to R4-30-201 and R4-30-202.
- E.F.** An applicant, except for a home inspector applicant, who has failed any division of an a multi-divisional examination shall be re-examined only on the division failed. The Board shall deny an application if the applicant fails to pass all divisions of an examination within five years after first taking any division of an examination. The applicant shall submit a new application for examination, and retake and pass those divisions any division of the examination, except the in-training examination, whose with results that are five or more years old.
- D.G.** An applicant for a Board-administered examination who wishes to review the applicant's examination scores shall file a written request with the Board within 30 days after receiving notification of the failing grade. The applicant may review an examination by making prior arrangements with the staff and paying the applicable fee. The applicant shall complete any review within 60 days of the request for a review. In reviewing multiple choice questions, an applicant may review only those questions that were incorrect.
- E.H.** An applicant who desires a re-grade of an examination and, where applicable, has exhausted all remedies for re-grading with the applicable testing agency, shall file a written request with the Board within 30 days after receiving notification of the failing grade or within 30 days after reviewing the examination, whichever is applicable, and pay the applicable fee. The applicant shall identify the questions to be reviewed. The applicant shall state why a review of the item is justified. The applicant shall provide specific facts, data, and references to support any assertion that the solution deserves more credit. The Board shall determine whether it will re-grade the examination or whether it will send the examination to the applicable testing agency for re-grading.
- F.** ~~If an applicant does not have the required education and experience, the Board may hold the application for a period of time not exceeding one year upon request of the applicant. All time frames adopted pursuant to Title 41, Chapter 6, Article 7.1 are suspended during the above referenced time.~~
- G.** An applicant may withdraw an application for registration or designation by written request to the Board. Any fee paid by the applicant is non refundable. If an applicant withdraws an application, the Board shall close the file. An applicant whose file has been closed and who later wishes to apply for professional registration or in-training designation shall submit a new application package to the Board pursuant to R4-30-201 and R4-30-202.
- I.** Examinations administered by a national council of which the Board is a member or a professional association approved by the Board shall be given at the times and places determined by the testing agency. Once approved to sit for a non-Board-administered examination, the applicant shall communicate all questions and concerns regarding extensions, additional time, special accommodation, re-examination, and refunds to the applicable testing agency. The Board shall not refund any examination fee paid to a testing agency.
- J.** The Board shall deny an application for registration as a architect, assayer, engineer, geologist, landscape architect, or land surveyor if the applicant fails to pass all divisions of the applicable examination within five years after first taking any division of the examination.

R4-30-214. Architect Registration

- A.** An applicant shall provide evidence of successful completion of the National Council of Architectural Registration Boards (NCARB) Internship Development Program (IDP) training requirement or diverse work experience substantially

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equal to that program that is of a character acceptable to the Board, and which includes, but is not limited to, experience in each of the following areas-. The total minimum experience shall not be less than 4,680 hours and not less than the minimum hour totals for each activity shown below:

<u>Activity</u>	<u>Minimum Hour Totals</u>
1. Programming	<u>80</u>
2. Site and Environmental Analysis	<u>80</u>
3. Schematic Design	<u>120</u>
4. Engineering Systems <u>Coordination</u>	<u>120</u>
5. Building Cost Analysis	<u>80</u>
6. Code Research	<u>120</u>
7. Design Development	<u>320</u>
8. Construction Documents	<u>1,080</u>
9. Specifications and Material Research	<u>120</u>
10. Document Checking and Coordination	<u>80</u>
11. Bidding and Contract Negotiation	<u>80</u>
12. Construction Phase - Office	<u>80</u>
13. Construction Phase - Field Observation	<u>120</u>
14. Project Management	<u>120</u>
15. Office Management	<u>80</u>

B. No change

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TITLE 12. NATURAL RESOURCES

CHAPTER 17. ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

[R05-308]

PREAMBLE

1. Sections Affected

Article 1
 R12-17-101
 R12-17-102
 R12-17-103
 R12-17-104
 R12-17-105
 R12-17-106
 R12-17-107
 R12-17-108
 R12-17-109
 R12-17-110

Rulemaking Action

New Article
 New Section
 New Section

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

Authorizing statutes: A.R.S. §§ 37-1122(A)(1) and 37-1123(C)

Implementing statutes: A.R.S. §§ 37-1121, 37-1122, 37-1123, 37-1124, and 37-1126

3. The effective date of the rules:

October 1, 2005

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 1198, March 25, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 1487, April 22, 2005

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

Name: George Mehnert, Director

Address: Arizona Navigable Stream Adjudication Commission
 1700 W. Washington, Room 304
 Phoenix, AZ 85007

Telephone: (602) 386-7519

Fax: (602) 542-9220
E-mail: streams@mindspring.com

6. An explanation of the rule, including the agency's reason for initiating the rule:

Background

The state of Arizona owns and administers several different types of interests in rivers and streams within the state's borders by virtue of being the sovereign representative of the people. These rights are the property of the state, and the state's powers with respect to these property rights are similar in certain ways to the rights of private property owners, but are governed by the law of public trust. These rights are grounded in English common law, as interpreted and applied by the federal and state court systems of the United States.

The terms of the trust, which governs the management of sovereign trust lands, whether in riverbeds or elsewhere, are found in the statutes and the decisions of the judiciary and collectively comprise what is commonly referred to as the Public Trust Doctrine. This Doctrine originated in early Roman law and, as incorporated into English common law, held that certain resources were available in common to all humankind by 'natural law.' Among those common resources were 'the air, running water, the sea and consequently the shores of the sea.' Navigable waterways were declared to be 'common highways, forever free,' and available to all the people for whatever public uses may be made of those waterways.

The state is guardian of those rights that fall under the protection of the ancient 'Public Trust Doctrine,' which in England governed certain rights and responsibilities that were entrusted to the King. As a result these rights collectively are often referred to as 'sovereign' rights, or 'sovereign lands.'

The state owns, as trustee for the public, the beds of tidal navigable rivers and streams up to the Ordinary High Water Mark (under natural conditions, that elevation reached by the average of all tides over an 18.6 year period). The state similarly owns, in its sovereign capacity, the beds of all nontidal, navigable rivers and streams up to the Ordinary Low Water Mark. (The term 'ordinary' in each of the above statements is a legal term of art that refers to property boundaries, which may sometimes, but not necessarily always, be visible from the ground). Where the state owns the fee interest in the underlying land, its ownership has some of the same characteristics as private property ownership, but is subject to the constraints of the public trust doctrine. For example, the state can and does require compensation from the public for any private use of its property, including both surface use and the extraction of resources from the land. However, the state does not have the unfettered right to alienate its trust property.

"Along navigable nontidal waterways, the state also owns a right often termed a 'public trust easement' in the area between the Ordinary Low Water Mark and High Water Mark. The state has both the right and the obligation to balance competing land uses in the easement area. In general, the title of the private owner of the fee underlying the state's easement is subservient to the easement, although the fee owner may use the lands in any way 'not inconsistent with public trust needs.'"

Because the matter regarding the navigability of Arizona's watercourses has never been resolved, the watercourse navigability question that the Arizona Navigable Stream Adjudication Commission (ANSAC) is attempting to answer is a legacy left over from Arizona's days as part of the Western frontier. Arizona's legislature could have dealt with the navigability issue at statehood, February 14, 1912, but did not.

This oversight went largely unnoticed for 75 years, until two claimants to riverbed property asked a court to decide the rightful owner. The judge responded that he was unable to decide the matter because he didn't know whether the river in question was navigable at the time of statehood.

There are estimated to be more than 100,000 clouded property titles related to streambeds in Arizona, and determining which watercourses were navigable at statehood and which were not is one of ANSAC's primary goals. ANSAC's other major goal is to determine the public trust values associated with those watercourses that are determined to have been navigable or susceptible to navigability as of statehood.

Who Owns the Water?

A navigability or non-navigability determination of a particular watercourse or a portion of a watercourse deals only with the streambed for title purposes and has nothing to do with water ownership. Water ownership, water use, the legal right to divert or channel water, etc., are regulated by laws specifically related to these topics and are not within the jurisdiction of ANSAC.

ANSAC's History

ANSAC began holding navigability hearings in 1996. After engineering studies were completed and other evidence obtained, ANSAC scheduled individual hearings for each major watercourse in each county into which a major watercourse traveled. For example, the Gila River travels into six Arizona counties and a hearing was held in each of these counties relating to the Gila River. Small and minor watercourses, of which there are more than 39,000 throughout the state, were studied on a countywide basis and hearings were scheduled in each county into which each watercourse traveled.

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ANSAC had completed 49 of 54 hearings when, on February 13, 2001, an Arizona Court of Appeals decision declared that some of the laws under which ANSAC was operating were unconstitutional. Although the Superior Court had previously ruled that the laws were constitutional, the Appeals Court decision required the legislature to change the laws regarding ANSAC's work.

Under the old law ANSAC held hearings and reported those findings to the legislature. The legislature made the final determinations regarding watercourse navigability. Under Arizona's current law, ANSAC not only holds the hearing, but also makes the final determinations with a right of appeal to Superior Court.

In 2003, due to an oversight, the Commission failed to submit its five-year review report to the Governor's Regulatory Review Council under A.R.S. § 41-1056(E). This failure resulted in the expiration of ANSAC's administrative rules. This rulemaking establishes the requirements necessary and proper to carry out the provisions and purposes of Title 37, Chapter 7, Article 1 of the Arizona Revised Statutes.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did 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

8. 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

9. A summary of the economic, small business, and consumer impact:

A. *Estimated Costs and Benefits to the Arizona Navigable Stream Adjudication Commission.*

This rulemaking clarifies the requirements of ANSAC. This statewide program covers the cost of holding statewide hearings to determine whether navigable streams in Arizona were navigable as of February 14, 1912.

The legislative changes made as a result of the Arizona Court of Appeals decision on February 13, 2001 required ANSAC to reschedule hearings for each major watercourse in each county into which a major watercourse traveled. In the last four years, ANSAC completed the following number of hearings and Commission navigability determinations:

Year	Watercourse Navigability Hearings	Number of Watercourses
2001	2	4,823
2002	3	8,217
2003	12	6,787
2004	10	7,855

Although there are actually 39,039 watercourses in Arizona, the "Number of Watercourses" column totals 27,682. This 4-year total reflects the new laws that were enacted in 2001. These new laws were the outcome of a lawsuit that was finalized in February 2001 that temporarily prevented the Commission from holding navigability hearings. After the lawsuit was resolved, watercourses that were previously adjudicated had to be readjudicated.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation of this rulemaking.

C. *Businesses or Persons Directly Affected by the Rulemaking.*

A.R.S. § 37-1122(A)(3) states "*the Commission shall conduct its proceedings informally without adherence to judicial rules of procedure or evidence.*" This rulemaking provides a clear understanding of the responsibilities and procedures of an ANSAC hearing. Title 37, Chapter 7, Article 1 of the Arizona Revised Statutes establishes the foundation of ANSAC hearings. This rulemaking adds the additional criteria required under A.R.S. §§ 37-1122(A)(1) and 37-1123(C).

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment is not directly affected by the implementation of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public are not directly affected by the implementation or enforcement of these rules.

F. *Estimated Costs and Benefits to State Revenues.*

Notices of Final Rulemaking

This rulemaking will have no impact on state revenues.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor format and grammatical changes were made at the request of Council's staff.

11. A summary of the comments made regarding the rule and the agency response to them:

No comments were made or received.

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

None

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

None

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 17. ~~EXPIRED~~ ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

ARTICLE 1. HEARINGS

Section

<u>R12-17-101.</u>	<u>Petition to Modify Priorities</u>
<u>R12-17-102.</u>	<u>Computation of Time</u>
<u>R12-17-103.</u>	<u>Service of Documents</u>
<u>R12-17-104.</u>	<u>Notice of Appearance as a Party</u>
<u>R12-17-105.</u>	<u>Evidence</u>
<u>R12-17-106.</u>	<u>Hearings</u>
<u>R12-17-107.</u>	<u>Hearing Record</u>
<u>R12-17-108.</u>	<u>Legal Memoranda</u>
<u>R12-17-109.</u>	<u>Hearing to Identify Public Trust Values</u>
<u>R12-17-110.</u>	<u>Hearing Log</u>

ARTICLE 1. HEARINGS

R12-17-101. Petition to Modify Priorities

If a person is aggrieved by the undetermined navigability status of a watercourse and submits a petition under A.R.S. § 37-1123(F), the Commission shall meet within 30 days following receipt of the petition to consider whether to modify the priorities set in accordance with A.R.S. § 37-1123(E).

R12-17-102. Computation of Time

The Commission shall consider any period of time prescribed or allowed under this Article as calendar days.

R12-17-103. Service of Documents

If a party has appeared by an attorney, service upon the attorney is deemed service upon the party.

1. Method of service.
 - a. Hand delivery with receipt or certificate of delivery.
 - b. Legible facsimile with confirmed receipt.
 - c. Personal service, or
 - d. Regular mail.
2. Service is deemed made at the time of personal service of the document or five days after deposit of the document in the United States mail, postage prepaid, in a sealed envelope, addressed to the person being served at the last known address of record.

R12-17-104. Notice of Appearance as a Party

A person may appear as a party at a Commission hearing by:

1. Providing notice to the Commission in writing before or at the hearing.

Notices of Final Rulemaking

2. Appearing at the hearing, or
3. Filing a post hearing opening legal memorandum or a response legal memorandum.

R12-17-105. Evidence

A. Submission of evidence.

1. Any person may submit evidence to the Commission in person or by mail to the Arizona Navigable Stream Adjudication Commission, 1700 West Washington, Suite 304, Phoenix, Arizona 85007, on or before the published hearing date.
2. A person may submit evidence relevant to a matter that is being heard.
3. A person is not required to resubmit evidence previously submitted to the Commission before August 9, 2002 that relates to the navigability of a particular watercourse.
4. A person submitting evidence shall submit an original and seven copies of the evidence.
 - a. The evidence shall, where practical, be printed on one side of 8 1/2 x 11-inch paper.
 - b. For computer-generated presentations, such as PowerPoint, only paper printouts of the presentation slides are accepted.
5. All evidence submitted, including maps, charts, photographs, transparencies, audiotapes, and videotapes are the property of the Commission.

B. Evidence review. A person may review any evidence submitted for a hearing and may request, at the person's expense, a copy of any item that can be copied.

C. Objection to an item of evidence.

1. Any person may object to the admission or exclusion of an item of evidence by making the objection on the record at the public hearing at which the item of evidence is offered.
2. The Commission shall admit the evidence, exclude the evidence, or take the matter under advisement for later determination.

D. Recordkeeping. The Commission shall maintain a permanent record for all relevant evidence submitted for each hearing.

R12-17-106. Hearings

A. Evidence.

1. The Commission shall receive, review, and consider only evidence relevant to the matter being heard.
2. At the beginning of the hearing, the Presiding Officer shall announce the time when evidence will no longer be accepted for consideration.

B. Any person acting as a party may be represented by legal counsel or may proceed without legal counsel.

C. A party may respond and present evidence and arguments on all relevant issues.

1. The Presiding Officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice; confusion of the issues; or considerations of undue delay, waste of time, or needless presentation of cumulative evidence.
2. If any Commissioner objects to a ruling by the Presiding Officer regarding the exclusion of evidence, the entire Commission shall vote on the ruling.

D. The Presiding Officer shall exercise reasonable control over the manner and order of examining witnesses and presenting evidence to ascertain the truth, avoid needless consumption of time, and protect witnesses from harassment or undue embarrassment. The Presiding Officer shall determine:

1. The order in which parties will testify.
2. The time limit for testimony, if any, and
3. The order and duration of questions that a party may ask a witness.

E. If any Commissioner objects to the Presiding Officer's ruling on a procedural motion, the entire Commission shall vote on the motion.

F. The Commission shall, as a whole, rule on any motion involving a matter of law or fact.

G. The Presiding Officer may, for good cause, continue or reschedule any hearing before the Commission.

H. Public participation.

1. The Commission shall provide an opportunity for public comment regarding any item on the hearing agenda.
2. The Presiding Officer may establish time limits for public comments.
3. The Presiding Officer may exclude any person if the person disrupts or obstructs a hearing or willfully refuses to comply with an order of the Presiding Officer.

R12-17-107. Hearing Record

A. The Presiding Officer shall ensure that a record of the proceeding is created. The Presiding Officer may tape record or secure a court reporter to produce a record of the proceeding. The Commission shall retain the original audiotape recording or the court reporter's transcript of the hearing, whichever method is used.

B. A person may obtain a copy of an audiotape recording of a hearing by requesting a copy of the audiotape and by providing the Commission with a blank audiotape.

Notices of Final Rulemaking

C. A person may obtain a copy of a court reporter's transcript by making copying arrangements directly with the court reporter.

R12-17-108. Legal Memoranda

A. Opening legal memoranda.

1. A party may file an opening legal memorandum with the Commission within 30 days, or within another reasonable period of time after conclusion of the hearing, as determined by the Presiding Officer.
2. The party shall serve a copy of the opening legal memorandum upon all other parties to the hearing and file proof of service with the Commission.
3. Unless allowed by the Commission, a party shall not submit an opening legal memorandum that exceeds 25 pages.

B. Response memoranda.

1. A party may file a response legal memorandum with the Commission within 20 days, or within another reasonable period of time after service of the opening legal memorandum, as determined by the Presiding Officer.
2. The party shall serve a copy of the response legal memorandum upon all other parties to the hearing and file proof of service with the Commission.
3. Unless allowed by the Commission, a party shall not submit a response legal memorandum that exceeds 15 pages.

R12-17-109. Hearing to Identify Public Trust Values

If the Commission determines that a watercourse was navigable as of February 14, 1912, the Commission shall, within 90 days of its final determination, hold a hearing to identify any trust values associated with the watercourse.

R12-17-110. Hearing Log

The Commission shall maintain a log of all Commission hearings and shall assign a number to each hearing regarding a particular watercourse. The hearing log shall include:

1. The hearing number.
2. The name and date of the hearing.
3. The final determination date.
4. The Commission report date; and
5. The county recording or close date.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

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

[R05-317]

PREAMBLE

1. Sections Affected

R18-2-101
 R18-2-201
 R18-2-202
 R18-2-203
 R18-2-210
 Appendix 2

Rulemaking Action

Amend
 Amend
 Amend
 Amend
 Amend
 Amend

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

Authorizing statutes: A.R.S. §§ 49-104(A)(1) and (A)(10) and 49-425

Implementing statutes: A.R.S. §§ 49-404 and 49-405

3. The effective date of the rules:

October 3, 2005

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 5099, December 17, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 5087, December 17, 2004

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

Name: Kevin Force
Address: Arizona Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007
Telephone: (602) 771-4480 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)
Fax: (602) 771-2366

6. An explanation of the rule, including the agency's reason for initiating the rule:

Summary. The Arizona Department of Environmental Quality has updated its ambient air quality standards for PM_{2.5} and 8-hour averaged ozone to reflect the current national standards. The rulemaking also adds a definition for PM_{2.5}, updates test methods and protocols in Appendix 2, updates area designations in R18-2-210 to include the Phoenix metropolitan 8-hour Ozone Nonattainment Area, and makes a technical correction to R18-2-202.

Background. In 1997, EPA promulgated final rules implementing new National Ambient Air Quality Standards (NAAQS) for particulate matter (PM) (62 FR 38652, July 18, 1997) and ozone (62 FR 38894, July 18, 1997). The new primary ozone NAAQS set forth an 8-hour averaged standard at a level of 0.08 ppm. This new primary standard is expected to provide increased protection to the public, particularly at-risk populations such as children, against a wide range of ozone-induced health effects, such as decreased lung function, increased respiratory symptoms, and hospital and emergency room admissions. The secondary 8-hour averaged ozone standard is identical to the primary standard, and is expected to provide increased protection to the public welfare against ozone-induced effects on vegetation, such as agricultural crops, forests and other ecosystems. ADEQ has amended R18-2-203 to include the new 8-hour averaged NAAQS for ozone.

The new ozone standards were challenged by industry and some states (*See: American Trucking Associations, Inc., et al. v. United States Environmental Protection Agency*, 336 U.S. App. D.C. 16, 175 F. 3d 1027, and 531 U.S. 457). The United States Supreme Court decided the case in February of 2001 (531 U.S. 457), ruling that the new standards promulgated by EPA may be implemented.

On November 14, 2002, U.S. EPA issued a memorandum outlining the schedule for designating areas under the 8-hour ozone (O₃) standard. This memorandum reflected an agreement between EPA and environmental organizations concerning ozone designations, as a resolution to the lawsuit. In order to comply with the agreement, EPA requested States to provide designation recommendations to the Regional Administrator by July 15, 2003. Pursuant to the proposed settlement, designations were to be final by April 15, 2004. States have until 2007 (three years from the date of designation) to submit State Implementation Plans (SIPs) to EPA.

The new primary and secondary ambient air quality standards for particulate matter are for fine particulate matter, or particulate matter with an aerodynamic diameter of less than or equal to 2.5 microns (PM_{2.5}). The new federal primary standard for PM_{2.5} is 15 µg per cubic meter of PM_{2.5}, annual arithmetic mean concentration, and 65 µg per cubic meter of PM_{2.5}, 24-hour average concentration. The new primary standard is expected to provide increased protection against a wide range of PM-related health effects, including premature mortality and increased hospital admissions and emergency room visits, increased respiratory symptoms and disease, and decreased lung function, especially in the at-risk populations such as the elderly, individuals with cardiopulmonary disease, children and people with asthma. The new secondary standard for PM_{2.5} is identical to the primary standard, and is expected to provide protection against PM-related public welfare effects including soiling, material damage, and visibility impairment. In conjunction with the new PM_{2.5} standards, reference methods based on 40 CFR part 50, Appendix L, and designated according to 40 CFR Part 53, have been specified for monitoring PM as PM_{2.5}, and reference methods in 40 CFR part 50, Appendices J and K, have been amended. The newly amended R18-2-201 will adopt the new PM_{2.5} NAAQS, and Appendix 2 has been amended to include the new and revised test methods. This rulemaking also amends R18-2-101 to include a definition for PM_{2.5}. The entire state of Arizona is in attainment of the PM_{2.5} standard.

In 1996, EPA restated the primary and secondary NAAQS for sulfur oxides, in the form of sulfur dioxide, in terms of parts per million (ppm), rather than micrograms per cubic meter (61 FR 25556, May 22, 1996). This rulemaking amends the Arizona sulfur dioxide standards, at R18-2-202, to conform to EPA terms.

This rulemaking also updates R18-2-210, incorporation by reference of 41 CFR 81.303, to July, 2004, to include the Phoenix metropolitan Basic Nonattainment Area for 8-hour ozone (eastern Maricopa County and Apache Junction in Pinal County).

The National Ambient Air Quality Standards contained in Article 2 are cited extensively in Chapter 18 of the Arizona Administrative Code, particularly in: Article 3, Permits and Permit Revisions; Article 4, Permit Modifications for New Major Sources and Major Modifications To Existing Sources and; Article 7, Existing Stationary Source Performance Standards. This rulemaking reduces confusion about the correct standards and ensures that correct standards are applied throughout Arizona.

Notices of Final Rulemaking

Section by Section Explanation of the Rules:

R18-2-101. Definitions. The rule adds a definition for “PM_{2.5},” drawn from 40 CFR Part 50.7.

R18-2-201. Particulate Matter; PM₁₀ and PM_{2.5}. The rule adds subsections (A)(3)(a) and (A)(3)(b), which determine reference methods used to measure PM₁₀. Subsection (B) has also been added, which contains the primary and secondary ambient air quality standards for PM_{2.5}, as well as the reference methods used to measure PM_{2.5} and determine attainment of the standards.

R18-2-202. Sulfur oxides (sulfur dioxide). This Section amends the standards for sulfur dioxide to conform to EPA terms, which have been changed from micrograms per cubic meter (µg/m³) to parts per million (ppm).

R18-2-203. Ozone; 1-hour standard and 8-hour averaged standard. This Section amends the standards for ozone, adding an 8-hour averaged standard of 0.08 ppm. Additionally, this Section provides an ending date for the application of the 1-hour standard – June 15, 2005. This date accords with EPA’s planned revocation of the 1-hour standard, to be set forth in Phase II of the implementation strategy for the 8-hour standard, to be promulgated later this year.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did 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:

See: Criteria documents for Final Rule at 62 FR 38652 (Air Quality Criteria for Particulate Matter (“Criteria Document”) (three volumes, EPA/600/P-95-001aF through EPA/600/P-95-001cF, April 1996, NTIS #PB-96-168224,) and (Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (“Staff Paper”) (EPA-452/R-96-013, July 1996, NTIS #PB-97-115406).

See: Criteria documents for Final Rule at 62 FR 38856 (Air Quality Criteria for O₃ and Other Photochemical Oxidants (“Criteria Document”) (three volumes, EPA/600/P-93-004aF through EPA/600/P-93-004cF, July 1996, NTIS # PB-96-185574,) and (The Review of the National Ambient Air Quality Standards for O₃: Assessment of Scientific and Technical Information (“Staff Paper”) (EPA-452/R-96-007, June 1996, NTIS # PB-96-203435).

See also: *American Trucking Associations, Inc., et al. v. United States Environmental Protection Agency*, 336 U.S. App. D.C. 16, 175 F. 3d 1027, and 531 U.S. 457.

8. 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

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

Rule Identification. This rulemaking includes amendments to Sections R18-2-101, R18-2-201 through R18-2-203, R18-2-210, and Appendix 2 to Article 2.

Costs. There are no additional costs to the regulated community when a state agency incorporates an already effective federal standard verbatim. The costs of compliance have already occurred, and were considered when the federal regulation was proposed and adopted. These rules impose no additional costs on the regulated community, small businesses, political subdivisions, or members of the public.

Costs to ADEQ associated with this rulemaking will be minimal, based on reducing confusion and ensuring correct standards are applied. ADEQ does not intend to hire any additional employees to implement or enforce these rules.

Benefits. Benefits accrue to the regulated community when a state agency incorporates a federal regulation in order to become the primary implementer of the regulation, because the state agency is closer to those being regulated and, therefore, is generally easier to contact and to work with to resolve differences, compared with the U.S. EPA, whose regional office for Arizona is in San Francisco. State implementation also reduces travel and communication costs.

Health benefits accrue to the general public whenever enforcement of environmental laws takes place. Adverse health effects from air pollution result in a number of economic and social consequences, including:

1. Medical costs. These include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare, for example.
2. Work loss. This includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.
3. Increased costs for chores and caregiving. These include special caregiving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual’s ability to undertake some or all normal chores, and he or she may require caregiving.
4. Other social and economic costs. These include restrictions on or reduced enjoyment of leisure activities, discomfort or inconvenience, pain and suffering, anxiety about the future, and concern and inconvenience to family members and others.

Notices of Final Rulemaking

Conclusion. In conclusion, the incremental costs associated with this rule are generally low, and apply solely to ADEQ, while the air quality benefits are generally high. In addition, there are benefits to industry from being regulated by a geographically nearer government entity. There are no adverse economic impacts on political subdivisions. There are no adverse economic impacts on private businesses, their revenues or expenditures. The fact that no new employment is expected to occur has been discussed above, in the context of the impact on state agencies. There are no adverse economic impacts on small businesses, although some regulatory benefits will accrue to them. There are no economic impacts for consumers; benefits to private persons as members of the general public are discussed above in terms of enforcement. There will be no direct impact on state revenues. There are no other, less costly alternatives for achieving the goals of this rulemaking. The rules are no less stringent and no more stringent than the federal regulations on each subject.

Small Businesses. A.R.S. § 41-1035 requires ADEQ to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives (see below) for the rulemaking. The five listed methods are:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

The statutory objectives which are the basis of the rulemaking. The general statutory objectives that are the basis of this rulemaking are contained in the statutory authority cited in number 2 of this Preamble. The specific objectives are as follows:

1. Implement rules necessary for EPA delegation of Clean Air Act § 109 (NAAQS) program to Arizona.
2. Implement rules necessary for EPA requirements of Clean Air Act § 110 for implementation of the NAAQS in Arizona.

For all of these objectives, ADEQ is required to adopt the federal rules without reducing stringency. ADEQ, therefore, has found that it is not legal or feasible to adopt any of the five listed methods in ways that reduce the impact of these rules on small businesses. Finally, if federal rules impact small businesses, EPA is required by both the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act to make certain adjustments in its own rulemakings.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor technical and grammatical changes to improve the rules' clarity, conciseness, and understandability

11. A summary of the comments made regarding the rule and the agency response to them:

None

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

Not applicable

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

41 CFR 81.303;	R18-2-210
40 CFR 50;	Appendix 2
40 CFR 50, Appendices A through N;	Appendix 2
40 CFR Part 51, Appendix M, Appendix S, Section IV, and Appendix W	Appendix 2
40 CFR 52, Appendices D and E;	Appendix 2
40 CFR 53;	Appendix 2
40 CFR 58;	Appendix 2
40 CFR 58, all appendices;	Appendix 2
40 CFR Part 60, all appendices;	Appendix 2
40 CFR Part 61, all appendices;	Appendix 2
40 CFR Part 63, all appendices;	Appendix 2
40 CFR Part 75, all appendices;	Appendix 2

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

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

ARTICLE 1. GENERAL

Section

R18-2-101. Definitions

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

Section

R18-2-201. Particulate matter: PM₁₀ and PM_{2.5}

R18-2-202. Sulfur oxides (sulfur dioxide)

R18-2-203. Ozone: 1-hour standard and 8-hour averaged standard

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

Appendix 2. Test Methods and Protocols

ARTICLE 1. GENERAL

R18-2-101. Definitions

No change

1. No change
2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
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7. No change
8. No change
9. No change
10. No change
 - a. No change
 - b. No change
 - c. No change
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 - f. No change
11. No change
 - a. No change
 - b. No change
 - c. No change
12. No change
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 - a. No change
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- 16. No change
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- 42. No change
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- 44. No change
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- 58. No change
- 59. No change
- 60. No change
- 61. No change
- 62. No change
- 63. No change
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 - i. No change
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 - xi. No change
- 64. No change
 - a. No change
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 - ii. No change
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 - i. No change
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 - iv. No change
 - v. No change
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 - vii. No change
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- xi. No change
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- 67. No change
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 - g. No change
- 74. No change
- 75. No change
- 76. No change
- 77. No change
- 78. No change
- 79. No change
- 80. No change
- 81. No change
- 82. No change
- 83. No change
- 84. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 85. “PM_{2.5}” means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53.

Notices of Final Rulemaking

- 85-86.No change
- 86-87.No change
- 87-88.No change
- 88-89.No change
- 89-90.No change
- 90-91.No change
- 91-92.No change
- 92-93.No change
- 93-94.No change
- 94-95.No change
- 95-96.No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 96-97.No change
- 97-98.No change
- 98-99.No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
- 99-100.No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - b. No change
 - c. No change
- ~~100-101.No change~~
 - a. No change
 - b. No change
- ~~101-102.No change~~
- ~~102-103.No change~~
- ~~103-104.No change~~
- ~~104-105.No change~~
- ~~105-106.No change~~
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- ~~106-107.No change~~
- ~~107-108.No change~~
- ~~108-109.No change~~
 - a. No change
 - b. No change
- ~~109-110.No change~~
- ~~110-111.No change~~
- ~~111-112.No change~~
- ~~112-113.No change~~
- ~~113-114.No change~~
- ~~114-115.No change~~
- ~~115-116.No change~~
- ~~116-117.No change~~

~~117-118~~.No change

~~118-119~~.No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. No change

h. No change

i. No change

j. No change

k. No change

l. No change

m. No change

n. No change

o. No change

p. No change

q. No change

r. No change

s. No change

t. No change

u. No change

v. No change

w. No change

x. No change

y. No change

z. No change

aa. No change

bb. No change

cc. No change

dd. No change

ee. No change

ff. No change

gg. No change

hh. No change

ii. No change

jj. No change

kk. No change

ll. No change

mm.No change

nn. No change

oo. No change

pp. No change

qq. No change

rr. No change

ss. No change

tt. No change

uu. No change

vv. No change

ww.No change

xx. No change

~~119-120~~.No change

~~120-121~~.No change

~~121-122~~.No change

~~122-123~~.No change

~~123-124~~.No change

~~124-125~~.No change

~~125-126~~.No change

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- ~~126-127.~~No change
- a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 - o. No change
 - p. No change
 - q. No change
 - r. No change
 - s. No change
 - t. No change
 - u. No change
 - v. No change
 - w. No change
 - x. No change
 - y. No change
 - z. No change
 - aa. No change
 - bb. No change
 - cc. No change
 - dd. No change
 - ee. No change
 - ff. No change
 - gg. No change
 - hh. No change
 - ii. No change
 - jj. No change
 - kk. No change
 - ll. No change
 - mm.No change
 - nn. No change
 - oo. No change
 - pp. No change
 - qq. No change
 - rr. No change
 - ss. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
- ~~127-128.~~No change

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

R18-2-201. Particulate matter: PM₁₀ and PM_{2.5}

A. PM₁₀ Standards

A.1. The primary ambient air quality standards for ~~particulate matter~~ PM₁₀ are:

- 1a.** 50 micrograms per cubic meter of PM₁₀ – annual arithmetic mean concentration.

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- ~~2b.~~ 150 micrograms per cubic meter of PM₁₀ – 24-hour average concentration.
- ~~B-2.~~ The secondary ambient air quality standards for ~~particulate matter~~ PM₁₀ are:
 - ~~1a.~~ 50 micrograms per cubic meter of PM₁₀ – annual arithmetic mean concentration.
 - ~~2b.~~ 150 micrograms per cubic meter of PM₁₀ – 24-hour average concentration.
- 3. To determine attainment of the primary and secondary standards, a person shall measure PM₁₀ in the ambient air by:
 - a. A reference method based on 40 CFR 50, Appendix J, and designated according to 40 CFR 53; or
 - b. An equivalent method designated according to 40 CFR 53.
- ~~C-4.~~ The primary and secondary annual ambient air quality standards for PM₁₀ ~~shall be considered~~ are attained when the expected annual arithmetic mean concentration, ~~as determined in accordance with~~ according to 40 CFR 50, Appendix K, is less than or equal to 50 micrograms per cubic meter.
- 5. The primary and secondary 24-hour ambient air quality standards for PM₁₀ ~~shall be considered~~ are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, ~~as determined in accordance with~~ according to 40 CFR 50, Appendix K, is less than or equal to 1.

B. PM_{2.5} Standards

- 1. The primary ambient air quality standards for PM_{2.5} are:
 - a. 15 micrograms per cubic meter of PM_{2.5} – annual arithmetic mean concentration.
 - b. 65 micrograms per cubic meter of PM_{2.5} – 24-hour average concentration.
- 2. The secondary ambient air quality standards for PM_{2.5} are:
 - a. 15 micrograms per cubic meter of PM_{2.5} – annual arithmetic mean concentration.
 - b. 65 micrograms per cubic meter of PM_{2.5} – 24-hour average concentration.
- 3. To determine attainment of the primary and secondary standards, a person shall measure PM_{2.5} in the ambient air by:
 - a. A reference method based on 40 CFR 50, Appendix L, and designated according to 40 CFR 53; or
 - b. An equivalent method designated according to 40 CFR 53.
- 4. The primary and secondary annual ambient air quality standards for PM_{2.5} are met when the annual arithmetic mean concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 15 micrograms per cubic meter.
- 5. The primary and secondary 24-hour ambient air quality standards for PM_{2.5} are met when the 98th percentile 24-hour concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 65 micrograms per cubic meter.

R18-2-202. Sulfur oxides (sulfur dioxide)

- A.** The primary ambient air quality standards for sulfur oxides, measured as sulfur dioxide, are:
 - 1. 80 micrograms per cubic meter (0.03 ppm) 0.03 parts per million (ppm) (80 µg/m³) -- annual arithmetic mean.
 - 2. 365 micrograms per cubic meter (0.14 ppm) 0.14 parts per million (ppm) (365 µg/m³) -- maximum 24-hour concentration not to be exceeded more than once per year.
- B.** The secondary ambient air quality standard for sulfur oxides, measured as sulfur dioxide, is ~~1300 micrograms per cubic meter (0.5 ppm)~~ 0.5 parts per million (ppm) (1300 µg/m³) -- maximum three-hour concentration not to be exceeded more than once per year.

R18-2-203. Ozone: 1-hour standard and 8-hour averaged standard

- A.** 1-hour standard. Until June 15, 2005:
 - ~~A-1.~~ The 1-hour primary ambient air quality standard for ozone is 0.12 ppm (235 micrograms per cubic meter).
 - ~~B-2.~~ The 1-hour secondary ambient air quality standard for ozone is 0.12 ppm (235 micrograms per cubic meter).
 - ~~C-3.~~ The 1-hour standards are attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm (235 micrograms per cubic meter) is less than or equal to 1, as determined by 40 CFR 50, Appendix H.
- B.** 8-hour averaged standard.
 - 1. The 8-hour averaged primary ambient air quality standard for ozone is 0.08 ppm.
 - 2. The 8-hour averaged secondary ambient air quality standard for ozone is 0.08 ppm.
 - 3. 8-hour averaged primary and secondary ambient air quality standards for ozone are met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour ozone concentration is less than or equal to 0.08 ppm, determined according to 40 CFR 50 Appendix I.

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

40 CFR 81.303 as amended as of July 1, ~~2003~~ 2004 (and no future amendments or editions) is incorporated by reference and is on file with the Department of Environmental Quality and the Office of Secretary of State. 40 CFR 81.303 is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328.

APPENDIX 2. TEST METHODS AND PROTOCOLS

The following test methods and protocols are approved for use as directed by the Department under this Chapter. These standards are incorporated by reference revised as of July 1, ~~2003~~ 2004, and no future editions or amendments. These standards are on file with the Department, and are also available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328.

1. 40 CFR 50;
2. 40 CFR 50, Appendices A through ~~K~~ N;
3. 40 CFR Part 51, Appendix M, Appendix S, Section IV, and Appendix W;
4. 40 CFR 52, Appendices D and E;
5. 40 CFR 53;
- ~~5-6.~~ 40 CFR 58;
- ~~6-7.~~ 40 CFR 58, all appendices;
- ~~7-8.~~ 40 CFR Part 60, all appendices;
- ~~8-9.~~ 40 CFR Part 61, all appendices;
- ~~9-10.~~ 40 CFR Part 63, all appendices;
- ~~10-11.~~ 40 CFR Part 75, all appendices.