

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3080.)

[R12-222]

PREAMBLE

- 1. Articles, Parts, and Sections Affected (as applicable) Rulemaking Action**

| | |
|-----------|-------|
| R4-23-604 | Amend |
| R4-23-605 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §§ 32-1904(A)(1) and (B)(3), 32-1929, 32-1930, 32-1931, and 32-1933
Implementing statute: A.R.S. §§ 32-1981, 32-1982, 32-1983, 32-1984, and 32-1985
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 18 A.A.R. 2260, September 14, 2012
- 4. The agency's contact person who can answer questions about the rulemaking:**

| | |
|------------|---|
| Name: | Dean Wright, Compliance Officer |
| Address: | Board of Pharmacy 1616 W. Adams Phoenix, AZ 85007 |
| Telephone: | (602) 771-2727 |
| Fax: | (602) 771-2749 |
| E-mail: | dwright@azpharmacy.gov |
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

In 2008 the 48th Legislature passed HB 2020. HB 2020 removed the requirement that only a pharmacist could manufacture a drug and specifically allowed a person who is not a pharmacist to manufacture a drug if that person possessed a permit to manufacture drugs from the Board of Pharmacy. The Board has a rule (R4-23-604 Resident Drug Manufacturer) that implements the statutory requirements for drug manufacturing. Before the Board could move to make changes to R4-23-604 necessitated by HB 2020, the Governor imposed a rulemaking moratorium. The Board is now ready to make the necessary changes to R4-23-604 to bring the rule into compliance with the statutory changes made in HB 2020. The Board has also determined that R4-23-605 Resident Drug Wholesaler Permit needs to be amended to remove the requirement that a pharmacy or licensee who is returning a drug to a drug wholesaler must provide the lot number and expiration date of the drug being returned on the return paperwork. Since a drug wholesaler does not have to provide a lot number and expiration date of a drug on the invoice when the wholesaler delivers the drug to the pharmacy, the pharmacies do not see why a pharmacy should be required to provide a lot number and expiration date of a drug when the drug is returned to the wholesaler. The Board agrees with the pharmacies, and intends to remove the lot number and expiration date requirement.

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The rulemaking will amend R4-23-604 Resident Drug Manufacturer by removing all references that require a pharmacist-in-charge in a drug manufacturing operation. Those references are in R4-23-604 (B)(9) and (12), (D), (H)(1)(d), (J), and (O). The rulemaking will amend R4-23-605 Resident Drug Wholesaler Permit by removing the requirement for a lot number and expiration date in subsection (H)(3)(a). The rule will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and the Governor's Regulatory Review Council.

The Board believes that approval of the rules benefits the public, pharmacies, resident drug manufacturers, and resident drug wholesalers by establishing standards for the manufacturing and distribution of drugs.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

The agency did not review or rely on any study relevant to the rule.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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 proposed rule will impact the Board, pharmacies, resident drug manufacturers, and resident drug wholesalers. The proposed rule's impact on the Board will be the usual rulemaking-related costs, which are minimal.

The Board estimates the proposed rules will have no economic impact on pharmacies, resident drug manufacturers, and resident drug wholesalers. In 2008 the 48th Legislature passed HB 2020. HB 2020 removed the requirement that only a pharmacist could manufacture a drug and specifically allowed a person who is not a pharmacist to manufacture a drug if that person possessed a permit to manufacture drugs from the Board of Pharmacy. The Board has a rule (R4-23-604 Resident Drug Manufacturer) that implements the statutory requirements for drug manufacturing. Before the Board could move to make changes to R4-23-604 necessitated by HB 2020, the Governor imposed a rulemaking moratorium. The Board is now ready to make the necessary changes to R4-23-604 to bring the rule into compliance with the statutory changes made in HB 2020. The Board has also determined that R4-23-605 Resident Drug Wholesaler Permit needs to be amended to remove the requirement that a pharmacy or licensee who is returning a drug to a drug wholesaler must provide the lot number and expiration date of the drug being returned on the return paperwork. Since a drug wholesaler does not have to provide a lot number and expiration date of a drug on the invoice when the wholesaler delivers the drug to the pharmacy, the pharmacies do not see why a pharmacy should be required to provide a lot number and expiration date of a drug when the drug is returned to the wholesaler. The Board agrees with the pharmacies, and intends to remove the lot number and expiration date requirement. The rulemaking will have no economic impact on pharmacies, drug manufacturers, or drug wholesalers.

The Board believes that approval of the rules benefits the public, pharmacies, resident drug manufacturers, and resident drug wholesalers by establishing standards for the manufacturing and distribution of drugs.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
1616 W. Adams
Phoenix, AZ 85007
Telephone: (602) 771-2727
Fax: (602) 771-2749
E-mail: dwright@azpharmacy.gov

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

Comments may be written or presented orally. Written comments must be received by 5 p.m., Friday, December 28, 2012. An oral proceeding is scheduled for:

Date: December 28, 2012
Time: 10:00 a.m.
Location: 1616 W. Adams, 1st Floor Board Room
Phoenix, AZ 85007

A person may request information about the oral proceeding by contacting the person listed above.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or

class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule itself does not require a permit. However, the registration required by statute arguably falls within the definition of general permit in A.R.S. section 41-1001.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

21 CFR 210 through 211, April 1, 2011, in R4-23-604(J)

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

R4-23-604. Resident Drug Manufacturer

R4-23-605. Resident Drug Wholesaler Permit

R4-23-604. Resident Drug Manufacturer

- A.** Permit. A person shall not manufacture, package, repack, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical without a current Board-issued drug manufacturer permit.
- B.** Application. To obtain a permit to operate a drug manufacturing firm in Arizona, a person shall submit a completed application, on a form furnished by the Board, that includes:
1. Business name, address, mailing address, if different, telephone number, and facsimile number;
 2. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
 3. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
 4. Whether the owner, any officer, or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
 5. Whether the owner, any officer, or active partner has ever been denied a drug manufacturer permit in this state or any other jurisdiction, and if so, indicate where and when;
 6. A copy of the drug list required by the FDA;
 7. Plans or construction drawings showing facility size and security for the proposed business;
 8. Applicant's and manager's name, address, emergency telephone number, and resumé indicating educational or experiential qualifications related to drug manufacturer operation;
 9. ~~Pharmacist-in-charge's name, address, emergency telephone number, Arizona pharmacist license number, and expiration date;~~
 - ~~10-~~ The applicant's current FDA drug manufacturer or repackager registration number and expiration date;
 - ~~11-10.~~ Documentation of compliance with local zoning laws;
 - ~~12-11.~~ For an application submitted because of ownership change, the former owner's name and business name, if different;
 - ~~13-12.~~ Date signed, and applicant's, corporate officer's, partner's, or manager's, ~~or pharmacist-in-charge's~~ verified signature and title; and
 - ~~14-13.~~ Fee specified in R4-23-205.
- C.** Before issuing a drug manufacturer permit, the Board shall:
1. Receive and approve a completed permit application;

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2. Interview the applicant and manager, if different from the applicant, ~~and the pharmacist in charge~~ at a Board meeting; and
 3. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer.
- D.** Notification. A resident drug manufacturer permittee shall notify the Board of changes involving the drug list, ownership, address, telephone number, name of business, ~~or manager, or pharmacist in charge,~~ including manager's ~~or pharmacist in charge's~~ telephone number. The resident drug manufacturer permittee shall submit a written notice via mail, fax, or e-mail to the Executive Director within 24 hours of the change, except any change of ownership requires that the resident drug manufacturer permittee comply with subsection (E).
- E.** Change of ownership. Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the application packet described under subsection R4-23-604(B).
- F.** Before an existing resident drug manufacturer permittee relocates, the drug manufacturer permittee shall submit the application packet described in subsection R4-23-604(B), excluding the fee. The facility at the new location shall pass a final inspection by a Board compliance officer before operations begin.
- G.** A resident drug manufacturer permittee shall submit the application packet described under subsection R4-23-604(B) for any change of officers in a corporation, excluding the fee and final inspection.
- H.** Manufacturing and distribution.
1. A drug manufacturer permittee shall manufacture and distribute a drug only:
 - a. To a pharmacy, drug manufacturer, and full-service or nonprescription drug wholesaler currently permitted by the Board;
 - b. To a medical practitioner currently licensed as a medical practitioner as defined in A.R.S. § 32-1901; or
 - c. To a properly permitted, registered, licensed, or certified person or firm of another jurisdiction; ~~and~~
 - d. ~~Under the supervision of an Arizona Board licensed pharmacist as required in A.R.S. § 32-1961. Manufacturing processes that require the supervision of a pharmacist include weighing, mixing, compounding, tableting, packaging, and labeling.~~
 2. Before manufacturing and distributing a drug that is not listed on a drug manufacturer's permit application, the drug manufacturer permittee shall send to the Board office a written request to amend the permit application, including documentation of FDA approval to manufacture the drug not listed on the original permit application. If a request to amend a permit application includes the documentation required in this subsection, the Board or its designee shall approve the request to amend within 30 days of receipt.
- I.** A drug manufacturer permit is subject to denial, suspension, probation, or revocation under A.R.S. § 32-1932.
- J.** ~~A drug manufacturer permittee shall:~~
- ~~1. Designate an Arizona Board licensed pharmacist as the pharmacist in charge. The pharmacist in charge shall:
 - a. Communicate Board directives to the management, other pharmacists, interns, and other personnel of the drug manufacturer; and
 - b. Ensure compliance with all federal and state drug laws and rules by the drug manufacturer; and~~
 - ~~2. Ensure that an Arizona Board licensed pharmacist is present at the facility whenever a drug is manufactured, packaged, repackaged, labeled, or relabeled.~~
- ~~**K.** Current Good Manufacturing Practice. A drug manufacturer permittee shall comply with the current good manufacturing practice requirements of 21 CFR 210 through 211, published April 1, 2000 (Revised April 1, 2011, and no future amendments or editions, incorporated by reference and on file with the Board and the Office of the Secretary of State. This incorporated material contains no future editions or amendments.)~~
- ~~**L.**~~ **K.** Records. A drug manufacturer permittee shall:
1. Establish and implement written procedures for maintaining records pertaining to production, process control, labeling, packaging, quality control, distribution, complaints, and any information required by federal or state law;
 2. Retain the records required by this Article and 21 CFR 210 through 211 as incorporated in subsection (H) for at least two years after distribution of a drug or one year after the expiration date of a drug, whichever is longer; and
 3. Make the records required by this Article and 21 CFR 210 through 211 as incorporated in subsection (H) available within 48 hours for review by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(4).
- ~~**M.**~~ **L.** Inspections. A drug manufacturer permittee shall make the drug manufacturer's facility available for inspection by the Board or its compliance officer under A.R.S. § 32-1904.
- ~~**N.**~~ **M.** Nonresident drug manufacturer. A nonresident drug manufacturer shall comply with the requirements of R4-23-607.
- ~~**O.**~~ **N.** Manufacturing radiopharmaceuticals. Before manufacturing a radiopharmaceutical, a drug manufacturer permittee shall:
1. Comply with the regulatory requirements of the Arizona Radiation Regulatory Agency, the U.S. Nuclear Regulatory Commission, the FDA, and this Section; ~~and~~
 2. ~~Be or employ an Arizona Board licensed authorized nuclear pharmacist as specified in R4-23-681(A);~~
 3. ~~Comply with the requirements specified in R4-23-682(F)(1), (2), (3), and (5);~~

4. Hold a current Arizona Radiation Regulatory Agency Radioactive Materials License. If a drug manufacturer permittee who manufactures radiopharmaceuticals fails to maintain a current Arizona Radiation Regulatory Agency Radioactive Materials License, the permittee's drug manufacturer permit shall be immediately suspended pending a hearing by the Board;
5. ~~Designate an authorized nuclear pharmacist as the pharmacist-in-charge. The pharmacist-in-charge shall:~~
 - a. ~~Communicate Board directives to the management, other pharmacists, interns, and other personnel of the drug manufacturer; and~~
 - b. ~~Ensure compliance with all federal and state drug laws and rules by the drug manufacturer;~~
6. ~~Ensure that an authorized nuclear pharmacist:~~
 - a. ~~Directly supervises all personnel who perform tasks in the manufacture and distribution of radiopharmaceuticals; and~~
 - b. ~~Is present at the facility whenever a radiopharmaceutical is manufactured, packaged, repackaged, labeled, relabeled, or distributed.~~

R4-23-605. Resident Drug Wholesaler Permit

- A. Permit. A person shall not operate a business or firm for the wholesale distribution of any drug, device, precursor chemical, or regulated chemical without a current Board-issued full-service or nonprescription drug wholesale permit.
- B. Application.
 1. To obtain a permit to operate a full-service or nonprescription drug wholesale firm in Arizona, a person shall submit a completed application on a form furnished by the Board that includes:
 - a. Whether the application is for a full-service or nonprescription drug wholesale permit;
 - b. Business name, address, mailing address, if different, telephone number, and facsimile number;
 - c. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
 - d. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
 - e. Whether the owner, any officer or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
 - f. Whether the owner or any officer or active partner has ever been denied a drug wholesale permit in this state or any other jurisdiction, and if so, indicate where and when;
 - g. For a full-service drug wholesale firm:
 - i. The designated representative's name, address, and emergency telephone number;
 - ii. Documentation that the designated representative meets the requirements of A.R.S. § 32-1982(B) and the following as specified in A.R.S. § 32-1982(C):
 - (1) A full set of fingerprints from the designated representative; and
 - (2) The state and federal criminal history record check fee specified by and made payable to the Arizona State Department of Public Safety by money order, certified check, or bank draft; and
 - iii. A \$100,000 bond as specified in A.R.S. § 32-1982(D) submitted on a form supplied by the Board;
 - h. The type of drugs, whether nonprescription, prescription-only, controlled substances, human, or veterinary, the applicant will distribute;
 - i. Plans or construction drawings showing facility size and security for the proposed business;
 - j. Documentation of compliance with local zoning laws;
 - k. For a nonprescription drug wholesale firm, the manager's or designated representative's name, address, emergency telephone number, and resumé indicating educational or experiential qualifications related to drug wholesale operation;
 - l. For an application submitted because of ownership change, the former owner's name and business name, if different;
 - m. Date signed, and applicant's, corporate officer's, partner's, manager's, or designated representative's verified signature and title; and
 - n. Fee specified in R4-23-205.
 2. Before issuing a full-service or nonprescription drug wholesale permit, the Board shall:
 - a. Receive and approve a completed permit application;
 - b. Interview the applicant and the designated representative, if different from the applicant, at a Board meeting;
 - c. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer; and
 - d. For a full-service drug wholesale permit, issue a fingerprint clearance to a qualified designated representative, as specified in subsection (L). If the fingerprint clearance of a designated representative for a full-service drug wholesale permit applicant is denied, the full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii).

- C. Notification. A resident full-service or nonprescription drug wholesale permittee shall notify the Board of changes involving the type of drugs sold or distributed, ownership, address, telephone number, name of business, or manager or designated representative, including the manager's or designated representative's telephone number.
 - 1. The resident full-service or nonprescription drug wholesale permittee shall submit a written notice via mail, fax, or e-mail to the Executive Director within 10 days of the change, except any change of ownership requires that the resident full-service or nonprescription drug wholesale permittee comply with subsection (D).
 - 2. For a change of designated representative, a resident full-service drug wholesale permittee shall submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii). If the fingerprint clearance of a designated representative for a full-service drug wholesale permit applicant is denied, the full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii).
- D. Change of ownership. Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the application packet described under subsection (B).
- E. Before an existing resident full-service or nonprescription drug wholesaler permittee relocates, the resident full-service or nonprescription drug wholesale permittee shall submit the application packet described under subsection (B), excluding the fee. The facility at the new location shall pass a final inspection by a Board compliance officer before operations begin.
- F. A resident full-service or nonprescription drug wholesale permittee shall submit the application packet described under subsection (B) for any change of officers in a corporation, excluding the fee and final inspection.
- G. Distribution restrictions. In addition to the requirements of this subsection, a resident full-service wholesale permittee shall comply with the distribution restrictions specified in A.R.S. § 32-1983.
 - 1. Records.
 - a. A full-service drug wholesale permittee shall:
 - i. Maintain records to ensure full accountability of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical including dates of receipt and sales, names, addresses, and DEA registration numbers, if required, of suppliers or sources of merchandise, and customer names, addresses, and DEA registration numbers, if required;
 - ii. File the records required in subsection (G)(1)(a)(i) in a readily retrievable manner for a minimum of three years;
 - iii. Make the records required in subsection (G)(1)(a)(i) available upon request during regular business hours for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5). Records kept at a central location apart from the business location and not electronically retrievable shall be made available within two business days; and
 - iv. In addition to the records requirements of subsection (G)(1)(a)(i), provide a pedigree as specified in A.R.S. § 32-1984(E) for all prescription-only drugs that leave the normal distribution channel as defined in A.R.S. § 32-1981.
 - b. A nonprescription drug wholesale permittee shall:
 - i. Maintain records to ensure full accountability of any nonprescription drug, precursor chemical, or regulated chemical including dates of receipt and sales, names, addresses, and DEA registration numbers, if required, of suppliers or sources of merchandise, and customer names, addresses, and DEA registration numbers, if required;
 - ii. File the records required in subsection (G)(1)(b)(i) in a readily retrievable manner for a minimum of three years; and
 - iii. Make the records required in subsection (G)(1)(b)(i) available upon request during regular business hours for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5). Records kept at a central location apart from the business location and not electronically retrievable shall be made available within two business days.
 - 2. Drug sales.
 - a. A full-service drug wholesale permittee shall:
 - i. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
 - ii. Not package, repack, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical;
 - iii. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, or prescription-only drug or device, to anyone except a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;

- iv. Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - v. Provide pedigree records upon request, if immediately available, or in no less than two business days from the date of a request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5);
 - vi. Maintain a copy of the current permit or license of each person or firm who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
 - vii. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- b. A nonprescription drug wholesale permittee shall:
- i. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
 - ii. Not package, repack, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical;
 - iii. Not sell or distribute any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - iv. Maintain a record of the current permit or license of each person or firm who buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and
 - v. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- c. Nothing in this subsection shall be construed to prevent the return of a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to the original source of supply.
3. Out-of-state drug sales.
- a. A full-service drug wholesale permittee shall:
- i. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
 - ii. Not package, repack, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical;
 - iii. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, to anyone except a person or firm that is properly permitted, registered, licensed, or certified in another jurisdiction;
 - iv. Provide pedigree records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5);
 - v. Maintain a copy of the current permit, registration, license, or certificate of each person or firm who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
 - vi. Provide permit, registration, license, and certificate records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5); and
- b. A nonprescription drug wholesale permittee shall:
- i. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
 - ii. Not package, repack, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical;
 - iii. Not sell or distribute any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a person or firm that is properly permitted, registered, licensed, or certified in another jurisdiction;
 - iv. Maintain a record of the current permit, registration, license, or certificate of each person or firm who buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and
 - v. Provide permit, registration, license, or certificate records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized

officer of the law as defined in A.R.S. § 32-1901(5).

4. Cash-and-carry sales.
 - a. A full-service drug wholesale permittee shall complete a cash-and-carry sale or distribution of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, only after:
 - i. Verifying the validity of the order;
 - ii. Verifying the identity of the pick-up person for each transaction by confirming that the person or firm represented placed the cash-and-carry order; and
 - iii. For a prescription-only drug order, verifying that the cash-and-carry sale or distribution is used only to meet the immediate needs of a particular patient of the person or firm who placed the cash-and-carry order; and
 - b. A nonprescription drug wholesale permittee shall complete a cash-and-carry sale or distribution of any nonprescription drug, precursor chemical, or regulated chemical, only after:
 - i. Verifying the validity of the order; and
 - ii. Verifying the identity of the pick-up person for each transaction by confirming that the person or firm represented placed the cash-and-carry order.
- H. Prescription-only drug returns or exchanges. A full-service drug wholesale permittee shall ensure that any prescription-only drug returned or exchanged by a pharmacy or chain pharmacy warehouse under A.R.S. § 32-1983(A) meets the following criteria:
 1. The prescription-only drug is not adulterated or counterfeited, except an adulterated or counterfeited prescription-only drug that is the subject of an FDA or manufacturer recall may be returned for destruction or subsequent return to the manufacturer;
 2. The quantity of prescription-only drug returned or exchanged does not exceed the quantity of prescription-only drug that the full-service drug wholesale permittee or a full-service drug wholesale permittee under common ownership sold to the pharmacy or chain pharmacy warehouse; and
 3. The pharmacy or chain pharmacy warehouse provides documentation that:
 - a. Lists the name, strength, and manufacturer, ~~lot number, and expiration date~~ of the prescription-only drug being returned or exchanged; and
 - b. States that the prescription-only drug was maintained in compliance with storage conditions prescribed on the drug label or manufacturer's package insert.
- I. Returned, outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, and contraband drugs.
 1. Except as specified in subsection (H)(1) for a prescription-only drug, a full-service drug wholesale permittee shall ensure that the return of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical meets the following criteria.
 - a. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, or otherwise deemed unfit for human or animal consumption shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
 - b. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical whose immediate or sealed outer or secondary containers or product labeling are misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA. When the immediate or sealed outer or secondary containers or product labeling are determined to be misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, the full-service drug wholesale permittee shall provide notice of the misbranding, counterfeiting, or contrabandage or suspected misbranding, counterfeiting, or contrabandage within three business days of the determination to the Board, FDA, and manufacturer or wholesale distributor from which the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical was acquired.
 - c. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that has been opened or used, but is not adulterated, misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, shall be identified as opened or used, or both, and quarantined and physically separated from other narcotics or other controlled substances, pre-

- scription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
- d. If the conditions under which a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the narcotic's or other controlled substance's, prescription-only drug's or device's, nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA, except as provided in subsection (I)(1)(d)(i).
 - i. If examination, testing, or other investigation proves that the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical meets appropriate standards of safety, identity, strength, quality, and purity, it does not have to be destroyed or returned to the manufacturer or wholesale distributor.
 - ii. In determining whether the conditions under which a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the narcotic's or other controlled substance's, prescription-only drug's or device's, nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the full-service drug wholesale permittee shall consider, among other things, the conditions under which the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been held, stored, or shipped before or during its return and the condition of the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical and the condition of its container, carton, or product labeling as a result of storage or shipping.
 - e. For any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical identified under subsections (I)(1)(a) or (b), the full-service drug wholesale permittee shall ensure that the identified item or items and other evidence of criminal activity, and accompanying documentation is retained and not destroyed until its disposition is authorized by the Board and the FDA.
2. A nonprescription drug wholesale permittee shall ensure that the return of any nonprescription drug, precursor chemical, or regulated chemical meets the following criteria.
 - a. Any nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, or otherwise deemed unfit for human or animal consumption shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
 - b. Any nonprescription drug, precursor chemical, or regulated chemical whose immediate or sealed outer or secondary containers or product labeling are misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA. When the immediate or sealed outer or secondary containers or product labeling are determined to be misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, the nonprescription drug wholesale permittee shall provide notice of the misbranding, counterfeiting, or contrabandage or suspected misbranding, counterfeiting, or contrabandage within three business days of the determination to the Board, FDA, and manufacturer or wholesale distributor from which the nonprescription drug, precursor chemical, or regulated chemical was acquired.
 - c. Any nonprescription drug, precursor chemical, or regulated chemical that has been opened or used, but is not adulterated, misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, shall be identified as opened or used, or both, and quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
 - d. If the conditions under which a nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity,

strength, quality, or purity, the nonprescription drug, precursor chemical, or regulated chemical shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA, except as provided in subsection (I)(2)(d)(i).

i. If examination, testing, or other investigation proves that the nonprescription drug, precursor chemical, or regulated chemical meets appropriate standards of safety, identity, strength, quality, and purity, it does not need to be destroyed or returned to the manufacturer or wholesale distributor.

ii. In determining whether the conditions under which a nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the nonprescription drug wholesale permittee shall consider, among other things, the conditions under which the nonprescription drug, precursor chemical, or regulated chemical has been held, stored, or shipped before or during its return and the condition of the nonprescription drug, precursor chemical, or regulated chemical and the condition of its container, carton, or product labeling as a result of storage or shipping.

e. For any nonprescription drug, precursor chemical, or regulated chemical identified under subsections (I)(2)(a) or (b), the nonprescription drug wholesale permittee shall ensure that the identified item or items and other evidence of criminal activity, and accompanying documentation is retained and not destroyed until its disposition is authorized by the Board and the FDA.

3. A full-service drug wholesale permittee and nonprescription drug wholesale permittee shall comply with the record-keeping requirements of subsection (G) for all outdated, damaged, deteriorated, adulterated, misbranded, counterfeited and contraband narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.

J. Facility. A full-service or nonprescription drug wholesale permittee shall:

1. Ensure that the facility occupied by the full-service or nonprescription drug wholesale permittee is of adequate size and construction, well-lighted inside and outside, adequately ventilated, and kept clean, uncluttered, and sanitary;

2. Ensure that the permittee's warehouse facility:

a. Is secure from unauthorized entry; and

b. Has an operational security system designed to provide protection against theft;

3. In a full-service drug wholesale facility, ensure that only authorized personnel may enter areas where any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is kept;

4. In a nonprescription drug wholesale facility, ensure that only authorized personnel may enter areas where any nonprescription drug, precursor chemical, or regulated chemical is kept;

5. In a full-service drug wholesale facility, ensure that any thermolabile narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored in an area where room temperature is maintained in compliance with storage conditions prescribed on the product label;

6. In a nonprescription drug wholesale facility, ensure that any thermolabile nonprescription drug, precursor chemical, or regulated chemical is stored in an area where room temperature is maintained in compliance with storage conditions prescribed on the product label;

7. Make the facility available for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5) during regular business hours;

8. In a full-service drug wholesale facility, provide a quarantine area for storage of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, otherwise deemed unfit for human or animal consumption, or that is in an open container; and

9. In a nonprescription drug wholesale facility, provide a quarantine area for storage of any nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, otherwise deemed unfit for human or animal consumption, or that is in an open container.

K. Quality controls.

1. A full-service drug wholesale permittee shall:

a. Ensure that any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that meets the criteria specified in subsection (I)(1) is not sold, distributed, or delivered to any person for human or animal consumption;

b. Ensure that a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is not manufactured, packaged, repackaged, labeled, or relabeled by any of its employees;

- c. Ensure that any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical stocked, sold, offered for sale, or delivered is:
 - i. Kept clean,
 - ii. Protected from contamination and other deteriorating environmental factors, and
 - iii. Stored in a manner that complies with applicable federal and state law and official compendium storage requirements;
 - d. Maintain manual or automatic temperature and humidity recording devices or logs to document conditions in areas where any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored; and
 - e. Develop and implement a program to ensure that:
 - i. Any expiration-dated narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is reviewed regularly;
 - ii. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that has less than 120 days remaining on the expiration date, or is deteriorated, damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
 - iii. Any quarantined narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired.
2. A nonprescription drug wholesale permittee shall:
 - a. Ensure that any nonprescription drug, precursor chemical, or regulated chemical that meets the criteria specified in subsection (I)(2) is not sold, distributed, or delivered to any person for human or animal consumption;
 - b. Ensure that a nonprescription drug, precursor chemical, or regulated chemical is not manufactured, packaged, repackaged, labeled, or relabeled by any of its employees;
 - c. Ensure that any nonprescription drug, precursor chemical, or regulated chemical stocked, sold, offered for sale, or delivered is:
 - i. Kept clean,
 - ii. Protected from contamination and other deteriorating environmental factors, and
 - iii. Stored in a manner that complies with applicable federal and state law and official compendium storage requirements;
 - d. Maintain manual or automatic temperature and humidity recording devices or logs to document conditions in areas where any nonprescription drug, precursor chemical, or regulated chemical is stored; and
 - e. Develop and implement a program to ensure that:
 - i. Any expiration-dated nonprescription drug, precursor chemical, or regulated chemical is reviewed regularly;
 - ii. Any nonprescription drug, precursor chemical, or regulated chemical that has less than 120 days remaining on the expiration date, or is deteriorated, damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
 - iii. Any quarantined nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired.
- L. Fingerprint clearance.**
1. After receiving the state and federal criminal history record of a designated representative, the Board shall compare the record with the list of criminal offenses that preclude a designated representative from receiving a fingerprint clearance. If the designated representative's criminal history record does not contain any of the offenses listed in subsection (L)(2), the Board shall issue the designated representative a fingerprint clearance.
 2. The Board shall not issue a fingerprint clearance to a designated representative who is awaiting trial for or who has been convicted of committing or attempting or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction:
 - a. Unlawfully administering intoxicating liquors, controlled substances, dangerous drugs, or prescription-only drugs;
 - b. Sale of peyote;
 - c. Possession, use, or sale of marijuana, dangerous drugs, prescription-only drugs, or controlled substances;
 - d. Manufacture or distribution of an imitation controlled substance;
 - e. Manufacture or distribution of an imitation prescription-only drug;
 - f. Possession or possession with intent to use an imitation controlled substance;
 - g. Possession or possession with intent to use an imitation prescription-only drug; or
 - h. A felony offense involving sale, distribution, or transportation of, offer to sell, transport, or distribute, or conspiracy to sell, transport, or distribute marijuana, dangerous drugs, prescription-only drugs, or controlled substances.
 3. If after conducting a state and federal criminal history record check the Board determines that it is not authorized to issue a fingerprint clearance, the Board shall notify the full-service drug wholesale applicant or permittee that

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employs the designated representative that the Board is not authorized to issue a fingerprint clearance. This notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions under A.R.S. § 41-1750 and federal law.

4. The issuance of a fingerprint clearance does not entitle a person to employment.

NOTICE OF PROPOSED RULEMAKING

TITLE 8. EMERGENCY AND MILITARY AFFAIRS

CHAPTER 3. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

DIVISION OF MILITARY AFFAIRS

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3080.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 25, 2010.

[R12-227]

PREAMBLE

1. Articles, Parts, and Sections Affected (as applicable) Rulemaking Action

| | |
|-----------|-------------|
| Article 1 | Amend |
| R8-3-101 | Amend |
| R8-3-102 | Amend |
| R8-3-103 | Amend |
| R8-3-104 | Amend |
| R8-3-105 | ReNUMBER |
| R8-3-105 | Amend |
| R8-3-106 | ReNUMBER |
| R8-3-106 | Amend |
| R8-3-107 | ReNUMBER |
| R8-3-107 | Amend |
| R8-3-108 | ReNUMBER |
| R8-3-108 | Amend |
| R8-3-109 | ReNUMBER |
| R8-3-109 | New Section |
| R8-3-110 | ReNUMBER |
| R8-3-110 | Amend |
| R8-3-111 | ReNUMBER |
| R8-3-111 | Amend |
| R8-3-112 | ReNUMBER |
| R8-3-112 | New Section |
| R8-3-113 | ReNUMBER |
| R8-3-113 | Amend |
| R8-3-114 | ReNUMBER |
| R8-3-114 | New Section |
| R8-3-115 | ReNUMBER |
| R8-3-115 | Amend |
| R8-3-116 | ReNUMBER |
| R8-3-116 | Amend |
| R8-3-117 | ReNUMBER |
| R8-3-117 | Amend |

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 26-262

Specific statute: A.R.S. § 26-102(C)(5)

3. Citations to all related notices published in the Register as specified in R1-1-409 (A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 18 A.A.R. 851, April 6, 2012

Notice of Recodification: 18 A.A.R. 848, April 6, 2012

4. The agency's contact person who can answer questions about the rulemaking:

Notices of Proposed Rulemaking

Name: John Burk, Senior Executive Officer
Address: Department of Emergency and Military Affairs
5636 E. McDowell Rd.
Phoenix, AZ 85008
Telephone: (602) 267-2732
Fax: (602) 267-2549
E-mail: John.Burk@azdema.gov
Web site: http://azdema.gov

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The purpose of this rulemaking is to incorporate legislative changes to the Military Installation Fund. Changes to A.R.S. § 26-262 expanded the list of authorized uses of Military Installation Fund monies to include construction, demolition and management. Amending these rules will allow the Department to use the Military Installation Fund to acquire and maintain properties for the purpose of preserving military installations through the management and disbursement of funds.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

The agency did not review or rely on any study relevant to the rules.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking 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 Military Installation Fund provides a means by which to preserve land around military installations and ensure compatible use of the land in support of economic development. Property owners are provided fair market value in exchange for their land deed which prevents encroachment on military installations. Military installations in Arizona have a \$2 billion impact on the statewide economy and preserving the installations is in the best economic interest of Arizona.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: John Burk, Senior Executive Officer
Address: Department of Emergency and Military Affairs
5636 E. McDowell Rd.
Phoenix, AZ 85008
Telephone: (602) 267-2732
Fax: (602) 267-2549
E-mail: John.Burk@azdema.gov
Web site: http://azdema.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber 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 scheduled for:

Date: December 27, 2012
Time: 10:00 a.m.
Location: Papago Park Military Reservation
Russell Auditorium, Bldg. M5101
5636 E. McDowell Rd.
Phoenix, AZ 85008

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. § 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general per-

mit is not used:

The rule does not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not applicable to the subject matter of these rules because this was a State legislative change of the Military Installation Fund. The legislature moved the fund from the Department of Commerce to the Department of Emergency and Military Affairs.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

The rules contain no material incorporated by reference.

13. The full text of the rule follows:

TITLE 8. EMERGENCY AND MILITARY AFFAIRS

**CHAPTER 3. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
DIVISION OF MILITARY AFFAIRS**

ARTICLE 1. MILITARY INSTALLATION FUND

Section

- R8-3-101. Definitions
R8-3-102. Notice of Application Deadline and Public Comment Period
R8-3-103. Administrative Review
R8-3-104. Application for ~~Acquisition of Private Property~~ Approval of Expenditures of Monies or Funds
~~R8-3-107-R8-3-105.~~ Department Solicitation of Comments Regarding Applications for Acquisition of Private Property
~~R8-3-109-R8-3-106.~~ Department Scoring of Applications for Acquisition of Private Property
~~R8-3-108-R8-3-107.~~ Department Report to ~~Commission~~ AMAC Regarding Applications for Acquisition of Private Property;
and Notice of Hearing
~~R8-3-111-R8-3-108.~~ ~~Military Affairs Commission Recommendations~~ AMAC Recommendation Regarding Applications for
Acquisition of Private Property
R8-3-109. Process for Determining Acceptable Value for Expenditure of Funds
~~R8-3-106-R8-3-110.~~ Leaving an Application for Acquisition of Private Property on File
~~R8-3-105-R8-3-111.~~ Application for Funding for a Military Installation Preservation and Enhancement Project ~~Funding~~
R8-3-112. Department Solicitation of Comments Regarding Applications for Funding for Military Installation Preservation and Enhancement Projects
~~R8-3-110-R8-3-113.~~ Criteria for AMAC Evaluation of Applications for Funding for Military Installation Preservation and Enhancement Projects
R8-3-114. Notice of Hearing and AMAC Recommendation Regarding Applications for Funding for Military Installation Preservation and Enhancement Projects
~~R8-3-113-R8-3-115.~~ Military Installation Preservation and Enhancement Project Reporting Requirements
~~R8-3-112-R8-3-116.~~ Department Decision
~~R8-3-113-R8-3-117.~~ Appeals

ARTICLE 1. MILITARY INSTALLATION FUND

R8-3-101. Definitions

In addition to the definitions provided in A.R.S. §26-261, the following definitions apply to this Article unless the context otherwise requires:

1. "Accident potential zone" has the meaning in A.R.S. §28-8461(1) and (2), as shown in the maps incorporated by reference in subsection (4).
2. "AMAC" means the Arizona Military Affairs Commission established under A.R.S. §26-261.
- 2.3. "Clear zone" has the meaning in A.R.S. §28-8461(8).
4. "Conservation easement" has the meaning in A.R.S. § 33-271 (1).

- 3-5. "Development right" means the right to undertake and complete the development of real property for a particular use.
- 4-6. "High noise zone" means an area designated as "a high noise zone" on the military facility installation maps listed below. ~~The Maps are available from the Department, incorporated by reference, and do not include any later revisions; updated annually with State Land and Department of Real Estate. Current maps will be available from the Department of Real Estate):~~
- a. Airport Vicinity Map for Luke Air Force Base ~~dated June 20, 2002;~~
 - b. Luke Air Force Base Auxiliary Airfield 1; ~~dated March 1, 2004;~~
 - c. Marine Corps Air Station Yuma Land Use Boundaries; ~~dated July 19, 2001;~~
 - d. Yuma Air Station Auxiliary Airfield 2; ~~dated July 20, 2004;~~
 - e. Gila Bend Auxiliary Airfield; ~~dated October 8, 2004;~~
 - f. ~~Figure 5-1 (Notional Noise Contours) and Figure 5-2 (Compatible Land Use Plan Zones) from the Davis-Monthan Air Force Base, Joint Land Use Study dated February 2004 and;~~
 - g. Fort Huachuca Military Reservation; ~~Map 7 from the City of Sierra Vista General Development Plan, dated October 24, 2002.~~
6. "Property management" means the preservation, transfer or disposal of property, including lease or sale of managed assets, consistent with the preservation or enhancement of military facilities in Arizona. Includes any structural renovations, construction of building modifications or improvements that mitigate or attenuate impact in high noise or accident potential zones, or removal of structures or improvements that are necessary for acquisition of private property for the purpose of protecting a military installation.
- 7-5. "Military Affairs Commission" means the Arizona Military Affairs Commission established under A.R.S. § 26-261.
8. "MIF" means the Military Installation Fund established under A.R.S. §26-262.
- 6-9. "Military installation" has the meaning in A.R.S. §26-261(F).
10. "Multi-use opportunity" means a chance to simultaneously benefit a military installation and the community in the vicinity of the military installation including associated airspace, military training routes and ranges.
- 7-11. "Property" means ~~all~~ real property including all rights to the real property such as easements, restrictive covenants, and development rights.
12. "Department" means the Department of Emergency and Military Affairs.

R8-3-102. Notice of Application Deadline and Public Comment Period

- A. The Department shall ~~publish~~ provide notice of the application deadline for awards from ~~the military installation fund established under A.R.S. § 26-262 in a newspaper-MIF~~ at least 60 days before the application deadline, ~~as well as posting it on the Department's web site, announcing it to the news media, and making it available from the Department during normal working hours.~~ The Department shall ensure that notice of the application deadline is:
1. Published in the Arizona Administrative Register,
 2. Posted on the Department's web site, and
 3. Posted on the Arizona Military Affairs Commission meeting agenda.
- B. ~~The Department's notice shall state that copies of submitted applications will be available for public review at the Department and that members of the public may submit written comments to the Department within the time specified in the notice. The Department shall ensure that the notice provided under subsection (A) indicates that a property owner or jurisdiction interested in making application is required to file an application form to the Department during normal working hours.~~
- C. The Department shall provide an application form and instructions to a property owner or jurisdiction that submits the Notice of Intent referenced in subsection (A) and (B)
- D. The Department shall ensure that the notice provided under subsection (A) states that:
1. A copy of submitted applications will be available for public review at the Department, and
 2. Members of the public may submit written comments to the Department about the submitted applications within the time specified in the notice.

R8-3-103. Administrative Review

~~The Department shall perform a review of an application within 45 days from the application deadline, and shall return any application not meeting the requirements of this Article with a written notice of deficiencies. The applicant may resubmit the application with the deficiencies corrected within 15 days from the date on the written notice of deficiencies. The Department shall reject any application not resubmitted with deficiencies corrected within the 15 days. The Department shall complete the administrative review in 60 days from the date of the application deadline, and shall not accept any further revisions or additions to any application after receipt of original application unless specifically requested by the Department.~~

Notices of Proposed Rulemaking

- A. The Department shall perform an administrative review to determine whether an application is complete and complies with the requirements in this Article within 45 days after the application deadline.
- B. If the Department determines that an application is incomplete or does not comply with the requirements of this Article, the Department shall return the application to the applicant with a written notice of deficiencies that includes:
 - 1. One original and four legible copies of the completed application form;
 - 2. Supporting application documentation (one original and four copies);
 - 3. Name of contact person if other than property owner and the contact person's title, telephone and fax number and if possible an email address;
 - 4. Legal description of property;
 - 5. Statements regarding the property the owner is offering for sale;
 - 6. A map of the real property showing its relation to the specified military installation;
 - 7. Date the property was acquired by current owners;
 - 8. Property owner's (s) statement of legal ownership;
 - 9. List of all recorded/unrecorded encumbrances, liens, mortgages or easements;
 - 10. Statement disclosing a phase one environmental inspection and the condition on the property;
 - 11. Narrative regarding the applicant's eligibility to apply for the MIF award under the criteria specified in the applicant;
 - 12. Description of the property owner's inability to use or limitation of use of the property;
 - 13. Amount of funds requested, and the source of any supplemental funding available;
 - 14. Description of measures taken by the applicant to mitigate the impact of the military installation on the property;
 - 15. Documents from military installation, city, town, county or other entity or individuals that support or oppose the proposed land acquisition.
 - 16. The applicant's signature shall be notarized on the original application.
- C. An applicant whose application is returned with a written notice of deficiencies shall correct the deficiencies and resubmit the application within 15 days from the date on the notice of deficiencies.
- D. If an applicant whose application is returned with a written notice of deficiencies fails to correct the deficiencies and resubmit the application within the time provided under subsection (C), the Department shall close the file on the application unless the Department determines that it is in the best interest of the state to provide additional time for the applicant to submit a complete application.
- E. Except as provided in subsection (D), the Department shall complete the administrative review of an application within 60 days after the application deadline.
- E. The applicant is required to submit information changes within 15 days of a change in application facts.
- G. If any information in an application changes before monies are expended, the Department shall evaluate the changed information and decide whether it is possible to proceed with the application as amended or a new application is required.

R8-3-104. Application for Acquisition of Private Property Approval of Expenditures of Monies or Funds

- A. ~~The An~~ applicant shall submit to the Department an application original and four legible copies of ~~the a~~ completed application, using a form that is available from ~~to~~ the Department.
- B. An applicant shall comply with the requirements of this Section according to on or before the deadline published under R8-3-102. The applicant shall provide the following information, on or with the application form:
 - 1. ~~The~~ the property owner's name, mailing address, telephone number and, if available, fax number and e-mail address.
 - 2. ~~If applicable, the name of the property~~ Information about the property owner's representative or agent, if applicable:
 - a. Name of representative or agent, mailing address, telephone number and, if available, fax number and e-mail address; and
 - b. Name of contact person for the representative or agent and the contact person's title, telephone and fax numbers, and e-mail address;
 - 3. If the property owner is represented by another person, attach to the application written consent for representation that is signed by the property owner and notarized;
 - 4. ~~A~~ Attach to the application a completed "Application Checklist" form which is available from the Department, listing all items included as part of the application;
 - 5. ~~The legal~~ Legal description of the location of the property offered for acquisition;
 - 6. ~~A statement~~ If less than all of the property owned is being offered for acquisition, a description of the portion of the property the owner is offering for acquisition;
 - 7. ~~A map of the real~~ Attach to the application a map of the applicable military installation and show the property showing its offered for acquisition in relationship to the specified military installation;
 - 8. The date the property was acquired by the current property owner;
 - 9. ~~A statement of legal ownership by the property owner~~ The name in which title to the property is held;
 - 10. ~~A list~~ List of all known recorded or unrecorded mortgages, encumbrances, liens, and easements on the property;
 - 11. ~~A statement~~ Statement disclosing any known environmental conditions on the property;

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12. A written description of any improvements and the date the improvements were made upon the property;
 - ~~13.~~ 12. A narrative Statement explaining the applicant's eligibility to apply for an award funding from the military installation fund MIF;
 - ~~14.~~ 13. ~~The amount~~ A request statement stating the Amount of MIF funds being requested, ~~and the amount and source of any supplemental funding available for the acquisition;~~ a long with a copy of the most recent notice of the property valuation provided by the county assessor in which the property is located and any other evidence used to determine the amount of funds to request;
 14. ~~The amount of funds requested, and the amount~~ Amount and source of any supplemental funding available for the acquisition. Attach to the application verification from the source of the supplemental funding that supplemental funding is available and indicate whether there is a limitation on the availability or use of the supplemental funding;
 15. ~~A written explanation describing~~ Description of the property owner's inability to use or limitation on the use of the property and how long the inability or limitation has existed due to state ~~and~~ or local military planning and zoning mandates;
 16. ~~A written explanation~~ Description of measures taken by the applicant to mitigate the impact of the military installation on the property and the property owner;
 17. ~~Any document from the military installation, city, town, county, or other entity or individual that support or oppose the proposed acquisition;~~ Attach to the application any supporting or opposing documents from a military installation, city, town, or county related to the proposed acquisition;
 18. ~~A written explanation~~ Explanation or other documentation providing information the applicant believes will assist the Department and the Military Affairs Commission AMAC regarding the acquisition request; and
 19. ~~The signature~~ Signature of the property owner or the owner's representative verifying that all information in the application is accurate and correct to the best of the property owner's or the representative's knowledge, under penalty of perjury.
- C. An applicant shall provide written notice within 20 days to the Department if any of the information submitted in the application changes or the application will be denied:
1. If ownership of the property changes, the new owner shall ensure that the required notice:
 - a. Is signed and notarized by the new owner and indicates whether the new owner wants the Department to continue to consider the application, and if so;
 - b. Updates the information contained in the application; and
 - c. Contains legal evidence of the change in ownership; and
 2. If use of the property changes, the owner of the property shall ensure that the required notice describes the nature of the changed use.

~~**R8-3-107.**~~ **R8-3-105. Department Solicitation of Comments Regarding Applications for Acquisition of Private Property**
~~Before providing the Military Affairs Commission with its recommendation regarding an application, To assist the Department in scoring an application for the acquisition of private property and making a recommendation regarding the application to AMAC, the Department shall contact solicit written comments regarding the application from personnel of the applicable military installation, city, town, county, and any other entity that may have an interest in the application. Responses to comment solicitation will be placed on the AMAC committee agenda for review prior to final property acquisition approval. The Department shall request written comments regarding the application.~~

~~**R8-3-109.**~~ **R8-3-106. Department Scoring of Applications for Acquisition of Private Property**
The Department shall rank applications in order of score. The Department shall use the following evaluation criteria to score applications for acquisition of private property. The Department shall give an application a score under either subsection (1) or (2) but not both:

1. Location of the property. When there is a range of points, the Department shall assign the highest score to property in closest proximity to a runway. If the property is in more than one zone, the Department shall assign the highest applicable score.
 - a. Clear zone: 300 points;
 - b. Accident potential zone 1 defined in A.R.S. § 28-8461(1): 250-290 points;
 - c. Accident potential zone 2 defined in A.R.S. § 28-8461(2), ~~including compatible use zone II as shown in the map incorporated by reference in R8-3-101(4)(F);~~ 200-240 points;
 - d. High noise zone, according to the day-night sound levels in decibels under A.R.S. § 28-8481(J):
 - i. Decibel level 85 or more: 190 points;
 - ii. Decibel level 80-84: 175 points;
 - iii. Decibel level 75-79: 160 points;
 - iv. Decibel level 70-74: 140 points; or
 - v. Decibel level 65-69: 125 points.
2. Property located outside of a clear ~~zones~~ zone, accident potential ~~zones~~ zone, and high noise ~~zones~~ zone, but which,

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based on written input from authorized personnel of the applicable military installation, is vital to the preservation or enhancement of a military installation: 0 -175 points;

3. The extent of the property owner's inability to use, or limitation on the use of the property according to zoning regulations ~~and~~ or state statute enacted for the preservation of the military installation: 0 - 95 points;
4. ~~Based on written input, the~~ The extent to which acquisition of the property by the state may prevent or reduce encroachment or other activity that could hinder preservation of the military installation or its ability to accomplish its mission: 0 - 90 points;
5. ~~The length of time that the property has been owned by the applicant, with the highest score going to the longest period of ownership: 0 – 80 points; and~~ The amount of supplemental funding, if any, as a percentage of the estimated value of the property:
 - a. At least 5 percent supplemental funding: 10 points, and
 - b. For each additional percentage point of supplemental funding: 1 point to a maximum of 100 points for 95 percent supplemental funding; and
6. ~~Measures the applicant has taken to preserve the military installation or to mitigate any impacts of the military installation: 0 – 60 points. The economic efficiency of using MIF to acquire the property: 0 to 100 points.~~

~~**R8-3-108**~~**R8-3-107. Department Report to Commission AMAC Regarding Applications for Acquisition of Private Property; and Notice of Hearing**

- A. The Department shall compile and forward to ~~the Military Affairs Commission~~ AMAC a report that includes the following:
 1. ~~All applications~~ Applications for expenditures of funds accepted as complete under R8-3-103;
 2. ~~Any written~~ Written comments received under ~~R8-3-102(B)~~ R8-3-102(D) and ~~R8-3-107; R8-3-105;~~
 3. ~~All evaluation~~ Evaluation scores and ranking under ~~R8-3-109; R8-3-106;~~
 4. Available funding calculated using the ~~funding~~ formula under A.R.S. §26-262 (G); and
 5. The recommended funding distribution.
- B. At least 14 days before the ~~Commission~~ AMAC meeting at which applications for acquisition of private property will be considered, the Department shall provide each applicant with a written notice of the date, time, and location of the meeting, and a copy of the portions of the Department's report relevant to the applicant's property.

~~**R8-3-111**~~**R8-3-108. Military Affairs Commission Recommendations AMAC Recommendation Regarding Applications for Acquisition of Private Property**

- A. The ~~Military Affairs Commission~~ AMAC shall review the Department's report under ~~R8-3-108~~ R8-3-107. ~~The Commission may allow oral testimony at its open meeting for review of applications.~~
- B. ~~The Commission~~ If AMAC determines that oral testimony regarding an application for acquisition of private property will assist AMAC to make a recommendation, AMAC shall ~~may allow oral testimony at its the open meeting for review of applications.~~
- ~~B.C.~~ The Military Affairs Commission AMAC shall ~~determine~~ base its recommendation to the Department ~~based upon~~ on AMAC's assessment of:
 1. ~~The likelihood of the proposed project or the~~ that acquisition of the private property ~~to will~~ will preserve and enhance the mission of a military installation, and
 2. The economic efficiency of applying ~~the fund~~ MIF for the greatest protection or enhancement of a military installation.
- ~~C.D.~~ The Commission AMAC shall transmit its written recommendation under A.R.S. §26-262(D) to the Department, including any ~~direction and~~ directions or alternatives ~~to the Department,~~ within seven days ~~of~~ after its decision.

R8-3-109. Process for Determining Acceptable Value for Expenditure of Funds

- A. As required by state law, the Department shall not pay more than fair market value to acquire private property using MIF monies.
- B. To determine the fair market value of private property to be acquired using MIF monies, the Department shall have the private property appraised by a professional appraiser who is under contract with the state.
- C. A property owner that disagrees with the fair market value determined under subsection (B) may appeal the determination under R8-3-117.
- D. For all other expenditures of funds relating to property preservation, the Department shall follow guidelines found in Title 41, Chapter 23, Article 5 relating to construction, building improvement and procurement standards.

~~**R8-3-106**~~**R8-3-110. Leaving an Application for Acquisition of Private Property on File**

- A. An applicant that submits a complete application under R8-3-104 may leave a complete the application with no deficiencies on file with the Department for a maximum of five years.
- B. An applicant that leaves a complete application on file with the Department under subsection (A) may request that the Department consider the application in a subsequent year. To request that the application be considered in a subsequent

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~~year, the applicant shall submit to the Department a written request before the application deadline specified under R8-3-102. The Department shall consider the application each year along with all new applications received if the applicant submits a written request to the Department during the annual application period under R8-3-102. The Department shall rank each application each year regardless of years under consideration. The applicant shall include the following information in the written request:~~

- ~~1. The name of the property owner, or the name of the requesting jurisdiction, as originally filed with the Department; and~~
- ~~2. Either a statement that the information in the application as previously submitted is current, or a statement of specific amendments to the original application.~~

C. If the Department receives a request under subsection (B), the Department shall score and rank the application under R8-3-106 with other applications for acquisition of private property.

~~R8-3-105.~~ **R8-3-111. Application for Funding for a Military Installation Preservation and Enhancement Project Funding**

A. A city, town, or county seeking funding for a military installation preservation and enhancement project (~~project~~) shall submit an original ~~application~~ and four legible copies of ~~the a~~ completed application to the Department, using a form that is available from the Department, as prescribed in this Section and according to by the deadline published under R8-3-102. The applicant under this Section is the representative authorized by the requesting jurisdiction.

B. The applicant shall provide the following information, ~~as applicable~~, on or with the application form:

- ~~1. The name~~ Name of the requesting jurisdiction;
- ~~2. Name of military installation that will be preserved or enhanced by the proposed project;~~
- ~~2-3. The applicant's~~ Applicant's name, mailing address, telephone number and, if available, fax number and e-mail address;
- ~~4. Name of contact person if other than the applicant and the contact person's title, mailing address, telephone and fax numbers, and e-mail address;~~
- ~~3-5. The date~~ Date on which the requesting jurisdiction approved the project request was approved by the requesting jurisdiction and authorized submission of the application for funding. Attach to the application evidence that the application was authorized by the jurisdiction;
- ~~6. Whether the proposed project involves acquisition of private property;~~
- ~~4-7. A~~ Attach to the application a completed "Application Checklist," which is a form available from the Department, listing all items included as part of the application;
- ~~5-8. The names~~ Names of the persons or organizations, if any, with which the jurisdiction will work with on the proposed project;
- ~~6-9. The name~~ Name and brief summary of the proposed project with a brief summary of the project proposal;
- ~~10. If funding is obtained, an estimated project timeline including the dates on which the project is expected to begin and be completed;~~
- ~~11. Statements explaining the following:~~
 - ~~7. a. A written narrative explaining the project in detail, including how it~~ How the proposed project will preserve or enhance the military installation and any proposed starting and ending dates;
 - ~~8. The estimated budget for the project, with a description of any other funding source that may be used;~~
 - ~~9. The amount of funding requested from the military installation fund;~~
 - ~~10. If the project includes proposed acquisition of private property, the information and items required under R8-3-104, as applicable;~~
 - ~~11. b. A statement of any past~~ Past action taken by the jurisdiction to preserve or enhance the military installation;
 - ~~c. Whether and how the proposed project involves a multi-use opportunity; and~~
 - ~~d. Whether and how the proposed project will mitigate impacts of the military installation on the surrounding community;~~
- ~~12. Total budget for the proposed project including:~~
 - ~~a. Amount of funding requested from MIF, and~~
 - ~~b. Amount of funding from another source including the identity of the other source. Attach to the application verification from the source of the other funding and indicate whether there is a limitation on the availability or use of the other funding;~~
- ~~13. If the proposed project involves acquisition of private property:~~
 - ~~a. Name, mailing address, telephone number and, if available, fax number and e-mail address of the property owner;~~
 - ~~b. Legal description of the location of the property to be acquired;~~
 - ~~c. Attach to the application a map of the applicable military installation and show the property to be acquired in relationship to the military installation; and~~
 - ~~d. Attach to the application an appraisal of the property to be acquired that is;~~

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- i. Prepared by an appraiser under contract with the state, and
 - ii. Completed no more than 60 days before the date of application;
- ~~12-14. Any Attach to the application any documents from the military installation, city, town, or county, or other entity or individual that support or oppose the proposed project;~~
- ~~13-15. A written explanation Explanation or other documentation the applicant believes will assist the Department and the Military Affairs Commission AMAC regarding the proposed project request application; and~~
- ~~14-16. The signature Signature of the applicant verifying that all information in the application is accurate and correct, to the best of the applicant's knowledge, under penalty of perjury; and~~
17. Attach to the application, using a form available from the Department, a signed offer to the state of Arizona.

R8-3-112. Department Solicitation of Comments Regarding Applications for Funding for Military Installation Preservation and Enhancement Projects

To assist AMAC in evaluating an application for funding for a military installation preservation and enhancement project, the Department shall solicit written comments regarding the application from authorized personnel of the applicable military installation. The Department shall ask authorized personnel of the military installation to:

1. Indicate whether the military installation supports the proposed project; and
2. If multiple projects are proposed for the same military installation, rank the proposed projects in priority order.

~~R8-3-110~~**R8-3-113. Criteria for AMAC Evaluation of Applications for Funding for Military Installation Preservation and Enhancement Projects**

The Military Affairs Commission AMAC shall consider use the following criteria in evaluating to evaluate an application for funding for a military installation preservation and enhancement projects project submitted under R8-3-105 R8-3-111:

1. How the proposed project will preserve or enhance the military installation;
2. The availability of additional funding for the project from other sources;
3. Whether acquisition of property for the project could prevent or reduce encroachment or other activity that could hinder preservation of the military installation, or the ability to accomplish its mission;
4. Past actions taken by the jurisdiction to preserve the military installation;
5. Whether or how the proposed project will improve the condition of the military installation, land, facilities, or associated airspace through involves a multi-use opportunities opportunity; and
6. Whether and how the proposed project will mitigate impacts of the military installation on the surrounding community;
5. Percentage of the total budget for the proposed project to be provided by sources other than MIF;
6. Comments from authorized personnel of the applicable military installation submitted in response to the Department's solicitation issued under R8-3-112; and
7. If the proposed project involves acquisition of private property, extent to which acquisition of the private property will prevent or reduce encroachment or other activity that could hinder preservation of the military installation or the ability of the military installation to accomplish its mission.

R8-3-114. Notice of Hearing and AMAC Recommendation Regarding Applications for Funding for Military Installation Preservation and Enhancement Projects

- A. When AMAC completes the evaluation of applications for funding for military installation preservation and enhancement projects, AMAC shall ensure that applicants are provided written notice of the AMAC meeting at which the applications will be considered.
- B. AMAC shall ensure that the written notice required under subsection (A) is provided at least 14 days before the AMAC meeting at which the applications will be considered and specifies the date, time, and location of the meeting.
- C. If AMAC determines that oral testimony regarding an application for funding for a military installation preservation and enhancement project will assist AMAC to make a recommendation, AMAC shall allow oral testimony at the open meeting for review of applications.
- D. AMAC shall base its recommendation to the Department on AMAC's assessment of:
 1. The likelihood that the proposed project will preserve and enhance the applicable military installation, and
 2. The military installation preservation and enhancement benefits from the proposed project justify the cost to MIF.
- E. AMAC shall transmit its written recommendation under A.R.S. §26-262 (D) to the Department, including any directions or alternatives, within seven days after its decision.

~~R8-3-113~~**R8-3-115. Military Installation Preservation and Enhancement Project Reporting Requirements**

- A. For the purpose of this Section, a "successful applicant" is any jurisdiction awarded MIF funds under this Article for a military installation preservation and enhancement project from the military installation fund under this Article.
- B. Each A successful applicant shall provide the Department with a written report within six months of the Department's decision under R8-3-112 on the report regarding progress of the military installation preservation and enhancement project, for which it received funds, and shall include in the report and an accounting of military installation fund MIF

monies received and used. The successful applicant shall make additional written reports to the Department every six months until completion of the project, or until all requirements for the acquisition are completed, at the times specified by the Department in the contract between the Department and the successful applicant.

~~R8-3-112~~ R8-3-116. Department Decision

- A.** ~~The After AMAC forwards its recommendations to the Department, the Department shall review the recommendations of the Military Affairs Commission and decide whether to:~~
- ~~1. accept, Accept AMAC's recommendation and award the recommended amount to an applicant,~~
 - ~~2. accept AMAC's recommendation but award with a reduced amount to an applicant, or~~
 - ~~3. deny an application submitted under R8-3-104 or R8-3-105, and Reject AMAC's recommendation and deny an award to an applicant.~~
- B.** ~~The Department shall provide each an applicant with a copy of its written decision within 21 days of the Military Affairs Commission's after AMAC's recommendation. The Department shall include in its written decision the reasons reason for denial or reduction denying or reducing an award and include a copy of R8-3-114 R8-3-117.~~
- C.** ~~If the Department decides to award funding for the acquisition of private property, the Department shall make the property owner an offer to purchase the property. The Department shall inform the property owner that the offer to purchase is open for only 90 days and if the offer to purchase is not accepted within the 90 days, funding for acquisition of the private property may no longer be available.~~
- D.** ~~If a property owner accepts an offer to purchase made under subsection (C), the Department shall ensure that the purchase contract specifies that Payment payment from the fund for acquisition of private property MIF is contingent upon satisfactory completion of legal requirements for acquisition of the property within nine months of the Department's written decision issued under subsection (B).~~

~~R8-3-113~~ R8-3-117. Appeals

- A.** ~~The following applicants may appeal a decision by The Adjutant General:~~
- ~~1. An applicant that is denied MIF funding,~~
 - ~~2. An applicant that is awarded MIF funding for a military installation preservation and enhancement project but the amount awarded is less than the amount recommended by AMAC, and~~
 - ~~3. A property owner that disagrees with the fair market value determined for the property.~~
- B.** ~~An applicant whose application for military installation funding is denied or the amount reduced by the Department may file an To appeal a decision made by the The Adjutant General, the affected person shall with the Department by submitting submit a letter to the Director the Adjutant General providing reasons for protesting the decision within 30 days of the date of on the final written decision issued under R8-3-112 R8-3-116(B)2. The appellant shall ensure that the letter clearly states the legal or factual basis for the appeal.~~
- C.** ~~If an appeal is about the fair market value of property and if the The Adjutant General determines that assistance regarding the fair market value of the property will be useful, The Adjutant General shall ask the Land Department Board of Appeals for an opinion regarding the fair market value of the property.~~
- B.D.** ~~The Director Adjutant General shall review the substance of the protest appeal, make a final decision, and respond in writing, by mail to the applicant appellant, within 30 days of receipt of the protest after receiving the appeal letter or within 30 days after receiving an opinion from the Land Department Board of Appeals whichever is earlier.~~
- C.E.** ~~Appeals from the Department decision are prescribed in A.R.S. Title 41, Chapter 6 Article 10, Uniform Administrative Hearing Procedures. When a final appeal is filed, the Adjutant General shall contact the Office of Administrative Hearing to schedule the case with the office in accordance with A.R.S. § 41-1092.02.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION – HIGHWAYS

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3080.) The Governor's Office authorized the notice to proceed through the rulemaking process on September 23, 2011.

[R12-221]

PREAMBLE

| <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R17-3-901 | Amend |
| R17-3-902 | Amend |

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| | |
|-----------|--------|
| R17-3-903 | Repeal |
| R17-3-904 | Amend |
| R17-3-905 | Amend |
| R17-3-906 | Amend |

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. § 28-7311

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 17 A.A.R. 2422, December 2, 2011

Notice of Proposed Rulemaking: 18 A.A.R. 81, January 13, 2012

Notice of Final Rulemaking: 18 A.A.R. 1263, June 1, 2012

Notice of Rulemaking Docket Opening: 18 A.A.R. 1239, May 25, 2012

4. The agency's contact person who can answer questions about the rulemaking:

Name: Jane McVay

Address: Arizona Department of Transportation
Government Relations and Policy Development Office
206 S. 17th Ave., MD 140A

Phoenix, AZ 85007

Telephone: (602) 712-4279

Fax: (602) 712-3232

E-mail: jmcvay@azdot.gov

Web site: http://www.azdot.gov/Government_Relations/adotrules/

Please check the ADOT web site to track progress of these rules and any other agency rulemaking matters.

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

A.R.S. 28-7311 authorizes the Arizona Department of Transportation (ADOT) to establish an urban logo sign program and requires administrative rules to implement and operate the program. Logo signs are guide signs that provide motorists with information about businesses and services closely accessible to interstate and other state highways. Effective July 6, 2012, ADOT assumed the administrative duties for the rural logo sign program, which was previously administered by a contractor. The existing rules prohibit placement of logo signs on many interstate and other state highways that are now in the urbanized areas of the state. ADOT is amending the logo sign rules to remove the urban logo sign placement restrictions that were placed on the former contractor. The proposed rules also provide specific authority for the manner in which the Department will operate the urban logo sign program on interstate and other state highways in urbanized areas, as authorized in A.R.S. § 28-7311, and make other necessary changes in the logo sign program rules. Eligible businesses in the state, including food, gas, lodging, camping, 24-hour pharmacies, and attractions that meet certain criteria may enter into a lease agreement with ADOT to lease space on a logo sign. A.R.S. § 28-7311(D) requires the Department to deposit revenues generated from the rural and urban logo sign programs, less program operating costs, into the State Highway Fund. The Department has authority to use these monies for transportation-related programs and projects, which will benefit the motoring public, increase tourism, and improve and expand the state's economy.

Eligible businesses may decide to promote to the motoring public their business locations that are adjacent to interstate and other state highways by placing their business logo on a logo sign. These businesses will either pay a rate to ADOT according to logo sign rate schedules, or determined from competitive offers submitted to ADOT and formalized in a standard lease agreement. Under these proposed rules, ADOT will determine the ranking order of competitive offers by responsible operators in urbanized areas with high demand for logo signs where limited signage is available, based on specific factors.

The proposed rulemaking includes the following provisions:

Revises definitions relevant to the rural and urban logo sign program.

Provides that 24-hour pharmacies are primary businesses that are within three miles in any direction of an interchange on the interstate system and are not eligible as secondary businesses.

Provides that ADOT may implement an urban logo sign program on state highways in urbanized areas in the state and a rural logo sign program on state highways outside of urbanized areas. Interstate highways are included in both programs.

Allows ADOT to terminate program participation of a responsible operator or determine that a business is ineligible to participate in the logo sign programs.

Provides that attraction service businesses that are historical or cultural, or that provide amusement or leisure activities to the public are eligible to place a logo on a logo sign panel.

Prescribes responsible operator pricing procedures, including use of rate schedules or competitive pricing established through offers, to determine the ranking order of responsible operators who may be awarded a logo sign lease.

Prescribes factors for a contractor or ADOT to use in ranking responsible operators who may be awarded a logo sign lease at each highway interchange or location.

Requires review of secondary business leases at the beginning of the 24th month to determine responsible operator compliance with the lease terms.

Allows a higher-ranked responsible operator who requests a logo sign to be awarded a lease under certain conditions when no specific service information sign panel openings exist at a highway intersection or interchange.

Provides that a contractor or the Department may choose not to renew an existing lease or a lease expiring within the next 90 calendar days if an eligible business with higher priority requests placement of a logo on a logo sign panel at the same location.

Provides that a contractor or ADOT will solely determine the location and position of new logos on logo sign panels when logo sign panel vacancies occur and a new responsible operator wishes to lease space or a waiting list exists.

Specifies that a contractor or ADOT is not required to place a logo sign at any particular state highway interchange or intersection.

Removes prior prohibitions for a contractor to place logo signs on certain highways in urbanized areas.

Allows logo signs in urbanized areas to remain until the minimum lease obligations are fulfilled or the lease is terminated, if urban boundaries are adjusted in a subsequent decennial census.

Amends provisions regarding ADOT's or the contractors' responsibilities in the logo sign programs.

Requires a responsible operator to fulfill all the requirements of the urban or rural logo sign program, including contractual obligations.

Allows logo signage in place at the end of a lease term to be transitioned from the urban to the rural program if an area is identified as rural, or from rural to urban if an area is identified as urban in a subsequent decennial census.

Allows for relocation of logo signs for a business at the exit ramp or interchange directly preceding the eliminated exit ramp or interchange when ADOT eliminates an exit ramp or interchange.

Provides that the rule changes do not affect a responsible operator's existing lease before the current lease expires.

Specifies the number of specific service information sign panels allowed on interstate or other state highways at the approach to an intersection, interchange, or exit ramp. Allows an exception for existing logo signs displayed or approved for display on July 6, 2012.

Deletes restrictions on combination signs.

Allows a contractor or the Department to place supplemental wording on logo sign panels in accordance with the MUTCD.

Authorizes ADOT or a contractor to collect applicable taxes in a lease with a responsible operator.

Updates the logo sign requirements in the rural and urban logo sign programs in accordance with the MUTCD, and to meet the needs of the urban and rural logo sign programs.

Provides that the rule changes do not affect a responsible operator's lease before the current lease expires.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

ADOT reviewed a study entitled "Other States Urban Program Consulting Project" that was prepared for ADOT regarding practices of other state agencies that operate urban logo sign programs. This study was conducted to determine how other states implement and administer their urban logo sign programs. Information was collected from phone interviews and site visits about fees charged in other states with urban logo sign programs, program objectives, and operation. The public may obtain a copy of the study from the contact person in item 4. ADOT relied on information gathered in the study to make decisions regarding the urban logo sign program.

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7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking 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:

ADOT

ADOT is required to comply with the MUTCD, which governs the usage of highway logo signs. These signs provide motorists with location information about gas, food, lodging, camping, attractions, and 24-hour pharmacies that are adjacent to state highway intersections or interchanges. ADOT will incur substantial costs to establish the urban logo sign program and to install logo signs in urbanized areas at appropriate locations near state and interstate highway interchanges. ADOT incurred costs for a study of practices in other states that have urban logo sign programs. ADOT is currently determining those locations adjacent to urban highway interchanges where logo signage can be installed in order to comply with the requirements of the MUTCD. ADOT will incur costs to market logo sign availability, prepare and construct signage sites, provide enhanced technology, and to hire minimal staffing. In addition, ADOT also incurs costs to complete the rulemaking.

Under ADOT's administration of both the urban and logo sign programs, the proceeds of the program minus the program administrative costs will be transferred to the State Highway Fund. These monies will be available for transportation programs and projects that are beneficial to the public. In recent years, overall funding for the state transportation system has declined while the needs for project funding continue to increase. Monies generated from the logo sign program will supplement monies generated through the State Highway Fund and other appropriated federal and state general funds to preserve, maintain, and expand the state transportation system.

Businesses

These rules do not mandate that businesses participate in the logo sign program. Eligible businesses that operate along interstate and other state highways may decide to participate in the program and pay logo sign lease costs for logo signage to increase their business revenue. ADOT is currently maintaining the same lease rate structure for the rural logo sign program that previously existed when a contractor operated the program.

ADOT will incur substantial costs to begin operating the urban logo sign program. Lease costs for logo signs in the urbanized areas will vary based on numerous factors, including the average annual daily traffic count adjacent to the highway location, the mix and distribution of businesses adjacent to state highway intersections and interchanges that meet program requirements, and competitive market conditions. Participating businesses will pay lease costs established by contract. In high traffic, urbanized areas with a substantial number of potential businesses, participating businesses will pay higher lease costs than in lower traffic areas with fewer potential businesses. ADOT expects that businesses participating in the logo sign program will have increased business revenue and customers. Some businesses will not have the option to use logo signs due to MUTCD restrictions on the types of businesses eligible for logo signs or because their business location is not adjacent to an interstate or other highway intersection or interchange. Those businesses are not impacted by these rules and may choose another method to promote their businesses.

Employment in participating businesses may be positively impacted in the long-term as a result of business participation in the logo sign program. As the state's economy improves, participating businesses may be more inclined to hire additional employees and may increase their business locations.

Consumers

The logo sign program provides information about services that benefit motorists traveling along Arizona's interstate and other state highways. Consumers who patronize businesses with logo signs are likely to pay for some or all of the lease costs incurred by the participating businesses with logo signs. Consumers who see a logo sign may exit the highway and patronize a business with a logo sign or a non-participating business, thereby positively impacting participating and non-participating businesses. As a whole, consumers, especially the motoring public, will benefit from the logo sign program by the addition of more state highway signage about services, and completion of transportation programs and projects from funding generated by this program.

Political Subdivisions and State

Political subdivisions that have logo signs are expected to benefit indirectly from additional tax revenue generated and distributed to them because of increased motorist expenditures and travel in their jurisdictions. The state is also expected to receive additional revenue from increased economic activity, visitation, and expenditures coming directly or indirectly from the urban logo sign program.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Jane McVay

Address: Arizona Department of Transportation
Government Relations and Policy Development Office

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206 S. 17th Ave., MD 140A
Phoenix, AZ 85007

Telephone: (602) 712-4279
Fax: (602) 712-3232
E-mail: jmcvay@azdot.gov

10. The time, place, and nature of the proceedings to make, amend, or renumber the rule, or if no proceedings scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: January 17, 2013
Time: 10:00 a.m.
Location: Arizona Department of Transportation, Auditorium
206 S. 17th Ave.
Phoenix, AZ 85007
Nature: Oral Proceeding/Public Hearing

Written comments may be submitted to the person listed in item 4 for 30 days after the Notice of Proposed Rulemaking is published in the *Register*.

Pursuant to Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act (ADA), ADOT does not discriminate on the basis of race, color, national origin, age, gender or disability. Persons that require a reasonable accommodation based on language or disability should contact ADOT Civil Rights at (602) 712-7761 or civilrightsoffice@azdot.gov (or designated coordinator). Requests should be made as early as possible to ensure the state has an opportunity to address the accommodation.

Personas que requieren asistencia o una adaptación razonable por habilidad limitada en inglés o discapacidad deben ponerse en contacto con la Oficina de Derechos Civiles de ADOT al (602) 712-7761 or civilrightsoffice@azdot.gov (or designated coordinator). Las solicitudes deben hacerse tan pronto como sea posible para asegurar que el estado tiene la oportunidad de abordar el alojamiento.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class or rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to questions (a) through (c):

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

ADOT will operate the urban and rural logo sign programs, so an encroachment permit is not required. If a contractor operates any aspect of the logo sign program in the future, a contractor is required to obtain an encroachment permit from ADOT before erecting a specific service information sign along an interstate or other state highway. Encroachment permits, which are currently required by existing agency rules, are general permits.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

In 23 U.S.C. 109(d), the Secretary of the U.S. Department of Transportation requires that on any highway project in which federal funds participate for projects constructed since December 20, 1944, the location, form, and character of informational, regulatory and warning signs, and traffic signals installed or placed by any other agency are subject to the state transportation department, with concurrence of the Secretary, who is directed to concur only in installations that promote the safe and efficient use of the highways. These rules comply with this requirement and are no more stringent than federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

12. A list of any incorporated by reference material in A.R. S. § 41-1028 and its location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION – HIGHWAYS

ARTICLE 9. HIGHWAY TRAFFIC CONTROL DEVICES

Section

- R17-3-901. Signing for Colleges and Universities
- R17-3-902. Logo Sign Programs
- R17-3-903. ~~Urban Logo Sign Program and Requirements~~ Repealed
- R17-3-904. ~~Rural Logo Sign Program~~ MUTCD Requirements for Logo Signs
- R17-3-905. Rural Logo Sign Requirements
- R17-3-906. Existing Leases

ARTICLE 9. HIGHWAY TRAFFIC CONTROL DEVICES

R17-3-901. Signing for Colleges and Universities

A. Definitions.

“Community College” has the meaning as prescribed in A.R.S. § 15-1401.

“Department” means the Arizona Department of Transportation.

“FHWA” means the Federal Highway Administration of the U.S. Department of Transportation.

“Major metro area” means an urban area with a population of at least 50,000.

“Municipality” means an incorporated city or town.

“MUTCD” means the Manual on Uniform Traffic Control Devices, a national standard for the design and application of traffic control devices that is published by the U.S. Department of Transportation (U.S. DOT), Federal Highway Administration (FHWA) and that is used as the standard for traffic control devices for use on the streets and highways of the this state of Arizona as required by A.R.S. § 28-641.

“Nonconforming sign” means an erected sign that does not comply with this Section or A.R.S. § 28-642(D) due to changes in the statutes, rules, or changed conditions. Examples of changed conditions include the reconstruction of a highway or physical deterioration of a sign.

“Regionally accredited college or university” means a college or university accredited by a regional institutional accrediting association recognized by the Arizona State Board for Private Postsecondary Education.

“Rural area” means all areas other than a major metro area or an urban area.

“Signing” means standard highway supplemental guide signs as specified in the MUTCD.

“State highway” has the same meaning as prescribed in A.R.S. § 28-101.

“State University” means a university established and maintained by the Arizona Board of Regents under A.R.S. § 15-1601.

“Trailblazing sign” means a sign installed by a local governmental agency, off the state highway, to guide traffic to a college or university.

“Trip” means a one-way commute to or from a college or university, calculated by the Department based on the number of students or dorm beds, using the following equivalents:

One student = 1 1/2 trips

One dorm bed = three trips.

“Urban area” means a municipality having a population of at least 10,000 but less than 50,000.

“U.S. DOT” means the United States Department of Transportation.

B. Application for signing. A college or university referenced in A.R.S. § 28-642(D) may request signing by submitting a letter on its letterhead to the Department’s State Traffic Engineer. The letter shall contain the following information:

1. Name of college or university;
2. Complete street address;
3. Names of agencies granting accreditation;
4. Number of students;
5. Number of dormitory beds, if applicable; and
6. Signature of a person authorized to sign for the college or university.

C. Requirements. To be considered for signing, a college or university referenced in A.R.S. § 28-642(D) shall satisfy the following:

1. Is on a road that intersects a state highway. If a college or university is on a road that does not intersect a state highway, it still may qualify if:
 - a. The governing political subdivision submits to the Department, within 30 days from the Department’s receipt of the request for signing, written confirmation stating that the governing political subdivision will install and maintain trailblazing signs; and
 - b. The governing political subdivision installs trailblazing signs before the Department places signing on the state highway.
2. Meets all the requirements under subsection (C)(2)(a), (b), or (c) of this Section.
 - a. If in a major metro area:
 - i. Generates at least 4000 trips per weekday.

- ii. Is three miles or less from a state highway, except the distance may be increased 1/4 mile for each 10% increase in the required number of trips per weekday to a maximum of five miles.
 - b. If in an urban area:
 - i. Generates at least 2000 trips per weekday.
 - ii. Is four miles or less from a state highway, except the distance may be increased 1/4 mile for each 10% increase in the required number of trips per weekday to a maximum of five miles.
 - c. If in a rural area:
 - i. Generates at least 1000 trips per weekday.
 - ii. Is five miles or less from the state highway, except the distance may be increased 1/4 mile for each 10% increase in the required number of trips per weekday to a maximum of 15 miles.
 - D. Exceptions to standards. The Department may place supplemental guide signs on state highways to direct traffic to colleges and universities. The Department shall determine whether to place supplemental guide signs for a college or university based on the specific criteria and the guidelines in the MUTCD.
 - E. Nonconforming signs. The Department may remove a nonconforming sign if:
 - 1. Other signs have greater priority under the criteria in the MUTCD,
 - 2. Physical spacing of signs is limited for an upcoming interchange or intersection, or
 - 3. A greater number of trips are generated by the subject of other guide signs.
 - F. College or university. Only the initial, main campus of a college or university referenced in A.R.S. § 28-642(D) may qualify for signing, unless otherwise permitted by statute.

R17-3-902. Logo Sign Programs

A. Definitions.

“Attraction” means any of the following:

“Arena” means a facility that has a capacity of at least 5000 seats, and is a:

Stadium or auditorium;

Track for automobile, boat, or animal racing; or

Fairground that has a tract of land where fairs or exhibitions are held, and permanent buildings that include bandstands, exhibition halls, and livestock exhibition pens.

“Cultural” means an organized and permanent facility that is open to all ages of the public, and is a:

Facility for the performing arts, exhibits, or concerts; or

Museum with professional staff, and an artistic, historical, or educational purpose, that owns or uses tangible objects, cares for them, and exhibits them to the public.

“Domestic farm winery” means a site licensed by the Arizona Department of Liquor Licenses and Control under A.R.S. § 4-205.04 that produces at least 200 gallons and not more than 40,000 gallons of wine annually that is commercially packaged for off-premises sale, and is open to the public for tours to provide an educational format for informing visitors about wine.

“Domestic microbrewery” means a site licensed by the Arizona Department of Liquor Licenses and Control under A.R.S. § 4-205.08 that produces not less than 5000 gallons of beer in each calendar year following the first year of operation and not more than 1.24 million gallons of beer in a calendar year, and is open to the public for tours to provide an educational format for informing visitors about beer.

“Dude ranch” means a facility offering overnight lodging, meals, horseback riding, and activities related to cattle ranching;

“Educational” means a facility that is a:

Community college, regionally accredited college or university, or state university, as defined in R17-3-901.

Educational excludes a business or research park affiliated with a college or university;

Scientific institution, designated research area, or site of specialized research techniques and apparatus that is accredited by a nationally recognized educational accreditation agency, and that conducts regular tours; or

Zoological or botanical park that houses and exhibits living animals, insects, or plants to the public.

“Farm-related” means an established area or facility where consumers can purchase directly from Arizona producers locally-grown consumer-picked or pre-picked produce, or local products produced from locally-grown produce.

“Golf course” means a facility offering at least 18 holes of play. Golf course excludes a miniature golf course, driving range, chip-and-putt course, and indoor golf.

“Historic” means a structure, district, or site that is listed on the National or Arizona Register of Historic Places as being of historical significance, and includes an informational device to educate the public about the facility’s historic features.

“Mall” means a shopping area with at least 1 million square feet of retail shopping space.

“Recreational” means a facility for physical exercise or enjoyment of nature that includes at least one of the following activities: walking, hiking, skiing, boating, swimming, picnicking, camping, fishing, playing tennis, horseback riding, skating, hang-gliding, and climbing;

“Scenic tours” means a business that offers guided tours of scenic areas in Arizona through various means, including air, motorized vehicle, animal, walking, or biking;

“Average annual daily traffic” means the total volume of traffic passing a point or segment of an interstate or other state highway in both directions for one year, divided by the number of days in the year, adjusted for hours of the day counted, days of the week, and seasons of the year.

“Business” means an entity that provides a specific service open for the general public; and is located on a roadway within the required distance of an interstate or rural other state highway; and is a primary or secondary business.

“Contract” means a written agreement between ~~the Department and~~ a contractor and the Department to operate a logo sign program or any aspect of a logo sign program that describes the obligations and rights of both parties.

“Contractor” means a person or entity that enters into an agreement with the Department to operate a logo sign program or any aspect of a logo sign program, and that is responsible for those aspects of a logo sign program as provided in the contract.

“Department” means the Arizona Department of Transportation.

“Exit ramp” means a roadway by which traffic may leave a controlled access highway to another highway.

“FHWA” means the Federal Highway Administration of the U. S. Department of Transportation.

“Food court” means a collective food facility that exists in one contiguous area and contains a minimum of three separate food service businesses.

“Highway” has the same meaning as prescribed in A.R.S. § 28-101.

“Interchange” means the point at which traffic on a system of interconnecting roadways that have one or more grade separations, moves from one roadway to another at a different level.

“Intersection” has the same meaning as prescribed in A.R.S. § 28-601.

“Interstate system” has the same meaning as prescribed in A.R.S. § 28-7901.

~~“Interstate logo sign program” means a system to install and maintain specific service information signs on certain portions of an interstate system as provided in A.R.S. § 28-7311.~~

“Lease agreement” means a written contract between a contractor and a responsible operator or between the Department and a responsible operator to lease space for a responsible operator’s logo on a contractor’s or the Department’s specific service information sign.

“Logo” means an identification brand, symbol, trademark, name, or a combination of these, for a responsible operator.

“Logo sign” means a specific service information sign consisting of a lettered board attached to a separate rectangular panel that displays an identification brand, symbol, trademark, name, or a combination of these, for a responsible operator.

“Logo sign panel” means a separate rectangular panel on which a logo is placed.

~~“Major decision point” means a location at or before the point at which a rural state highway intersects with another rural state highway or a local roadway, that is within a municipality (except an urbanized area), and that the Department determines to be the point at which a driver shall make a decision whether to stay on the highway or turn off onto the other highway or local roadway.~~

“Municipality” means an incorporated city or town.

~~“MUTCD” has the same meaning as prescribed in R17-3-901.~~ means the Manual on Uniform Traffic Control Devices, a national standard for the design and application of traffic control devices that is published by the U.S. DOT, FHWA and that is the standard for traffic control devices on the streets and highways of this state as required by A.R.S. § 28-641.

“Primary business” means:

A gas service business that is within three miles of an intersection or exit ramp; is in continuous operation to provide services at least 16 hours per day, seven days per week for the interstate system; and 12 hours per day, seven days per week, for other highways;

A food service business that is within three miles of an intersection or exit ramp terminal and is in continuous operation to serve at least two meals per day at least six days per week;

A lodging service business that is within three miles of an intersection or exit ramp terminal;

A camping service business that is within five miles of an intersection or exit ramp terminal;

An attraction service business, or staging area of that business, that is within three miles of an intersection or exit ramp terminal; or

A 24-hour pharmacy that is within three miles in any direction of an interchange or exit ramp terminal: on the interstate system.

“Ramp terminal” means the area where an exit ramp intersects with a roadway.

“Responsible operator” means a person or entity that:

Owns or operates a an eligible business; pursuant to subsection (C) of this Section.

Has authority to enter into a lease, ~~and~~

Enters into a lease for a logo sign through the ~~interstate, rural; or urban logo sign program; and~~

Has not become ineligible to participate.

“Rural logo sign program” means a system to install and maintain specific service information signs on a rural state highway outside of an urbanized area, as provided in A.R.S. § 28-7311-~~(E)(2)~~.

“Rural state highway” means any class of state highway, ~~other than an interstate highway~~, located outside of an urbanized area as provided in A.R.S. § 28-7311-~~(B)~~ and (E)(2).

“Secondary business” means a business as follows:

A gas service business that is within three to 15 miles of an intersection or exit ramp terminal, and is in continuous operation to provide services at least eight hours per day, five consecutive days per week;

A food service business that is within three to 15 miles of an intersection or exit ramp terminal, and is in continuous operation to serve at least two meals per day (either breakfast and lunch, or lunch and dinner) for a minimum of five consecutive days per week;

A lodging service business that is within three to 15 miles of an intersection or exit ramp terminal;

A camping service business that is within five to 15 miles of an intersection or exit ramp terminal; or

An attraction service business, or staging area of that business, that is within three to 15 miles of an intersection or exit ramp terminal.

~~A 24-hour pharmacy that is between three to 15 miles of an interchange or exit ramp terminal.~~

“Specific service” means gas, food, lodging, camping, attractions, or 24-hour pharmacies.

“Specific service information sign” means a rectangular sign panel that contains directional information, one or more logos, and the following words:

“GAS,” “FOOD,” “LODGING,” “CAMPING,” “ATTRACTION,” OR “24-HOUR PHARMACY.”

“Staging area” means a regular, designated site where a scenic tour begins.

“State highway” has the same meaning as prescribed in A.R.S. § 28-101.

~~“Straight-ahead sign” means a specific service information sign that provides additional directional guidance to a location, route, or building located straight ahead on a roadway, and that is located before a junction that is a major decision point.~~

“Trailblazing sign” means a specific service information sign that provides additional directional guidance to a location, route, or building from another highway or roadway.

“Urbanized area” has the same meaning as prescribed in A.R.S. § 28-7311(E)(2).

“Urban logo sign program” means a system to install and maintain specific service information signs on an interstate system or other state highway within an urbanized area, as provided in A.R.S. § 28-7311.

“U.S. DOT” means the United States Department of Transportation.

B. Administration.

1. The Department may operate an urban, ~~an interstate~~, and a rural logo sign program, or may select a contractor to administer an urban, ~~an interstate~~, and a rural logo sign program. An urban logo sign program may be implemented on state highways in any urbanized areas in the state. A rural logo sign program may be implemented on state highways located outside of urbanized areas in the state. If the Department utilizes a contractor to administer an urban, ~~an interstate~~, and a rural logo sign program, the Department shall solicit offers, as provided in A.R.S. §§ 41-2501 through 41-2673, to select a contractor.
2. The Department may contract separately for an urban, ~~an interstate~~, and a rural logo sign program.
3. A contract shall specify the standards that a contractor shall use, which are contained in the MUTCD, U.S. DOT/FHWA, current edition as adopted by the Department under A.R.S. § 28-641 and any other requirements and standards prescribed by the Department.
4. The Department may propose its own form of a written lease agreement with a responsible operator. The Department shall pre-approve the form of any written lease agreement between a contractor and a responsible operator. A contractor’s lease agreement with a responsible operator shall include, by reference, the terms and conditions of the Department’s contract with a contractor under A.R.S. §§ 41-2501 through 41-2673. A contractor or the Department may terminate program participation of any responsible operator under subsection (C)(1).

C. Eligibility criteria for primary and secondary businesses.

1. Any business is ineligible to place a logo on a logo sign panel on a particular state highway if it already has a highway guide sign installed on that state highway by a contractor or the Department. Any business is ineligible for program participation if:
 - a. Thirty calendar days have elapsed since a contractor or the Department issued a notice of default to a business, during which time a business failed to cure the default, or
 - b. A business has defaulted on a lease.
2. Gas service business. To be eligible to place a logo on a logo sign panel, a gas service business shall:
 - a. Provide gasoline, diesel fuel, oil, and water for public purchase or use;
 - b. Provide sanitary restroom facilities and drinking water;
 - c. Provide a telephone available for public use; and
 - d. Meet the additional requirements for a primary or secondary gas service business in the definition of a primary or

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secondary business in subsection (A) of this Section.

3. Food service business. To be eligible to place a logo on a logo sign panel, a food service business shall:
 - a. Provide sanitary restroom facilities for customers;
 - b. Provide a telephone available for public use;
 - c. If a food service business is part of a food court located within a shopping mall, the shopping mall may qualify as the responsible operator if the food court:
 - i. Complies with this Section, and
 - ii. Has clearly identifiable on-premise signing consistent with the logo sign that is sufficient to guide motorists directly to the entrance to the food court.
 - d. Have a license where required; and
 - e. Meet the additional requirements for a primary or secondary food service business in the definition of a primary or secondary business in subsection (A).
4. Lodging service business. To be eligible to place a logo on a logo sign panel, a lodging service business shall:
 - a. Provide five or more units of sleeping accommodations;-
 - b. Provide a telephone available for public use;
 - c. Have a license, where required;
 - d. Provide sanitary restroom facilities for customers; and
 - e. Meet the additional requirements for a primary or secondary lodging service business in the definition of a primary or secondary business in subsection (A).
5. Camping service business. To be eligible to place a logo on a logo sign panel, a camping service business shall:
 - a. Be able to accommodate all common types of travel trailers and recreational vehicles;
 - b. Have a license, where required;
 - c. Provide sanitary restroom facilities and drinking water;
 - d. Be available on a year-round basis unless camping in the community is of a seasonal nature in which case the facilities in question shall be open to the public 24 hours per day, seven days per week during the entire season; and
 - e. Meet the additional requirements for a primary or secondary camping service business in the definition of a primary or secondary business in subsection (A).
6. Attraction service business. To be eligible to place a logo on a logo sign panel, an attraction service business shall meet the following requirements, if applicable:
 - a. Derive less than 50% of its sales from:
 - i. The sale of alcohol consumed on the premises, or
 - ii. Gambling.
 - b. Derive more than 50% of its sales or visitors during the normal business season from motorists ~~not residing who do not reside~~ within a 25-mile radius of the business.
 - c. Provide at least 10 parking spaces.
 - d. ~~Be significant as a historic, Provide historical, cultural, scientific, educational, or recreational site, natural scenic phenomenon, or unique commercial amusement, or leisure activity.~~ activities to the public.
 - e. Be in continuous operation at least six hours per day, six days per week, except:
 - i. An arena attraction shall hold events at least 28 days annually;
 - ii. A cultural attraction shall be open at least 180 days annually;
 - iii. An educational attraction shall operate at least six hours per day, five days per week;
 - iv. A domestic farm winery or domestic microbrewery shall be open for tours at least 40 days annually;
 - v. A farm-related attraction shall be open at least 120 days annually; or
 - vi. A dude ranch shall be open at least 150 days annually.
 - f. Meet the additional requirements for a primary or secondary attraction service business in the definition of a primary or secondary business in subsection (A) of this Section.
7. Twenty-four hour pharmacy business. To be eligible to place a logo on a logo sign panel, a 24-hour pharmacy business shall:
 - a. Operate continuously 24 hours per day, seven days per week;
 - b. Have a state-licensed pharmacist present and on duty at all times; and
 - c. Meet the additional requirements for a primary ~~or secondary~~ 24-four hour pharmacy business in the definition of a primary ~~or secondary~~ business in subsection (A).

D. Ranking. Responsible operator pricing and lease procedures.

1. ~~If more than six eligible businesses providing the same specific service request lease space and placement of a logo on one specific service information sign, a contractor or the Department shall use the following ranking criteria to determine which businesses are awarded a lease:~~
 - a. ~~The business closest to an intersection or exit ramp terminal shall receive first priority,~~
 - b. ~~A gas service business or a food service business that provides the most days and hours of service shall receive~~

second priority;

- e. A business that does not have an off-premise advertising sign to direct motorists to its business within five miles from the location of the specific service information sign shall receive third priority, and
 - d. All other businesses shall be ranked on a first come first served basis by the date and time of the initial request.
2. If two or more businesses have the same ranking, a contractor or the Department shall award a lease to the first business that requests placement of a logo on a logo sign panel. A contractor or the Department shall establish a waiting list for other businesses in sequence of each request.
 3. A contractor or the Department may elect not to renew the lease of a responsible operator if another eligible business with higher priority requests lease space for placement of a logo on a logo sign panel.
 1. In the rural and urban logo sign programs, a contractor or the Department may use:
 - a. Rate schedules that are established and periodically adjusted by the Department; or
 - b. Competitive pricing established by one or more offers from potential or current responsible operators.
 2. A contractor or the Department may use competitive pricing or rate schedules to determine the ranking order of potential or current responsible operators who may be awarded a logo sign lease at each appropriate highway interchange or location.
 3. Along with the amount of available signage, competitive pricing or rate schedules may be based on any one or a combination of the following additional factors:
 - a. The average annual daily traffic at, or adjacent to, the highway location of the specific service information sign;
 - b. The population mix and relative distribution between primary and secondary businesses that appear to meet all the program requirements;
 - c. The ranking order determined by a contractor or the Department as established by competitive pricing proposed or offered by potential or current responsible operators, or rate schedules, at each appropriate highway interchange or location; or
 - d. The competitive market conditions, as well as economic, regulatory, logistical, and other related factors as determined by the Department.
 4. If any of the factors in subsection (D)(3) is used in competitive pricing or rate schedules, a contractor or the Department shall make advance notification of information relevant to these factors available to businesses on the contractor's or the Department's website.
 5. If the factors in subsection (D)(3) do not resolve the business rankings at a location, a contractor or the Department shall prioritize the remaining requests for placement of a logo on a specific service information sign panel based on the following additional factors in the order listed below:
 - a. The responsible operator situated closest to the highway intersection or exit ramp terminal;
 - b. A gas service business or a food service business that provides the most days and hours of service to the public; and
 - c. The first-in-time eligible responsible operator to request placement of a logo on a logo sign panel.
 6. If a potential responsible operator requests placement of a logo on a specific service information sign panel at a highway intersection or interchange where there are no available placements, and does so no later than 90 calendar days before the first expiration of an existing lease with a lower-ranked responsible operator at that location, a contractor or the Department may award a lease to the highest-ranked responsible operator at that location. A contractor or the Department may establish a waiting list of requesting businesses and potential responsible operators.
 7. A contractor or the Department may choose not to renew an existing lease or a lease expiring within the next 90 calendar days if another eligible business with higher priority requests placement of a logo on a specific service information sign panel at the same location.

E. Secondary businesses.

1. Lease limitations. For a secondary business, a contractor or the Department may enter into a lease for up to five years or renew a lease for up to five years, with the following terms:
 - a. ~~A responsible operator is guaranteed a term of two years, providing the responsible operator complies with all other terms of the lease;~~ A contractor or the Department shall review the lease of a responsible operator at the beginning of the 24th month of the lease term to determine if the responsible operator complies with all other terms of the lease;
 - b. After the ~~two-year period, 24-month review,~~ a contractor or the Department shall may terminate the lease and remove the appropriate logo from the logo sign panel if another eligible business with higher priority requests lease space for a logo on a logo sign panel; and
 - c. A contractor or the Department shall notify a responsible operator at least ~~six months~~ 90 calendar days before terminating the lease and removing a logo from the logo sign panel.
2. A contractor or the Department shall may display the following additional information on a specific service information sign for a secondary business, as space allows, based on the following ranking order:
 - a. Distance,
 - b. Days and hours of operation, and

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- c. Seasonal operation.
- F.** Contractor or Department responsibility.
1. A contractor shall follow all Department design standards and specifications for all sign panels, supports, and materials, as provided in the contract and the MUTCD.
 2. A contractor or the Department shall ensure that a business complies with all criteria established in this Section. A contractor or the Department ~~shall not~~ may choose not to enter into a lease agreement or renew a lease agreement if the eligibility criteria in subsection (C) of this Section are not met. If a responsible operator becomes ineligible to place a logo on a logo sign panel, a contractor or the Department shall remove a logo from a logo sign panel after notifying a responsible operator as provided in the lease.
 3. A contractor or the Department shall require that a responsible operator certify in writing as directed that a responsible operator will comply with all applicable federal, state, and local laws, ordinances, rules, ~~and regulations,~~ and contractual requirements of the rural or urban logo sign program.
 4. Nothing in these rules shall require a contractor or the Department to place or maintain a specific service information sign at any particular interchange or intersection. A contractor or the Department shall not place a specific service information sign that obstructs or ~~detracts from~~ interferes with a traffic control device.
 5. A contractor shall not remove or relocate an existing official traffic control device, as defined in A.R.S. § 28-601~~(12)~~, to accommodate a specific service information sign without prior written approval by the Department, or a local authority under A.R.S. § 28-643.
 6. A contractor or the Department shall provide a copy of the signed lease agreement to a responsible operator, ~~as defined in subsection (A).~~ A responsible operator shall deliver a logo for the logo sign panel to a contractor or the Department for installation, or contract with a contractor to fabricate a logo for a logo sign panel to a responsible operator's and the Department's specifications.
 7. ~~A~~ Within 30 calendar days after receipt of a written request from a responsible operator, a contractor or the Department shall return any pre-paid lease payments to a responsible operator if a responsible operator's logo is not installed on a logo sign panel within 90 calendar days of tendering the payments, for reasons solely caused by the Department or a contractor.
 8. A contractor shall obtain an encroachment permit under R17-3-501 through R17-3-509 before erecting or modifying a specific service information sign along a state highway.
 9. If a contractor requests an encroachment permit under R17-3-501 through R17-3-509, the Department's staff shall decide the best placement of a specific service information sign and shall cooperate with a contractor to provide information to the motoring public as prescribed in subsection (E)(2).
 10. If an urban, ~~interstate,~~ or rural logo sign program is terminated, a contractor or the Department shall:
 - a. Notify a responsible operator by certified mail, or a mutually agreed upon electronic communication method, of the program termination and the location where a responsible operator may claim its logo;~~;~~
 - b. Remove all sign panels and supports, as directed by the Department; and
 - c. Refund any unused lease payments on a prorated basis to each responsible operator.
 11. A contractor or the Department shall solely determine the position and location of new or additional logos on logo sign panels or specific service information signs when logo sign vacancies occur on a logo sign panel or a specific service information sign panel, and a new responsible operator wishes to lease space on that panel, or a waiting list exists.
 12. In a lease agreement with a responsible operator, a contractor or the Department may collect all applicable taxes.
- G.** Urbanized or rural boundary changes. If the boundaries of an urbanized area, as identified in a subsequent decennial census, are relocated or adjusted, a contractor or the Department shall allow:
1. The logo signs within the urbanized area boundaries and outside of those boundaries to remain in place until the minimum lease obligations between a contractor and a responsible operator have been fulfilled; or
 2. The minimum lease obligations between the Department and a responsible operator have been fulfilled; or
 3. Until lease termination, whichever occurs first.
- H.** Signage transition. Logo signage in place at the end of a lease term following boundary changes in subsection (G) may be transitioned from the urban to the rural logo sign program or from the rural to the urban logo sign program as appropriate.
- I.** Elimination of exit ramp or interchange. When the Department eliminates an exit ramp or interchange from the state highway system, a contractor or the Department may install and maintain a specific service information sign at an exit ramp or interchange directly preceding the exit ramp or interchange that the Department eliminates in each direction, as follows:
1. A responsible operator may request placement of a logo on a logo sign panel by contacting the Department in writing.
 2. A business affected by exit ramp or interchange elimination shall meet the following eligibility criteria for continued program participation as prescribed in R17-3-902(C), except for any distance requirement:
 - a. Be located directly off the interstate or other state highway, and
 - b. Had previous routine access from the eliminated exit ramp or interchange with direct access from:
 - i. The crossroad at the eliminated exit ramp or interchange;
 - ii. The frontage road of the interstate or other state highway at the eliminated exit ramp or interchange, within

- 1000 feet of the crossroad; or
iii. The frontage road of the interstate or other state highway at the eliminated exit ramp or interchange, within 1000 feet of the crossroad, as the frontage road existed before the exit ramp or interchange was eliminated.

R17-3-903. Urban Logo Sign Program and Requirements Repealed

- A.** Elimination of exit ramp or interchange. For purposes of the urban logo sign program, when the Department eliminates an exit ramp or interchange from the state highway system in an urbanized area, a contractor or the Department shall install and maintain a specific service information sign panel on an interstate highway within an urbanized area, at an exit ramp or interchange directly preceding the exit ramp or interchange that the Department eliminates, as prescribed in this Section.
1. A business may request placement of a logo on a logo sign panel in writing by contacting the Department.
 2. A business shall meet the following eligibility criteria as prescribed in R17-3-902(C), except for any distance requirement:
 - a. Be located directly off the interstate highway, and
 - b. Have previous routine access from the eliminated exit ramp or interchange with direct access from:
 - i. The crossroad at the eliminated exit ramp or interchange;
 - ii. The frontage road of the interstate at the eliminated exit ramp or interchange, within 1000 feet of the crossroad; or
 - iii. The frontage road of the interstate at the eliminated exit ramp or interchange, within 1000 feet of the crossroad, as the frontage road existed before the exit ramp or interchange was eliminated.
 3. A business is responsible for fulfilling all other statutory, regulatory, and contractual requirements of the urban logo sign program.
 4. A contractor or the Department shall not place a specific service information sign in an urban area for more than three years.
- B.** Urban area. Except as prescribed in this Section, a contractor shall not place a specific service information or directional sign on any highway in an urbanized area, which includes the following:
1. Phoenix:
 - a. Interstate 10, Agua Fria River bridge to Gila River Indian Reservation boundary (milepost 161.68);
 - b. Interstate 17, Skunk Creek bridge to junction Interstate 10;
 - c. State Route 51;
 - d. US 60, Beardsley Canal to Ellsworth Road (milepost 191.40);
 - e. State Route 85, 17th Avenue to 15th Avenue;
 - f. State Route 87, Chandler south city limit (milepost 162.82) to Salt River bridge;
 - g. State Route 88, US 60 to 200 feet north of Tomahawk Road (milepost 197.50);
 - h. State Route 101 loop;
 - i. State Route 143;
 - j. State Route 153;
 - k. State Route 202 loop; or
 - l. State Route 303 loop.
 2. Tucson:
 - a. Interstate 10, from railroad overpass (milepost 243.33) to milepost 272.00 (between Kolb and Rita traffic interchanges);
 - b. State Business 19, milepost 59.00 (between Hughes Plant Road and Los Reales Road) to junction Interstate 10;
 - c. Interstate 19, San Xavier Indian Reservation boundary (milepost 57.96) to junction Interstate 10;
 - d. State Route 86, milepost 167.83 (between Century Road and Old Ajo Way) to State Business 19;
 - e. State Route 77, junction Interstate 10 to Oro Valley north city limit (milepost 84.16); or
 - f. State Route 210; or
 3. Any other urbanized area with a population of 100,000 or more.
- C.** Boundary changes. If the boundaries of an urbanized area, as identified in a subsequent decennial census, are relocated so that an intersection, interchange, or exit ramp is no longer eligible for the urban logo sign program, the Department shall allow the logo signs within the revised urbanized boundaries to remain until the minimum lease obligations between a contractor and a responsible operator, or between the Department and a responsible operator have been fulfilled, or until lease termination, whichever occurs first.

R17-3-904. Rural Logo Sign Program MUTCD Requirements for Logo Signs

- A.** Number of sign panels and services allowed. Only No more than four specific service information sign panels are allowed on an interstate or ~~rural~~ other state highway at the approach to an intersection, interchange, or exit ramp.
1. Each specific service information sign panel shall contain a maximum of six logos as provided in Chapter 2J of the current version of the MUTCD.

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2. ~~Only one~~ No more than two specific service information sign ~~panel panels~~ for each type of specific service ~~is are~~ allowed on an interstate or ~~rural~~ other state highway at the approach to an intersection, interchange, or exit ramp. A contractor or the Department may combine types of specific services as prescribed in subsection ~~(E)~~: (A)(3).
 3. Except for existing logo signs displayed or approved for display as of July 6, 2012, ~~No no~~ more than three types of services shall be represented on any specific service information sign panel. If three types of services are displayed on one specific service information sign panel, the panel shall have two logo sign panels for each service, or a total of six logo sign panels. If two types of services are displayed on one sign, the logo sign panels shall be limited to either three for each type, for a total of six logo sign panels, or four for one type and two for the other type, for a total of six logo sign panels.
 4. One service type shall appear on no more than two specific service information sign panels.
 5. When logos for more than six businesses of a specific service type are displayed at the same interchange or intersection approach, no more than 12 logos of a specific service type shall be displayed on no more than two specific service information sign panels.
- B.** Sign sequence. A contractor or the Department shall install successive specific service information signs for participating responsible operators in the direction of travel for the following as specified in the MUTCD:
1. Twenty-four hour pharmacies,
 2. Attractions,
 3. Camping,
 4. Lodging,
 5. Food, and
 6. Gas services.
- C.** Seasonal requirements. If a responsible operator operates on a seasonal basis, a contractor or the Department shall:
1. Remove or cover a logo on a logo sign panel during the off-season; or
 2. Display the dates of operation, if additional information is not required on the sign under R17-3-902(E)(2).
- D.** Sign standards. If the Department decides to move a specific service information sign because of construction or reconstruction of transportation facilities, or the placement of other signs or traffic control devices, the standards of the MUTCD apply regarding the new placement.
- ~~**E.** Combination signs.~~
- ~~1. A contractor or the Department shall combine three or fewer types of specific services on a specific service information sign panel, or two or fewer logos for each service, for a total of six logos, as provided in Chapter 2J of the current version of the MUTCD, if:~~
 - ~~a. A contractor or the Department reasonably expects that three or fewer businesses for each service type will request a logo sign within five years from the time of installing the combination sign;~~
 - ~~b. The approach to an intersection, interchange, or exit ramp on an interstate or rural state highway has insufficient space in a single direction for four specific service information signs; or~~
 - ~~c. Businesses for each of the six types of specific services request placement of a logo on a logo sign panel.~~
 - ~~2. A contractor or the Department shall attempt to achieve representation of as many different service types as possible.~~
 - ~~3. A contractor or the Department shall not display a logo on a combination sign panel if the specific service type advertised by the logo already exists on a specific service information sign panel on the approach to the intersection, interchange, or exit ramp.~~
- ~~**F.** Trailblazing signs.~~
1. A contractor or the Department shall install a trailblazing sign for a responsible operator along a highway if a responsible operator's business is not located on, and is not visible from an intersection with a highway as directed from the specific service information sign.
 2. A contractor or the Department may locate a trailblazing sign near all intersections where the direction of the route changes or where a motorist may be uncertain which road to follow.
 3. A trailblazing sign is limited to four or fewer ~~logos~~: logo sign panels.
 4. A contractor or the Department shall obtain written approval from a local governing authority to install and maintain a trailblazing sign along a highway that is not under the Department's maintenance jurisdiction.
 5. A contractor or the Department shall not install a logo on a specific service information sign panel until all necessary trailblazing signs have been installed.
 6. A trailblazing sign shall indicate by arrow the direction to a responsible operator's business.
 7. A trailblazing sign may:
 - a. Duplicate the logo sign or specific service information sign, or both;
 - b. Consist of two lines of text; or
 - c. Include the type of specific service and distance to a responsible operator's business.
- ~~**G.** Sign requirements.~~ A logo sign shall comply with A.R.S. § 28-648. Descriptive advertising words, phrases, or slogans are prohibited on a logo sign, except:
1. If a responsible operator does not have an official trademark or logo, a responsible operator may display as its logo,

on a logo sign panel, the name indicated in its partnership agreement, incorporation documents, or other documentation.

2. ~~Words to identify alternative fuel availability, including “diesel,” “propane,” “natural gas,” and “alcohol” may be placed on a logo sign panel for a gas service business. A contractor or the Department may place supplemental wording on logo sign panels in accordance with the MUTCD.~~

R17-3-905. Rural Logo Sign Requirements

~~A.~~ In addition to R17-3-902 through R17-3-904 and R17-3-906, the following requirements apply to the rural logo sign program: spacing between specific service information signs on a rural state highway shall be in accordance with the MUTCD based on engineering judgment.

1. ~~A business is ineligible to place a logo on a logo sign panel if the business is visible and recognizable from a rural state highway 300 feet from the intersection.~~
2. ~~A contractor or the Department shall not install a specific service information sign on a rural state highway less than 300 feet before an intersection from which the services are available.~~
3. ~~The spacing between specific service information signs on a rural state highway shall be at least 200 feet based on engineering judgment.~~

~~B.~~ Specific service information sign.

1. ~~A contractor or the Department shall install a specific service information sign that combines three or fewer types of specific services and displays the legend “SERVICES” at an approach to an intersection on a rural state highway, in accordance with Chapter 2J of the current version of the MUTCD, if:~~
 - a. ~~A contractor or the Department reasonably expects three or fewer types of specific services to lease space for placement of logos on a specific service information sign panel, and~~
 - b. ~~A contractor or the Department reasonably expects the total number of logo sign panels to be leased on one specific service information sign will be at least three and not more than six.~~
2. ~~A contractor or the Department shall install no more than one specific service information sign panel that displays the legend “SERVICES” at an approach to an intersection.~~
3. ~~A contractor or the Department shall not display a logo on a specific service information sign panel that displays the legend “SERVICES” if the specific service type advertised by the logo sign already exists on a specific service information sign at the approach to the intersection.~~

~~C.B.~~ Agreement. A community official designated by a municipality or town organized under Arizona law may sign a written agreement with the Department or its contractor a contractor or the Department to prohibit installation of logos on logo sign panels or specific service information sign panels on rural state highways within the recognized boundaries of the community.

R17-3-906. Existing Leases

Any change to R17-3-902 through R17-3-905 does not affect a responsible operator’s lease before the current lease expires.