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 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1889.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 8, 2011.

[R11-140]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R12-15-101	Amend
R12-15-107	New Section

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

Authorizing statute: A.R.S. § 45-105(B)

Implementing statute: A.R.S. § 45-118

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

Notice of Rulemaking Docket Opening: 17 A.A.R. 1882, September 23, 2011 *(in this issue)*

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

Name:	Ken Slowinski, Chief Counsel
Address:	Department of Water Resources 3550 N. Central Ave. Phoenix, AZ 85012
Telephone:	(602) 771-8472
Fax:	(602) 771-8686
E-mail:	kcslowinski@azwater.gov
or	
Name:	Doug Dunham, Legislative Liaison
Address:	Department of Water Resources 3550 N. Central Ave. Phoenix, AZ 85012
Telephone:	(602) 771-8490
Fax:	(602) 771-8690
E-mail:	dwdunham@azwater.gov

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

Reasons for initiating the rule

During the 2011 regular legislative session, the legislature passed and the Governor signed into law Senate Bill ("S.B.") 1624, the Environment Budget Reconciliation Bill (Laws 2011, Ch. 36, § 2, effective July 20, 2011). Section

2 of S.B. 1624 amended the Arizona Revised Statutes by adding section 45-118 which authorizes the Department of Water Resources ("Department") to assess and collect a fee from each municipality in the state ("municipality fee"). The purpose of this rulemaking is to adopt a rule establishing the municipality fee for each fiscal year beginning with fiscal year 2012-2013.

A.R.S. § 45-118 provides that the municipality fee shall be assessed proportionately, based on the population of each municipality. A.R.S. § 45-118 further provides that the Director of the Department ("Director") shall deposit all municipality fees in the water resources fund established by A.R.S. § 45-117. The water resources fund was established in 2010 and, in addition to the municipality fees authorized by A.R.S. § 45-118, the fund consists of certain application and filing fees paid to the Department. A.R.S. § 45-117(A). Monies in the water resources fund are to be used by the Department to carry out the purposes of title 45, Arizona Revised Statutes. A.R.S. § 45-117(C). Monies in the fund are subject to legislative appropriation, and any monies remaining in the fund at the end of a fiscal year remain in the fund and are exempt from lapsing. A.R.S. § 45-117(B).

Because A.R.S. § 45-118 requires the Director to assess the municipality fee proportionately based on each municipality's population, the only thing the Director must determine in establishing the fee for a fiscal year is the total amount of fees to be assessed and collected from all municipalities during the fiscal year. After the total amount of municipality fees is determined, the amount to be assessed and collected from each municipality is arrived at by performing a simple mathematical calculation based on each municipality's population. A.R.S. § 45-118 does not provide any guidance to the Director on how to determine the total amount of municipality fees to be assessed and collected during a fiscal year. However, Section 7 of S.B. 1624 does contain language expressing the legislature's intent regarding the maximum amount of municipality fees the Department may assess and collect during a fiscal year. Section 7(B) of S.B. 1624 (as applied to the years following fiscal year 2011-2012) provides that it is the intent of the legislature that the revenue generated by the municipality fees collected pursuant to A.R.S. § 45-118 shall not exceed $7,000,000.

The proposed rule contains a methodology for determining the total amount of fees the Director will assess and collect from all municipalities during a fiscal year. The first step is to determine the maximum total amount of fees the Director may assess and collect from all municipalities during the fiscal year pursuant to A.R.S. § 45-118. While the legislature expressed its intent in S.B. 1624 that the total amount of municipality fees not exceed $7,000,000, the Department recognizes that the legislature may choose in the future to express a different intent. For that reason, the proposed rule provides that the total maximum amount of municipality fees the Director may assess and collect during a fiscal year is $7,000,000, unless the legislature expresses a contrary intent in either statute or session law.

Although the Department may assess and collect the maximum amount of municipality fees allowed in a fiscal year, the Department recognizes that its authority to use the fees in the water resources fund during a fiscal year is restrained by the amount of money the legislature appropriates to it from the fund for that fiscal year. Based on the amount of monies appropriated to the Department from the fund during the past several years, the Department has determined that if it were to assess and collect the maximum amount of municipality fees allowed in a fiscal year, the amount of fees deposited in the water resources fund during the fiscal year, together with the amount of monies carried over in the fund from the prior fiscal year, likely would greatly exceed the amount of money appropriated to the Department from the fund for the fiscal year. For that reason, the proposed rule provides that after the Director determines the maximum amount of fees the Department may assess and collect in the fiscal year, the Director shall reduce that amount by the amount of monies carried over in the water resources fund from the prior fiscal year.

Because the amount of money appropriated to the Department from the water resources fund in any given year in the future could be significantly different than the amount appropriated to it from the fund for the past several fiscal years, the proposed rule also includes provisions allowing the Director to adjust the amount of the reduction if necessary to allow the Department to use all of the money appropriated to it from the water resources fund in the fiscal year or to prevent the over-accumulation of unobligated monies in the fund at the end of the fiscal year. It is important to note that in no event can the total amount of municipality fees assessed by the Department for a fiscal year exceed the maximum amount intended by the legislature.

An explanation of the rule

R12-15-101 sets forth the definitions applicable to Title 12, Article 1. The Department is proposing to amend R12-15-101 to add new subsections and renumber other subsections. Specifically, the Department is adding definitions to R12-15-101 for the terms, "fiscal year," "municipality," "population," and "water resources fund."

Subsection (A) of R12-15-107 requires each municipality in the state to pay a fee to the Department in fiscal year 2011-2012 in the amount calculated pursuant to subsection (B) and by the dates specified in subsection (E).

Subsection (B) provides that a municipality's fee will be calculated in the following manner:

1. Determine the total amount of fees the Director will assess and collect from all municipalities during the fiscal year. The Director will determine that amount by first determining the maximum total amount of fees the Director may assess and collect from all municipalities during the fiscal year pursuant to A.R.S. § 45-118. Unless the legislature expresses a contrary intent in statute or session law, this amount will be $7,000,000. The Director will then subtract from that amount the amount of unobligated monies in the water resources fund at the beginning of the fiscal year. The Director may decrease this reduction if necessary to allow the

Department to use all the money appropriated to it from the water resources fund for the fiscal year, or increase the reduction if necessary to avoid an excessive accumulation of unobligated monies in the fund at the end of the fiscal year.

2. Divide the municipality's population by the total population of all municipalities in the state. The population numbers will all be based on the most recent United States decennial census.
3. Multiply the dollar amount obtained in step 1 with the result obtained in step 2. This number will be the municipality's fee for a fiscal year.

Subsection (C) states that the Director shall mail each municipality a notice of its municipality fee by July 15 of each fiscal year. Such notice shall be mailed to the municipality's city or town manager or city or town attorney.

Subsection (D) allows each municipality to seek review of the calculation of its fee. Review shall be limited only to whether the Director's calculation of the fee contained a mathematical, clerical or typographical error.

Subsection (E) establishes the timing of payment of the municipality fee. A municipality shall pay at least one-half of its fee by August 15 of that fiscal year and any remaining portion of the fee by January 15 of the fiscal year. If the due date for a payment falls on a weekend, the payment is due on the next business day.

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

None

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

Not applicable

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

1. Identification of the proposed rulemaking.

The purpose of this proposed rulemaking is not to change any specific conduct of the regulated community. Rather, the purpose of this rulemaking is to establish a new fee to be assessed and collected from municipalities, as authorized by A.R.S. § 45-118. These fees will be deposited in the water resources fund established by A.R.S. § 45-117 and used by the Arizona Department of Water Resources ("Department") to carry out the purposes of Title 45, Arizona Revised Statutes.

As a result of state revenue shortfalls, the amount of money appropriated to the Department from the state general fund in fiscal years 2010-2011 and 2011-2012 was significantly less than the amounts appropriated to the Department in prior fiscal years. This has required the Department to lay off employees, close its offices outside of Phoenix, and curtail certain functions it has historically performed, including state-wide water monitoring and planning, data collection, protection of Arizona's Colorado River entitlements, preparation of hydrologic studies and support for streamflow and flood warning monitoring. To provide the Department with alternative funding, the legislature enacted legislation during the 2011 regular session that added section 45-118 to the Arizona Revised Statutes. Laws 2011, Ch. 36, § 2. A.R.S. § 45-118 authorizes the Department to assess and collect fees from each municipality in the state ("municipality fees") and deposit the fees into the water resources fund. A session law included in the legislation limits the total amount of municipality fees the Department may collect during a fiscal year to $7,000,000. Laws 2011, ch. 36, § 7(B).

Through this rulemaking, the Department is proposing to adopt a rule establishing the municipality fees. These fees will allow the Department to acquire alternative revenues and allow the Department to better perform the activities necessary for it to accomplish its mission of securing long-term dependable water supplies for Arizona's communities.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.

Incorporated municipalities in the state will be directly affected by and bear the costs of the proposed rulemaking. This is because the municipality fees will be assessed directly on and collected from municipalities.

The Department will directly benefit from the proposed rulemaking because the municipality fees will be deposited in the water resources fund and will be used by the Department to carry out the purposes of Title 45, Arizona Revised Statutes, subject to appropriation by the legislature.

3. Cost-benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule

Probable costs to the Department of the proposed rulemaking include costs associated with submitting bills to each municipality on an annual basis. The Department would not be required to hire new full time employees to

implement and enforce this proposed rule. Current staff resources will be used to prepare and send bills to municipalities. A.R.S. § 45-118 does not provide the Department with authority to enforce the rule.

The proposed rulemaking will benefit the Department by allowing the Department to increase funding for its programs.

No other state agency will be affected by the implementation of the proposed rulemaking.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking

Incorporated municipalities within the state of Arizona will directly bear the costs associated with the new municipality fees. The Department believes that the method of determining each municipality's fee represents the most reasonable and fair calculation of those fees. The actual cost to each municipality will vary year-to-year, depending on the total amount of municipality fees the Department assesses each year.

The municipality fees for fiscal year 2011-2102 were established by a rule adopted pursuant to a rulemaking exempt from the rulemaking requirements in Title 41, Chapter 6, Arizona Revised Statutes. Under that rule, the total amount of municipality fees assessed during the fiscal year were calculated by subtracting the amount of unobligated monies carried over in the water resources fund from the prior fiscal year ($743,312.46) from $7,000,000 (the maximum total amount of municipality fees the Department was authorized to assess and collect during the fiscal year). The result, $6,256,687.54, amounts to approximately $1.25 per person for each city and town. The individual municipality fees ranged from $439.77 for the Town of Winkelman to $1,800,995.14 for the City of Phoenix.

Under the proposed rule, the Department would calculate the total amount of municipality fees to be assessed during a fiscal year in the same manner as was done for fiscal year 2011-2012, with two possible deviations. First, should the legislature express its intent that the maximum total amount of municipality fees the Department may assess and collect during a fiscal year is an amount different than $7,000,000, the Department would calculate the total amount of municipality fees to be assessed during the fiscal year using the maximum total amount expressed by the legislature instead of $7,000,000. Second, the Director has the option of modifying the amount of the reduction of the unobligated monies in the water resources fund. The Director may do this in either of the following two ways: (1) the Director may decrease the amount of the reduction if the Director determines that the reduction would prevent the Department from using all the monies appropriated to it from the water resources fund for the fiscal year; or (2) the Director may increase the amount of the reduction if the Director determines that the reduction is insufficient to avoid the accumulation of an excessive amount of unobligated monies in the water resources fund at the end of the fiscal year.

These possible deviations from the manner in which the municipality fees were calculated for fiscal year 2011-2012 should not result in a significantly different impact to cities and towns than the impact for fiscal year 2011-2012 because a $1,000,000 increase or decrease in the total municipality fees would result in an increase or decrease for each municipality of only approximately $.20 per person included in their 2010 decennial census population number. Using the 2010 decennial census population numbers, if the Department were to assess $7,000,000 of municipality fees in a fiscal year, each municipality would be required to pay a fee of approximately $1.39 per person included in their census population. The individual municipality fees would range from $492.02 for the Town of Winkelman to $2,014,958.53 for the City of Phoenix. A $1,000,000 increase or decrease would result in an increase or decrease of the municipality fee in a range of $70.29 for the Town of Winkelman to $287,851.22 for the City of Phoenix.

The proposed rulemaking will benefit incorporated municipalities within the state of Arizona by providing additional funding for the Department's programs that are essential for ensuring a long-term dependable water supply for the state and for providing water supply information that is necessary for municipalities to plan future development.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The Department does not believe that businesses will be directly affected by this proposed rulemaking. However, it is expected that many municipalities will pass their municipality fees on to residents and businesses within their municipal boundaries through increased water rates, taxes or fees. If that occurs, the proposed rulemaking would have an indirect impact on those businesses required to pay the higher water rates, taxes or fees. However, the Department does not believe that this would result in a significant impact to any individual business class because, as stated in section 3(b) above, if the Department were to assess a total of $7,000,000 in municipality fees in a fiscal year, this would amount to approximately $1.39 per person included in each municipality's census population. A $1,000,000 increase or decrease the total amount of municipality fees in the fiscal year would result in an increase or decrease of only approximately $.20 per person included in the municipality's census population.

While the proposed rulemaking will not directly affect businesses, the Department believes that businesses will see benefits from the proposed rulemaking. Specifically, by providing additional funding to the Department, the proposed rulemaking will allow the Department to better meet its mission of securing a long-term dependable water supply for the state. This will provide greater clarity to businesses regarding the availability of water for their current uses and any expansion of those uses. It also will allow existing businesses to remain in the state and new business to locate here.

4. Probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.

The Department does not believe that private or public employment in business, agencies and political subdivisions of this state will be directly affected by this rulemaking. Accordingly, the probable impact on private and public employment will be minimal or nonexistent.

Although the proposed rulemaking will require municipalities to pay additional fees to the Department, the Department does not believe this will impact employment within municipalities because it is expected that most municipalities will pass their fees on to residents and businesses within their municipal boundaries. As explained in section 3(c) above, the Department does not believe this will result in a significant economic impact to businesses, including employment by businesses.

5. Probable impact of the proposed rulemaking on small business.

   a. Identification of the small businesses subject to the proposed rulemaking.

   The Department believes that, in most cases, the impacts on small businesses as a result of this proposed rulemaking will be negligible. It is expected that many municipalities will pass their fees on to residents and businesses within their municipal boundaries. In that case, small businesses of all types would be affected as a result of this proposed rulemaking. However, the Department anticipates that, even in those cases, the probable impact on small businesses will be minimal because if the Department were to assess $7,000,000 of municipality fees in a fiscal year, an individual municipality's fee would amount to approximately $1.39 per person included in the municipality's census population. A $1,000,000 increase or decrease the total amount of municipality fees in the fiscal year would result in an increase or decrease of only approximately $.20 per person included in the municipality's census population.

   b. Administrative and other costs required for compliance with the proposed rulemaking.

   None

   c. A description of the methods that the agency may use to reduce the impact on small business.

   Not applicable

   d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

   The Department believes that this proposed rulemaking significantly benefits all private persons and consumers located within the state of Arizona. Particularly, the proposed rulemaking will provide the Department with additional funding that will allow it to perform activities that will benefit the entire state of Arizona, including private persons and consumers, by securing a long-term dependable water supply. Such activities include state-wide water monitoring and planning, data collection, protection of Arizona's Colorado River entitlements, preparation of hydrologic studies and support for streamflow and flood warning monitoring.

   There will be no direct costs to private persons and consumers. As mentioned above, it is expected that many municipalities will pass their fees on to residents and businesses within their municipal boundaries through increased water rates, taxes or fees. However, the costs to private persons and consumers in such cases will be minimal. If the Department were to assess $7,000,000 of municipality fees in a fiscal year, an individual municipality's fee would amount to approximately $1.39 per person included in the municipality's census population. A $1,000,000 increase or decrease the total amount of municipality fees in the fiscal year would result in an increase or decrease of only approximately $.20 per person included in the municipality's census population.

6. Probable effect on state revenues.

This rulemaking will have no direct impact on state general funding revenues. The revenues generated from this fee will be directed to the water resources fund. Monies in the water resources fund are used by the Department to carry out the purposes of Title 45, Arizona Revised Statutes, subject to appropriation by the legislature. With the possible deviations discussed in section 3(b) above, the revenues generated from this fee in a fiscal year will be $7,000,000 minus the amount of monies carried over in the water resources fund from the prior fiscal year.

7. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives.

No other less intrusive or less costly methods are available to the Department to achieve the purposed of this rulemaking. The Department's appropriation from the state general fund has been significantly reduced and the legislature enacted A.R.S. § 45-118 in order to allow the Department to continue providing services to the state of Arizona. Without the implementation of the municipality fee, the Department's ability to meet its mission would be significantly affected and could pose additional health and safety risks.

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

Name:	Ken Slowinski, Chief Counsel
Address:	Department of Water Resources 3550 N. Central Ave. Phoenix, AZ 85012
Telephone:	(602) 771-8472
Fax:	(602) 771-8686
E-mail:	kcslowinski@azwater.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule:

An oral proceeding regarding the proposed rules will be held as follows:

Date:	October 24, 2011
Time:	10:00 a.m.
Location:	Arizona Department of Water Resources 3550 N. Central Ave., Second Floor, Verde Conference Rooms Phoenix, AZ 85012

The rulemaking record will close on October 24, 2011 at 5:00 p.m.

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

None

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

None

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 1. FEES

Section
R12-15-101. Definitions
R12-15-107. Municipality Fee

ARTICLE 1. FEES

R12-15-101. Definitions

In addition to the definitions in A.R.S. §§ 45-101, 45-271, 45-402, 45-511, 45-561, 45-802.01, 45-1001, 45-1201 and R12-15-701, the following definitions apply to this Article:

1. No change
2. "Fiscal year" means the year beginning July 1 and ending June 30.
~~2.~~3. No change
4. "Municipality" means an incorporated city or town.
5. "Population" means the population according to the most recent United States decennial census.
~~3.~~6. No change
~~4.~~7. No change
~~5.~~8. No change
~~6.~~9. No change
10. "Water resources fund" means the water resources fund established by A.R.S. § 45-117.

R12-15-107. Municipality Fee

A. Each municipality in this state shall pay a fee to the Department each fiscal year in the amount calculated by the Director pursuant to subsection (B). The fee shall be paid by the dates specified in subsection (E).

B. The Director shall calculate a municipality's fee for a fiscal year as follows:

1. Determine the total amount of fees the Director will assess and collect from all municipalities during the fiscal year as follows:
   a. Determine the maximum total amount of fees the Director may assess and collect from all municipalities during the fiscal year pursuant to A.R.S. § 45-118 consistent with legislative intent. Unless the legislature expresses its intent otherwise in statute or session law, this amount shall be $7,000,000.
   b. Reduce the amount determined in subsection (B)(1)(a) by the amount of unobligated monies in the water resources fund at the beginning of the fiscal year, except that:
      i. If the Director determines that such a reduction likely would prevent the Department from using all the monies appropriated to it from the water resources fund for the fiscal year, the Director may decrease the amount of the reduction or make no reduction, as appropriate, to allow the Department to use all the monies appropriated to it from the fund.
      ii. If the Director determines such a reduction likely would result in an excessive accumulation of unobligated monies in the water resources fund at the end of the fiscal year, the Director may increase the amount of the reduction.
2. Determine the ratio, expressed as a percentage, that the municipality's population bears to the total population of all municipalities in the state by dividing the municipality's population by the total population of all municipalities in the state.
3. Multiply the amount from subsection (B)(1) by the percentage calculated in subsection (B)(2). The result is the municipality's fee for the fiscal year.

C. By July 15 of each fiscal year, the Director shall mail to each municipality a notice of the municipality's fee for that fiscal year as calculated pursuant to subsection (B), including the manner in which the fee was calculated. The notice shall be mailed to the municipality's city or town manager or city or town attorney.

D. A municipality may seek review of the calculation of its fee by filing a written request for review with the Director within 15 calendar days after receipt of the initial notice of the fee given by the Director under subsection (C). Review shall be limited to whether the Director's calculation of the fee contains a mathematical, clerical or typographical error. The Director shall make a final decision on a request for review and mail a final written decision to the municipality requesting the review within 10 calendar days after the date the Director receives the written request. The Director's final written decision shall state the municipality's fee following review.

E. A municipality shall pay at least one-half of its fee for a fiscal year by August 15 of that fiscal year and any remaining portion of the fee by January 15 of the fiscal year. If the due date for a payment falls on a weekend, the payment is due on the next business day.

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 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1889.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 9, 2011.

[R11-141]

PREAMBLE

1. Sections Affected | **Rulemaking Action**

R17-3-701 | Amend

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

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. § 28-7908

3. A list of all previous notices appearing in the *Register* addressing the proposed rule:
Notice of Rulemaking Docket Opening: 17 A.A.R. 1818, September 16, 2011

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

Name: Eileen Colleran, Policy and Rules Administrator

Address: Office of Policy and Rule
Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007

Telephone: (602) 712-7685

Fax: (602) 712-3232

E-mail: EColleran@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/mvdrules/index.asp.

5. An explanation of the rule, including the agency's reasons for initiating the rule:
The Department has determined that certain language under R17-3-701(A)(1)(b) and (s) conflicts with 23 CFR 750.707. Under 23 U.S.C. 131, federal funds may be withheld if states do not comply with federal outdoor advertising requirements.

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

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:
There is no economic impact resulting from the amendment of this rule other than the resources necessary for rulemaking since the Department is unable to enforce language that is in conflict with federal law.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
See item 4.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:
No oral proceeding is scheduled for this rulemaking. A request for an oral proceeding may be made to the agency official listed under item 4. If no oral proceeding is requested, the public record for this rulemaking will close at 5:00 p.m. on October 24, 2011.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None

12. Incorporations by reference and their location in the rule:
Not applicable

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION HIGHWAYS

ARTICLE 7. HIGHWAY ENCROACHMENTS AND PERMITS

Section
R17-3-701. Outdoor ~~advertising control~~ Advertising Control

ARTICLE 7. HIGHWAY ENCROACHMENTS AND PERMITS

R17-3-701. Outdoor ~~advertising control~~ Advertising Control

A. Purpose. The purpose of this subsection is to present the definitions of specialized terms used in describing outdoor advertising signs and matters relating thereto and to present a portion of the Arizona Revised Statutes dealing specifically with the regulation of certain advertising displays.

1. Definition of terms. Terms used in this rule are defined as follows:
   a. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any way bring into being or establish.
   b. "Re-erection" means the placing of any sign in a vertical position subsequent to its initial erection. Re-erection shall only occur in the event the sign has been damaged by tortious acts~~, acts of God such as wind, rain, flooding,~~ or in the course of normal maintenance.
   c. "Lease" means an agreement, oral or in writing by which possession or use of land or interests therein is given by the owner to another person for a specified period of time.
   d. "Illegal sign" means one which was erected and/or maintained in violation of the state law.
   e. "On-premise sign" means any sign that meets the following requirements (such signs are not controlled by state statutes):
      i. Premises. The sign must be located on the same premises as the activity or property advertised.
      ii. Purpose. The sign must have as its purpose:
         (1) The identification of the activity, or its products or services~~.~~; or
         (2) The sale or lease of the property on which the sign is located, rather than the purpose of general advertising.
      iii. In the case of an on premise sign advertising an activity, the premises will include all actual land used or occupied for such activity, including its buildings, parking, storage and service areas, streets, driveways and established front, rear, and side yards constituting an integral part of such activity, provided the sign is located on property under the same ownership or lease as the activity. Uses of land which serves no reasonable or integrated purpose related to the activity other than to attempt to qualify the land for signing purposes will not be considered as premises. Generally these will be inexpensive facilities, such as picnic, playgrounds, walking paths, or fences.
   f. "Off-premise sign" means an outdoor advertising sign which advertises an activity, service or product and which is located on premises other than the premises at which such activity or service occurs or product is sold or manufactured.
   g. "Nonconforming sign" means one which was lawfully erected but which does not comply with the provisions of state law or state laws passed at a later date or which later fails to comply with state law or state regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.
   h. "Maintain" means to allow to exist, including such activities necessary to keep the sign in good repair, safe condition, and change of copy.
   i. "Scenic area" means any area of particular scenic beauty or historical significance as determined by the federal, state, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.
   j. "Parkland" means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.
   k. "Federal or state law" means a federal or state constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a state or federal agency or a political subdivision of a state pursuant to a federal or state constitution or statute.
   l. "Scenic overlook or rest area" - an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.
   m. "Abandoned sign" means a sign for which neither the sign owner nor the landowner claim any responsibility.
   n. "Double-faced sign" means a sign which has two faces facing in the same direction.
   o. "Back-to-back sign" means a sign which carries faces attached on each side of the structure, being read from opposite directions.
   p. "V-type signs" - signs which are oriented at an angle to each other, the nearest points of which are not more than ~~ten~~ 10 feet apart.
   q. "Face" means the surface of an outdoor advertising structure on which the design is posted or painted, usually made of galvanized metal sheets, fiberboard, plywood or plastic.
   r. "Landmark sign" means a sign of historic or artistic significance which existed on October 22, 1965 which may be preserved or maintained as determined by the Director and approved by the Secretary of Transportation.
   s. "Normal maintenance (nonconforming sign)," is that customary to keep a sign in ordinary repair, upkeep or refurbishing. Such maintenance will not exceed 50% of the appraised value of the sign. ~~Repairs will be allowed for fires, winds, explosions, or other acts of God.~~ Current appraisal schedules will be used in making value determinations. ~~Normal maintenance also includes re-erection at the same location or within a reasonable distance of~~

~~the original location, not to exceed ten feet.~~

t. "Intended to be read from the main traveled way" is defined by any of the following criteria:
   i. More than 80% of the average daily traffic (as determined by ADOT traffic counts) viewing the outdoor advertising is traveling in either or both directions along the main-traveled way.
   ii. Message content is of such a nature that it would be only of interest for the traffic using the main-traveled way.
   iii. The sales value of the outdoor advertising is directly attributable to advertising circulation generated by traffic along the main-traveled way.

u. "Within the view of and directed at the main-traveled way" means any sign which is readable from the main-traveled way for more than five seconds traveling at the posted speed limit or for such a time as the whole message can be read whichever is less.

v. "Interchange" means a junction of two or more highways by a system of separate levels that permit traffic to pass from one to another without the crossing of traffic streams.

2. State statute regarding outdoor advertising. The following portion from Title 28 of the Arizona Revised Statutes is the authority for and is relevant to the content and intent of this rule. This portion of the A.R.S. is from Title 28, amended effective August 22, 1975. Exhibits 1 through 8 portray the essence of requirements promulgated by these statutes.

"CHAPTER 16
BEAUTIFICATION OF HIGHWAYS

ARTICLE 1. REGULATION OF CERTAIN ADVERTISING DISPLAYS

"28-2101. Definitions

In this Article, unless the context otherwise requires:

1. "Business area" means an area outside municipal limits embracing all of the land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied for such activity, including its parking, storage and service areas, its driveways and its established front, rear and side yards, constituting an integral part of such activity and which is zoned, under authority of law, primarily to permit industrial or commercial activity. However, when one or more commercial or industrial activities are located within one thousand feet of a freeway interchange, the business area shall extend three thousand feet measured in each direction parallel to the freeway from the center line of the crossroad, but shall not extend beyond the limits of the established commercial or industrial zone.
2. "Freeway" means a divided arterial highway on the interstate or primary system with full control of access and with grade separations at intersections.
3. "Information center" means a site established and maintained at a safety rest area for the purpose of informing the public of places of interest within the state and providing other information the transportation board considers desirable.
4. "Interstate system" means that portion of the national system of interstate and defense highways located within this state as may now or hereafter be officially designated by the transportation board and approved by the secretary of transportation pursuant to title 23, United States Code.
5. "Main-traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders, on which through traffic is carried. In the case of divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads or parking areas.
6. "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform, the message of which is visible from any place on the main-traveled way of the interstate, secondary or primary systems.
7. "Primary system" means that portion of connected main highways located within this state as may now or hereafter be officially designated by the transportation board and approved by the secretary of transportation pursuant to title 23, United States Code.
8. "Safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right-of-way of the interstate or primary systems.
9. "Secondary system" means that portion of connected highways located within this state as may now or hereafter be officially designated by the transportation board and approved by the secretary of transportation pursuant to title 23, United States Code.
10. "Unzoned commercial or industrial area" means an area not zoned under authority of law in which land use is characteristic of that generally permitted only in areas which are actually zoned commercial or industrial

under authority of state law, embracing all of the land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied by such activity, including its parking, storage and service areas, its driveways and its established front, rear and side yards, constituting an integral part of such activity. As used in this paragraph, "commercial or industrial activities" does not include:

(a) Outdoor advertising structures.
(b) Agricultural, forestry, grazing, farming and related activities.
(c) Transient or temporary activities including but not limited to wayside fresh produce stands.
(c) Activities not visible from the main-traveled way.
(e) Activities conducted in a building principally used as a residence.
(f) Railroad tracks and minor sidings, and above ground or underground utility lines.

"28-2102. Outdoor advertising authorized

A. The following outdoor advertising may be placed or maintained along interstate, secondary and primary systems within six hundred sixty feet of the edge of the right-of-way:
   1. Directional or other official signs or notices that are required or authorized by law, including but not limited to, signs pertaining to natural wonders, scenic and historic attractions.
   2. Signs, displays and devices advertising activities conducted on the property upon which they are located.
   3. Signs, displays and devices advertising the sale or lease of property upon which they are located.
   4. Signs, displays and devices lawfully placed after April 1, 1970, in business areas.
   5. Signs, displays and devices lawfully placed after the effective date of this Article in zoned or unzoned commercial or industrial areas inside municipal limits, or after April 1, 1972, in unzoned commercial or industrial areas outside of municipal limits.
   6. Signs, displays and devices lawfully existing on April 1, 1970, which are located in business areas, and in zoned commercial or industrial areas outside of municipal limits.
   7. Signs, displays and devices lawfully existing on the effective date of this Article which are located in zoned or unzoned commercial or industrial areas inside municipal limits, or on April 1, 1972, in unzoned commercial or industrial areas outside of municipal limits.

B. Outdoor advertising authorized under subsection A, paragraphs 1, 4, and 5 of this Section shall conform with standards contained, and shall bear permits required, in regulations promulgated by the director under the provisions of this Article, except that such authorized outdoor advertising along highways in the secondary system which are not state highways need only bear permits required by the responsible county or municipal authority.

C. Outdoor advertising authorized under paragraphs 6 and 7, subsection A of this Section need not conform to standards contained, but shall bear permits required, in regulations promulgated by the director under the provisions of this Article, except that such authorized outdoor advertising along highways in the secondary system which are not state highways need only bear permits required by the responsible county or municipal authority.

D. Signs lawfully in existence on October 22, 1965 which are determined by the director, subject to the approval of the secretary of transportation as provided for by § 131(c) of Title 23 of the United States Code, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of this Article, may be preserved or maintained.

"28-2103. Outdoor advertising prohibited

A. No outdoor advertising shall be placed or maintained adjacent to the interstate, secondary or primary systems at the following locations or positions or under any of the following conditions or if it is of the following nature:
   1. If within view of, directed at, and intended to be read from the main-traveled way of the interstate, primary or secondary systems, excepting outdoor advertising authorized under § 28-2102.
   2. If visible from the main-traveled way and simulating or imitating any directional, warning, danger or information sign permitted under the provisions of this Article, or if likely to be mistaken for any such permitted sign, or if intended or likely to be construed as giving warning to traffic, such as by the use of the words "STOP" or "SLOW DOWN."
   3. If within any stream or drainage channel or below the flood water level of any stream or drainage channel where the outdoor advertising might be deluged by flood waters and swept under any highway structure crossing the stream or drainage channel or against the supports of the highway structure.
   4. If visible from the main-traveled way and displaying any red, flashing, blinking, intermittent or moving light or lights likely to be mistaken for a warning or danger signal, excepting that part necessary to give public service information such as time, date, weather, temperature or similar information.
   5. If any illumination thereon is of such brilliance and so positioned as to blind or dazzle the vision of travelers on the main-traveled way.
   6. If existing under a permit as required by this Article and not maintained in a safe condition.

7. If obviously abandoned.
8. If placed in such a manner as to obstruct, or otherwise physically interfere with, an official traffic sign, signal or device or to obstruct, or physically interfere with, the vision of drivers in approaching, merging or intersecting traffic.
9. If placed upon trees, or painted or drawn upon rocks or other natural features, excepting signs permitted under § 28-2102, subsection A, paragraph 2.

B. At interchanges on freeways or interstate highways outside of municipal limits, no outdoor advertising signs, displays or device shall be erected in the area between the crossroad and a point five hundred feet beyond the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

"28-2104. Standards for outdoor advertising; directional and other official signs; business areas and unzoned commercial or industrial areas outside municipal limits; zoned or unzoned commercial or industrial areas within municipal limits

A. Direction and other official signs authorized under § 28-2102, subsection (A), paragraph (1), shall comply with regulations which shall be promulgated by the director relative to their lighting, size, number, spacing and such other requirements as may be appropriate to implement this Article, which regulations shall not be inconsistent with such national standards as may be promulgated from time to time by the secretary of transportation of the United States pursuant to subdivision (c) of § 131 of Title 23 of the United States Code.

B. After April 1, 1970, outdoor advertising placed in business areas and after April 1, 1972, in unzoned commercial or industrial areas outside of municipal limits shall comply with the provisions of this Article and the following standards:
   1. Size of outdoor advertising shall not exceed one thousand two hundred square feet in area with a maximum vertical facing dimension of twenty-five feet and a maximum horizontal facing dimension of sixty feet, including border and trim, and excluding base or apron supports and other structural members. Such size limitations shall apply to each facing of outdoor advertising. The area shall be measured by the smallest square, rectangle, triangle, circle or combination thereof, which will encompass the entire advertisement. Two advertising displays not exceeding three hundred fifty square feet each may be placed in a facing. Back to back or V-type signs may be placed, with the maximum area allowed for each facing.
   2. Spacing of outdoor advertising shall be such that it is not placed:
      (a) Within five hundred feet from other outdoor advertising on the same side of a freeway.
      (b) Within five hundred feet of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way at a scenic overlook or safety roadside rest area on any portion of a freeway.
      (c) Within three hundred feet from other outdoor advertising on the same side of any portion of the primary system which is not a freeway.
   3. Minimum spacing distances from other outdoor advertising shall not apply to outdoor advertising which is separated by a building or other obstruction in such a manner that only one display located within the minimum distances set forth herein is visible from the highway at any one time. Spacing distances shall be measured along the nearest edge of the pavement to a point directly opposite the outdoor advertising.
   4. Outdoor Advertising authorized under § 28-2102, subsection (A), paragraphs (2) and (3) shall not be counted and measured from in determining compliance with the spacing requirements of this subsection.

C. After the effective date of this Article, outdoor advertising placed in zoned or unzoned commercial or industrial areas within municipal limits shall comply with the following standards:
   1. The size of outdoor advertising shall not exceed that set forth in subsection (B), paragraph (1) of this Section.
   2. Spacing of outdoor advertising shall be such that it is not placed:
      (a) Within five hundred feet from other outdoor advertising on the same side of a freeway.
      (b) Within one hundred feet from other outdoor advertising on the same side of any portion of the primary system which is not a freeway.
   3. It shall have the same standard as subsection (B), paragraph (3) of this Section.
   4. It shall have the same standard as subsection (B), paragraph (4) of this Section.

"28-2105. Authority to acquire outdoor advertising and property rights; compensation; removal

A. The director shall acquire by gift, agreement, purchase, exchange, eminent domain or other lawful means, all right, title, leasehold, and interest in any outdoor advertising together with the right of the owner of the real property on which such outdoor advertising is located to erect and maintain such outdoor advertising thereon, when the outdoor advertising is prohibited by this Article. Damages resulting from any taking of property in eminent domain shall be ascertained in the manner provided by law.

B. If compensation is required by federal law, and if federal participation in such compensation is required by federal law, nonconforming outdoor advertising shall not be required to be removed until federal funds for the federal share of compensation therefor as required by such federal law have been made available to the Department.

C. When outdoor advertising is placed after the effective date of this Article, contrary to provisions of this Article or the regulations promulgated by the director, or when a permit is not obtained as prescribed in this Article, the outdoor advertising shall be deemed unlawful. The director shall give notice by certified mail of his intention to remove advertising deemed unlawful to both the owner or the occupant of the land on which such outdoor advertising is located and the owner of the outdoor advertising, if the latter is known, or if unknown, by posting notice in a conspicuous place on such outdoor advertising. Within seven days after such notice is mailed or posted the owner of the land or the outdoor advertising may make a written request to the director for a hearing to show cause why the outdoor advertising should not be removed. The director shall designate a hearing officer, who shall be an administrative employee of the department, to conduct and preside at such hearings. When a hearing is requested under this provision, the hearing shall be held within thirty days thereafter and the party requesting the hearing shall be given at least five days' notice of the time of such hearing. All hearings shall be conducted at department administrative offices. A full and complete record and transcript of the hearing shall be taken. The presiding officer shall within ten days after the hearing make a written determination of his findings of fact, conclusions and decision and shall mail a copy of the same, by certified mail, to the owner or the party who requested the hearing. If the decision is adverse to the party, the party may within ten days after the decision is rendered, petition the superior court of the county wherein the outdoor advertising is located to determine whether the decision of the hearing officer was lawful and reasonable. If the decision of the court upholds that of the director, all costs from the time of the administrative hearing, including court costs, shall be borne by the owner of the land or the outdoor advertising or both. If a hearing before the director is not requested, or if there is no appeal taken from the director's decision of such hearing, or if the director's decision is affirmed on appeal, the director shall immediately remove the offending outdoor advertising. The owner of the outdoor advertising or the owner or occupant of the land or the owner of the outdoor advertising and the owner or occupant of the land shall be liable for the costs of such removal. The director shall incur no liability for such removal.

"28-2106. Agreement with secretary of transportation; outdoor advertising regulations; permits

The director shall:

1. Enter into the agreement with the secretary of transportation provided for by § 131(d) of Title 23 of the United States Code setting forth the standards governing the size, lighting, and spacing of outdoor advertising authorized under § 28-2102, subsection (A), paragraphs (4) and (5), and defining an unzoned commercial or industrial area. If the standards and definitions contained in the agreement do not agree substantially with the provisions of this Article, the agreement shall not become effective until the legislature by statute amends this Article to conform with the terms of the agreement.
2. Prescribe and enforce regulations governing the placing, maintenance, and removal of outdoor advertising. Such regulations shall be consistent with the public policy of this state to protect the safety and welfare of the traveling public, the provisions of this Article, the terms of the agreement with the secretary of transportation, and the national standards, criteria, and rules and regulations promulgated by the secretary of transportation pursuant to § 131 of Title 23, United States Code.
3. Define by rules or regulations, unzoned commercial or industrial areas along with the interstate and primary systems. The definitions shall be consistent with the definitions of these areas set forth in this Article and set forth in the agreement with the secretary of transportation.
4. Issue permits to place or maintain, or both, outdoor advertising authorized under § 28-2102, subsection (A), paragraphs (1), (4), (5), (6) and (7), and establish and collect fees for the issuance of such permits. The fees shall be not more than the actual costs to the department. All fees collected under the provisions of this Article shall be paid to the state treasurer for credit to the state highway fund.

"28-2107. Control of advertising displays along interstate, secondary and primary highways by municipality or county

If an incorporated municipality or county desires to control outdoor advertising along interstate, secondary and primary highways, it may do so upon request to the director and certification by the director to the secretary of transportation that the municipality or county has enacted comprehensive zoning ordinances and by ordinance regulates the size, lighting, and spacing of outdoor advertising in zoned commercial and industrial areas along interstate, secondary and primary highways, providing that municipalities or counties may not assume control of outdoor advertising under the provisions of this Section if the ordinance provisions are less restrictive than the provisions of this Article.

"28-2108. Advertising displays in safety rest areas; information centers

In order to provide information in the specific interest of the traveling public, the director may authorize advertising displays at safety rest areas and at information centers.

"28-2109. Construction of Article
The provisions of this Article shall be cumulative and supplemental to other provisions of law and shall not be construed as affecting or enlarging any authority of counties, cities or towns pursuant to any other provisions of law which may exist to enact ordinances regulating the size, lighting, and spacing of outdoor advertising.

"28-2110. Violating penalty
A person who violates any provision of this Article or any regulation of the director made and promulgated under this Article is guilty of a misdemeanor."

B. Authority and responsibility.

1. Purpose. The purpose of this subsection is to describe the authority and responsibilities the Arizona Department of Transportation exercises in developing rules and regulations relative to outdoor advertising facilities.
2. ADOT responsibilities regarding advertising control. The Arizona Department of Transportation is directed to:
   a. Enter into an agreement with the U.S. Secretary of Transportation provided for by ~~§ 131(d) of Title 23, United States Code~~ 23 U.S.C. 131(d), setting forth standards governing outdoor advertising authorized;
   b. Prescribe and enforce regulations governing the placing, maintenance, and removal of outdoor advertising;
   c. Define by rules or regulations, unzoned commercial or industrial areas along the interstate and primary systems;
   d. Issue permits to place or maintain, or both, outdoor advertising authorized under the act and establish and collect fees for the issuance of such permits.
3. Rules, regulations, and authority. The regulation of outdoor advertising along Arizona Highways by the Arizona Department of Transportation was established by A.R.S. §§ 28-2101 through 28-2110 by the ~~twenty-ninth~~ 29th legislature in second regular session and subsequent amendments. This legislation was approved by the governor and filed in the Office of the Secretary of State on May 18, 1970. The rules and regulations prescribed herein describe the administrative procedure adopted by the Arizona Department of Transportation to aid and guide the effective control of outdoor advertising. These rules and regulations are in addition to and do not purport to change or alter the federal act, the state act, or the federal-state agreement.
4. Permit application procedure. Maintenance Permit Services, Highways Division, Arizona Department of Transportation, is responsible for administering a permit procedure.

C. Outdoor advertising permit application procedure.

1. Purpose. The purpose of this subsection is to present the procedures to be followed by applicants in requesting permits for the erection of outdoor advertising facilities.
2. ADOT permit form and fee required. Each application for a permit to erect an outdoor advertising facility must be made on the appropriate Arizona Department of Transportation form and shall be accompanied by a check or money order in the amount of $20.00 payable to the Arizona Department of Transportation.
   a. The initial application fee shall be valid for a period of one year from date of issuance. It shall be renewable annually upon payment of a $5.00 fee.
   b. Renewal fees will become delinquent 30 days after the annual renewal date. On becoming delinquent, such sign structures will be in violation and a new initial application fee of $20.00 will be required.
3. Applications mailed to maintenance permit engineer. Applications for outdoor advertising permits should be mailed to: Arizona Department of Transportation, Highway Division; 206 South 17th Avenue; Phoenix, Arizona 85007-; Attention: Maintenance Permit Engineer, Maintenance Section. ~~a.~~ Assistance to applicants is available at District offices. (See list of district office addresses in Exhibit 9).
4. Separate application for each sign. Each outdoor advertising sign, display or device requires a separate application with fee. All required information describing the location of the sign, the sign qualification standards, and the permitted area identification shall be completely entered on the permit form.
5. Legal description of sign site required. Applicants shall be required to obtain a certification from the governing zoning authority certifying that the zoning is correct for the legal description of the proposed sign location. In cases where the legal description is listed incorrectly on the application, a new certification must be obtained for the correct legal description. Legal descriptions shall adequately describe the property for which the application is made.
6. Location diagram required. Applicants shall submit a location diagram indicating highway route number and such physical features as: buildings, bridges, culverts, poles, mileposts and other stationary land marks necessary to adequately describe the location. The sketch will also indicate the distance in feet the sign is to be erected from the nearest milepost or a street intersection and other off-premise signs in the same vicinity.
7. Applicants must mark site locations. Applicants are required to place an identifiable device or object bearing applicant's name at the proposed sign location to aid field inspectors in site evaluations.
8. Landowner's permission mandatory. Applicants shall be required to obtain a signed certification stating that the applicant has the permission of the landowner to erect the sign at the noted legal description, or in lieu thereof, furnish a copy of an executed lease.

9. Each pending application field checked. Each pending application will be field checked for compliance with the state act and ADOT regulations by the district. The findings of the field check will be forwarded to the Maintenance Permit Engineer, Maintenance Section, for final examination and if approved, permit issuance.
10. Noncompliance. Each application for a permit to erect an outdoor advertising facility which does not comply with all requirements of the law and the Arizona Department of Transportation regulations, will be denied and the application fee may be retained by the state. Exception will be made in cases where applicants did not have knowledge of previous applications or permits for the same site. ~~a.~~ An additional $20.00 fee shall be added to the regular permit fee for signs illegally erected prior to the issuance of a permit.
11. Permit decals on sign structures. Applicants shall affix permit decals on a permanent surface near the portion of the sign structure closest to the main traveled way and clearly visible from said roadway. Permit decals to replace any which have been issued and were improperly affixed, lost or destroyed, whether before or after attaching to the sign structure, may be purchased at a cost of $5.00. ~~a.~~ Signs bearing permit decals for signs other than the sign for which they were issued shall be in violation.
12. Forfeiture of permit fee. Outdoor advertising facilities for which permits have been issued shall be erected within 120 days and shall bear the official permit identification issued for the specific facility. If the applicant mails a written request for extension of time prior to expiration of the 120 days, an additional 60-day extension may be granted. Any permit canceled because no sign was erected within the prescribed time will result in forfeiture of the $20.00 fee.
13. Denial of permit renewals. An existing permit will not be renewed for an approved location on which no sign structure exists.
14. Removal and re-erection time limits. If an outdoor advertising sign is removed from a permitted location for any reason, the permit shall expire within 30 days from date of removal, except that the permittee may notify the Arizona Department of Transportation, Highways Division, Maintenance Permit Engineer, of intent to re-erect which will allow 120 days for re-erection. Failure to re-erect which will allow 120 days for re-erection. Failure to re-erect within the 120 days allowed will cancel the existing permit.
15. Transfer of permits. Permits are transferable upon sale of sign provided a new order furnishes the Arizona Department of Transportation with notification of sale within 30 days after date of sale.
16. Calendar days. All references to days made in this permit application procedure, as well as those references in all rules and regulations applying to outdoor advertising control, shall mean calendar days.

D. Administrative rules.

1. Purpose. The purpose of this subsection is to present administrative rules developed by the Arizona Department of Transportation for control of outdoor advertising.
2. Restrictions on rights-of-way use. No sign shall be erected or maintained from or by use of interstate highway rights-of-way. Any observed action of this type will result in cancellation of the permit. Signs may be erected and maintained from primary and secondary highways only if no other access is available and an encroachment permit is issued.
3. Nonconforming signs shall be in violation if:
   a. A sign is enlarged (increased in any dimensions of the sign face or structural support),
   b. A sign is replaced (an existing sign is removed and replaced with a completely different sign),
   c. A sign is rebuilt to a different configuration or material composition beyond normal maintenance, or
   d. A sign is relocated (moved to a new position or location without being lawfully permitted).
   e. A sign which was previously non-illuminated has lighting added.
4. Commercial or industrial activities. Commercial or industrial activities which define a "business area," "unzoned commercial or industrial area" must be in operation at the time the permit application is made. ~~a.~~ Should any commercial or industrial activity, which has been used in defining or delineating a "business area," or an "unzoned commercial or industrial area," cease to operate for a period of six continuous months, any signs qualified by such activity shall become nonconforming.
5. On premise. Should any activity which has been used in defining an "on-premise" sign cease to operate for a period of six continuous months any signs qualified by such activity shall be considered as off premise and will require appropriate permits. If the signs are then not permitable they will be in violation.
6. Municipal limit between signs. When a municipal limit falls between signs the spacing requirement shall be 300 feet between signs on primary or secondary highways.
7. Proposed interstate alignment locations. Signs existing or to be erected on primary or secondary highway systems which have been declared by the Director of Transportation as an interstate freeway alignment prior to construction of such interstate or freeway shall be classified as though the Interstate or Freeway already exists, requiring spacing criteria for Interstate or other freeways.
8. Double-faced, back-to-back, and V-type signs. Double-faced, back-to-back and V-type sign structure permits will be limited to a single sign ownership for each site. No more than two faces will be allowed facing each direction of travel. Double-faced signs shall not exceed 350 square feet per face. "V-type signs will be limited to a 10' spacing between faces at the apex. V-type sign spacing from other signs shall be measured from the middle of the apex."

9. Multifaced community signs. Local chambers of commerce may obtain permits to erect signs with more than two faces. These signs shall not exceed 1,200 square feet in area with a maximum overall vertical facing of 25 feet and a maximum overall horizontal facing of 60 feet, including border and trim, and excluding base or apron supports and other structural members. All other laws, rules and regulations will apply to multifaced community signs as to other off premise signs.
10. New sign making existing sign nonconforming. If a new sign which would otherwise be conforming will make an existing sign nonconforming, the new sign shall not be allowed.
11. Hearing requests. The land owner or sign owner may request a hearing in connection with a permit application denied or other action taken by the Arizona Department of Transportation in connection with the rules herein prescribed. Within seven days after notice of such action is mailed or posted the land owner or sign owner may make written request for a hearing on such actions. The Director of Transportation shall designate a hearing officer, who shall be an administrative employee of the Department of Transportation, to conduct and preside at such hearings. When a hearing is requested, the hearing shall be held within ~~thirty~~ 30 days thereafter and the party requesting the hearing shall be given at least five days notice of the time of such hearing. All hearings shall be conducted at Department of Transportation administrative offices. A full and complete record and transcript of the hearing shall be taken. The presiding officer shall within ~~ten~~ 10 days after the hearing make a written determination of his findings of fact, conclusions and decision and shall mail a copy of the same, by certified mail, to the owner or the party who requested the hearing.
12. Landmark signs. The Director will submit a one-time declaration listing all landmark signs to the Secretary of Transportation. The preservation of these signs would be consistent with the purposes of state highway beautification laws.
13. Blanked out or discontinued nonconforming signs. When an existing nonconforming sign ceases to display advertising matter for a period of one year the use of the structure as a nonconforming outdoor advertising sign is terminated.
14. Vandalized signs. Legal nonconforming signs may be rebuilt to their original configuration and size when they are destroyed due to vandalism and other criminal or tortious acts.

E. Standards for directional and other official signs.

1. Purpose. The purpose of this subsection is to present standards applicable to directional and other official signs.
2. Scope and application. The standards presented in this Chapter apply to directional and other official signs and notices which are erected and maintained with 660 feet of the nearest edge of the right-of-way of the interstate, federal-aid primary and secondary highway systems and which are visible from the main traveled way of the systems. These types of signs must conform to national standards, promulgated by the Secretary of Transportation under authority set forth in ~~§ 131(c) of Title 23, United States Code~~ 23 U.S.C. 131(c). These standards do not apply, however, to directional and other official signs erected on the highway right-of-way.
3. Definitions. "Official signs and notices" means signs and notices, other than traffic regulatory, erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies may be considered official signs.
    a. "Directional and other official signs and notices" includes only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.
    b. "Public utility signs" means warning markers which are customarily erected and maintained by publicly or privately owned public utilities to protect their facilities.
    c. "Service club and religious notices" means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious service, which signs do not exceed eight square feet in area.
    d. "Public service signs" means signs located on school bus stop shelters, which signs:
        i. Identify the donor, sponsor, or contribution of said shelters;
        ii. Contain safety slogans or messages, which shall occupy not less than 60% of the area of the sign;
        iii. Contain no other message;
        iv. Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved; and
        v. May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.
    e. "Directional" means signs containing directional information about public places owned or operated by federal, state, or local government or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, religious, and rural activity sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.
    f. "Obsolete sign" means a directional or other official sign the purpose of which is no longer pertinent.
4. Standards for directional signs. The following apply only to directional signs:
    a. General. The following signs are prohibited:

i. Signs advertising activities that are illegal under federal or state laws or regulations in effect at the location of those signs or at the location of those activities.
ii. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.
iii. Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.
iv. Obsolete signs.
v. Signs which are structurally unsafe or in disrepair.
vi. Signs which move or have any animated or moving parts.
vii. Signs located in rest areas, parklands or scenic areas.

b. Size. No sign shall exceed the following limits, which include border and trim, but exclude supports.
i. Maximum area -- 150 square feet.
ii. Maximum height -- 20 feet.
iii. Maximum length -- 20 feet.

c. Lighting. Signs may be illuminated, subject to the following:
i. Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited.
ii. Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.
iii. No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

d. Spacing.
i. Each location of a directional sign must be approved by the Arizona Department of Transportation.
ii. No directional sign may be located within 2,000 feet of an interstate, or intersection at grade along the interstate system or other freeways (measured along the interstate of freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).
iii. No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area.
(1) No two directional signs facing the same direction of travel shall be spaced less than one mile apart;
(2) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;
(3) Directional signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and
(4) Directional signs located adjacent to the Primary System shall be within 50 air miles of the activity.
(5) No directional signs shall be located within 500 feet of an off-premise outdoor advertising sign on any state highway.

e. Message content. The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit number. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

f. Selection methods and criteria for privately owned activities or attractions to obtain directional sign approval.
i. Privately owned activities are attractions eligible for directional signing are limited to the following categories:
(1) Natural phenomena,
(2) Scenic attractions,
(3) Historic sites,
(4) Educational sites,
(5) Cultural sites,
(6) Scientific sites,
(7) Religious sites,
(8) Outdoor recreational area.
ii. To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.
iii. The Director, Arizona Department of Transportation, will appoint a "Selection Board for Directional Signing Qualifications" consisting of three administrative or professional employees of the Department of Transportation, one of whom shall be designated as chairman, to judge and approve the qualifications for directional signing of privately owned activities or attractions as limited to the categories in ~~subdivision (i)~~ subsection (E)(4)(f)(i) and the qualification in ~~subdivision (ii)~~ subsection (E)(4)(f)(ii) above.

iv. Applicants for directional signs involving privately owned activities or attractions, shall first qualify such activity or attraction by submitting an official qualification form to the attention of the maintenance permit engineer, highways division, Arizona Department of Transportation. The maintenance permit engineer will forward the application for qualification, along with any technical data which may assist the board in making their determination, to the selection board.

v. Applicant shall indicate one or more categories (as listed in ~~subdivision (i)~~ subsection (E)(4)(f)(i) above) that is applicable to the activity or attraction for which qualification is sought. Applicants shall submit a statement and supporting evidence that the activity or attraction is nationally or regionally ~~know~~ known and is of outstanding interest to the traveling public.

vi. The qualifications board will, upon approval or rejection of an application, give notification of their determination in writing, to the applicant and to the maintenance permit engineer.

vii. The maintenance permit engineer will not issue any permits for directional signs for any privately owned activity or attraction until receipt of qualification approval by the qualifications board. All directional sign permits issued for the Department of Transportation by the maintenance permit engineer will meet the standards for directional and other "official signs" as incorporated in the "Rules and Regulations for Outdoor Advertising along Arizona Highways" approved and issued by the Director, Arizona Department of Transportation.

g. "Rural activity signs" are intended to give directions to rural activity sites located along rural roads connecting to state highways. The signs must be located in areas primarily rural in nature. Rural activities that may qualify include ranches, recreational areas and mines. Signs for private residences, subdivisions, and commercial activities are not permitted. Industrial activities that are located in primarily rural areas such as mines or material pits may be allowed. The signs shall not be located in "business areas," "unzoned commercial or industrial areas," nor within municipal limits. The selection board may make final determination of eligibility for such signs when necessary. Not more than one sign pertaining to a rural activity facing the same direction of travel may be erected along a single route approaching the rural connecting road. Signs will be limited to ~~ten~~ 10 square feet in area. All other standards for directional signs shall apply.

h. No application fee, is required for "official signs and notices," "public utility signs," "service club and religious notices," "public service signs" or "directional signs" erected by federal, state or local governments. Other directional signs require a permit application and $20.00 fee.