NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2389.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 26, 2012.

[R12-179]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R9-22-601	Amend
R9-22-604	Amend
R9-22-605	Amend
R9-22-606	Amend

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

Authorizing statute: A.R.S. § 36-2906

Implementing statute: A.R.S. §§ 36-2903(M), 36-2904(J) and 36-2906(C)

3. The effective date of the rule:

November 11, 2012

4. Citations to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 18 A.A.R. 1149, May 18, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 1112, May 18, 2012

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

Name:	Mariaelena Ugarte
Address:	AHCCCS Office of Administrative Legal Services 701 E. Jefferson St.
Telephone:	(602) 417-4693
Fax:	(602) 253-9115
E-mail:	AHCCCSrules@azahcccs.gov
Web site:	www.azahcccs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking: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. § 36-2906 authorizes the Administration to adopt rules for the RFP process and the award of contracts. The Administration is proposing revisions to several rules in Article 6 to streamline and clarify the RFP and contract award process, correct inaccurate references, and eliminate redundant language. The proposed rules are more clear, concise, and understandable. In particular, the proposed rules more clearly delineate the process for filing a protest alleging improprieties in an RFP or an amendment to the RFP. Additionally the proposed rules specify the legal bases

for hearings as well as contract performance disputes. The term "procurement file" is defined in the proposed rule, and the term sanction is clarified to include actions beyond monetary sanctions and enrollment restrictions.

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

A study was not referenced or relied upon when revising the regulations for Contracts and RFPs.

8. 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

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

The Administration anticipates a minimal economic impact on the implementing agency, small businesses and consumers. The contractors, members, providers, and AHCCCS are nominally impacted by the changes to the rule language. These rules set forth the request for proposal and contract process pertaining to covered services under the AHCCCS Program as referenced in the procurement. The Administration is amending these rules to make the rules more clear, concise, and understandable. In addition, the proposed rules eliminate redundant language, update incorrect cross references, and streamline the RFP process.

It is anticipated that the private sector, including small businesses or political subdivisions, will be minimally impacted since the proposed rule language streamlines and clarifies the existing rules, including rules delineating the protest process. The Administration, contractors, and providers will benefit because the changes provide clarification of the rule.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No significant changes were made between the proposed rulemaking and the final rulemaking.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were received as of the close of the comment period of June 18, 2012.

12. 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:

No other matters are applicable.

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:

Not applicable

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:

Not applicable

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

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

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 6. RFP AND CONTRACT PROCESS

Section
R9-22-601. General Provisions
R9-22-604. Contract or Proposal Protests; Appeals
R9-22-605. Waiver of Contractor's Subcontract with Hospitals
R9-22-606. Contract Compliance Sanction

ARTICLE 6. RFP AND CONTRACT PROCESS

R9-22-601. General Provisions

A. The Director has full operational authority to adopt rules for the RFP process and the award of contracts under A.R.S. § 36-2906.

B. This Article applies to the award of contracts under A.R.S. §§ 36-2904 and 36-2906 to provide services under A.R.S. § 36-2907 and the expenditure of ~~all~~ public monies by the Administration ~~for~~ pertaining to covered services when the procurement so states ~~under Articles 2 and 12 of this Chapter except as otherwise provided by law~~. The Administration shall establish conflict-of-interest safeguards for officers and employees of this state with responsibilities relating to contracts that comply with 42 U.S.C. 1396u-2(d)(3).

~~**C.** The Administration shall award contracts under A.R.S. §§ 36-2904 and 36-2906 to provide services under A.R.S. § 36-2907.~~

~~**D.**~~**C.** The Administration is exempt from the procurement code under A.R.S. § 41-2501.

~~**E.**~~**D.** The Administration and contractors shall retain all contract records for five years under A.R.S. § 36-2903 and dispose of the records under A.R.S. § 41-2550.

E. The following terms are defined as related to this Article:

"Procurement file" means the official records file of the Director whether located in the Office of the Director or at the public procurement unit. The procurement file shall include in electronic or paper form a list of notified vendors, final solicitation, solicitation amendments, bids/offers, final proposal revisions, clarifications, and final evaluation report.

R9-22-604. Contract or Proposal Protests; Appeals

A. Disputes related to contract performance. This Section does not apply to a dispute related to contract performance. A contract performance dispute is governed by ~~Article 8 of this Chapter~~ 9 A.A.C. 34.

B. Resolution of a proposal protest. The procurement officer issuing a RFP shall have the authority to resolve proposal protests. An appeal from the decision of the procurement officer shall be made to the Director.

C. Filing of a protest.
1. A person may file a protest with the procurement officer regarding:
   a. A RFP issued by the Administration,
   b. A proposed award, or
   c. An award of a contract.
2. A protester shall submit a written protest and include the following information:
   a. The name, address, and telephone number of the protester;
   b. The signature of the protester or protester's representative;
   c. Identification of a RFP or contract number;
   d. A detailed statement of the legal and factual grounds of the protest including copies of any relevant documents; and
   e. The relief requested.

D. Time for filing a protest.
~~1. A protester filing a protest alleging improprieties in a RFP shall file the protest before the due date for receipt of proposals.~~
1. A protester filing a protest alleging improprieties in an RFP or an amendment to an RFP shall file the protest at least 14 days before the due date of receipt of proposals.
~~2. A protester filing a protest alleging improprieties that do not exist in the original RFP but are subsequently incorporated into the RFP before the due date for receipt of proposals shall file the protest prior to the amended due date for receipt of proposals.~~
2. Any protest alleging improprieties in an amendment issued 14 or fewer days before the due date of the proposal shall be filed before the due date for receipt of proposals.
3. In cases other than those covered in subsections (D)(1) and (2), a protester shall file a protest ~~within~~ no later than 10 days after the procurement officer makes the procurement file available for public inspection. ~~protester knows or should have known the basis of the protest~~.

E. Stay of procurement during the protest. If a protester files a protest before the contract award, the procurement officer may issue a written stay of the contract award. In considering whether to issue a written stay of contract, the procurement

officer shall consider but is not limited to considering whether:

1. A reasonable probability exists that the protest will be sustained, and
2. The stay of the contract award is in the best interest of the state.

F. Stay of contract award during an appeal to the Director. The Director shall automatically continue the stay of a contract award if:

1. An appeal is filed before a contract award, and
2. The procurement officer issues a stay of the contract award under subsection (E), unless
3. The Director issues a written determination that the contract award is necessary to protect the best interest of the state.

G. Decision by the procurement officer.

1. The procurement officer shall issue a written decision ~~within~~ no later than 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
2. The procurement officer shall furnish a copy of the decision to the protester by:
   a. Certified mail, return receipt requested; or
   b. Any other method that provides evidence of receipt.
3. The Administration may extend, for good cause, the time-limit for decisions in subsection ~~(F)(1)~~ (G)(1) for a time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
4. If the procurement officer fails to issue a decision within the time-limits in subsection ~~(F)(1)~~ (G)(1) or (G)(3), the protester may proceed as if the procurement officer issued an adverse decision.

H. Remedies.

1. If the procurement officer sustains the protest in whole or in part and determines that the RFP, proposed contract award, or contract award does not comply with applicable statutes and rules, the procurement officer shall order an appropriate remedy.
2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances of the procurement or proposed procurement, including:
   a. Seriousness of the procurement deficiency,
   b. Degree of prejudice to other interested parties or to the integrity of the RFP process,
   c. Good faith of the parties,
   d. Extent of performance,
   e. Costs to the state, and
   f. Urgency of the procurement.
   g. Best interest of the state.
3. An appropriate remedy may include one or more of the following:
   a. Terminating the contract;
   b. Reissuing the RFP;
   c. Issuing a new RFP;
   d. Awarding a contract consistent with statutes, rules, and the terms of the RFP; or
   e. Any relief determined necessary to ensure compliance with applicable statutes and rules.

I. Appeals to the Director.

1. A person may file an appeal ~~about~~ of a procurement officer's decision with both the Director and the procurement officer ~~within~~ no later than five days from the date the decision is received. The date the decision is received shall be determined under subsection ~~(F)(2)~~ (G)(2).
2. The appeal shall contain:
   a. The information required in subsection (C)(2),
   b. A copy of the procurement officer's decision,
   c. The alleged factual or legal error in the decision of the procurement officer on which the appeal to the Director is based, and
   d. A request for hearing unless the person requests that the Director's decision be based solely upon the ~~contract record~~ procurement file.

J. Dismissal. The Director shall not schedule a hearing and shall dismiss an appeal with a written determination if:

1. The appeal does not state a basis for protest,
2. The appeal is untimely under subsection ~~(H)(1)~~ (I)(1), or
3. The appeal is moot.

K. Hearing. Hearings under this Section shall be conducted ~~under R9-22-802 of this Chapter~~ using the Arizona Administrative Procedure Act under A.R.S. Title 41, Ch. 6.

R9-22-605. Waiver of Contractor's Subcontract with Hospitals

If a contractor is unable to obtain a subcontract with a hospital as contractually required, the contractor may request in writing a waiver from the Administration as allowed by A.R.S. § 36-2906. The contractor shall state in the request the reasons a

waiver is believed to be necessary and all efforts the contractor has made to secure a subcontract. ~~The Administration shall consider the following criteria in deciding whether to grant the waiver:~~

~~1. The number of hospitals in the GSA,~~
~~2. The extent to which the contractor's physicians have staff privileges at noncontracting hospitals in the service area,~~
~~3. The size and population of, and the demographic distribution within, the service area,~~
~~4. Patterns of medical practice and care within the service area,~~
~~5. Whether the contractor has diligently attempted to negotiate a hospital subcontract with local hospitals capable of serving members in the service area,~~
~~6. Whether the contractor has any subcontracts in adjoining service areas with hospitals that are reasonably accessible to the contractor's members in the service area, and~~
~~7. Whether the contractor's members can reasonably be expected to receive all covered services in the absence of a hospital subcontract.~~

R9-22-606. Contract Compliance Sanction

A. The Director may impose ~~one or more of the following~~ sanctions upon a contractor ~~that violates~~ for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:
1. ~~Suspend any~~ Suspension of any or all further member enrollment, by choice ~~and/~~or assignment~~,~~ for a period of time ~~commensurate with the nature, term, and severity of the violation~~.
2. ~~Withhold a percentage~~ Imposition of a monetary sanction ~~of the contractor's capitation prepayment, commensurate with the nature, term, and severity of the violation~~.

B. The Director shall consider the nature, severity, and length of the violation when determining a sanction.

C. The Director shall provide a contractor with written notice specifying grounds and terms for the sanction. ~~which are commensurate with the nature, term, and severity of the violation and one or more of the following~~:
~~1. Length of suspension,~~
~~2. Amount to be forfeited, or~~
~~3. Prepayment to be withheld.~~

D. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 2389.) The Governor's Office authorized the notice to proceed through the rulemaking process on March 22, 2012.

[R12-180]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action:**
R9-28-508 Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. § 36-2951

Implementing statute: A.R.S. § 36-2951

3. The effective date of the rule:
November 11, 2012

4. Citations to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:
Notice of Rulemaking Docket Opening: 18 A.A.R. 1079, May 11, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 1066, May 11, 2012

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

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson St.
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSrules@azahcccs.gov
Web site: www.azahcccs.gov

6. 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. § 36-2951 authorizes the Administration to provide requirements for Self-Directed Attendant Care (SDAC) services. The Administration is proposing a revision to the rule language describing the administration of insulin. An Attendant Care Worker may provide insulin and is not limited to only providing the insulin when using a sliding scale.

The Nursing Board approved the rulemaking on March 4, 2011.

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

A study was not referenced or relied upon when revising the regulations for SDAC.

8. 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.

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

The Administration anticipates a minimal economic impact on the implementing agency, small businesses and consumers. Other attendant care options are available to the member in addition to the Self-Directed Attendant Care services described in the rule.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No significant changes were made between the proposed rulemaking and the final rulemaking.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were received as of the close of the comment period of June 18, 2012.

12. 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:

No other matters are applicable.

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:

Not applicable.

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:

Not applicable.

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.

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

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES
CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Section
R9-28-508. Self-directed Attendant Care (SDAC)

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

R9-28-508. Self-directed Attendant Care (SDAC)

A. For purposes of this Article the following terms are defined:
"Competent member" means a person who is oriented, exhibits evidence of logical thought, and can provide directions.

"Fiscal and Employer Agent" or "FEA" is a company specified by the program contractor or the Administration in contract to serve as an employment/payroll processing center for attendant care workers employed by the member to provide SDAC services.

"Medically stable" means the member's skilled-care medical needs are routine and not subject to frequent change because of health issues.

"Personal care" means activities of daily life such as dressing, bathing, eating and mobility.

B. In lieu of receiving other attendant care services a competent member who meets the requirements of A.R.S. § 36-2951 or the member's legal guardian may choose to employ through the FEA a person to provide Self-directed Attendant Care (SDAC) services. A paid caregiver described under R9-28-506 and a parent of a minor child shall not receive reimbursement for SDAC services.

C. The attendant care worker chosen to provide SDAC services does not need to be a registered provider. The attendant care worker shall have, at a minimum, hands-on training in First Aid, CPR, Universal Precautions, and state and federal laws regarding privacy of health information or training of similar efficacy as approved by the Administration.

D. The Administration or Program Contractor shall cover SDAC services only if the member resides in the member's home, and shall not cover SDAC services if the member is institutionalized or residing in an alternative residential setting. If the member has a legal guardian, the legal guardian shall be present when SDAC services are provided.

E. A member who chooses to receive SDAC services is not precluded from receiving medically necessary, cost-effective home health services from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the program contractor.

F. A competent member or legal guardian may employ an SDAC attendant care worker to provide personal care, homemaker and general supervision services.

G. A competent member, who is medically stable, or the member's legal guardian may employ an attendant care worker to also provide the following skilled services:
1. Bowel care, including suppositories, enemas, manual evacuation, and digital stimulation;
2. Bladder catheterizations (non-indwelling) that do not require a sterile procedure;
3. Wound care (non-sterile);
4. Glucose monitoring;
5. Glucagon as directed by the health care provider;
6. Insulin by subcutaneous injection only if the member is not able to self-inject ~~and the attendant care worker uses a sliding scale dosing for insulin~~;
7. Permanent gastrostomy tube feeding; and
8. Additional services requested in writing with the approval of the Director and the Arizona State Board of Nursing.

H. The Administration or program contractor shall not cover services under ~~this Section~~ subsection (G) unless:
1. For each SDAC attendant care worker employed by a member or legal guardian, a registered nurse licensed under A.R.S. Title 32, Chapter 15 visits the member and SDAC attendant care worker before a skilled service is provided. The registered nurse will assess, educate, and train the member and SDAC attendant care worker regarding the specific skilled service that the member requires; and
2. The registered nurse determines in writing that the attendant care worker understands how and demonstrates the skill to perform the processes or procedures required to provide the specific skilled service.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION HIGHWAYS

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 2389.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 9, 2011.

[R12-181]

PREAMBLE

1. Article or Section Affected — **Rulemaking Action**

Article 7	Amend
R17-3-701	Amend

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

Authorizing statutes: A.R.S. §§ 28-366 and 28-7908.

Implementing statutes: A.R.S. §§ 28-7901 (as amended by Laws 2012, Chapter 316, §1), 28-7902 (as amended by Laws 2012, Chapter 316, § 2), 28-7903 (as amended by Laws 2012, Chapter 316, § 3), 28-7904, 28-7905, 28-7906, 28-7907, 28-7909, 28-7910, 28-7911, 28-7912, 28-7913, 28-7914 and 28-7915.

3. The effective date of the rules:

November 10, 2012

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 17 A.A.R. 1818, September 16, 2011

Notice of Proposed Rulemaking: 17 A.A.R. 1852, September 23, 2011

Notice of Oral Proceeding on Proposed Rulemaking: 17 A.A.R. 2348, November 18, 2011

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

Name:	Holly Hunnicutt, Special Advisor to the Director
Address:	Department of Transportation Phoenix, AZ 85007
Telephone:	(602) 712-4284
Fax:	(602) 712-3232
E-mail:	hhunnicutt@azdot.gov
Web site:	www.azdot.gov/mvd/Government_Relations/adotrules

Please visit the Arizona Department of Transportation web site to track progress of this rule and any other agency rulemaking matters.

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

The Department has determined that certain language under R17-3-701(A)(1)(b) and (s) (now R17-3-701(A)(16) and (24)) conflicts with 23 CFR 750.707. 23 CFR 750.707 only provides for an exception to the prohibition on re-erecting a legal nonconforming destroyed sign if the sign is destroyed due to vandalism and other criminal or tortious acts.

R17-3-701(D)(14) (see now R17-3-701(C)(14)) is consistent with this provision but R17-3-701(1)(b) and (s) allow re-erection of signs damaged by an act of God. Additionally, R17-3-701(1)(s) allows a nonconforming sign to be relocated up to 10 feet from its original location. 23 CFR 750.707 prohibits a nonconforming sign from being relocated. Under 23 U.S.C. 131, federal funds may be withheld if states do not comply with federal outdoor advertising requirements. As stated in the five-year review report approved by the Council on February 2, 2010, the Federal Highway Administration (FHWA), Arizona Division Representative, provided the Department with verbal notice of the inconsistency between the administrative rule and the federal regulations in the fall of 2004. Since it is not a common occurrence that a sign would be damaged by an act of God to the point that it would require in excess of 50% of normal maintenance to re-erect or re-build, the FHWA allowed the Department time to remove this provision. This allowance is not indefinite and the Department has been reminded of the potential loss of federal funding repeatedly if the Department does not remove this inconsistency. Because of the specificity of the exemption from the moratorium on rulemaking by the Governor's Office, the threat of loss of federal funds for this specific conflict and the controversial nature of the regulation of outdoor advertising evidenced by a recent Arizona Court of Appeals decision regarding outdoor advertising, Scenic Arizona v. City of Phoenix (CV 09-0489), and legislation considered by the Arizona Legislature in 2012, the Department determined that a limited approach to this rulemaking was most appropriate to ensure the required rule change was made to avoid the loss of federal funds. The Department has requested an exemption from the rulemaking moratorium for a more comprehensive rewrite of the outdoor advertising rules. This request includes other issues raised in the five-year report approved by the Council on February 2, 2010.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not 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:

The Department did not review or rely on any study.

8. 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

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

In order to promote highway beautification, Congress passed legislation, 23 U.S.C. 131, which required states to control and regulate outdoor advertising along state highways. Federal laws includes up to a 10% reduction in a state's federal highway construction funds if a state fails to provide for effective control of outdoor advertising.

Arizona's statutes on outdoor advertising control, A.R.S. §§ 28-7901 through 28-7915, follow federal requirements. A.A.C. R17-3-701 and R17-3-701.01 implement and clarify those statutes. The Department's outdoor advertising rules were adopted in 1977 and other than one change in 1994 to create R17-3-701.01, the outdoor advertising rules have remained unchanged for over 30 years.

In the current rulemaking, there will not be an increase in fees for permits or applications.

This rulemaking amends R17-3-701 by repealing the provisions that allow for the re-erection of a nonconforming sign destroyed by acts of God, which is in direct conflict with 23 CFR 750.707, and moving a sign from its current location.

This rulemaking arises from both a five-year rule review and a request by the United States Department of Transportation to amend the rule so it complies with federal requirements. The cost of not repealing the language to comply with federal laws and regulations could be substantial to both the Department and the state. Failure to comply may result in the withholding of 10% of the annual federal funding for statewide transportation projects. For fiscal year 2011, this amount would have been approximately $75,900,000. It is anticipated that similar amounts would be subject to withholding in future fiscal years.

The cost to large and small businesses that utilize advertising for a product or service on a sign classified as nonconforming may be anywhere from minimal to substantial depending on the number of signs impacted. It may also impact land owners who lease property for a sign and those who construct and maintain outdoor advertising.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Title 17, Chapter 3, Article 7

The heading of this Article was changed to Highway Beautification to more accurately reflect the content of the Article.

R17-3-701

Definitions were reordered, technical changes were made to the definitions, the quotation of outdated statutory text and outdated and unnecessary historical text were deleted, formatting and technical changes were made for clarity, and typographical errors were corrected in order to conform the rules to the rulemaking format and style requirements of the Administrative Procedure Act, the Office of the Secretary of State, and the Governor's Regulatory Review Council.

Based on public comments from outdoor advertising owners at the oral proceeding and in writing, the Department added to the definition of normal maintenance for nonconforming signs any repairs to a sign damaged so that less than 60% of the uprights require replacement for wood uprights or less than 30% of the length of each upright support above ground for metal uprights require replacement and restructured the definition. The FHWA Destroyed Sign Guidance Memorandum dated September 9, 2009, allows for more restricted repair and replacement percentages, 40% and 20%, respectively. The only comments received during the comment period and at the oral proceeding recommended the 60% and 30% figures. This alternative imposes the least burden and costs to persons regulated by the rule. At least one state, Illinois, uses the same percentages. Even with the 60% and 30% figures, fewer signs will be allowed to be repaired than under the current rules.

The changes made between the proposed and final rule were intended to eliminate unnecessary costs and lessen the regulatory burden while achieving the same regulatory objective. The changes are consistent with the overall purpose of the rulemaking moratorium and Executive Order 2012-03.

11. An agency's summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:

The notice of oral proceeding was set after a request from the public for a hearing. Because of the interest in this rulemaking, the close of the record was extended to January 20, 2012, as indicated in the transcript from the oral proceeding and on the agency web site.

Company/Individual	Comment	Department's Response
Scenic Arizona	Concurs with proposed rule changes.	No comment
Scenic Arizona	Requests that the Department add in R17-3-701(A)(1)(s) (now R17-3-701(A)(16)) after "such maintenance will not" the word "cumulatively". Suggests that this will prevent someone from replacing a nonconforming sign by scheduling maintenance in at least two phases to stay within the required 50%.	This comment merits a thorough analysis and this comment will be considered in a future more comprehensive rulemaking. This rulemaking was intended to be limited to repairs due to acts of God and this comment is a little broader in that is specifically relates to the existing 50% appraised value language.
Scenic Arizona	Requests that the Department also strike the language "beyond normal maintenance" in R17-3-701(D)(3)(c) (now R17-3-701(C)(3)(c)). Suggests that normal maintenance does not include changes in configuration or materials used in the sign.	This comment also merits discussion. Since the suggested substantive changes are to provisions other than the definitions of "re-erection" and "normal maintenance" and therefore outside of the limited intent of this rulemaking, this comment will be considered in a future more comprehensive rulemaking

Outdoor Advertising Association of America (OAAA)	Requested that the Department review the Federal Highway Administration Memorandum dated September 9, 2009, which provided the following language as guidance to states to define "destroyed" as that (a specified percentage*) or more of the upright supports of a sign structure are physically damaged such that normal repair practices would call for, in the case of wooden sign structures, replacement of the broken supports, or in the case of metal sign structures, replacement of at least (a specified percentage**) of the length above ground of each broken, bent, or twisted support. *A range of 40 to 60% would be considered effective control. **A range of 20 to 30% would be considered effective control.	The guidance document was reviewed and the changes noted were made under the definition of normal maintenance. See R17-3-701(A)(16).
OAAA	Requested specifically that in R17-3-701 the Department adopt the criteria 60% of the upright supports of a wooden structure and 30% of the length above ground of the supports for a metal structure.	The guidance document was reviewed and the changes noted were made under the definition of normal maintenance. See R17-3-701(A)(16).
OAAA	States that repairs due to fires, wind, explosions or other Acts of God are allowed and should be adopted in the Department's regulations.	Federal regulations do not allow for all repairs to non-conforming signs but only to a % for normal repair or a % of support repairs which is now included under normal maintenance. See R17-3-701(A)(16).
Bowlin Travel Centers, Inc.	Requested the Department define damaged and destroyed.	This is beyond the scope of this rulemaking. It would be a substantial change from the proposed rules. However, the Department was able to incorporate suggested changes into normal maintenance. See R17-3-701(A)(16).
Bowlin Travel Centers, Inc.	Requested the Department consider adoption of language to allow for replacement, repair, or re-erection of up to 60% of the upright supports of a wooden sign structure and up to 30% of the length above ground of the supports of metal structure as long as those repairs could be made in the normal course of routine sign maintenance.	The guidance document was reviewed and the changes noted were made under the definition of normal maintenance. See R17-3-701(A)(16).
Bowlin Travel Centers, Inc.	Requested the Department keep the language "Acts of God" in R17-3-701(a)(1)(b) and (s) (now R17-3-701(16) and (24)).	Federal regulations do not allow for all repairs to non-conforming signs but only to a % for normal repair or a % of support repairs which is now included under normal maintenance. See R17-3-701(A)(16).

Clear Channel Outdoor	Requested the Department modify the proposed language to include a definition for "destroyed" similar to the Federal Highway Administration Memorandum dated September 9, 2009.	The guidance document was reviewed and the changes noted were made under the definition of normal maintenance. See R17-3-701(A)(16).
Clear Channel Outdoor	Add the following definition, "Repair" means the replacement of materials where such replacement may not exceed 60% of the upright supports of a wooden sign structure or up to 30% of the length above ground of the supports in the case of a metal sign structure. Repair will be allowed for fires, winds, explosions, or other acts of God."	The guidance document was reviewed and the changes noted were made under the definition of normal maintenance, except that a specific reference to acts of God was not included so as not to conflict with federal regulations. See R17-3-701(A)(16).
CBS Outdoor	The language the Department has proposed to strike is not in conflict with federal law or guidelines.	Federal regulations do not allow for all repairs to non-conforming signs but only to a % for normal repair or a % of support repairs, which is now included under normal maintenance. See R17-3-701(A)(16).
CBS Outdoor	Provided alternative language for the Department to consider for R17-3-701(A)(1)(b) (now R17-3-701(A)(24)) which is noted with underlining and strikethroughs. "Re-erection" means the placing of any sign in a vertical position subsequent to its initial erection. Re-erections shall only occur in the event the sign has been damaged by tortuous acts, or where a sign has been damaged by Acts of God such as wind, rain, or flooding ~~or in the course of normal maintenance~~ where such re-erection may not exceed 60% of the upright supports of a wooden sign structure or up to 30% of the length above ground of the supports in the case of a metal sign structure.	The guidance document was reviewed and the changes noted were made under the definition of normal maintenance, except that a specific reference to acts of God was not included so as not to conflict with federal regulations. See R17-3-701(A)(16).
CBS Outdoor	Requested the Department leave the definition of normal maintenance in R17-3-701(A)(1)(s) (now R17-3-701(A)(16)) as is without any changes.	This definition was the appropriate area to address the comments above. See R17-3-701(A)(16).
YESCO Outdoor Media	Requested the Department review the Federal Highway Administration Memorandum dated September 9, 2009.	The guidance document was reviewed and the changes noted were made under the definition of normal maintenance. See R17-3-701(A)(16).
YESCO Outdoor Media	Requested that Department include the potential economic impact to the industry in making the rule changes.	See item 9 and the attached Economic, Small Business and Consumer Impact Statement.

Clear Channel Outdoor, CBS Outdoor, YESCO Outdoor Media, and Bowlin Travel Centers, Inc.	Insufficient notice of this rulemaking was given.	The Notice of Proposed Rulemaking was filed with the Secretary of State on September 2, 2011. The notice was posted on the Department's web site. Pursuant to A.R.S. § 41-1022(C), at the time an agency files a Notice of Proposed Rulemaking with the Secretary of State, the agency is required to notify each person who has made a timely request to the agency for notification of the proposed rulemaking and to each person who has requested notification of all proposed rulemakings. The Department does not have a record of any such requests being made. At least one such specific request was made at the time comments were submitted, indicating that a prior request had not been provided. When, as of October 20, 2011, the Department had not received any comments regarding this rulemaking, the Department provided electronic notice of the rulemaking to persons the Department thought would be interested. An oral proceeding was held on December 20, 2011 and the timeframe for comments was extended until January 20, 2012.
Clear Channel Outdoor, CBS Outdoor, and YESCO Outdoor Media	Stakeholder participation was lacking.	Many stakeholders responded and provided written comments. An oral proceeding was held, at which stakeholders testified, and additional written comments were received. The close of record was extended until January 20, 2012. As evidenced by this Table, numerous comments from stakeholders were received.

Clear Channel Outdoor, CBS Outdoor, and YESCO Outdoor Media	An economic impact study was not performed.	The Department did not rely on a study relevant to this rulemaking, but the Department did prepare an Economic, Small Business and Consumer Impact Statement as required by A.R.S. § 41-1055. See item 9 and the attached Economic, Small Business and Consumer Impact Statement.

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

There are no other matters prescribed by statute applicable to the Department or to this rulemaking.

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

Outdoor advertising permits are specifically authorized under A.R.S. § 28-7909, which provides authority for issuance and fees. The Department requires specific information from applicants under these rules to determine whether a sign is considered conforming or nonconforming and which rules are applicable to that specific sign. A general permit is not technically feasible for this type of activity.

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

23 U.S.C. 131 requires states to provide effective control of the erection and maintenance of outdoor advertising signs, displays, and devices along the interstate system and the primary system within 660 feet of the nearest edge of the right-of-way if visible from the main-traveled way of the system and erected with the purpose of the message being read from that main-traveled way. The FHWA may withhold 10% of the federal-aid highway funds apportioned to the state under 23 U.S.C. 104 if it determines that the Department has not provided effective control. These rules are not 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:

The Department did not receive any analyses that compared the rule's impact on competitiveness of business in this state with the impact on business in other states.

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

None

14. Whether the rules were previously made, amended or repealed as emergency rules. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION HIGHWAYS

~~**Authority: A.R.S. § 28-108 et seq.**~~

ARTICLE 7. HIGHWAY ~~ENCROACHMENTS AND PERMITS~~ BEAUTIFICATION

Section

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

ARTICLE 7. HIGHWAY ~~ENCROACHMENTS AND PERMITS~~ BEAUTIFICATION

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 adver-

tising signs and matters relating ~~thereto and to present a portion of the Arizona Revised Statutes dealing specifically with the regulation of certain advertising displays~~ to outdoor advertising signs. Terms used in this rule are defined as follows:

~~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 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.~~

1. "Abandoned sign" means a sign for which neither the sign owner nor the landowner claim any responsibility.
2. "Back-to-back sign" means a sign that carries faces attached on each side of the structure and is read from opposite directions.
3. "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.
4. "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.
5. "Double-faced sign" means a sign that has two faces facing in the same direction.
6. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any way bring into being or establish.
7. "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.
8. "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.
9. "Illegal sign" means a sign that was erected or maintained, or both, in violation of the state law.
10. "Intended to be read from the main-traveled way" is defined by any of the following criteria:
    a. More than 80% of the average daily traffic (as determined by traffic counts) viewing the outdoor advertising is traveling in either or both directions along the main-traveled way.
    b. Message content is of such a nature that it would be only of interest for the traffic using the main-traveled way.
    c. The sales value of the outdoor advertising is directly attributable to advertising circulation generated by traffic along the main-traveled way.
11. "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.
12. "Landmark sign" means a sign of historic or artistic significance that existed on October 22, 1965, which may be preserved or maintained as determined by the Director and approved by the Secretary of Transportation.
13. "Lease" means an agreement, oral or in writing, by which possession or use of land or interests in land is given by the owner to another person for a specified period of time.
14. "Maintain" means to allow to exist, including such activities necessary to keep the sign in good repair, safe condition, and change of copy.
15. "Nonconforming sign" means a sign that was lawfully erected but does not comply with the provisions of state law or state laws passed at a later date or later fails to comply with state law or state regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.
16. "Normal maintenance (nonconforming sign)" means the maintenance customary to keep a sign in ordinary repair, upkeep or refurbishing. The maintenance does not include:
    a. Maintenance that exceeds 50% of the appraised value using current appraisal schedules for a sign, or
    b. Repairs to a sign damaged to such an extent that 60% or more of the uprights require replacement for wood uprights, or 30% or more of the length of each upright support above ground requires replacement for metal uprights.
17. "Obsolete sign" means a directional or other official sign the purpose of which is no longer pertinent.
18. "Official signs and notices" means signs and notices, other than traffic regulatory signs and notices, erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to 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 are official signs.
19. "Off-premise sign" means an outdoor advertising sign that advertises an activity, service or product and that is located

on premises other than the premises at which the activity or service occurs or the product is sold or manufactured.

20. "On-premise sign" means any sign that meets the following requirements (such signs are not controlled by state statutes):
    a. Premises. The sign must be located on the same premises as the activity or property advertised.
    b. Purpose. The sign must have as its purpose:
        i. The identification of the activity, or its products or services, or
        ii. The sale or lease of the property on which the sign is located, rather than the purpose of general advertising.
    c. In the case of an on-premise sign advertising an activity, the premises must include all actual land used or occupied for the 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 that serve no reasonable or integrated purpose related to the activity other than to attempt to qualify the land for signing purposes are not premises. Generally these will be inexpensive facilities, such as picnic grounds, playgrounds, walking paths, or fences.
21. "Parkland" means any publicly owned land that is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.
22. "Public service signs" means signs that are located on school bus stop shelters and that:
    a. Identify the donor, sponsor, or contribution of the shelters;
    b. Contain safety slogans or messages, which must occupy not less than 60% of the area of the sign;
    c. Contain no other message;
    d. Are located on school bus shelters that 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
    e. May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.
23 "Public utility signs" means warning markers that are customarily erected and maintained by publicly or privately owned public utilities to protect their facilities.
24. "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, or in the course of normal maintenance.
25. "Scenic area" means any area of particular scenic beauty or historical significance as determined by the federal, state, or local officials having jurisdiction of the area, and includes interests in land that have been acquired for the restoration, preservation, and enhancement of scenic beauty.
26. "Scenic overlook or rest area" means 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.
27. "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, that do not exceed eight square feet in area.
28. "V-type signs" means signs that are oriented at an angle to each other, the nearest points of which are not more than 10 feet apart.
29. "Within the view of and directed at the main-traveled way" means any sign that 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.

~~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.
    (e) 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 mini-

mum 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), setting forth standards governing 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 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.~~ **B.** 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~~ Intermodal Transportation Division; 206 South 17th Avenue; Phoenix, Arizona 85007~~,~~; Attention: Maintenance ~~Permit Engineer, Maintenance~~ Permits 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~~ of the signed certification, 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~~ the 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~~ Intermodal Transportation Division, Maintenance ~~Permit Engineer~~ Permits Section, 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~~ owner 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.~~ **C.** 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)~~.~~, or
   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,~~"~~ "or an 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~~ that 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 in this Section. Within seven days after notice of ~~such~~ the action is mailed or posted, the land owner or sign owner may make written request for a hearing on ~~such actions~~ the action. The Director of the Department of Transportation shall designate a hearing officer, who shall be an administrative employee of the Department of Transportation, to conduct and preside at ~~such~~ the hearings. When a hearing is requested, the hearing shall be held within ~~thirty~~ 30 days ~~thereafter~~ after the request, and the party requesting the hearing shall be given at least five days notice of the time of ~~such~~ the 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~~ the presiding officer's 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.~~**D.** 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~~ within 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.~~3. 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, and
   (8) Outdoor recreational ~~area~~ areas.

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~~ chairperson, to judge and approve the qualifications for directional signing of privately owned activities or attractions as limited to the categories in ~~subdivision (i)~~ subsection (D)(3)(f)(i) and the qualification in ~~subdivision (ii)~~ subsection (D)(3)(f)(ii) above.

iv. Applicants for directional signs involving privately owned activities or attractions, shall first qualify ~~such~~ the 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 selection board in making ~~their~~ the selection board's determination, to the selection board.

v. Applicant shall indicate one or more categories (as listed in ~~subdivision (i)~~ subsection (D)(3)(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~~ selection board will, upon approval or rejection of an application, give notification of ~~their~~ the selection board's 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~~ selection 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~~ or within municipal limits. The selection board may make final determination of eligibility for ~~such~~ those 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.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMERCIAL PROGRAMS

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 2389.) The Governor's Office authorized the notice to proceed through the rulemaking process on June 24, 2011.

[R12-182]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) | **Rulemaking Action**

R17-5-501	Amend
R17-5-504	Amend
R17-5-506	Repeal

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

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-4001, 28-4002, 28-4033, 28-4034, 28-5201, 28-5204, and 49 U.S.C. 13906

3. The effective date of the rule:

November 10, 2012

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 17 A.A.R. 1819, September 16, 2011

Notice of Proposed Rulemaking: 18 A.A.R. 190, January 27, 2012

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

Name: John Lindley, Administrative Rules

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

Telephone: (602) 712-8804

Fax: (602) 712-3232

E-mail: jlindley@azdot.gov

Web site: Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/government_relations/adotrules.

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

The rules prescribe financial responsibility reporting requirements for certain commercial motor carriers. The Department has determined that over the past several years statutory references and other information contained within the rules have changed. The rules need to be updated to provide accurate references and information for motor carriers to comply with Arizona's financial responsibility requirements.

Under A.R.S. § 28-5432(A), persons subject to these rules include motor carriers and intermodal equipment providers who, unless exempt under A.R.S. § 28-5432(B), operate only in Arizona:

A trailer or semitrailer with a gross weight of ten thousand pounds or less and that is used in the furtherance of a commercial enterprise;
A motor vehicle or vehicle combination if the motor vehicle or vehicle combination is designed, used or maintained primarily for the transportation of passengers for compensation or for the transportation of property;
A hearse, an ambulance, or any other vehicle that is used by a mortician in the conduct of the mortician's business; and
A commercial motor vehicle as defined under A.R.S. § 28-5201(1), which includes a motor vehicle or combination of motor vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise on a highway in this state, that is not exempt from the gross weight fees as prescribed under A.R.S. § 28-5432(B), and that includes any of the following:
A single vehicle or combination of vehicles that has a gross vehicle weight rating of eighteen thousand one or more pounds and that is used for the purposes of intrastate commerce;
A single vehicle or combination of vehicles that has a gross vehicle weight rating of ten thousand one or more pounds and that is used for the purposes of interstate commerce;
A school bus;
A bus;
A vehicle that transports passengers for hire and that has a design capacity for eight or more persons; and
A vehicle that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and that is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the Department pursuant to this Chapter.

This rulemaking updates the Department's existing motor carrier financial responsibility reporting requirements to provide accurate references, information, and clarification for an intrastate motor carrier of non-hazardous commodities when not subject to the electronic financial responsibility reporting requirements of FMCSA under 49 CFR 387. The rules provide the methods an eligible intrastate motor carrier may use to file evidence of financial responsibility with the Department when the motor carrier does not insure a motor vehicle or vehicle combination through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and 17 A.A.C. 5, Article 8.

Currently, applicants for registration of a vehicle subject to the gross weight fees imposed under A.R.S. Title 28, Chapter 15, Article 2, are required under A.R.S. §§ 28-2167, 28-2169, and A.A.C. R17-5-202 to provide the Department with the motor carrier's United States Department of Transportation (USDOT) number and federal taxpayer identification number before registering the vehicle for travel in Arizona. A person or motor carrier that maintains a valid United States Department of Transportation number and files proof of financial responsibility with the Federal Motor Carrier Safety Administration under 49 CFR 387 is not required to submit additional proof of financial responsibility under these rules, except on written request by the Department.

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

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

8. 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

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

The rules apply to motor carriers of property or passengers operating motor vehicles in intrastate commerce when not subject to the motor carrier financial responsibility reporting requirements of the Federal Motor Carrier Safety Administration under 49 CFR 387. The rules provide the methods an eligible intrastate motor carrier may use to file proof of financial responsibility with the Department when the motor carrier does not insure a motor vehicle or vehicle combination through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and 17 A.A.C. 5, Article 8.

All interstate and intrastate motor carriers and intermodal equipment providers operating in Arizona are currently required under 49 CFR 390.19, as incorporated by reference under R17-5-202 and 203, to file Form MCS-150, Form MCS-150B, or Form MCS-150C with FMCSA on application for operating authority and a USDOT number. The motor carrier is responsible for updating the information with FMCSA if the information changes or at least once every two years. The Department has determined that the information each motor carrier provides to the FMCSA is sufficient certification that the motor carrier maintains an appropriate level of financial responsibility.

Since the rulemaking updates the Department's existing motor carrier financial responsibility reporting requirements to provide accurate references, information, and clarification for intrastate motor carriers of non-hazardous commodities to comply with Arizona's financial responsibility reporting requirements, the Department anticipates no signifi-

cant economic impact resulting from the amendment of the rules other than the resources necessary for rulemaking. However, the rules do benefit motor carriers and the Department by eliminating redundant reporting of duplicative motor carrier financial responsibility information and decreasing monitoring, recordkeeping, administrative costs, and reporting burdens.

The Department has not notified the Joint Legislative Budget Committee under A.R.S. § 41-1055(B)(3)(a) since no new full-time employees are necessary to implement and enforce the rules.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

R17-5-501: A reference was added to the introductory paragraph referencing other definitions under A.R.S. § 28-4001, which remain applicable to these rules. The language was also modified to ensure consistency with other Department rules. Additionally, the term "Binder" was reinserted without change after being inadvertently stricken from the definitions Section in the Notice of Proposed Rulemaking.

R17-5-504: The term "Division" was changed to "Department" for consistency purposes.

Minor grammatical and technical corrections were also made at the request of the Governor's Regulatory Review Council staff.

11. An agency's summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:

The Department received no public stakeholder comments regarding this rulemaking.

12. All agencies shall list any 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:

There are no other matters prescribed by statute applicable to the Department or to any specific rule or class of rules.

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 rules do 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:

These rules apply to motor carriers of property or passengers operating motor vehicles in intrastate commerce when not subject to the motor carrier financial responsibility reporting requirements of the Federal Motor Carrier Safety Administration under 49 CFR 387. The rules prescribe methods an eligible intrastate motor carrier may use to file proof of financial responsibility with the Department if the motor carrier does not insure a motor vehicle or vehicle combination through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and 17 A.A.C. 5, Article 8. The rules are not 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:

No analysis was submitted to the Department.

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

This rulemaking contains no materials incorporated by reference.

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

These rules were not previously made, amended, or repealed as emergency rules.

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

ARTICLE 5. MOTOR CARRIER FINANCIAL RESPONSIBILITY

Section
R17-5-501. Definitions
R17-5-504. Requirement to Submit Proof of Financial Responsibility; Applicability ~~and~~; Procedure; Exception
R17-5-506. ~~Failure to Maintain Proof of Financial Responsibility and Suspension~~ Repealed

ARTICLE 5. MOTOR CARRIER FINANCIAL RESPONSIBILITY

R17-5-501. Definitions

In addition to the definitions provided under A.R.S. §§ 28-4001, 28-4031, 28-5201, and 28-5431, the following terms apply to this Article, unless the context otherwise requires:

~~1.~~ "Binder" means a contract for temporary insurance as described in A.R.S. § 20-1120.
~~2. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.~~
~~3.~~ "Initial motor vehicle registration" means the first time a motor carrier registers a specific motor vehicle or a vehicle combination in Arizona.
~~4.~~ "Insurance company" means an entity that is in the business of issuing motor carrier liability insurance policies.
~~5. "Lightweight motor vehicle" has the meaning in A.R.S. § 28-5201(6).~~
~~6.~~ "Managing general agent" has the meaning ~~in~~ prescribed under A.R.S. § ~~20-284(A)~~ 20-311.
~~7. "Motor carrier" has the meaning in A.R.S. § 28-5201(8).~~
~~8. "Motor vehicle" has the meaning in A.R.S. § 28-5201(9).~~
~~9. "Motor vehicle liability policy" has the meaning in A.R.S. § 28-4001(4).~~
~~10. "Proof of financial responsibility" has the meaning in A.R.S. § 28-4001(7).~~
~~11. "Vehicle combination" has the meaning in A.R.S. § 28-5431(3).~~

R17-5-504. Requirement to Submit Proof of Financial Responsibility; Applicability ~~and;~~ Procedure; Exception

A. If a person or motor carrier subject to financial responsibility requirements under A.R.S. § 28-4032 does not insure its motor vehicle or vehicle combination ~~by~~ through an insurance company that electronically reports to the ~~Division~~ Department under A.R.S. § 28-4148~~, R17-5-502, or R17-5-503~~ and Article 8 of this Chapter, the person or motor carrier shall submit proof of financial responsibility as prescribed in this Section, and in the amount required under A.R.S. § 28-4033(A)~~, as follows~~:
1. ~~At the time of~~ On initial motor vehicle registration, or
2. ~~As notified by the Division under R17-5-506~~ On written request by the Department.

B. An insurance company, its managing general agent, broker, or agent may submit~~, on behalf of a motor carrier,~~ proof of financial responsibility to the ~~Division~~ Department on behalf of a person or motor carrier.

C. As proof of financial responsibility, a person or motor carrier shall submit to the Department ~~the original or~~ a photocopy of:
1. A valid liability insurance policy;
2. A binder dated within 90 days of filing with the ~~Division~~ Department;
3. A completed and signed Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance ~~listed in subsection (E)~~, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation as the ~~Commission~~ agency;
4. A completed and signed Certificate of Liability Insurance form ~~listed in subsection (F)~~, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation~~, Motor Vehicle Division~~ as the certificate holder; or
5. A certificate of self-insurance issued by the ~~Division~~ Department after a person or motor carrier meets the requirements of R17-5-810 and A.R.S. §§ 28-4007 and 28-4135.

D. Before a binder submitted as proof of financial responsibility expires, a motor carrier shall submit:
1. A binder from an insurance company other than the insurance company named in the first binder; or
2. Proof of financial responsibility listed in subsections (C)(1) or (C)(3) through ~~(C)(5)~~ (5).

~~**E.** A person may obtain a Form E from:~~
~~Uniform Information Services, Inc.~~
~~125 Nougat Park, Acton, Massachusetts 01720;~~
~~Telephone: (800) 872-0700;~~
~~Fax: (978) 263-1824; or~~
~~Web site: www.uniforminfomationservices.com.~~

~~**F.** A person may obtain a Certificate of Liability Insurance form from:~~
~~ACORD~~
~~1 Blue Hill Plaza, P.O. Box 1529, 15th Floor~~
~~Pearl River, New York 10965;~~
~~Telephone: (800) 444-3341 extension 506;~~
~~Fax: (845) 620-3600; or~~
~~Web site: www.acord.org.~~

E. A person or motor carrier that maintains a valid USDOT number and files proof of financial responsibility with the Federal Motor Carrier Safety Administration under 49 CFR 387 is not required to submit additional proof of financial responsibility under this Section, except on written request by the Department.

R17-5-506. ~~Failure to Maintain Proof of Financial Responsibility and Suspension~~ Repealed

~~**A.** If a motor carrier's proof of financial responsibility expires, is cancelled, or lapses, with no new proof of financial responsibility submitted to the Division, the Division shall send the motor carrier a dated intent to suspend notice by regular mail.~~

~~1. A motor carrier shall, within 20 days after the date of the intent-to-suspend notice, submit to the Division proof of financial responsibility that complies with R17-5-504.~~

~~2. If a motor carrier does not submit proof of financial responsibility within the time prescribed under subsection (A)(1), the Division shall immediately suspend the motor carrier's vehicle registration.~~

~~3. If a motor carrier submits proof of financial responsibility during a suspension, the Division shall immediately reinstate the motor carrier's vehicle registration.~~

~~**B.** A motor carrier may request a hearing for a vehicle registration suspension as follows:~~

~~1. 17 A.A.C. 1, Article 5 applies to a hearing request and to any hearing.~~

~~2. An Administrative Law Judge shall limit the scope of a hearing to whether the motor carrier has proof of financial responsibility under R17-5-505.~~