

NOTICES OF PROPOSED RULEMAKING

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

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 6. DEPARTMENT OF TRANSPORTATION - OVERDIMENSIONAL PERMITS

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 23.) The Governor's Office authorized the notice to proceed through the rulemaking process on September 27, 2012.

[R12-248]

PREAMBLE

- Articles, Parts, or Sections Affected (as applicable)** **Rulemaking Action**
R17-6-506 New Section
- Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statutes: A.R.S. §§ 28-366 and 28-1144.
Implementing statutes: A.R.S. §§ 28-1141, 28-1142, 28-1143, 28-1144, 28-1145, 28-1146, 28-1147, 28-1148, 28-1149 and 28-1151.
- Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rules:**
Notice of Rulemaking Docket Opening: 18 A.A.R. 3265, December 14, 2012
- The agency's contact person who can answer questions about the rulemaking:**
Name: Holly B. Hunnicutt, Special Advisor to the Director
Address: Arizona Department of Transportation
Government Relations and Policy Development Office
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007
Telephone: (602) 712-4284
Fax: (602) 712-3232
E-mail: HHunnicutt@azdot.gov
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.
- An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
This proposed rulemaking implements A.R.S. § 28-1144(B), as amended by Laws 2012, Ch. 164, § 3. Under that statute, the Director of the Department of Transportation may issue envelope permits for vehicles hauling a houseboat within a ten mile radius of a lake that is located in this state and the state of Utah and whose tributary is the Colorado River (Lake Powell) if the vehicle or load does not exceed the following:
150,000 pounds gross weight;
16 1/2 feet in width;
25 feet in height; and
120 feet in length.

Notices of Proposed Rulemaking

A person who operates a vehicle under one of these envelope permits must notify the Department as the Director prescribes each time a vehicle hauls a houseboat under the permit. The Director of the Department of Transportation is required to adopt rules, including establishing fees, for these envelope permits.

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

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

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

Not applicable

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

Under this rulemaking, the Department identifies the following entities that may bear costs and receive benefits that may range from minimal to moderate:

- a. Arizona Department of Transportation,
- b. Political subdivisions,
- c. Commercial houseboat transporters requiring oversize or oversize and overweight permits within a ten mile radius of Lake Powell, and
- d. Businesses or consumers requiring movement of houseboats within a ten mile radius of Lake Powell.

In Fiscal Year 2012, the Department collected \$126,635 through the issuance of 1632 single trip special permits to seven commercial houseboat transporters that the Department anticipates will use this new envelope permit. Those single trip special permit fees were deposited in the Arizona Highway User Revenue Fund (HURF) and distributed to the State Highway Fund (SHF) and political subdivisions as provided in A.R.S. Title 28, Chapter 18, Article 2. The distribution formula as provided in A.R.S. § 28-6538(A) is as follows: 50.5% to the SHF, 19% to counties, 27.5% to incorporated cities and towns, and 3% to incorporated cities with a population of 300,000 or more persons.

The proposed rule prescribes the applicable fee for these envelope permits as the same fee charged for any other envelope permit. As prescribed under A.R.S. § 28-1143(A) and R17-6-210, those fees are \$500 for a 30-day oversize and overweight permit and \$1500 for an oversize and overweight annual permit. The Department anticipates that only those commercial houseboat transporters that would benefit financially from the 30-day or annual envelope permit rate will apply for the envelope permit. If seven commercial houseboat transporters apply for the new annual envelope permit, the revenues generated will equal \$10,500 annually. The estimated reduction in revenues caused by this change is \$116,135 annually.

Envelope permit fees are distributed differently than single trip special permit fees. Twenty-five percent of the envelope permit fees are deposited directly in the SHF. Those monies are subject to legislative appropriation and must be used for the purpose of carrying out duties relating to envelope permits as provided under A.R.S. § 28-1143(B). The estimated annual distribution reductions that may result from this rulemaking are as follows: SHF - \$60,000, counties - \$23,562, incorporated cities and towns - \$34,102, and incorporated cities with a population of 300,000 or more persons - \$3720.

Conversely, commercial houseboat transporters anticipated to apply for the envelope permit will benefit by a reduction in fees equal to the loss of revenues. Businesses and consumers requiring the movement of houseboats should benefit from a reduction in fees charged by the commercial houseboat transporters if the transporters pass on those savings to their customers. Since the houseboat industry is a significant industry in the Page area, the City of Page and its residents and businesses should also benefit from any reduction in fees if it encourages businesses and consumers to utilize houseboats in the area.

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

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www.azdot.gov/government_relations/adotrules.

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

Written comments on the proposed rulemaking should be directed to the person listed under item 4. The Department has scheduled the following oral proceeding for public comments:

Date: February 5, 2013
Time: 1:30 p.m.
Location: 206 S. 17th Ave.
Phoenix, AZ 85007
Nature: Oral Proceeding/Public Hearing

All comments must be received by close of public record at 5:00 p.m. on February 5, 2013.

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

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

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class 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 rule prescribes the application and use requirements for envelope permits issued by the Department for vehicles hauling houseboats within a ten mile radius of Lake Powell. Although these permits are specifically authorized by statute, envelope permits may be considered to be general permits in the sense that all vehicle and load combinations that fit within the specifically prescribed dimensions are able to use the envelope permit. Since an envelope permit is issued for transporting non-specific and non-reducible vehicle and load combinations, and an in-depth analysis by Department engineers is generally not required before issuance, the applicant needs only to provide the Department a minimal amount of information to receive the permit. However, this particular envelope permit, though on its own is general in nature, will be issued with the understanding that the permit holder must notify the Department and provide additional vehicle and load specific information each time the permit is used to transport a load. Because of this statutory requirement, the Department is not able to consider making this a general 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:

The rule is not more stringent than any applicable federal law.

c. Whether a person submitted an analysis to the agency that compares a 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.

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

This rulemaking incorporates no materials by reference.

13. The full text of the rule follows:

TITLE 17. TRANSPORTATION

CHAPTER 6. DEPARTMENT OF TRANSPORTATION - OVERDIMENSIONAL PERMITS

ARTICLE 5. ENVELOPE PERMIT SPECIAL PROVISIONS

Section

R17-6-506. Page-Lake Powell Area Houseboat Hauling Envelope Permit

ARTICLE 5. ENVELOPE PERMIT SPECIAL PROVISIONS

R17-6-506. Page-Lake Powell Area Houseboat Hauling Envelope Permit

- A.** An applicant requesting an envelope permit for a vehicle hauling a houseboat under A.R.S. § 28-1144(B) shall:
1. Apply to the Department using the application procedure provided under R17-6-103; and
 2. Pay the applicable fees prescribed under R17-6-210.
- B.** A permittee issued an envelope permit under this Section shall:
1. Comply with all provisions applicable to the application, issuance, and maintenance of envelope permits under this Chapter;
 2. Notify the Department as required under A.R.S. § 28-1144(B) before transporting a houseboat authorized by the envelope permit. This notification shall include at least the following information:
 - a. The number of the authorizing envelope permit;
 - b. The date of transport;
 - c. The transport origination;
 - d. The transport destination;
 - e. The name and hull identification number of the houseboat being transported;
 - f. The overall length, height, and width of the vehicle and load combination;
 - g. The overall gross weight of the vehicle and load combination; and
 - h. The total number of axles on the vehicle and load combination;
 3. Notify the Department each time information submitted under subsection (B)(2) of this Section changes by submitting a new notification to the Department; and
 4. Complete the notifications required under subsections (B)(2) and (3) of this Section electronically through the Department's web site at www.azdot.gov.