

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st 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. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

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 adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 12. NATURAL RESOURCES

#### CHAPTER 4. GAME AND FISH COMMISSION

#### PREAMBLE

1. **Sections Affected**

R12-4-102	<b><u>Rulemaking Action</u></b>
R12-4-318	Amend
R12-4-319	Amend
R12-4-426	New Section
	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 17-231(A)(1)(2) and (3)

Implementing statute: A.R.S. §§ 17-333(A)(1) through (29), (31), (32), (33), (35), and (36), 17-333(B); 17-342(A); 17-232; 17-332(B) and (C); and 17-231(B)(7) for R12-4-102; 17-102 for R12-4-318; 17-102 and 17-301(B) for R12-4-319; and 17-306 for R12-4-426
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 5 A.A.R. 709 and 710, March 5, 1999.
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Susan L. Alandar, Rules Manager

Address: Game and Fish Department  
2221 West Greenway Road, DORR  
Phoenix, AZ 85023-4399

Telephone: (602) 789-3271

Fax: (602) 789-3677

e-mail: salandar@gf.state.az.us
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**

**R12-4-102. Fees for Licenses, Tags, Stamps, and Permits**

This rule prescribes fees, within statutory confines, to cover necessary Department expenditures. The Game and Fish Department receives no appropriation from the State General Fund, but is supported by those fees prescribed in this rule; license fees are the major source of funding. A.R.S. §§ 17-333(A)(1) and (3) through (19) and 17-333(B) authorize hunting and fishing license fees and big game tag fees. Stamps and special use permit fees are authorized by A.R.S. §§ 17-342(A), 17-232, 17-332(B), 17-333(B), and 17-333(A)(2)(31) and (35). Other license fees are authorized by A.R.S. §§ 17-333 (A)(20) through (29), (32), (33), and (36). Administrative fees are authorized by A.R.S. §§

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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17-333(A), 17-332(C), and 17-231(B)(7). Although the rule is effective in meeting its objective, the 5-year review of this rule indicated the following amendments are needed:

R12-4-102 (B)(10). Class U Urban Fishing License: This is a fishing license that allows the taking of all aquatic wild-life from Department designated urban waters. Authorized by A.R.S. § 17-333(A)(9), at \$14 resident or nonresident, the current fee under R12-4-102 (B)(10) is \$12. The proposed rule amendment will increase the license fee by \$2, from \$12 to \$14. Arizona's urban fishing program is accomplished through partnerships between the Department and various City Parks and Recreation Departments. The program, established September 15, 1982, is self-supporting and is funded by fees paid by the partnering municipalities, which account for 18% of revenues and by urban fishing license fees, which account for 82% of revenues. While the urban fishing license fee has remained at \$12 since 1985, the cost of fish required to stock Arizona's 16 urban lakes has increased by more than 33%, causing a 9% reduction in fish stocking rates. The 1997 Arizona Game and Fish Department's urban angler survey, *Angler Satisfaction and Opinion Survey of the Arizona Urban Fishing Program and Park Management. A 1997 Roving Creel Survey of Urban Anglers*, indicates that more than 83% of licensed anglers were willing to pay an additional \$2 or more for an urban license if it meant more fish. A license fee increase of \$2 would yield a net estimated revenue increase of \$10,000 - \$20,000 the 1st year, and more in later years as buyer resistance to the fee increase wears off. The license fee increase is necessary to increase funds available to purchase more fish so that stocking rates can be maintained or increased and urban angler satisfaction levels can be improved.

R12-4-102(C)(4). Yearling or Cow Buffalo Permit Tag: This is a big game tag that validates the Arizona class F or G hunting license to take buffalo from the state's buffalo herds. Authorized by A.R.S. § 17-333(B), as an "additional license or permit", no ceiling on this fee is set. Under R12-4-102(C)(4), separate buffalo tags are established and resident and nonresident fees for these tags are set. The resident fee for an adult bull or any buffalo tag is \$750; for an adult cow tag is \$450; and for a yearling tag is \$240. These resident fees have been in effect since before 1982. The nonresident fee for an adult bull or any buffalo tag is \$3,750; for an adult cow tag is \$2,250; and for a yearling tag is \$1,200. These nonresident fees were established January 1, 1989. The proposed rule amendment will establish a 4th combination tag and set resident and nonresident fees for this tag.

In addition to the 3 current buffalo tags, which allow for the harvesting of adult bulls or any buffalo, adult cows, or yearlings, the Department proposes an additional combination yearling/cow tag for buffalo at \$450 for residents and \$2,250 for nonresidents. The cost of the tag would be the same as the cost of the cow tag. The yearling and cow hunts are where most improper harvesting occurs. Differentiation between yearlings and cows is difficult. Many hunters have stated they located the herd but did not shoot because they were unsure of the correct buffalo for their tag. Hunters also harvest the wrong buffalo and swear it was the correct buffalo for their tag as they pulled the trigger. Potential penalties include seizure of the buffalo, citation and fines, and the loss of a once in a lifetime opportunity to legally harvest a buffalo in Arizona. Combining the tags would alleviate these problems, reduce workload in enforcement of restricted hunt regulations which require a lot of time and effort to ensure that hunters take only the sex and age class buffalo for which their tag is valid, and would reduce hunting pressure on the herd which causes buffalo to leave the wildlife area. Hunting pressure is reduced when a hunter is able to identify a legal buffalo and harvest it with 1 look at the herd rather than having to engage in continued pursuit to ensure correct identification. The new combination tag would also improve the Department's ability to effectively manage the buffalo population by increasing the number of buffalo successfully taken in the buffalo harvest.

R12-4-102(E)(1). Falconer License: This is a 3-year license that validates an Arizona class G general hunting license for the taking of quarry with a trained raptor and allows the possessing and transporting of raptors for that purpose consistent with the requirements of the Migratory Bird Treaty Act, 40 STAT 755; 16 United States Code Sections 703 through 711, and the Endangered Species Act of 1973, P.L. 93-205; 87 STAT. 884; 16 United States Code Sections 1531 through 1544. Authorized by A.R.S. §§ 17-333(A)(36), at \$75, the fee under R12-4-102(E)(1) is \$75. The proposed rule amendment will change the name of the license from "falconer license" to "sport falconry license" to correspond to new language in A.R.S. §§ 17-236(B) and 17-333(A)(36) created by SB 1128 and revised language in R12-4-422. Falconers: Licensing and Requirements resulting from SB 1128.

**R12-4-318. Seasons**

This rule prescribes special restrictions or requirements for various hunt structures to achieve management plans and goals for wildlife harvest while providing maximum wildlife oriented benefits to the public. The proposed change to this rule addresses only the "Juniors-only" portion.

The "Juniors-only" hunt was developed to give youngsters the opportunity to hunt in their own structured hunt setting. Encouraging youngsters to hunt is essential to the future of wildlife management. These hunts have been very well received by the public. The Commission wishes to consider a proposal to increase the age of eligibility for youth to participate in these hunts. Currently, the rule allows participation by youth through the calendar year of their 15th

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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birthday. The proposal would extend this to the calendar year of their 17th birthday.

First, it is necessary to explain the reasoning behind the rule's wording. The rule used to restrict participation to those "14 years of age or under." The last 5-year rules review report for this rule found this was confusing for hunters and for enforcement. Junior hunters applied for these hunts at age 14, but turned 15 by the time the hunt began, or during the hunt. The Commission subsequently changed the rule to allow youth to participate in "Juniors-only" hunts up to and throughout the calendar year of their 15th birthday. This has helped the rule meet its objective (by expanding participation at no disadvantage to the agency or the resource) and removed the confusion surrounding "birthday dates." The same reasoning is applied to extending the rule to 16-year-olds.

Originally, consideration was given to extending the rule to youth through the calendar year of their 20th birthday. This idea was raised during the Department's annual "hunt recommendation" meetings, which are held prior to the Department's final recommendations for the Arizona Game and Fish Commission regarding the year's hunting seasons (Commission orders establish hunting seasons and are exempt from rulemaking per A.R.S. § 41-1005.) Close to 500 persons attended the meetings in 1999. There was strong opposition to raising the age to 20-21 years old. There was also concern from the Department's law enforcement officers, as persons who are otherwise legally "adults" would be participating in these hunts, making it much more difficult to identify legal participants.

**R12-4-319. Use of Aircraft to Take Wildlife.**

This would be a new rule prohibiting the use of an aircraft for hunting or harassing wildlife. It would also prohibit use of an aircraft for locating big game 48 hours before or during open seasons.

During the last year, the Arizona Game and Fish Department has received at least 5 written complaints regarding the use of aircraft during big game hunts. In addition, many Game Rangers (Department law enforcement personnel) have received numerous verbal complaints while interacting with the public. Generally, complaints deal with low flying aircraft disturbing wildlife while people are hunting, chasing animals and signaling animal locations to hunters on the ground.

On December 22, 1998, 2 complainants filed a petition for rule (per R12-4-601) with the Arizona Game and Fish Commission to regulate the use of aircraft associated with big game hunts. The Commission denied the rule because of problems with the language in the proposal. However, the Commission recognized the merit of the proposal and directed the Department to open a rulemaking docket in order to pursue the intent of the petition.

Arizona's current law regarding the use of aircraft while hunting is relatively narrow and vague:

*A.R.S. § 17-301 (B). A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission. ...*

Department personnel and the public are concerned that ongoing legal and illegal aircraft activity will have negative effects on animal health, quality of hunts, hunt opportunity, public perceptions of hunting and public safety. Although many activities regarding aircraft are prohibited by the Federal Airborne Hunting Act, the U.S. Fish and Wildlife Service is severely limited in manpower, with only 5 Special Agents assigned to all of Arizona. Having a State statute that overlaps the Act would not create "double jeopardy" and therefore violators could potentially be prosecuted by both the state and federal jurisdictions. Department law enforcement cannot enforce federal law, and currently can only refer complaints and lend assistance to federal investigations. Having a State rule would allow the Department to conduct its own investigations, determine prosecution avenues, and be more responsive to the concerns of Arizona hunters. Further, the proposed rule is more restrictive than the federal law in that it would prohibit use of aircraft for scouting purposes 48 hours before the hunt, as well as during the hunt. Federal law only prohibits this activity during the hunt.

Specific concerns related to animal health involve the relatively strict energy and water budgets which wild animals often operate under. Aircraft use related to hunting may cause animals to expend energy and water to the point of negatively effecting individual survival and reproductive potential.

Numerous public complaints have centered on low flying aircraft disturbing both animals and hunters while stalking game. Since many of the complaints about aircraft are generated during hunts with some of the highest application rates it's understandable how these disturbances could cause extreme anger among hunters.

Public safety can also become a factor given the frustration level from hunters who have just had the hunt of a lifetime spoiled by inappropriate use of an aircraft. Many Game Rangers have reported threats from frustrated hunters that can be characterized as; "If that ever happens again I may bag an airplane!" In addition, the above ground elevation from which wildlife can effectively be observed leads to a relatively thin layer of useful airspace. This constricts

tion, coupled with possible concentrations of wildlife and the distraction of pilots, may also create a safety problem.

At some point, the proliferation of aircraft assisted hunting along with the extreme advantage gained by their use will significantly increase success rates overall and more specifically for older age class animals. The end result may be a decrease in both hunting opportunity and the older age class segment of wildlife populations.

Much of the rule language is very near to the language of the Federal Airborne Hunting Act. Language used in the definition for "aircraft" was intended to include all the physics involved with movement or suspension within the earth's atmosphere. Since the definition of flight is centered on airflow over a wing surface to provide lift, it was necessary to preclude the use of dirigibles and tethered balloons by using the "lighter-than-air" phrase. Since same day satellite imagery is now available in the field, the phrase "image producing contrivance orbiting the earth" was needed to preclude its use. This phrasing would continue to allow the use of satellites associated with the Global Positioning System.

Subsections (D) and (E) contain the "locating" prohibitions. Subsection (D) addresses all big game seasons except "special seasons" (see following) and lion seasons. Aircraft is not an effective tool for hunting lion. (E) addresses "special seasons." These seasons are described in R12-4-318 (B). The word "special" is reserved for tags issued under the authority of A.R.S. § 17-346, "Special big game license tags". This law authorizes the Game and Fish Commission to issue big game tags in the name of an incorporated, nonprofit organization for the purpose of raising money for wildlife management projects. These organizations raffle or auction the special tags. No more than 2 tags per species may be issued in a license year. R12-4-120 prescribes procedures related to the tags. The special seasons established by Commission order for the recipients of these special license tags are extremely long and open areas are nearly statewide. Not separating these different situations would virtually eliminate the use of aircraft for scouting between seasons, and there is no reason to do so.

#### **R12-4-426. Possession of Nonhuman Primates**

Currently, only primates of the family *Pongidae* of the order Primates are listed in R12-4-406 (Restricted Live Wildlife.) This encompasses orangutans, chimpanzees, and gorillas. This means that a special license or exemption specified within Article 4 of the Commission's rules is required to possess these animals. R12-4-405 allows all other lawfully possessed wildlife not listed in R12-4-406 to be imported without any license or permit from the Department, and activities are generally unrestricted. This means that all primates other than orangutans, chimpanzees and gorillas can be imported and bought and sold as pets, often through the classified ads in local newspapers. Macaque monkeys are the most popular type of primates sold to private individuals as pets in Arizona.

The Arizona Department of Health Services began collecting monkey bite report data and following up on potential Herpes B virus exposures with consults to physicians in 1994. In 1996, Health Services organized a meeting with the Arizona Game and Fish Department, Arizona State Veterinarian, and the USDA animal care inspector, to discuss public health issues related to the unrestricted private ownership of nonhuman primates. In 1997, the Arizona Department of Health Services petitioned the Arizona Game and Fish Commission to add all nonhuman primates to the restricted list. There was public comment in opposition to this petition, and it became apparent that federal law was not clear on the requirements surrounding possession of nonhuman primates. At the suggestion of the Arizona Game and Fish Department, Health Services withdrew its petition to participate in a focus group of interested parties to discuss regulation of the private ownership of nonhuman primates. The rule language proposed at this time is a direct result of those meetings. (Note: the language has not been changed to meet current style requirements of the Governor's Regulatory Review Council because it is the result of an agreement between interested parties; only the numbering has been changed, to meet the requirements of the Secretary of State's office as established in rule.)

This proposed new rule would prohibit the sale or import of infant nonhuman primates, and require testing for disease of all other nonhuman primates within 30 days prior to importation into Arizona. It would require that owners confine their nonhuman primates and have them tested for pathogens in the event that they bite, scratch, or otherwise expose humans to potential pathogenic organisms. This rule is proposed to protect public health and safety.

Because humans are closely related to nonhuman primates genetically, both groups share a wide array of diseases. These include diseases caused by mycobacteria, hepatitis viruses, pox viruses, and retroviruses. Thus, nonhuman primates are good research models for disease; however, they pose a threat to the public's health, particularly when owned by persons who may not know how to protect themselves and others from acquiring zoonotic disease.

Research institutions working with nonhuman primates tend to have strict protocols in place to minimize risk of disease exposure and to define appropriate responses for disease prevention and control. Despite these measures, occasional diseases or even casualties occur, for example, a primate researcher at Yerkes died of B virus (*herpesvirus simae*) last December after she was exposed in the eye to body fluids from a caged macaque.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

B virus occurs naturally among macaques and usually causes minimal or undetectable morbidity in its natural host; however, B virus causes meningoencephalitis in humans which is often (70%) fatal. Other medical facts:

- 70% - 100% of adult macaques, both captive and wild, are latently infected.
- Shedding of virus in body fluids is intermittent (2% - 6% shed at any given point,) but occurs primarily during periods of breeding, disease, and stress.
- Transmission to humans can occur through bites, scratches, or exposure to mucous membrane.
- As with other herpes infections, there are no vaccines, post-exposure prophylaxis, or treatment.

Pet monkeys, often offspring of infected monkeys, are routinely sold at 1-4 weeks of age. Department of Health Services is aware of at least 1, an infant macaque, which tested positive for B virus at 9 weeks, most likely due to maternal transmission, soon after being sold by a breeder or dealer in Glendale in 1998.

Infant nonhuman primates are quite manageable at first, but as they mature they develop the typical wild animal behavior that would help them establish dominance in a social hierarchy. Thus, it is not unusual to have nonhuman primates challenging and attacking their owners. There is particular risk to children, as they are weaker, and more easily dominated by an aggressive wild animal.

Arizona Department of Health Services followed up on 35 nonoccupational nonhuman primate bites to humans which were reported from 1994-1997. Follow-up showed that 69% were old-world monkeys. Whereas the concern with new-world monkey bites is primarily infection and traumatic injury, many of the old-world species can carry and transmit potentially serious zoonotic diseases caused by agents such as B virus and Simian immunodeficiency virus. Of the old world species, 80% were macaques, which are often carriers of B virus.

All monkeys bite. Along with zoonotic disease risks, severe injuries are common with monkey bites. They are intelligent, agile, and like other wild animals, are very strong for their size.

6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

**Rule:** R12-4-102. Fishing License Fee:

**Survey:** *Angler Satisfaction and Opinion Survey of the Arizona Urban Fishing Program and Park Management. A 1997 Roving Creel Survey of Urban Anglers.* Publication #98-21, Arizona Game and Fish Department, Fisheries Branch.

**Available:** Arizona Game and Fish Department  
Wildlife Management, Fisheries Branch  
2221 West Greenway Road  
Phoenix, AZ 85023-4399

**Telephone:** (602) 789-3258

**Fax:** (602) 789-3265

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

Not applicable.

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

**R12-4-102. Fees for Licenses, Tags, Stamps, and Permits.**

**R12-4-102(B)(10). Class U Urban Fishing License:** This proposal will increase the cost of buying an urban fishing license by \$2. However, since the fee increase will be used primarily to increase the amount of fish in Arizona's 16 designated urban lakes, the additional cost to urban anglers will be balanced by the urban angler's opportunity to catch more fish and the urban angler's increased satisfaction with the fishing experience. This proposal should result in no added cost to the Department.

**R12-4-102(C)(4). Yearling or Cow Buffalo Permit Tag:** This proposal will create a new buffalo tag for the taking of either an adult cow or a yearling on a single tag. The new tag will provide an additional tag opportunity to the hunting public at no additional cost. The combination tag will eliminate hunter anxiety over buffalo sex and age identification, reduce unintentional violations when a hunter takes a sex or age class buffalo for which the tag is not valid, ease Department workload in enforcement of restricted buffalo hunt regulations, increase the likelihood that the maximum

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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number of buffalo will be successfully harvested, and assist in the effective control of the buffalo population within the carrying capacity of the available habitat. This proposal should result in no added cost to the Department and may marginally increase buffalo permit revenues by adding a buffalo tag option.

R12-4-102(E)(1). Falconer License: This proposal will change the name of this 3-year license from “falconer license” to “sport falconry license” to correspond to new language in A.R.S. §§ 17-236(B) and 17-333(A)(36) created by SB 1128. This proposal will result in no added cost to the Department or any other persons.

**R12-4-318. Seasons**

The primary beneficiaries of the proposal are hunters between the ages of 16 and 17. It is unknown at this time how many persons this would be. (Some historical data: In 1998, there were 14 Juniors-Only deer seasons, with a total of 808 permits being offered. Two Juniors-Only elk seasons were offered for a total of 400 permits, and 4 Juniors-Only turkey seasons totaling 100 permits. There were also Juniors-Only dove and waterfowl seasons, which do not require permits.) The specific benefit would be eligibility for hunting seasons that may have better odds for being selected in the big game drawing than comparable hunts in the other season structures. It is unknown what percent of eligible hunters would take advantage of junior hunting seasons rather than the general seasons. The Arizona Game and Fish Commission establishes the number of permits available for each season each year. If the Commission offered a high number of junior permits, thereby lowering the odds of being drawn for junior only hunts, interest in the program would probably increase. There would be no additional costs to hunters because the prices of the hunt permit-tags are the same for junior and adult hunters.

Hunters older than age 17 would not benefit and would lose opportunity that would be given to the junior only hunters. Of this group, senior hunters may view loss of opportunity to be drawn for a hunt as very undesirable because they have relatively few years left to be hunters. Hunters younger than 16 may also be adversely impacted when competition for permits for junior-only hunts goes up. The younger juniors will be affected by being in the hunting field with older juniors, some that can drive and with more skill, potentially making the junior only hunts more similar to general season hunts with adults.

There should be little cost to the Department, but enforcement may become more difficult.

**R12-4-319. Use of Aircraft to Take Wildlife**

Hunters who use aircraft directly or vicariously through the guides they hire and the guides themselves who use aircraft may be negatively affected. The number of people adversely affected is roughly estimated to be between 50-100 people. The number of people positively affected is at least potentially equal to the number of people that apply for big game permits each year or about 50,000 individuals. Benefits to those affected will be maintenance of hunt quality and hunt opportunity commensurate with wildlife population dynamics.

Since the proposed rule is slightly to moderately more restrictive than the existing Federal Act the effect on hunters and guides using aircraft lawfully should be slight to moderate. Attaching an accurate dollar figure to the additional time a hunter or guide will need to spend in the field to maintain their level of success with the proposed new restrictions on aircraft use is not possible. The Department's best guess is less than \$10,000 per year.

**R12-4-426. Possession of Nonhuman Primates**

Because humans are closely related to nonhuman primates genetically, both groups share a wide array of diseases. These include diseases caused by mycobacteria, hepatitis viruses, pox viruses, and retroviruses. Thus, nonhuman primates are good research models for disease; however, they pose a threat to the public's health, particularly when owned by persons who may not know how to protect themselves and others from acquiring zoonotic disease.

Benefit is to those persons currently at risk that would be protected by the provisions of the new rule. Not only owners, but often the general public is at risk. Frequently these animals are taken to public areas. In Arizona, bites have occurred in public places such as shopping malls, stores, bars, schools, health club, and neighborhood sidewalks. The public generally is unaware of the risks and approach to pet these animals, which can lead to exposure to a variety of diseases. Another common scenario is the escaped monkey that jumps the fence and bites neighborhood children playing outside.

Children 14 years and younger accounted for 41.7% of the bite victims, and adult owner and handlers accounted for 39% of the bites. The protocol used by the Arizona Department of Health Services for assessing bites is geared toward assessing the rise of zoonoses specific to the species and history of the biting monkey - particularly B virus, since macaques are the most commonly sold pet monkey species in Arizona. Two specific segments will be affected by the proposed rule: people who sell infant nonhuman primates, and people who possess these animals for pets. Sellers will be affected the most as this proposed rule will limit their ability to sell infants, which are the most sought-

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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after animals. It is important to note that this aspect of the rule was suggested from members of the focus group that were nonhuman primate pet owners. Sale of infants was suggested to cause problems for both the animal and the owner as the animal becomes physically and sexually mature and has had no social development with other nonhuman primates. Thus, the animal was poorly socially adjusted with high potential to be quite aggressive to the owner later in life.

The affect on pet owners will be minimal as they are not precluded from personal ownership; the only restriction will be that animals can not be in public places other than a veterinarian. This proposed rule will cost the general public nothing, it will cost the pet owner nothing, but it will limit the profit from the sale of infants. The dollar amount of the latter is impossible to assess, as there are no data to indicate the number of sales. These animals are often advertised for as much as \$2,500 each.

The agency is also soliciting input on the accuracy of this summary. Please provide your input to the agency contact person named in question #4.

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

**R12-4-102. (Fishing License Fee)**

Name: Larry Riley, Fisheries Branch Chief  
Address: Game and Fish Department, WMFS  
2221 West Greenway Road  
Phoenix, AZ 85023-4399  
Telephone: (602) 789-3258  
Fax: (602) 789-3265

**R12-4-102. (Yearling or Cow Buffalo Permit Tag Fee)**

Name: Tom Britt, Regional Supervisor  
Address: Game and Fish Department, Region II  
3500 South Lake Mary Road  
Flagstaff, AZ 86001-9342  
Telephone: (520) 774-5045  
Fax: (520) 779-1825

**R12-4-102. (Falconer License)**

Name: Susan L. Alandar, Rules Manager  
Address: Game and Fish Department, DORR  
2221 West Greenway Road  
Phoenix, AZ 85023-4399  
Telephone: (602) 789-3289  
Fax: (602) 789-3677

**R12-4-318. (Seasons)**

Name: Tice Supplee, Game Branch Chief  
Address: Game and Fish Department, WMGB  
2221 West Greenway Road  
Phoenix, AZ 85023-4399  
Telephone: (602) 789-3350

**R12-4-319. (Use of Aircraft to Take Wildlife)**

Name: David Conrad, Field Supervisor  
Address: Game and Fish Department, Region IV  
9140 E. CO. 10 1/2 St.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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Yuma, AZ 85365

Telephone: (520) 342-0091

**R12-4-426. (Possession of Nonhuman Primates)**

Name: Jim deVos, Chief of Research for Wildlife Management

Address: Game and Fish Department, WMRS  
2221 W. Greenway Road  
Phoenix, AZ 85023

Telephone: (602) 789-3247

e-mail: [jdevos@gf.state.az.us](mailto:jdevos@gf.state.az.us)

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule; or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Written comments may be submitted through September 6, 1999, to:

Name: Susan L. Alandar, Rules Manager

Address: Game and Fish Department  
2221 West Greenway Road, DORR  
Phoenix, AZ 85023-4399

Telephone: (602) 789-3271

Fax: (602) 789-3677

e-mail: [salandar@gf.state.az.us](mailto:salandar@gf.state.az.us)

Public hearings on the proposed rules will be held:

Date: Monday, August 16, 1999

Time: 7 p.m.

Location: Game and Fish Department  
3500 Lake Mary Road  
Flagstaff, AZ

Date: Monday, August 30, 1999

Time: 6:30 p.m.

Location: Arizona State Office Complex  
400 West Congress, Room 158  
Tucson, AZ

Date: Saturday, September 4, 1999

Time: 2 p.m.

Location: Game and Fish Department, Wildlife Building  
Arizona State Fairgrounds  
McDowell and 17th Avenue  
Phoenix, AZ

The Game and Fish Commission will hold an additional public hearing and may take action to amend the rules on:

Date: Friday, October 22, 1999

Time: 9:30 a.m.

Location: Fraternal Order of Police Lodge  
12851 North 19th Avenue  
Phoenix, AZ

The Game and Fish Commission follows Title II of the Americans with Disabilities Act. The Commission does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking or

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services) to participate in the public comment process, or who require this information in an alternate form, may contact Susan L. Alandar at (602) 789-3289 (Voice); 1-800-367-8939 (TDD); 2221 W. Greenway Road, Phoenix, Arizona 85023-4399. Requests should be made as soon as possible so that the Game and Fish Department will have sufficient time to respond.

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

Not applicable.

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

Not applicable.

**13. The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

Sections

R12-4-102. Fees for Licenses, Tags, Stamps, and Permits

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

Sections

R12-4-318. Seasons

R12-4-319. Use of Aircraft to Take Wildlife

**ARTICLE 4. LIVE WILDLIFE**

Sections

R12-4-426. Possession of Nonhuman Primates

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

**R12-4-102. Fees for Licenses, Tags, Stamps, and Permits**

**A.** No change.

**B.** No change.

1. No change.

2. No change.

3. No change.

4. No change.

5. No change.

6. No change.

7. No change.

8. No change.

9. No change.

10. Urban fishing license

Resident or  
Nonresident

\$ 14.00 ~~42.00~~

**C.** No change.

1. No change.

2. No change.

3. No change.

4. No change.

a. No change.

b. No change.

c. No change.

d. Yearling or cow

Resident  
Nonresident

\$ 450.00

\$2,250.00

5. No change.

6. No change.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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- 7. No change.
- 8. No change.
- 9. No change.
- D.** No change.
  - 1. No change.
  - 2. No change.
  - 3. No change.
  - 4. No change.
  - 5. No change.
  - 6. No change.
  - 7. No change.
  - 8. No change.
- E.** No change.
  - 1. Sport falconry ~~Falconer~~ license \$ 75.00
  - 2. No change.
  - 3. No change.
  - 4. No change.
  - 5. No change.
  - 6. No change.
  - 7. No change.
  - 8. No change.
  - 9. No change.
  - 10. No change.
  - 11. No change.
  - 12. No change.
  - 13. No change.
- F.** No change.
  - 1. No change.
  - 2. No change.
  - 3. No change.
- G.** This rule is effective January 1, 2000 ~~1997~~.

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

**R12-4-318. Seasons**

- A.** No change.
- B.** No change.
- C.** No change.
  - 1. No change.
  - 2. No change.
  - 3. No change.
  - 4. No change.
  - 5. No change.
  - 6. No change.
  - 7. No change.
  - 8. No change.
  - 9. No change.
  - 10. No change.
  - 11. No change.
  - 12. An individual may participate in a “juniors-only hunt” up to and throughout the calendar year of their 17th ~~15th~~ birthday, provided they meet the requirements of A.R.S. § 17-335.
  - 13. No change.
- D.** This rule is effective January 1, 2000 ~~1998~~.

**R12-4-319. Use of Aircraft to Take Wildlife**

- A.** For the purposes of this Section, the following definitions apply:
  - 1. “Aircraft” means any contrivance used for flight in the air, lighter-than-air contrivance or image-producing contrivance orbiting the earth.
  - 2. “Harass” means to disturb, molest, chase, rally, concentrate, harry, drive, herd or torment.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

3. “Locate” means any act or activity directed at locating or finding wildlife in a hunt area that does not take or harass wildlife.
- B.** A person shall not take or assist in taking wildlife from or with the aid of aircraft.
- C.** A person shall not harass wildlife or assist in harassing wildlife from or with the aid of an aircraft.
- D.** A person shall not locate or assist in locating wildlife from or with the aid of an aircraft beginning 48 hours before and during all open big game seasons, except Commission ordered special seasons and seasons for mountain lion.
- E.** A person possessing a special big game license tag for a special season or a person assisting such licensee shall not use an aircraft to locate wildlife beginning 48 hours before and during a Commission ordered special season.
- F.** This section does not apply to any person acting within the scope of official duties as an employee or authorized agent of the State or the United States to administer or protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life or crops.

**ARTICLE 4. LIVE WILDLIFE**

**R12-4-426. Possession of Nonhuman Primates**

All nonhuman primates, except those listed in R12-4-406(A)(4), shall be subject to the following provisions:

1. Sale or import of infant nonhuman primates is prohibited. For the purpose of this rule, infants shall be defined as animals weighing less than 50% of the weight of an adult as identified in “The Pictorial Guide to Living Primates”, Pagonias Press 1996, and not including any later edition.
2. All nonhuman primates shall be tested and reported to be disease free, within 30 days prior to importation into Arizona, for any zoonotic disease that poses a serious health risk as determined by the Arizona Game and Fish Department, including, but not limited to tuberculosis, Simian Herpes B virus, and Simian Immunodeficiency Virus (SIV) prior to importation into Arizona, as appropriate to the species imported.
3. All nonhuman primates shall be contained within the confines of the owner's private property with the following exceptions.
  - a. When in transport to or from a licensed veterinarian.
  - b. Transport into or out of Arizona for lawful purposes.
4. Any nonhuman primate that bites, scratches, or otherwise exposes any humans to pathogenic organisms as determined by the Arizona Game and Fish Department shall be required to undergo examination and laboratory testing for the presence of pathogens as prescribed by the Arizona Game and Fish Department Director or the Director's designee. All examinations and laboratory test specimen collection and submission must be done by an Arizona-licensed veterinarian. The cost of all such testing shall be borne by the owner of the nonhuman primate. The result of any ordered test (and examinations) shall be reported, immediately by phone and in writing, by the veterinarian testing the animal, to the Arizona Game and Fish Department Director or the Director's designee.
5. Any nonhuman primate that tests positive for zoonotic disease which poses a serious health risk to humans as determined by the Arizona Game and Fish Department, shall be maintained in captivity as directed by the Arizona Game and Fish Department Director or the Director's designee.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY**

**WASTE MANAGEMENT**

**PREAMBLE**

<b>1. Sections Affected</b>	<b>Rulemaking Action</b>
R18-8-260	Amend
R18-8-261	Amend
R18-8-262	Amend
R18-8-263	Amend
R18-8-264	Amend
R18-8-265	Amend
R18-8-266	Amend
R18-8-268	Amend
R18-8-270	Amend
R18-8-271	Amend
R18-8-273	Amend

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

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

Authorizing Statutes: A.R.S. §§ 41-1003 and 49-104

Implementing Statute: A.R.S. § 49-922

**3. List all previous notices appearing in Register addressing the proposed rules:**

Notice of Docket Opening: 4 A.A.R. page 1137, May 15, 1998.

Notice of Docket Opening: 4 A.A.R. page 1349, June 12, 1998.

Notice of Docket Opening: 4 A.A.R. page 4185, December 18, 1998.

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

Primary Contact:

Name: Deborah K. Blacik, Rules Specialist or Martha Seaman, Rule Development Manager

Address: Department of Environmental Quality  
Rule Development Section, M0836A-829  
3033 North Central Avenue  
Phoenix, AZ 85012-2809

Telephone: (602) 207-2223 or 800-234-5677, Ext. 2222 (Arizona only)

TTD: (602) 207-4829

Fax: (602) 207-2251

Secondary Contact:

Name: John Bacs, Technical Programs Unit

Address: Department of Environmental Quality  
M0636A  
3033 N. Central, Room 675  
Phoenix, AZ 85012-2809

Telephone: (602) 207-4211 or 800-234-5677, Ext. 4211 (Arizona only)

Fax: (602) 207-4138

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

Table of Contents

- A. General Information about the Incorporations by Reference.
- B. Descriptions of the revisions incorporated by reference.
- C. State-initiated changes.

THE EXPLANATION OF THE RULE

**A. General Information about the Incorporations by Reference.**

Every year the Arizona Department of Environmental Quality (ADEQ) amends the state's hazardous waste rules. The state's hazardous waste rules are generally comprised of the federal regulations, authorized by Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), which are incorporated by reference. The hazardous waste rules are well established and have been effective since 1984. This year's amendments mostly cover changes in the federal regulations promulgated between July 2, 1997 and July 1, 1998.

For the Environmental Protection Agency (EPA) to authorize Arizona to manage the federal hazardous waste program, ADEQ must either incorporate by reference the federal regulations or write state rules that are equivalent to and consistent with federal regulations. Incorporating the federal regulations will keep Arizona's hazardous waste management program funded by EPA and in compliance with A.R.S. § 49-922. EPA requires that Arizona be re-authorized to maintain the authority to manage the federal hazardous waste program in lieu of the EPA administering the program in Arizona. ADEQ received final RCRA authorization in 1985 and continues to apply for re-authorization to keep current with changes to federal regulations. Adoption of federal regulations also promotes compliance uniformity among states. Most of the federal regulations incorporated by reference in this rulemaking are required for

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

re-authorization.

To identify the changes made to the incorporations by reference in the rules, the date has been changed from July 1, 1997 to July 1, 1998 in subsection (A) of most sections. Subsection (A) of sections R18-8-260, R18-8-261, R18-8-262, R18-8-263, R18-8-264, R18-8-265, R18-8-266, R18-8-268, R18-8-270, R18-8-271, and R18-8-273 incorporates by reference the federal regulations published in 40 CFR 124, 260 through 266, 268, 270, 271 and 273 as of July 1, 1998 with certain exceptions.

The purpose of this rulemaking is primarily to incorporate the text of federal regulations for re-authorization by the EPA. Modifications to the text incorporated by reference are intended to make the language consistent with state terminology, and not intended to make substantive changes to the content. For example, the federal regulations incorporated by reference refer to the "EPA" because it is the implementing agency, but since Arizona is authorized to implement and enforce the RCRA program contained in the incorporated regulations, "EPA" is usually replaced with "ADEQ" when referring to the agency that implements the regulations. Because the changes to the federal regulations are generally to tailor the language to ADEQ, the changes to the incorporated text are not intended to have any additional impact beyond the federal regulation.

The Arizona Mining Association (AMA) has submitted 5 position papers to ADEQ concerning issues regarding the Phase IV Land Disposal Restrictions (LDR) (see Rule # 8 below). These position papers cover issues involved with reverts; used refractory brick; point of generation, storage, and production; uniquely associated status for various materials generated in the primary minerals industry; and exclusions for mineral processing secondary materials and reuse of substitute commercial product. In general, the AMA's concerns are that, while EPA's Phase IV LDR rules appear technically correct, the rules are vague in several respects, due in part to the lack of definitions for such terms as production and secondary material, and to the lack of clarification on how to clearly distinguish regulated storage from unregulated generation or production under the Phase VI LDR rule. In addition, EPA's clarifications and guidance offered in the preamble to the LDR rule do not sufficiently address the issues associated with mineral processing activities.

There are issues associated with the mineral processing secondary materials exclusion portion of the Phase IV LDR rule that need further clarification and guidance from EPA. Therefore, ADEQ will not incorporate the "mineral processing secondary materials exclusion" section of the Phase IV LDR rule in this rulemaking. Instead, ADEQ will seek further clarifications and guidance from EPA on this matter to help resolve the contentious issues. ADEQ anticipates adopting the mineral processing secondary materials exclusion portion of this rule in the next hazardous waste rulemaking package.

**B. Descriptions of the federal rules incorporated by reference.**

A description of the rules which have been incorporated by reference follows.

1. Rule Title: Land Disposal Restrictions Phase III--Emergency Extension of the K088 National Capacity Variance. EPA is extending the current national capacity variance for spent potliners from primary aluminum production (Hazardous Waste Number K088) for 3 months. Thus, K088 wastes may be land disposed without being treated to meet Land Disposal Restrictions (LDRs) treatment standards until October 8, 1997, 3 months from the current treatment standards effective date of July 8, 1997. EPA is taking this action because it now appears that sufficient treatment capacity exists which is capable of achieving the treatment standards promulgated by EPA on March 8, 1996, the process provides substantial treatment of spent potliners and minimizes the threats posed by land disposal of these wastes, and the treatment and disposal capacity provided for the waste will be protective of human health and the environment because it will occur at Subtitle C units. This action is being taken by EPA in order to provide time for generators to make contractual and other logistical arrangements relating to utilization of the treatment capacity. This rule can be found in Volume 62 of the Federal Register p. 37694, dated July 14, 1997.
2. Rule Title: Second Emergency Revision of the Land Disposal Restrictions Treatment Standards for Listed Hazardous Wastes From Carbamate Production. This 2nd emergency revision extends the time the alternative carbamate treatment standards are in place by 1 additional year. EPA is taking this action because analytical problems associated with the measurement of constituent levels in carbamate waste residues have not yet been resolved. This rule can be found in Volume 62 of the Federal Register p. 45568, dated August 28, 1997.
3. Rule Title: Clarification of Standards for Hazardous Waste Land Disposal Restriction Treatment Variances. This rule finalizes clarifying amendments to the rule authorizing treatment variances from the national LDRs treatment standards. It adopts EPA's interpretation that a treatment variance may be granted when treatment of any given waste to the level or by the method specified in the regulations is not appropriate, under either technical or environmental circumstances. In addition, this rule withdraws the proposal to reissue the treatment variance granted to Citgo

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

Petroleum under the clarified standard. This rule can be found in Volume 62 of the Federal Register p. 64504, dated December 5, 1997.

4. Rule Title: Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers. Previously, EPA has promulgated standards (59 FR 62896) to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment. These air standards are known as the "subpart CC" standards and are designed to control organic emissions from certain tanks, containers, and surface impoundments (including tanks and containers at generators' facilities) used to manage hazardous waste capable of releasing organic waste constituents at levels which can harm human health and the environment. In response to public comments and inquiries since the publication of the final standards on December 6, 1994, this rule makes clarifying amendments to certain regulatory text, and provides clarification of certain preamble language that was contained in previous documents for this rule making. This rule can be found in Volume 62 of the Federal Register p. 64636, dated December 8, 1997.

5. Rule Title: National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category. In this rule, EPA is excluding from RCRA regulations condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). Without this exclusion, these condensates would be regulated under RCRA because they exhibit the ignitability characteristic, and the boilers burning these condensates for fuel would be subject to emissions standards in 40 CFR 266, subpart H. EPA has determined that RCRA regulation of the rectification and combustion of the condensate is not appropriate or necessary. The rectification practice would not increase environmental risk, would reduce secondary environmental impacts, and would provide a cost savings. Moreover, the burning of condensate will not increase the potential environmental risk over the burning of the steam stripper vent gases before condensation. The scope of this exemption is limited to combustion at the facility generating the condensate. Note: This exclusion is part of a much larger rule that affects both effluent guidelines and air emission standards for specified sections of the pulp and paper industry. This rule can be found in Volume 63 of the Federal Register p. 18504, dated April 15, 1998.

6. Rule Title: Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA hazardous Substances, Reportable Quantities. This rule adds K140 and U408 hazardous waste codes to the current lists found in 40 CFR 261, as well as modifies the land disposal treatment standards for hazardous waste in 40 CFR 268 to include these new wastes. The effect of listing these wastes will be to subject them to stringent management and treatment standards under RCRA, as well as to emergency notification requirements for releases of hazardous substances to the environment (CERCLA and EPCRA). In addition, EPA has made a final determination not to list as hazardous 10 waste streams from the production of Bromochloromethane, ethyl bromide, tetrabromobisphenol A, 2,4,6-tribromophenol wastewaters, octabromodiphenyl oxide, and decabromobisphenyl oxide. This rule can be found in Volume 63 of the Federal Register p. 24596, dated May 4, 1998, and in Volume 63 of the Federal Register p. 35147, dated June 29, 1998, which corrects purely technical errors in the final regulations.

7. Rule Title: Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards. This rule clarifies: 1) when used oil contaminated with PCBs is regulated under the used oil management standards and when it is not, 2) that the requirements applicable to releases of used oil apply in States that are not authorized for the RCRA base program, 3) that mixtures of CESQG wastes and used oil are subject to the used oil management standards irrespective of how the mixture is to be recycled, and 4) that the initial marketer of used oil that meets the used oil fuel specifications need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. This rule also amends the 3 incorrect references to the pre-1992 used oil specifications in the revisions which address hazardous waste fuel produced from, or oil reclaimed from, oil bearing hazardous wastes from petroleum refining operations. [Note: This rule affects 40 CFR 261 and 279; however, since 40 CFR 279 is incorporated by statute into Arizona law, only that portion of this rule which applies to 40 CFR 261 will be incorporated into the Arizona hazardous waste rules]. This rule can be found in Volume 63 of the Federal Register p. 24963, dated May 6, 1998 and in Volume 63 of the Federal Register p. 33780, dated July 14, 1998 which makes technical corrections, removing 3 amendments made by the May 6, 1998 rule.

8. Rule Title: Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters. This rule promulgates Land Disposal Restrictions treatment standards for metal-bearing wastes, including toxicity characteristic metal wastes, and hazardous wastes from mineral processing. The set of standards being applied to these wastes is the universal treatment standards which are based upon the performance of the Best Demonstrated Available technologies

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

for treating these, or similar, wastes. This rule also revises the universal treatment standards for twelve metal constituents, which means that listed and characteristic wastes containing 1 or more of these constituents may have to meet different standards than they currently do. In regards to wastes and secondary materials from mineral processing, EPA is amending the rules to define which secondary materials from internal processing are considered to be wastes and potentially subject to LDRs. The intended effect is to encourage safe recycling of mineral processing secondary materials by reducing regulatory obstacles to recycling, while ensuring that hazardous wastes are properly treated and disposed. EPA is also finalizing decisions on a set of mineral processing waste issues which courts have remanded to EPA. These include retaining the TCLP as the test for identifying the toxicity characteristic for mineral processing wastes, and readdressing the regulatory status of a number of miscellaneous mineral processing wastes. This rule also amends the LDRs treatment standards for soil contaminated with hazardous waste; the purpose being to create standards which are more technically and environmentally appropriate to contaminated soils than those which currently apply. Finally, this rule excludes from the definition of solid waste certain shredded circuit boards in recycling operations, as well as certain materials reused in wood preserving operations. This rule can be found in Volume 63 of the Federal Register p. 28556, dated May 26, 1998, and in Volume 63 of the Federal Register p. 31266, dated June 8, 1998, which makes 1 editorial correction to the final regulations.

NOTE: There are numerous unresolved issues (definition of reverts; reuse of used refractory bricks; uniquely associated concept, point of generation, and production; reclamation of alternate feedstocks vs. reuse of effective substitutes for commercial products; etc.) between the Arizona Mining Association and EPA concerning the mineral processing secondary materials exclusion for which EPA has indicated that further clarifications and guidance will be provided within the year. Therefore, ADEQ has decided not to incorporate the mineral processing secondary materials exclusion portion of this rule in this rulemaking, but to wait until next year when further clarification and guidance is anticipated from EPA.

9. Rule Title: Hazardous Waste Combustors; Revised Standards; Final Rule-Part 1: RCRA Comparable Fuel Combustion Units; Notification of Intent To Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions. This rule finalizes some elements of the April 19, 1996, EPA-proposed revisions for air emission standards for certain hazardous waste combustion units. These elements include a conditional exclusion from RCRA for fuels which are produced from a hazardous waste but which are comparable to some currently used fossil fuels; a new RCRA permit modification provision which is intended to make it easier for facilities to make changes to their existing RCRA permits when adding air pollution control equipment or making other changes in equipment or operation needed to comply with the upcoming air emissions standards; notification requirements for sources which intend to comply with the final rule; and allowances for extensions to the compliance period to promote the installation of cost effective pollution prevention technologies to replace or supplement emission control technologies for meeting the emission standards. This rule can be found in Volume 63 of the Federal Register p. 33782, dated June 19, 1998.

10. Rule Title: Hazardous Waste Recycling; Land Disposal Restrictions.

The EPA is issuing an amendment to the final rule, published on May 26, 1998 (63 FR 28556), which, in part, amended the Land Disposal Restriction (LDR) treatment standards for metal-bearing hazardous wastes which exhibit the characteristic of toxicity. EPA is amending the rule only insofar as it applies to zinc micronutrient fertilizers which are produced from these toxicity characteristic wastes. The EPA is taking this action because it appears that the new treatment standards are not well suited for zinc micronutrient fertilizers, and also could result in greater use of zinc fertilizers that contain relatively higher concentrations of hazardous constituents. The EPA expects to develop a more consistent and comprehensive approach to regulating hazardous waste-derived fertilizers, and currently intends to leave this amendment in place until those new regulations are adopted. In the interim, the fertilizers affected by this amendment would remain subject to the previous treatment standards for toxic metals. This rule can be found in Volume 63 of the Federal Register p. 46332, dated August 31, 1998.

11. Rule Title: Emergency Revision of the Land Disposal Restrictions (LDRs) Treatment Standards for Listed Hazardous Wastes from Carbamate Production. This rule revises the waste treatment standards applicable to 40 waste constituents associated with the production of carbamate wastes. The rule sets final alternative treatment standards for 7 specific carbamate waste constituents for which there are no available analytical standards. This action extends indefinitely the alternative treatment standards for the 7 hazardous waste constituents and deletes the treatment standard for 1 additional constituent for which available analytical methods have not been shown to achieve reliable measurements. This rule also deletes these 8 waste constituents as underlying hazardous constituents. In addition, because the temporary alternative standards for 40 carbamate waste constituents expire automatically on August 26, 1998, this rule also amends the Code of Federal Regulations to clarify that numerical treatment standards for these 32 carbamate waste constituents will once again be effective. The rule is necessary to allow generators the ability to identify all underlying hazardous constituents reasonably expected to be present in their wastes at the point of generation, and to

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

allow waste treaters to certify that wastes have been treated in compliance with applicable land disposal restrictions. Faced with the inability to demonstrate waste and treatment residual content through analytical testing, these facilities face potential curtailment of operations.

Given the need for the regulated community to adjust its testing and compliance programs for the 32 constituents for which numerical treatment standards are being reinstated, the EPA is extending the current set of alternative treatment standards for these 32 constituents (and concomitantly delaying the effectiveness of the corresponding portion of this rule) for 6 months from the date of publication. This rule can be found in Volume 63 of the Federal Register p. 47410, dated September 4, 1998.

12. Rule Title: Characteristic Slags Generated From Thermal Recovery of Lead by Secondary Lead Smelters; Land Disposal Restrictions; Final Rule; Extension of Compliance Date. The EPA is issuing an extension of the compliance date until November 26, 1998 for a limited portion of the Phase IV Final Rule, published on May 26, 1998 (63 FR 28556), which, in part, amended the Land Disposal Restriction (LDR December 29, 1998) treatment standards for metal-bearing hazardous wastes exhibiting the toxicity characteristic. EPA is extending the date for treatment standards only for secondary lead slags exhibiting the toxicity characteristic for 1 or more metals that are generated from thermal recovery of lead-bearing wastes (principally batteries). The EPA is taking this action because there appear to be short-term logistical difficulties resulting in a temporary shortage of available treatment capacity for these particular wastes. In the interim, the slags affected by this extension remain subject to the treatment standards for toxicity characteristic metals promulgated in the Third Final Rule (55 FR 22520; June 1, 1990) and codified at 40 CFR 268.40. This rule can be found in Volume 3 of the Federal Register p. 48124, dated September 9, 1998.

**C. State-initiated changes.**

1. The State is amending R18-8-261(I) to make an editorial correction to its amendment of 40 CFR § 261.6(a)(3)(iv) and (v). Reference to "A.R.S. § 49-801(A)(5)" is replaced with "A.R.S. § 49-801" to comply with the most recent update of the Arizona Revised Statutes pertaining to used oil management which incorporates 40 CFR 279 by reference.

2. The State is amending R18-8-266(B) to make an editorial correction to its amendment of 40 CFR § 266.100(b)(1). Reference to "A.R.S. § 49-815" is replaced with "A.R.S. § 49-818" to comply with the most recent update of the Arizona Revised Statute pertaining to used oil.

3. The State is amending R18-8-262(F), R18-8-264(G) and R18-8-265(G) to make editorial corrections to its amendment of 40 CFR § 262.23(a)(4), § 264.71(a)(4), and § 265.71(a)(4). References to "R18-8-262(H), R18-8-264(H), and R18-8-265(H)" is replaced with "R18-8-262(I), R18-8-264(I), and R18-8-265(I)," respectively.

4. The State is amending R18-8-264(C), R18-8-265(C), and R18-8-270(C) to make editorial corrections to its amendment of 40 CFR § 264.1(g)(8)(i)(D), § 265.1(c)(11)(i)(D), and § 270.1(c)(3)(i)(D). In all of these subsections a telephone number was corrected.

5. The State is amending R18-8-273(F) and (H) to provide for the removal of mercury containing arc tubes from universal waste lamps. The proposed rule change encourages generators and other universal waste handlers to manage mercury-containing lamps in a manner designed to reduce the total amount of hazardous waste sent off site. Universal waste lamps include a class of lamps called high intensity discharge (HID) lamps. A HID lamp consists of a glass bulb, surrounding a glass tube which contains mercury vapor. The HID lamp frequently terminates at a screw-on base, shaped similarly to the base of a typical household incandescent bulb. The outer bulb does not contain any mercury vapors; therefore, it is possible to separate the outer bulb from the inner tube without releasing any mercury.

Safe removal of the outer, uncontaminated glass from the universal waste lamp is an environmentally sound practice for several reasons: it reduces the amount of universal waste transported off site which reduces management cost, and it separates clean glass and metal from the inner component that contains hazardous material (that is, mercury vapor) which promotes recycling.

The proposed rule change requires the person treating HID lamps to comply with workplace safety requirements, found in the OSHA regulations, and it requires that a containment system is in place to collect any contaminated components which protects human health and the environment. It is emphasized that this proposed rule does not apply to universal waste lamps where the outer bulb contains vapors that meet any of the hazardous waste characteristics or may be a listed hazardous waste. Further, HID lamps in which the handler suspects the inner tube has been compromised must not be disassembled, and must be handled as a whole lamp.

The proposed rule is deemed to be consistent with ADEQ's current hazardous waste rules. ADEQ has already adopted a similar provision contained in the Federal universal waste rules for mercury-containing thermostats, with similar protective measures. EPA has approved ADEQ's hazardous waste rules, including those universal waste pro-

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

visions. Considering the environmental benefits to be gained from the safe management practices covered in the proposed rule, it is expected that EPA will not object to this proposed rule change.

6. The state is amending R-18-8-264 (L) to make an editorial correction to 40 CFR §264.143 (h) and § 264.145 (h). The reference to the removal of the 3rd sentence in each citation is replaced with a sentence in each citation to correct the deletion of the requirement of submitting evidence of financial assurance and to require each facility located in this state to submit evidence of financial assurance to the Director. This is to clarify that facilities located in this state are to submit evidence of financial assurance to ADEQ rather than to the Regional Administrator of Region 9.

7. The state is amending R-18-8-265 (M) to make an editorial correction to 40 CFR §265.143 (g) and § 265.145 (g). The reference to the removal of the 3rd sentence in each citation is replaced with a sentence in each citation to correct the deletion of the requirement of submitting evidence of financial assurance and to require each facility located in this state to submit evidence of financial assurance to the Director. This is to clarify that facilities located in this state are to submit evidence of financial assurance to ADEQ rather than to the Regional Administrator of Region 9.

6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable.

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

Not applicable.

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

A. Rule Identification

This is a hazardous-waste rulemaking, known colloquially as the 1997-98 amendments to the hazardous waste management rules. This rulemaking is codified in A.A.C. as follows:

Title 18. Environmental Quality

Chapter 8. Department of Environmental Quality, Waste Management

Article 2. Hazardous Wastes §§ 261 through 273

ADEQ requests your comments about the compliance burdens of this rulemaking, or any other aspect of this preliminary EIS, including economic analysis assumptions and economic impacts on small businesses in this state. Relevant comments received will be incorporated into the final EIS.

This EIS assesses 15 federal rules (see Table 1). However, the preamble describes 12 rules proposed to be incorporated by reference. This difference is because the preamble combines the following: (1) Technical corrections in 63 FR 35147 to a previously published rule in 63 FR 24596 (preamble rule 6, but rules 6a and 6b in the EIS); (2) Amendments in 63 FR 37780 to a previously published rule in 63 FR 24963 (preamble rule 7, but rules 7a and 7b in the EIS); and (3) An editorial correction (word omission) in 63 FR 31266 to a previously published rule in 63 FR 28556 (preamble rule 8, but rules 8a and 8b in the EIS).

B. Background Information

ADEQ updates hazardous waste rules annually to be eligible for Resource Conservation and Recovery Act (RCRA) reauthorization. This is necessary for ADEQ to maintain authorization by the Environmental Protection Agency (EPA) to administer the federal hazardous waste program in lieu of the EPA. A notion prevails that businesses generally prefer the state to be the primary agency implementing regulations instead of the federal government. This may be due to the belief by many owners/operators that they will be treated more fairly and granted increased flexibility by ADEQ.

Maintaining authorization to administer the hazardous waste program also enables ADEQ to remain in compliance with A.R.S. § 49-922, which requires the ADEQ to adopt rules that provide for a program equivalent to and consistent with the federal hazardous waste regulations. Consequently, federal rule changes are being incorporated into the state program as identical requirements. Thus, no changes in costs or benefits accruing to the businesses impacted in Arizona have been identified as a result of this rulemaking (see Appendix A, "EIS Assumptions").

In addition to incorporating federal changes from final rules published in the *Federal Register* (FR), ADEQ is making

7 state-initiated changes, none of which will impose costs. Six of these changes consist merely of editorial changes, while 1 change consists of amendments to A.A.C. R18-8-273(F) and (H). This change will allow generators and universal waste handlers to remove mercury-containing arc tubes from universal waste lamps. Universal waste lamps include a class of lamps called high intensity discharge lamps (see C.5. in the preamble). ADEQ expects that this change potentially could encourage recycling and reduce the total amount of hazardous waste sent off-site. This could generate cost-saving benefits to generators and waste handlers and create environmental benefits to the public.

#### C. EIS Introduction

This EIS contains a summary of the analysis of federal rules to be adopted by reference and their impacts on a national level. Adoption of these federal rules will impact some of the state's businesses, but for the most part, ADEQ expects these impacts to be beneficial due to cost-saving benefits and rule clarifications. However, most of these rules impart no impacts to Arizona businesses. Even if certain industries potentially could be impacted, actual impacts are unknown at this time. Statements about expected impacts to Arizona's industries are based on the assumptions identified in Appendix A.

Table 1 describes the purpose and impact of each rule, as well as the location of the published final rule in the FR and the effective date. A rule is identified by the number shown in parentheses in the 1st column of each row. The last column of this table contains brief comments about the disposition of impacts to Arizona businesses.

A person might argue that costs and benefits should be monetized. However, because ADEQ is adopting federal requirements to maintain RCRA authorization for its state program, which must be equivalent to federal requirements, it may be viewed as unnecessary. Technically, the EPA is the senior partner in the relationship of authorized state programs and resulting impacts may not be considered incremental to Arizona industries. Furthermore, the EPA may act as the enforcer even in states with authorized programs (see endnote #1).

Table 2 has been revised and included to provide a description of the general type of industries impacted by these federal rules. The EPA anticipates that rule 8a will impose costs to certain industries, but the net benefit is expected to be about \$6 million annually. Cost-saving benefits, for example, are associated with the new soil treatment standards because the requirements are less stringent. Nationally, the EPA estimates these benefits to be \$25 million annually (see 63 FR 28630-28634). However, increased compliance costs are anticipated as a result of newly identified wastes and media contaminated with these wastes. Specific impacts and the ratio of benefits to costs in Arizona are unknown at this time. However, general statements about national impacts are presented in Appendix B, "Potential National Impacts."

The federal rules, which will be adopted by reference into Arizona's program, can be categorized into 4 types of rules, although some can fit into more than a single type. The 4 types are those that do the following:

- (1) Correct errors, such as technical amendments or omissions.
- (2) Clarify ambiguities or interpret existing regulations.
- (3) Impose no costs either because there probably are no affected entities in Arizona or the rule provides cost-saving benefits (exclusions, extensions, reductions, or less stringent requirements).
- (4) Impose costs.

Even if this rulemaking does impose costs, it does not mean that overall costs will exceed probable benefits. While some businesses may experience increased compliance costs, others may experience decreased costs, or some combination thereof. Potential benefits include increased compliance options, less burdensome requirements, and reduced risks to human health and the environment. In fact, the EPA anticipates that central tendency and high-end hypothetical individual cancer and non-cancer risks could be decreased (rule 8a). In addition, this rule might result in reduced ecological risk and natural resource damage. It cannot be determined what this impact might mean to Arizona's inhabitants or to its biosphere.

#### D. Potential Entities Impacted in Arizona

Based on the illustrations of potential entities impacted in Tables 1 and 2, the following classes of persons could be impacted: hazardous waste generators, TSD facilities (treatment, storage, and disposal), transporters, commercial testing laboratories, consultants, contractors, suppliers, ADEQ (implementing agency), and public. Thus, these classes include a wide variety of entities from recyclers, smelters, refiners, manufacturers, and treaters to combustors, blenders, pulp mills, remediation companies, and mineral processing industries. Additionally, these entities include both private and public owners/operators.

Potentially, some of these entities could be affected in varying degrees both within a specific class and from 1 class to

another. In some cases, only large scale facilities will be impacted. For example, the EPA claims that rule 9 primarily will affect large-scale facilities, but it should provide cost-saving benefits over current requirements. Any negative impacts of this rule in Arizona probably can be dismissed (see endnote #2).

According to the EPA, 29 mineral commodity sectors nationally could be affected by rule 8a. This includes approximately 136 facilities that generate 118 streams of newly identified mineral processing secondary materials (see endnote #3). However, economic impacts might not be substantial for some mineral processing sectors, depending on the current storage and management of mineral processing residues prior to being recycled (see endnote #4). Other mineral processing sectors could experience substantial compliance costs for building new storage facilities or upgrading existing ones (see part G).

Also, prior to the effective date of rule 8a, wastes that were characteristic but which did not fail the extraction procedure (EP) were classified as newly identified wastes and were not subject to the land disposal restrictions (LDR) requirements. Also, prior to the effective date of this rule, metals that were characteristic due to failing the TCLP and the EP, were subject to treatment standards at levels equal to the toxicity characteristic (TC) levels (see endnote #5). But TC levels normally are higher than those treatment levels for which threats posed by land disposal of the wastes are minimized. Thus, treatment to levels lower than the characteristic levels will now be required. As a result of this rule, businesses will experience increased compliance costs.

#### E. Overview of Impacts

ADEQ expects some Arizona businesses to experience increased compliance costs and others to experience cost-saving benefits, or both. Net benefits, or at least in the short-term, might not exceed compliance costs in all cases. However, for many businesses, ADEQ expects no significant impacts to occur. Benefits could accrue as a result of exclusions, extensions, reductions, or otherwise more lenient, less burdensome, or less stringent requirements. Part of these benefits could accrue from increased compliance alternatives and greater flexibility. A likely conclusion is that probable benefits will exceed probable compliance costs.

Additionally, this rulemaking is expected to improve the protection of human health and the environment in some instances and maintain it in others. It does this, in part, by minimizing potential threats to human health and the environment. ADEQ also expects this rulemaking to improve the efficiency of hazardous waste management in Arizona. In addition to the general public being impacted in a positive manner, some consumers potentially might be negatively affected by increased costs due to compliance costs being passed on to them. Overall, ADEQ expects probable benefits to exceed probable costs of this rulemaking.

The social cost of this rulemaking is the sum of business compliance costs (the real-resource costs or pre-tax compliance burdens), government regulatory costs, opportunity costs (foregone benefits), adjustment costs for displaced resources (due to job losses and facility closures), market costs, and other business and administrative costs. The social cost is expected to be relatively minimal. This expectation is not only due to the high probability of net benefits exceeding costs, but to the fact that Arizona does not have an extensive number of businesses that could be impacted by these rules, except for mineral processing industries. In addition, compliance by businesses should not result in deadweight-welfare losses. This is because ADEQ does not anticipate any type of reduction in industry output. Hence, no net losses in consumers' and producers' surpluses are anticipated (see endnote #6).

#### F. Overview of Primary and Secondary Impacts

ADEQ does not expect this rulemaking to impact short- or long-run employment, production, or industrial growth in Arizona. This includes both private and public facilities. There is no reason to believe that price, profitability, or capital availability will be affected. Furthermore, because ADEQ expects no facility closures, reductions in output, or increases or decreases in employment, no transitional employment problems are expected to occur, including re-employment.

For some industries, consulting expenditures for consulting services and capital requirements may be necessary for these owners/operators to comply with the federal requirements incorporated into the state's hazardous waste program. In most cases, the impact probably will be minimal. But due to the potential for some of these rules to impose real-resource costs upon certain industries, some revenues may be affected. However, expenditures by industry will represent revenues for service providers (consultants, contractors, and suppliers).

Other economic changes in secondary employment, energy, international trade, regional impacts, or supply and demand are not anticipated to occur as a result of this rulemaking. Impacts to ADEQ's program should be effectively handled by its current personnel without any additional staffing requirements. Finally, ADEQ expects that this rulemaking will not have an impact on state revenues.

#### G. Cost-Effectiveness Analysis (CEA)

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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Although actual impacts could vary from 1 business to another, ADEQ expects that various industries and the public could receive benefits. However, the assessment of impacts in this section is limited to rules 4, 5, 8a, 9, 10, and 11. ADEQ expects only rules 8a and 9 to generate costs, but even those costs could be off-set by cost-saving benefits. Finally, it is unknown if any Arizona businesses will be affected by rules 5, 7a, 7b, 9, 10, 11, and 12.

Based on a preliminary assessment, the types of businesses set forth below potentially could be impacted (either positively or negatively) by this rulemaking. In many cases, ADEQ expects businesses to benefit.

(1) Businesses that treat or dispose of hazardous waste subject to permitting requirements or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers (rule 4). This rule imposes no costs, but it increases compliance alternatives, reduces the overall information-keeping burden, clarifies certain provisions, and makes some regulatory provisions more lenient. Standards were established to reduce organic air emissions for certain hazardous waste activities to levels protective of human health and the environment.

(2) Pulp and paper businesses (SIC codes 261 and 262) that seek an exclusion for condensates derived from overhead gases from kraft mill steam strippers, provided they combust the condensate at the mill where it is generated (rule 5). This rule imposes no costs. Without this exclusion, condensates would be regulated under RCRA because they exhibit the ignitability characteristic. This should generate a cost-saving benefit to a business that would seek this exemption.

(3) Businesses that generate toxicity characteristic metal hazardous wastes, characteristic mineral processing waste, or any hazardous waste required to meet the LDR treatment standard for the 12 metals (rule 8a; also refer to note #3 to Table 2 and notes #9 and #10 to Table 1). The EPA also is revoking the listing for 5 remanded waste listings. If these wastes do exhibit a characteristic of a hazardous waste, they will be subject to hazardous waste regulations, including the waste mixture rule (see endnote #7).

Entities impacted by rule 8a could include the following: businesses that process primary minerals, chemical manufacturers, pharmaceutical producers, paint producers, steel mills, motor vehicle parts manufacturers, blast furnaces, metal plating/polishing facilities, and aircraft parts and equipment industries. Other businesses include TSD facilities that treat or dispose of toxicity characteristic metal hazardous wastes, characteristic mineral processing wastes, and other metal-bearing hazardous wastes; private or public businesses remediating sites containing hazardous soil; businesses that generate, store, or recycle secondary materials from primary mineral processing (copper smelters, gold refiners, and other primary metals producers that return waste streams to units for additional recovery); businesses that generate and reclaim drippage and wastewaters on-site from wood preserving industries (SIC code 2491); businesses that recycle certain circuit boards; and businesses that store or recycle mercury-containing waste lamps. Thus, this rule imposes significant costs nationally, but it also provides for benefits, which are expected to exceed costs by \$6 million (see note #5 to Table 1). ADEQ expects some Arizona businesses to experience cost-saving benefits while others may encounter increased compliance costs.

(4) Generators, transporters, combustors, some hazardous waste treaters, and 3rd party blenders involved in the comparable/syngas fuels exclusion, as well as any business that stores these fuels. Potential combustors include: industrial furnaces and utility boilers, hazardous waste incinerators (commercial or on-site facilities), cement kilns, light weight aggregate kilns, combustion turbines, and boilers. Petroleum refineries also may seek an exemption for the output of gasification operations) known as syngas. Other businesses include generators and TSD facilities involved in RCRA permit modification and waste minimization and pollution prevention (rule 9). This rule imposes no costs, but it does create a public reporting burden nationally, which is estimated at over \$5 million annually. This rule mainly will impact large-scale facilities, but it should provide cost-saving benefits compared to current requirements. Potentially, some Arizona businesses could be impacted, but with benefits very likely exceeding costs.

(5) Businesses that produce zinc micronutrient fertilizers from toxicity characteristic wastes (rule 10). This rule imposes no costs. It is likely to positively impact human health and the environment (refer to note #6 to Table 1). ADEQ expects that Arizona businesses, if any, involved in producing this type of fertilizer would benefit.

(6) Businesses that generate carbamate production wastes and waste treaters (rule 11). Imposes no costs. The rule provides greater flexibility for compliance with treatment standards. It minimizes potential threats to human health and the environment by ensuring that effective treatment will occur without delay (treated by a BDAT prior to land disposed). It also eliminates a potential for halting production of certain carbamate pesticides. ADEQ expects that Arizona businesses, if any, involved in producing this type of waste would benefit.

Because it is not possible to monetize the costs and benefits to Arizona businesses and other classes of persons at this time, a traditional cost-benefit analysis cannot be done. However, costs and benefits identified in this EIS should help industries to assess potential impacts to them. Although benefits are expected to accrue to several types of businesses in terms of compliance savings, other businesses are expected to be impacted by increased costs. Additional data per-

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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taining to Arizona industries, if available, will be incorporated into the final EIS.

As previously stated, ADEQ expects some Arizona businesses to experience increased compliance costs and others to experience cost-saving benefits, or both. Net benefits, or at least in the short-term, might not exceed compliance costs in all cases. However, for many businesses, ADEQ expects no significant impacts to occur. In addition, the public is expected to benefit from improved protection of human health and the environment and improved program management. ADEQ expects probable benefits to outweigh probable costs of this rulemaking.

#### H. General Impact on Small Businesses and Reduction of Impacts

Although Department data do not identify facilities classified as small businesses, hazardous waste program staff estimate 80-90% of the 900 small quantity generators (SQGs) and as many as 90% of the 1,200 conditionally exempt small quantity generators (CESQGs), which produce less than 100 kg. of non-acute hazardous waste per month or less than 1 kg. of acute hazardous waste per month, could be classified as small businesses (see endnote #8). Unlike the other generators, only a small proportion of the 200 large quantity generators (LQGs) and probably none of the 39 treatment, storage, and disposal (TSD) facilities would be considered small businesses (see endnote #9). As a result of this apportionment, approximately 80% of the 2,339 generators could be classified as small businesses. However, ADEQ estimates that the majority, by far, will be unaffected by this rulemaking, including the 1,200 CESQGs. Approximately 60 SQGs, 70 CESQGs, 20 LQGs, and 10 TSD facilities represent government entities, including schools. Probably none of these government entities will be impacted.

From an EPA perspective, very few, if any, small entities should be adversely affected by this rulemaking. This is because most of the federal requirements that ADEQ is adopting by reference do not impose costs or economic impacts on businesses, either small or large. Table 1 provides information about national impacts and potential affects to Arizona businesses. As a result, this rulemaking might not have a significant economic impact to a substantial number of small businesses. However, if small businesses were to experience an adverse impact, it probably would be due to rules 8a and 9. Because rule 9 primarily affects large-scale facilities and the fact that it provides cost-saving benefits, probably no small business would be adversely impacted by this rule. Rule 8a may be the exception.

The EPA has identified general impacts upon small businesses expected to accrue from rule 8a, although the impacts probably would not be significant (see 63 FR 28633). In some cases, no impacts are expected. For example, no businesses should be affected that generate or treat toxicity characteristic (TC) metal wastes because these wastes generally are treated to below universal treatment standard (UTS) levels. In addition, TC metal wastes with organic underlying hazardous constituents (UHCs) are not prevalent, but if present, they rarely would require incineration. Hence, this rule should not result in increased costs from incineration.

Rule 8a is expected to generate compliance costs to some small businesses. The EPA identified 24 mineral processing facilities in the U.S. (owned by 22 businesses), but they are not expected to experience compliance costs that exceed 1% of reported revenues. In addition, 34-93 small businesses undergoing remediation of toxicity characteristic (TC) metal contaminated soils and sediments with organic underlying hazardous constituents (UHCs) could be impacted. However, the EPA estimated that only 2 firms could incur compliance costs that would exceed 1% of reported revenues. The EPA also identified 10 secondary small businesses that produce zinc fertilizers, but only 2 firms in the U.S. produce a hazardous waste-derived fertilizer. Only 1 of these firms potentially could incur a significant economic impact.

ADEQ is sensitive to the concerns of small businesses and the impact this rulemaking could have upon them. Accordingly, ADEQ has considered each of the methods prescribed in A.R.S. § 41-1035 for reducing the impact on small businesses. Likewise, ADEQ has considered each of the methods prescribed in A.R.S. § 41-1055(B)(5)(c). For example, A.R.S. § 41-1035 requires agencies implementing rules to reduce the impacts on small businesses by using certain methods where legal and feasible. Methods that may be used include the following: (1) Exempt them from any or all rule requirements, (2) Establish performance standards which would replace any design or operational standards, or (3) Institute reduced compliance or reporting requirements. The latter method could be accomplished by establishing less stringent requirements, consolidating or simplifying them, or by setting less stringent schedules or deadlines.

ADEQ could not provide additional regulatory relief for small businesses beyond what was built-in by the federal requirements. ADEQ has no authority to exempt a small business, or even establish a less stringent standard or schedule for it, or any business as a matter of fact, from compliance or reporting requirements. Pursuant to A.R.S. § 49-922(A), the state's hazardous waste program must be "equivalent to and consistent with" federal hazardous waste regulations. In addition, the state's nonprocedural program standards must not be more stringent than or conflict with federal regulations. Under these conditions, ADEQ cannot provide additional relief to small businesses because it would not be legal or feasible. If ADEQ's program were not consistent with federal requirements, it would jeopardize EPA authorization to administer the federal hazardous waste program in Arizona, which, in addition to other negative

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

impacts, could mean a loss of approximately \$1.5 million annually.

I. Alternative Rulemaking Provisions

ADEQ could not find any less costly or less intrusive rule provisions of achieving the goals and objectives of this rulemaking. The reason is that these rules mainly represent the adoption of federal requirements (see parts B, C, and H).

**Table 1 Identification of Federal Rules Incorporated into Arizona's Rules and Their Anticipated Impacts**

FEDERAL RULE	EFFECTIVE DATE OF RULE	PURPOSE OF RULE	IMPACT OF RULE (U.S. & ARIZONA)
(# 1) 62 FR 37694 14 July 1997 (40 CFR 268)  (Rule is effective)	7 July 1997	Extends national capacity variance for spent potliners from primary aluminum production (K088) for 3 months (until 8 October 1997). <sup>1</sup>	Imposes no costs. It represents a cost-savings benefit nationally. Because there probably are no SIC code 3334 businesses in Arizona that generate spent potliners, no impact is expected to occur in Arizona. Additionally, the extension has expired.
(# 2) 62 FR 45568 28 August 1997 (40 CFR 268, 271)  (Rule is effective)	21 August 1997	Extends alternative LDR treatment standards for carbamate production wastes for 1 more year (until 26 Aug. 1998), and the inclusion of carbamate waste constituents on the UTS list at 40 CFR 268.48.	Imposes no costs. It represents a cost-savings benefit nationally. If treated by a specified technique, it is not required to measure compliance with treatment levels. It is unknown if any Arizona businesses have been affected. However, the relevance is moot because the extension has expired (see rule 11).
(# 3) 62 FR 64504 5 December 1997 (40 CFR 268)  (Rule is effective)	5 December 1997	Clarifies standards by codifying the current EPA interpretation of existing LDR treatability variance language.	Imposes no costs. Since EPA merely adopted its long-standing interpretation of when a variance may be granted, no incremental impact, either nationally or locally (Arizona), has been expected.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

<p>(# 4) 62 FR 64636 8 December 1997 (40 CFR 264, 265, 270)</p> <p>(Rule is effective)</p>	<p>8 December 1997</p>	<p>Makes technical amendments to final subparts AA, BB, and CC rules to clarify and interpret, as well as to make various corrections. EPA promulgated standards to reduce organic air emissions from certain hazardous waste management activities to levels that protect human health and the environment. The standards are referred to as “subpart CC” standards. <sup>2</sup></p>	<p>Imposes no costs. Since EPA clarified the rule’s intent and made certain amendments, the impact has been beneficial by eliminating regulatory overlap between RCRA and CAA regulations, as well as providing cost-saving benefits to the regulated community (increased compliance alternatives and certain provisions more lenient). Certain types of Arizona businesses are expected to benefit.</p>
<p>(# 5) 63 FR 18504 15 April 1998 (40 CFR 261)</p> <p>(Rule is effective when Arizona’s rule is effective)</p>	<p>15 June 1998</p>	<p>Grants an exclusion for condensates derived from overhead gases from kraft mill steam strippers, but only if it is combusted at the mill generating the condensates. <sup>3</sup></p>	<p>Imposes no costs. Nationally, it represents a cost-savings benefit. There may be 1 or 2 industries involved in the pulping process in Arizona (SIC codes 261 and 262), but it is unknown if any will seek an exclusion. Although the impact is expected to be positive, it is unknown what it will mean to Arizona businesses.</p>
<p>(# 6a) 63 FR 24596 4 May 1998 (40 CFR 261, 268, 271)</p> <p>(Rule is effective)</p>	<p>4 November 1998</p>	<p>Lists 2 organobromine production wastes as hazardous and sets LDRs prohibitions and treatment standards. Only 2 firms in southern Arkansas produce 95% of organobromine chemicals manufactured in the U.S. <sup>4</sup></p>	<p>Imposes minimal costs nationally (&lt; \$100,000/yr). This industry is limited by the location of underground bromide-bearing brine deposits. Because the industry is geographically limited, no impacts are expected in Arizona, unless entities respond to a spill. However, because the Department deems the probability of a spill occurring to be low, no impact from this rule is anticipated.</p>
<p>(# 6b) 63 FR 35147 29 June 1998 (40 CFR 268, 271)</p> <p>(Rule is effective)</p>	<p>29 June 1998</p>	<p>Corrects technical errors in final rule published 4 May 1998 (effective 4 November 1998) in 63 FR 24596.</p>	<p>Imposes no costs either nationally or in Arizona (see rule 6a).</p>
<p>(# 7a) 63 FR 24963 6 May 1998 (40 CFR 261, 279)</p> <p>(Rule is effective when Arizona’s rule is effective)</p>	<p>6 July 1998</p>	<p>Corrects technical errors and clarifies ambiguities to existing used oil management standards (it includes 8 amendments).</p>	<p>Generally, imposes no costs, but if it does, they are expected to be de minimis. It is unknown how Arizona businesses could be affected.</p>

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

<p>(# 7b) 63 FR 37780 14 July 1998 (40 CFR 261, 279)</p> <p>(Rule is effective when Arizona's rule is effective)</p>	<p>14 July 1998</p>	<p>Removes 3 amendments to the used oil management standards in final rule published 6 May 1998 (effective 6 July 1998) in 63 FR 24963, and restores the prior regulatory text.</p>	<p>Imposes no costs. Possible minor benefits may accrue to some facilities. If any Arizona businesses will be affected, the impact is not expected to be incremental since prior regulatory language was restored (see rule 7a).</p>
<p>(# 8a) 63 FR 28556 26 May 1998 (40 CFR 261, 266, 268, 271)</p> <p>(Most rule provisions will be in effect when Arizona's rules are effective, but some currently are in effect)</p>	<p>24 August 1998 The latest Phase IV rule in a series of LDR rules (see 63 FR 28558-28559)</p>	<p>Establishes LDR treatment standards for metal wastes, mineral processing wastes, mineral processing secondary materials; treatment standards for hazardous soils; and provides for certain exclusions. The new soil treatment standards are less stringent than the standards currently required for previously regulated soils, which should provide cost-saving benefits to some entities.<sup>5</sup></p>	<p>Imposes significant costs nationally, but EPA expects overall cost-saving benefits to exceed these costs by an estimated \$6 million. Even if some entities will experience cost-saving benefits, others may encounter higher operating costs for compliance (costs for newly identified wastes and media contaminated with these wastes). Overall, EPA expects reduced risks to human health and the environment, including ecological risk reduction and reduced natural resource damages. Potentially, some Arizona businesses could experience cost-saving benefits, but others could encounter increased compliance costs.</p>
<p>(# 8b) 63 FR 31266 8 June 1998 (40 CFR 268)</p> <p>(Editorial corrections to a previously published rule)</p>		<p>Corrects an omission of a word in amendatory instruction #19 (Table 1 to Appendix VII) in the final rule published 26 May 1998 (effective 24 August 1998) in 63 FR 28556 on page 28751.</p>	<p>Imposes no costs either nationally or in Arizona (see rule 8a).</p>

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

<p>(# 9) 63 FR 33782  19 June 1998  (40 CFR 261, 270)</p> <p>(Rule is effective when Arizona's rule is effective)</p>	<p>19 June 1998</p>	<p>Finalizes some elements of the proposed air emissions standards (19 April 1996) for certain hazardous waste combustion units. The remaining issues will be addressed in future federal rules.<sup>6</sup></p>	<p>Although it imposes no costs, it does create an incremental public reporting and recordkeeping burden, but only to affected entities, which is estimated at \$5 million per year nationally. This rule mainly affects large-scale facilities, but it does provide cost-saving benefits compared to current requirements. Likewise, certain Arizona businesses could benefit with potential benefits exceeding administrative costs.</p>
<p>(# 10) 63 FR 46332  31 August 1998  (40 CFR 268)</p> <p>(Rule is effective)</p>	<p>21 August 1998</p>	<p>Amends LDR treatment standard for zinc micronutrient fertilizers (recycling) in the final rule published 26 May 1998 (effective 24 August 1998) in 63 FR 28556 by providing an administrative stay. The affected fertilizers (produced from TC wastes) will remain subject to previous treatment standards prior to the Phase IV requirements.<sup>7</sup></p>	<p>Imposes no costs. Provides a cost benefit nationally. It is likely to positively impact human health and the environment. This impact is due to the potential decrease in the use of K061-derived fertilizers and other zinc fertilizers (D004-D011) that may contain higher levels of contaminants. It is unknown if any Arizona businesses will be affected by this amendment (rule 8a).</p>
<p>(# 11) 63 FR 47410  4 September 1998  (40 CFR 268)</p> <p>(Rule is effective)</p>	<p>26 August 1998  (note that temporary alternative waste constituents expire automatically on 26 August 1998)</p>	<p>Revises waste treatment standards for 40 waste constituents associated with the production of carbamate wastes. For the 8 specific carbamate waste constituents, it sets alternative treatment standards for 7 and deletes 1; it reinstates numerical treatment standards for the 32 other carbamate waste constituents. It also provides 6 months for testing and analysis of the 32 waste constituents (numerical standards reinstated).<sup>8</sup></p>	<p>Imposes no costs. Provides greater flexibility for compliance with treatment standards. It minimizes potential threats to human health and the environment by ensuring that effective treatment will occur without delay (treated by a BDAT prior to land disposed). It also eliminates a potential for halting production of certain carbamate pesticides. It is unknown if any Arizona businesses will be affected.</p>

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

(# 12) 63 FR 48124 9 September 1998 (40 CFR 268)  (Rule is effective)	28 August 1998	Provides a 3-month extension (until 26 November 1998) for the treatment standards to be effective for secondary lead slags exhibiting the TC for 1 or more metals that are generated from thermal recovery of lead-bearing wastes (mainly batteries). <sup>9</sup>	Imposes no costs. Provides for compliance flexibility for resolving short-term logistical difficulties for secondary lead (SIC code 3341). This rule only affects the date of compliance and not the means of compliance. However, the relevance is moot because the extension has expired (see rule 8a). <sup>10</sup>
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Source: Federal Registers (FRs) as indicated in the 1st column. *County Business Patterns 1995: Arizona* (Oct. 1997) also was used to check some data by industry type.

APCD=air pollution control devices; BDAT=best demonstrated available technology; CAA=Clean Air Act; Cd=cadmium; LDR=land disposal restrictions; MACT=maximum achievable control technology; PAH=polycyclic aromatic hydrocarbons; Pb=lead; RCRA=Resource Conservation and Recovery Act; SIC codes 3334=primary production of aluminum, 261=pulp mills, 2491=wood preserving industries, 3341=secondary smelting and refining of nonferrous metals; TC=toxicity characteristic; TCLP=toxicity characteristic leaching procedure; TSD=treatment, storage, and disposal; UHCs=underlying hazardous constituents; and UTS=universal treatment standard.

The following notes are part of Table 1:

<sup>1</sup> On 8 April 1996, EPA promulgated a prohibition on land disposing spent potliners from primary aluminum production (K088 waste from the industry SIC code 3334) unless such waste satisfied the treatment standards for K088 established by the EPA (61 FR 15566). That was because the hazardous waste K088 is highly toxic (constituents include cyanide, toxic metals, fluoride, and PAHs). Refer to 53 FR 35412, 61 FR 15626, 61 FR 15584-15585, and 15589. Improper management of K088 has resulted in groundwater contamination with cyanide and fluoride. The EPA delayed the prohibition effective date by a 9-month capacity extension pursuant to RCRA § 3004(h)(2), or until 8 January 1997. A 6-month emergency extension subsequently was granted (8 January 1997 to 8 July 1997). The purpose was to allow time to modify, evaluate, and correct the current deficiencies in treatment performance because it does not currently protect human health and the environment. Upon the expiration of this extension, K088 wastes will have to be treated to meet LDR treatment standards. The goal of the LDR program is to “substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized” (RCRA § 3004(m)(1) as reported in 62 FR 1994; see also 62 FR 1995). During this extension period, generators will dispose of K088 wastes, other than Reynolds, in landfill units that satisfy minimum technical requirements of RCRA § 3004(o).

<sup>2</sup> Although this rule effects general facility standards, manifest system, recordkeeping and reporting, it clarifies the following: (1) Subparts AA, and BB apply to recycling units at both permitted and interim status TSD facilities, as well as to TSD facilities and generator’s 90-day accumulation units that are not recycling units; (2) The RCRA “permit-as-a shield” provisions do not apply to subparts AA, BB, or CC standards (owners/operators who received permits prior to the date the rule became effective, must comply with these subpart standards); and (3) Portable equipment is not exempted from these provisions. EPA also amended the applicability provision of subpart AA by exempting a process vent from being subject to subpart AA standards if every process vent at a facility is equipped with air emission control devices in compliance with applicable Clean Air Act (CAA) standards (emissions from each subpart AA process vent must be routed through an air emission control device because a vent which complies with a CAA standard that is exempt from a control devices not in compliance with subpart AA provisions). EPA believes this will provide less extensive monitoring, recordkeeping, and reporting requirements. Note that 40 CFR parts 264 and 265, subparts AA and BB pertain to air emissions from certain process vents and equipment leaks; subpart CC standards pertain to emissions from certain tanks, containers, and surface impoundments, including tanks and containers at generators’ facilities.

<sup>3</sup> Without this exclusion, condensates would be regulated under RCRA because they exhibit the ignitability characteristic. Boilers burning these condensates would be subject to emissions standards in 40 CFR 266(H).

<sup>4</sup> Just 4 facilities account for 99% of the total domestic production of organobromine chemicals.

<sup>5</sup> This rule does the following: (1) Sets LDRs treatment standards for metal-bearing wastes, including TC metal wastes and hazardous wastes from mineral processing; (2) Revises UTS for 12 metal constituents (listed and TC

**Arizona Administrative Register**  
**Notices of Proposed Rulemaking**

wastes containing 1 or more of these constituents may have to meet different standards than currently is the case); (3) Amends the rule to define which secondary materials from mineral processing are considered to be wastes and potentially subject to LDR; (4) Finalizes decisions on a set of mineral processing issues wastes that courts have remanded to EPA (retaining TCLP as the test for identifying the TC for mineral processing wastes and re-addressing regulatory status of miscellaneous mineral processing wastes); (5) Amends LDR treatment standards for soil contaminated with hazardous waste (creates standards that are more technically and environmentally appropriate than those which currently apply); and (6) Excludes from the solid waste definition certain shredded circuit boards in recycling operations (clarifying the intent was not to regulate whole circuit boards that contain minimal quantities of mercury and batteries that are packaged to minimize dispersion of metal constituents), and certain materials reused in wood preserving operations (SIC code 2491).

<sup>6</sup> This rule establishes the following: (1) A conditional exclusion from RCRA for fuels that are produced from a hazardous waste, but comparable to currently used fossil fuels (namely, legitimate fuels that contain hazardous constituents at levels comparable to fossil fuels, but excluding solids and used oil); (2) A new RCRA permit modification to make it easier for facilities to make changes to existing RCRA permits when adding APCD or making other equipment or operational changes (to comply with the 3-year maximum time limitation with MACT standards set by the CAA); (3) Notification requirements for sources intending to comply with the final rule and to identify sources that will choose, as a compliance strategy, to stop burning hazardous waste; and (4) Allowances for extensions to the compliance period to promote the installation of cost-effective, pollution prevention techniques to replace or supplement emission control techniques for meeting emission standards.

<sup>7</sup> Zinc micronutrient fertilizers usually contain measurable levels of Pb and Cd, which are hazardous constituents and not agriculturally beneficial. Under the Phase IV rule treatments standards, fertilizer products would have to meet more stringent standards (0.75 ppm for Pb as opposed to 5 ppm and 0.11 ppm for Cd as opposed to 1 ppm as measured by TCLP). Fertilizers can be manufactured from several types of hazardous wastes: dusts collected in emissions (APCD) such as “baghouse dust, “electric arc steel making furnaces and brass foundries, ash from combustion of used tires, and other wastes. Additionally, they can be manufactured from waste not classified as hazardous wastes or from raw materials such as refined zinc ores. Currently, fertilizers made from electric arc furnace dust (K061 hazardous waste) are not subject to LDR treatment standards (K061 was made exempt in 1988). The problem is that Phase IV rules could encourage the use of fertilizers made from K061 waste which typically contain higher concentrations of hazardous constituents (Pb and Cd) than zinc-containing fertilizers made from characteristic hazardous waste.

<sup>8</sup> Regarding the 8 specific carbamate waste constituents, for 7 there are no available analytical standards, and for the other 1, the method has not shown to achieve reliable measurements. The rule also removes these 8 waste constituents as UHCs. Compliance dates vary: (1) The existing alternative standards of 40 CFR 268.40(g) continue to apply until 4 March 1999; (2) The treatment standards for the following wastes specified in 40 CFR 261.33 were effective 26 August 1998: P185, P191, P192, P197, U364, U394, U395; (3) The numerical standards specified in 40 CFR 268.40 for the wastes specified in 40 CFR 261.32 as K156-K159 and K161, and the wastes specified in 40 CFR 261.33 as P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U278-U280, U364, U367, U372, U373, U387, U389, U394, U395, U404, and U409-U411, as well as the numerical standards associated with waste constituents in 40 CFR 268.48, all will be effective 4 March 1999.

<sup>9</sup> Until the extension expires, the slags affected are subject to the treatment standards for TC metals promulgated in the Third Final Rule and codified at 40 CFR 268.40 (see 55 FR 22520). Note that secondary lead slags that do not exhibit a characteristic are not subject to further LDR treatment requirements.

<sup>10</sup> Commercial treaters need this additional time to receive slag samples, to develop treatment strategies, and to make other arrangements (including contractual and shipping).

**Table 2 Potential Entities Impacted Nationally by Federal Rules**

FEDERAL RULE	POTENTIAL INDUSTRY EXAMPLE (PUBLIC & PRIVATE)
(# 1) Extends national capacity variance for spent potliners until October 1, 1999 (LDR Phase III).	Industries engaged in the primary production of aluminum (SIC code 3334).

**Notices of Proposed Rulemaking**

<p>(# 2) Extends alternative LDR treatment standards for carbamate production wastes for 1 additional year (Phase III), or until 26 August 1998. It provides for a temporary alternative means to comply.</p>	<p>Industries that generate carbamate production wastes (from carbamate pesticide manufacturing). Entities that become subject to the requirements of the LDR program, although it does not impose additional burdens.</p>
<p>(# 3) Clarifies standards by codifying current EPA interpretation of existing LDR treatability variance language.</p>	<p>Various industries, including remediation companies, that apply for treatability variances for wastes (contaminated soil or wastewater, washes, surface impoundments, and remediation wastes). This includes solid and hazardous wastes, all media, and debris. Remediation wastes could include RCRA corrective action, CERCLA cleanup, and cleanup under state programs. <sup>1</sup></p>
<p>(# 4) Makes technical amendments and clarifies the regulatory text of final standards; interprets those standards; clarifies preamble language in previous FR documents; and corrects errors.</p>	<p>Industries that treat or dispose of hazardous waste subject to permitting requirements (including portable equipment), or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers.</p>
<p>(# 5) Grants an exclusion from RCRA requirements for condensates derived from overhead gases from kraft mill steam strippers.</p>	<p>Pulp, paper, and paperboard mills that combust the condensate at the mill (SIC codes 261 and 262) and boilers burning these condensates.</p>
<p>(# 6a) Lists 2 organobromine production wastes as hazardous and modifies the LDR treatment standards to include these wastes.</p>	<p>Industries that generate the waste solids and filter cartridges from the production of 2,4,6-tribromophenol (K140) or the product (U408), and TSD facilities. Although most organobromine chemicals are sold as flame retardants, a small volume is used as reagent chemicals and pharmaceutical intermediates. It also could include state and local emergency planning entities and the National Response Center (federal).</p>
<p>(# 7a) Corrects technical errors and clarifies ambiguities to existing used oil management standards (consists of 8 amendments).</p>	<p>Generators, distributors, transporters, processors, refiners, and burners (CESQG if wastes are mixed with used oil).</p>
<p>(# 7b) Removes 3 of the 8 amendments to the use oil management standards direct final rule published 6 May 1998 (63 FR 24963) and reinstates the prior regulatory requirements in effect. <sup>2</sup></p>	<p>Generators, distributors, transporters, processors, refiners, and burners.</p>
<p>(# 8a) Promulgates LDR treatment standards for TC metal hazardous wastes, characteristic mineral processing wastes, other metal-bearing wastes. <sup>3</sup> It also clarifies that a previous exclusion for hazardous waste regulation for recycled shredded circuit boards applies to whole circuit boards under certain conditions.</p>	<p>Primary mineral processing, chemical manufacturers, pharmaceutical producers, paint producers, steel mills, motor vehicle parts manufacturers, blast furnaces, metal plating/polishing industries, and aircraft parts and equipment. Industries that treat or dispose of TC metal hazardous wastes, characteristic mineral processing wastes, and other metal-bearing hazardous wastes. Additionally, it could include the following: private or public parties remediating sites containing hazardous soil; copper smelters, gold refiners, and other primary metals producers that return waste streams to units for additional recovery; industries that generate and reclaim drippage and wastewaters on-site from the wood preserving industries (SIC code 2491); and industries that recycle certain circuit boards.</p>

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

<p>(# 9) Finalizes elements of the proposed air emissions standards that will affect certain generators and other entities.</p>	<p>Generators seeking a conditional exemption from RCRA, and some hazardous waste treaters; transporters, 3rd party blenders, combustors, and any entity that stores these fuels. Potential combustors include: industrial furnaces and utility boilers, hazardous waste incinerators (commercial or on-site facilities), cement kilns, light weight aggregate kilns, combustion turbines, and boilers. Petroleum refineries also may seek an exemption for syngas (output of gasification operations).<sup>4</sup> Also, facility owners/operators and TSD facilities that modify facility design or operations to meet MACT standards, that notice their intent to comply, and that incorporate waste minimization measures.<sup>5</sup></p>
<p>(# 10) Amends LDR treatment standard for zinc micronutrient fertilizers (recycling).</p>	<p>Producers of zinc micronutrient fertilizers (produced from TC wastes).</p>
<p>(# 11) Revises waste LDR treatment standards for 40 waste constituents associated with the production of carbamate wastes. Does not create additional regulatory requirements.</p>	<p>Industries that generate carbamate production wastes (from carbamate pesticide manufacturing). Also, waste treaters who must certify that wastes have been treated to LDR standards.</p>
<p>(# 12) Extends the compliance date for secondary lead slags exhibiting the TC for 1 or more metals that are generated from thermal recovery of lead-bearing wastes (mainly batteries).</p>	<p>Industries (smelters) that generate secondary lead slags as byproducts (SIC code 3341). Also commercial treaters and transporters of crushed slag (must be crushed to be successfully stabilized).</p>

Source: 62 FR 37694; 62 FR 45569-45571; 62 FR 64504-64505, 64507; 62 FR 64636; 62 FR 18504, 18635; 63 FR 24596-24597, 24623; 63 FR 35147; 63 FR 24963-24965, 24969; 63 FR 37780-37782; 63 FR 28559; 63 FR 31266; 63 FR 33783-33785, 33792-33796, 33799-33813, 33818-33819; 63 FR 46332-46333; 63 FR 47419-47414. This table includes entities likely to be impacted, but it is not intended to be exhaustive. Although the table excludes commercial laboratories, some will be impacted by certain rules.

BDAT=best demonstrated available treatment; CERCLA=Comprehensive Environmental Response, Compensation, and Liability Act; CESQG=conditionally exempt small quantity generators; LDR=land disposal restrictions; MACT=maximum achievable control technology; PCB=polychlorinated biphenyls; RCRA=Resource Conservation and Recovery Act; TC=toxicity characteristic; TSD=treatment, storage, and disposal; UHCs=underlying hazardous constituents; and UTS=universal treatment standard.

The following notes are part of Table 2:

<sup>1</sup> These wastes could include media contaminated with metal contaminants and low levels of organic contaminants; or waste containing low levels of nonvolatile organic contaminants (slightly exceeding a UTS, but the waste is stabilized). In some cases, a BDAT treatment could expose site workers to acute risks or fire or explosion due to an inappropriate LDR treatment standard, or it could result in net environmental detriment by discouraging aggressive remediation. Note that inappropriate LDR treatment standards could be due to unachievable or technically or environmentally inappropriate standards.

<sup>2</sup> EPA received adverse comments on 3 of the prior 8 amendments to the recycled used oil management standards (63 FR 24963). As a result, these 3 amendments were deleted: (1) CESQG waste mixed with used oil (40 CFR 261.5(j)); (2) Used oil contaminated with PCB (40 CFR 279.10(I)); and (3) Recordkeeping requirements for marketers of used oil that meets the used oil fuel specification (40 CFR 279.74(b)). Note that the other 5 amendments became effective on 6 July 1998.

<sup>3</sup> The 12 metals include: antimony, barium, beryllium, cadmium, chromium, lead, nickel, selenium, silver, thallium, vanadium, and zinc. The treatment standard for lead nonwastewaters exhibiting the TC, for example, is now 0.75 mg/liter (measured by TCLP) as opposed to 5.0 mg/liter (measured by either TCLP or extraction procedure (EP)). Additionally, all UHCs in characteristic lead wastes must be treated to meet the standards for hazardous constituents set forth in § 268.48. The rule intent is to assure that threats posed by land disposal of these wastes will be minimized as required by RCRA § 3004(m).

<sup>4</sup> EPA is excluding from the definition of solid waste hazardous waste-derived fuels that meet specification levels comparable to fossil fuels for concentrations of hazardous constituents and for physical properties that affect burning. “Syngas” is a type of synthesis gas which is a hazardous waste-derived fuel. The exclusion applies to syngas that results from the thermal reaction of hazardous wastes by a process designed to generate H<sub>2</sub> and CO as usable fuel (see 63 FR33785, 33791 and the proposal in 61 FR 17465). Applicability is dependent on waste codes assigned to the waste as well as to the industry generating the waste (see 63 FR 33793-33794). EPA’s goal was to develop a comparable fuel specification that is useful to the regulated community and that is similar in composition to commercially available fuel and which would pose no greater risk than burning a fossil fuel (see 63 FR 33783).

<sup>5</sup> Sources must notify the permitting agency within 1 year of the final standards and submit a progress report within 2 years. The source can either notify their intent to comply with the new standards or their intent not to comply. If a source intends not to comply, the source must stop burning hazardous waste within 2 years of the emission control requirements (see 63 FR 33806-33807). This rule also provides for 3 incentives to encourage pollution prevention measures to reduce the volume and toxicity of hazardous wastes entering combustion feedstreams (see 63 FR 33816).

#### **Appendix A**

##### **EIS Assumptions**

- (1) There are no businesses engaged in the primary production of aluminum and which generate spent potliners (SIC code 3334), but even if there were, the extension for the national capacity variance expired in October of 1997 (rule 1).
- (2) There may be 1 or 2 businesses involved in the pulping process (SIC codes 261 and 262), and it is unknown if any will seek an exclusion for condensates derived from overhead gases, but if they do, it will represent a cost-savings benefit (rule 5).
- (3) Although there are no businesses that manufacture organobromine chemicals, and hence, no waste solids and filter cartridges (K140) or the product (U408) would be generated, state or political subdivisions of the state could be impacted if they were to respond to a release of either K140 or U408. However, for this EIS the impact is not considered because of a perceived low probability of a release actually occurring in Arizona (rule 6a).
- (4) There may be a few businesses involved in the production of zinc micronutrient fertilizers, but it is unknown if these fertilizers are produced from toxicity characteristic wastes, but if they are, the “administrative stay” will represent a cost-savings benefit because the fertilizers would remain subject to previous treatment standards prior to this Phase IV rule (rule 10).
- (5) Some businesses will be impacted by other rules according to specific rule provisions, but overall probable benefits are expected to exceed probable costs (rules 4, 7a, 7b, 8a, 9, 11 and 12).
- (6) Businesses generating toxicity characteristic (TC) metal wastes associated with stabilization are not expected to be negatively impacted (rule 8a). No incremental costs or benefits are expected to be generated.
- (7) Businesses generating toxicity characteristic (TC) metal wastes that contain organic underlying hazardous constituents (UHCs) are not expected to be negatively impacted. This is because these wastes (including foundry sands) often are treated to universal treatment standard (UTS) levels using bona fide treatment reagents, such as portland cement (rule 8a).
- (8) Contaminated soils which exhibit a characteristic for toxicity characteristic (TC) metals, including soils containing newly identified mineral processing wastes, and that do not contain organic underlying hazardous constituents (UHCs), are not expected to be negatively impacted (rule 8a). Newly identified mineral processing wastes represent mineral processing wastes which exhibit a characteristic, are not excluded from RCRA by the Beville Amendment, and are not excluded from being solid wastes due to recycling. Rule 9a amends the land disposal restrictions (LDR) treatment standards for these soils; hence, generators and treaters will benefit from these alternative treatment standards. Thus, treatment standards will be more technically and environmentally appropriate.
- (9) Many businesses will not be impacted because the rules merely clarify, correct, or interpret existing requirements, or rule extensions have expired (rules 1, 2, 3, 4, 6b, 7a, 8b, and 12).

#### **Appendix B**

##### **Potential National Impacts**

- (1) Because this rule prohibits the land storage of mineral processing residues below the high-volume threshold before being recycled, annualized compliance costs could reach \$10 million. This estimate is based on the need for owners/operators to purchase new units and to upgrade existing storage units. It also includes the estimated cost of transferring some mineral processing residues from recycling to disposal (increased costs) and from disposal to recy-

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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cling (decreased costs). The actual economic impact will depend on current storage and management practices of mineral processing residues prior to being recycled.

The EPA expects 5 of the 29 mineral commodity sectors (cadmium, fluorspar and hydrofluoric acid, mercury, selenium, and tungsten) to incur compliance costs 1% of the economic value of mineral commodities produced under rule 8a. For the mineral commodity cadmium, this anticipated impact is 2%, but for the mineral commodity mercury, it is anticipated to be 36%. Because many of these sectors are co-processed with other mineral commodity sectors, impacts could be distributed over the economic value of other minerals and not just mineral commodity sectors associated with generating secondary materials. The EPA predicts that rule 8a will impose incremental costs equal to 18% of the value added to the cadmium and selenium mineral commodity sectors. "Value added" equals the market value of minerals less the cost of raw materials (ore concentrate). For example, cadmium and selenium are co-products of zinc and copper production, respectively. Thus, economic impacts are expected to mainly affect the production of these co-products and the reclamation of their residuals as opposed to mineral processing as a whole. EPA's conclusion is that costs for these residuals will not significantly decrease their recovery (see 63 FR 28632).

(2) Because TC hazardous metal contaminated soils which contain organic underlying hazardous constituents that will require additional treatment over that received in the baseline, annualized compliance costs to owners/operators are estimated at \$3 million. However, this is expected to occur mainly at voluntary cleanups and Superfund sites.

(3) Because owners/operators of manufactured gas plants (MGPs) may have to select remedies that are alternatives to asphalt, brick, or concrete recycling, annualized compliance costs of \$6.2 million are expected to occur. The EPA estimates that compliance costs to business sales for MGP site cleanups will be < 1%. MGP contaminated soils represent a category of contaminated media that was not previously subject to LDR treatment standards.

The EPA believes that some costs may accrue to manufactured gas plant (MGP) cleanups involving the use of MGP soils in land applied recycling (for example, hot or cold mix asphalt, brick, and concrete). It is possible that owners/operators will choose alternative remedies not subject to rule 8a (for example, in-situ treatment or co-burning).

(4) Because the EPA does not consider the use of iron filings to be a legitimate and effective treatment reagent (for example, nonferrous foundries), the estimated cost of \$11.7 million to come into compliance is not considered an incremental cost. The estimated cost for switching treatment reagents from iron filings to portland cement is expected to represent < 1% of industry revenues and < 6% of industry profits.

(5) Because the final Phase IV rule creates an information collection burden, the estimated cost to the private sector is about \$944,000 over 3 years. This burden includes time and financial resources to generate, maintain, retain, and disclose or provide information to or for a federal agency.

(6) Because the new soil treatment standards are less stringent than what have been required, cost-saving benefits of \$25 million are expected to accrue annually.

ENDNOTES

1. William H. Rodgers, Jr., *Environmental Law: Hazardous Wastes & Substances*, Vol. 4 (St. Paul, MN: West Publishing Co.), 1992, pp. 252-353.

2. Refer to 63 FR 33818-33819. Additionally, the EPA estimates the total estimated cost to state, local, and tribal governments to be less than \$4.5 million over 10 years.

3. The EPA estimates the following volumes of waste potentially may be affected: 22,000,000 tons of newly identified mineral processing secondary materials; 1,300,000 tons of contaminated soil containing coal tar and other wastes from manufactured gas plants; 165,000 tons per year of soil and sediment contaminated with toxicity characteristic (TC) metals; and 90,000 tons per year of previously regulated contaminated soils (63 FR 28630).

4. Refer to "c. Economic Impact Results" in 63 FR 28632.

5. Characteristic wastes are wastes that failed the toxicity characteristic leaching procedure (TCLP). Refer to 63 FR 28560; 55 FR 22520; *Waste Management v. EPA*, 976 F.2d 2, 13-14, 26-27, 32 (D.C. cir. 1992); 40 CFR 268.40; 59 FR 47982; 60 FR 43582; and 40 CFR 261.24.

6. These costs comprise the main component of total social costs. Real-resource costs are pre-tax compliance costs less any transfer costs (for example, emission fees, licensing fees, or subsidies). Nonmonetized resources also should be included because they have opportunity costs connected with them. Refer to U.S. Environmental Protection Agency, Office of Policy Analysis, *Guidelines for Performing Regulatory Impact Analysis* (Washington, D.C., 1991 (1983 reprint)) Appendix B, "Analysis of Costs," July 1984, p. B 4.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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7. In 1980, the EPA listed 8 wastes as hazardous (containing 1 or more hazardous constituents) that were generated by primary metal smelters. These 8 wastes were K064-K068, K088, K090, and K091. However, in response to the Congressional enactment of the Bevill Exclusion (1980), the EPA suspended its listing of these 8 wastes as hazardous. Then, on October 2, 1985, the EPA proposed to re-list 6 of the 8 wastes (excluding K067 and K068), but withdrew the proposal on October 9, 1985. In *Environmental Defense Fund v. EPA*, the EPA was ordered to make a final decision about re-listing the 6 metal smelting wastes and to reduce the scope of the Bevill exemption applicable to mineral processing wastes. However, the American Mining Congress challenged these listings. Although the court upheld EPA's decision to re-list the K088 waste (spent potliners) and found EPA did not adequately address certain issues raised by commentors, it did not vacate the listings (technically remained in effect). In January of 1996, the EPA proposed to revoke the current hazardous waste listing for the 5 court-remanded smelting wastes and would not re-list them as hazardous. They would be regulated as hazardous wastes if they exhibit a characteristic of a hazardous waste. They include the following K-wastes: copper acid plant blowdown, surface impoundment solids at primary lead smelters, acid plant blowdown from primary zinc production, emission control dust and sludge from ferrochromium-silicon production, and emission control dust or sludge from ferrochromium-silicon production. Refer to 63 FR 28590-28600; 43 FR 33066, 33124, 47832-47834; 40 CFR 261.11(a)(3); 40 CFR 261, Appendix VIII; 46 FR 4614-4615, 27473; 50 FR 40292, 40295; 51 FR 36233; *Environmental Defense Fund v. EPA*, 852 F.2d 1316 (D.C. Cir. 1988); and *American Mining Congress v. EPA*, 907 F.2d 1179 (D.C. Cir. 1990).

8. Small business is defined in statute as an independently owned and operated concern, including its affiliates, which is not dominant in its field and that employs fewer than 100 FTEs or which had gross annual receipts less than \$4,000,000 in its last fiscal year (A.R.S. § 41-1001(20)). Facility data from ADEQ's annual facility reports.

9. These treatment, storage, and disposal (TSD) facilities include the following types: 8 treatment, 16 storage, 7 disposal, 7 treatment and disposal, and 1 treatment, storage, and disposal.

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

Name: David Lillie  
Address: Arizona Department of Environmental Quality  
M0836A  
3033 N. Central, Eighth Floor  
Phoenix, AZ 85012-2809  
Telephone: (602) 207-4436 or 800-234-5677, Ext. 4436 (Arizona only)  
TTD: (602) 207-4829  
Fax: (602) 207-2251

**10. The time, place and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:**

Date: August 23, 1999  
Time: 1 p.m.  
Location: Department of Environmental Quality, Room 1710  
3033 N. Central  
Phoenix, AZ 85012

(Please call (602) 207-4795 for special accommodations pursuant to the Americans with Disabilities Act.)

Nature: Public hearings on the proposed rules, with opportunity for formal comments on the record.

The close of written comment is August 23, 1999, at 5 p.m.

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

Not applicable

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

<b>Federal Citation</b>	<b>State Citation</b>
40 CFR 260	R18-8-260
40 CFR 261 Including Federal Register Vol. 63, p. 37780, 7/14/98	R18-8-261

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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40 CFR 262	R18-8-262
40 CFR 263	R18-8-263
40 CFR 264	R18-8-264
40 CFR 265	R18-8-265
40 CFR 266	R18-8-266
40 CFR 268 Including Federal Register Vol 63, p. 46332, 8/31/98; p. 47410, 9/4/98; and p. 48124, 9/9/99	R18-8-268
40 CFR 270	R18-8-270
40 CFR 124	R18-8-271
40 CFR 273	R18-8-273

**13. The full text of the rules follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY  
WASTE MANAGEMENT**

**ARTICLE 2. HAZARDOUS WASTES**

Section

- R18-8-260. Hazardous Waste Management System: General
- R18-8-261. Identification and Listing of Hazardous Waste
- R18-8-262. Standards Applicable to Generators of Hazardous Waste
- R18-8-263. Standards Applicable to Transporters of Hazardous Waste
- R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities
- R18-8-268. Land Disposal Restrictions
- R18-8-270. The Hazardous Waste Permit Program
- R18-8-271. Procedures for Permit Administration
- R18-8-273. Standards for Universal Waste Management

**ARTICLE 2. HAZARDOUS WASTES**

**R18-8-260. Hazardous Waste Management System: General**

- A.** Federal and state statutes and regulations cited in these rules are those adopted as of July 1, ~~1997~~1998, unless otherwise noted. 40 CFR 124, 260 through 266, 268, 270 and 273 or parts thereof, are adopted by reference when so noted. Federal statutes and regulations that are cited within 40 CFR 124 and 260 through 270 that are not adopted by reference may be used as guidance in interpreting federal regulatory language.
- B.** *No Change*
- C.** All of 40 CFR 260 and the accompanying appendix, as amended as of July 1, ~~1997~~1998, (and no future editions), with the exception of §§ 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33, are incorporated by reference and modified by the following subsections of R18-8-260 and are on file with the Department of Environmental Quality (DEQ) and the Office of the Secretary of State.
- D.** *No Change*
  - 1. *No Change*
  - 2. *No Change*
    - a. *No Change*
      - i. *No Change*
      - ii. *No Change*
    - b. *No Change*
      - i. *No Change*
      - ii. *No Change*
      - iii. *No Change*
      - iv. *No Change*
    - c. *No Change*

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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- i. *No Change*
    - ii. *No Change*
    - iii. *No Change*
  - d. *No Change*
    - i. *No Change*
    - ii. *No Change*
    - iii. *No Change*
  - e. *No Change*
    - i. *No Change*
      - (1) *No Change*
      - (2) *No Change*
    - ii. *No Change*
      - (1) *No Change*
      - (2) *No Change*
    - iii. *No Change*
      - (1) *Change*
      - (2) *No Change*
      - (3) *No Change*
      - (4) *No Change*
  - f. *No Change*
    - i. *No Change*
    - ii. *No Change*
    - iii. *No Change*
    - iv. *No Change*
    - v. *No Change*
- E.** *No Change*
  - 1. *No Change*
  - 2. *No Change*
  - 3. *No Change*
  - 4. *No Change*
  - 5. *No Change*
  - 6. *No Change*
  - 7. *No Change*
  - 8. *No Change*
  - 9. *No Change*
  - 10. *No Change*
  - 11. *No Change*
  - 12. *No Change*
    - a. *No Change*
    - b. *No Change*
    - c. *No Change*
    - d. *No Change*
    - e. *No Change*
    - f. *No Change*
    - g. *No Change*
    - h. *No Change*
    - i. *No Change*
  - 13. *No Change*
  - 14. *No Change*
  - 15. *No Change*
  - 16. *No Change*
  - 17. *No Change*
  - 18. *No Change*
  - 19. *No Change*
  - 20. *No Change*
  - 21. *No Change*
  - 22. *No Change*
    - a. *No Change*
    - b. *No Change*

*Arizona Administrative Register*  
Notices of Proposed Rulemaking

---

- 23. *No Change*
- 24. *No Change*
- 25. *No Change*
- 26. *No Change*
- 27. *No Change*
- 28. *No Change*
- 29. *No Change*
- 30. *No Change*
- 31. *No Change*
- 32. *No Change*

- F.** *No Change*
  - 1. *No Change*
  - 2. *No Change*
  - 3. *No Change*
    - a. *No Change*
    - b. *No Change*
  - 4. *No Change*
  - 5. *No Change*
  - 6. *No Change*
    - a. *No Change*
    - b. *No Change*
  - 7. *No Change*
- G.** *No Change*
- H.** *No Change*
- I.** *No Change*
- J.** *No Change*
- K.** *No Change*
- L.** *No Change*
- M.** *No Change*
  - 1. *No Change*
  - 2. *No Change*
  - 3. *No Change*

**R18-8-261. Identification and Listing of Hazardous Waste**

- A.** All of 40 CFR 261 and accompanying appendices, as amended as of July 1, ~~1997~~1998 (and no future editions), with the exception of §§ 261.5(j), 261.4(a)(16) intro through 261.4(a)(16)(vi), and 261.4(b)(7)(iii) are incorporated by reference and modified by the following subsections of R18-8-261 and are on file with the DEQ and the Office of the Secretary of State. In addition, all amendments to Part 261 as amended at 63 Federal Register 37780, on July 14, 1998 are incorporated by reference and on file with the DEQ and the Office of the Secretary of State.

**B.** *No Change*

- C.** § 261.2, entitled “Definition of solid waste”, paragraphs (c)(3), (c)(4)/Table, and (e)(1)(iii) are amended as follows:
  - (c)(3) Delete the following phrase at the end of the sentence: “(except as provided under 40 CFR 261.4(a)(15)). Materials noted with a “-” in column 3 of Table 1 are not solid waste when reclaimed (except as provided under 40 CFR 261.4(a)(15))”.
  - (c)(4)/Table Delete the following phrase in the 3rd column heading: “(except as provided in 261.4(a)(15) for mineral processing secondary materials)”.
  - (e)(1)(iii) Delete the following sentence at the end of the paragraph: “Where materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion at 261.4(a)(15) apply.”

**C.D.** *No Change*

**D.E.** *No Change*

**E.F.** *No Change*

**F.G.** *No Change*

**G.H.** *No Change*

**H.I.** *No Change*

- I.J.** § 261.6, entitled “Requirements for recyclable materials”, paragraphs (a)(1) through (a)(3) are amended as follows:
  - (a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled [shall] be known as “recyclable materials.”

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

- (2) The following recyclable materials are not subject to the requirements of this section but are regulated under [40 CFR 266, subparts C, F, G, and H (as incorporated by R18-8-266)] and all applicable provisions in parts 270 and 124 of this Chapter [(as incorporated by R18-8-270 and R18-8-271)]:
- (i) Recyclable materials used in a manner constituting disposal (subpart C);
  - (ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O (as incorporated by R18-8-264 and R18-8-265)] (subpart H);
  - (iii) Recyclable materials from which precious metals are reclaimed (subpart F);
  - (iv) Spent lead-acid batteries that are being reclaimed (subpart G).
- (3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124 (as incorporated by R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and are not subject to the notification requirements of section 3010 of RCRA:
- (i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in § 262.58:
    - (A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, [shall] comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56 (a)(1)-(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in subpart E of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;
    - (B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.
  - (ii) Scrap metal that is not excluded under § 261.4(a)(13);
  - (iii) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12) (as incorporated by R18-8-261);
  - (iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801(A)(5)] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;
  - (B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining[,] production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under [A.R.S. § 49-801(A)(5)]; and
  - (C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under [A.R.S. § 49-801(A)(5)]; and
  - (v) Petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds 1 or more of the characteristics of hazardous waste in part 261, subpart C [(as incorporated by R18-8-261)].

**J.K.** *No Change*

**K.L.** *No Change*

**L.M.** *No Change*

**M.N.** *No Change*

**R18-8-262. Standards Applicable to Generators of Hazardous Waste**

- A.** All of 40 CFR 262 and the accompanying appendix, as amended as of July 1, ~~1997~~1998, (and no future editions), are incorporated by reference and modified by the following subsections of R18-8-262, and are on file with the DEQ and the Office of the Secretary of State.
- B.** *No Change*
  - 1. *No Change*
  - 2. *No Change*
  - 3. *No Change*
- C.** *No Change*
- D.** *No Change*
- E.** *No Change*
- F.** § 262.23, entitled “Use of the manifest”, paragraph (a) is amended by adding the following:

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

[~~(4)~~ Submit one (1) copy of each manifest to the DEQ in accordance with R18-8-262(~~H~~)(I).]

- G. *No Change*
- H. *No Change*
- I. *No Change*
  - 1. *No Change*
  - 2. *No Change*
- J. *No Change*
- K. *No Change*
- L. *No Change*
- M. *No Change*

**R18-8-263. Standards Applicable to Transporters of Hazardous Waste**

- A. All of 40 CFR 263, as amended as of July 1, ~~1997~~1998, (and no future editions), is incorporated by reference ~~a~~(and modified by the following subsections of R18-8-263, and on file with the DEQ and the Office of the Secretary of State.
- B. *No Change*
- C. *No Change*
- D. *No Change*
- E. *No Change*

**R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

- A. All of 40 CFR 264 and accompanying appendices, as amended as of July 1, ~~1997~~1998, (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149 - 264.150, and 264.301(l), are incorporated by reference, and modified by the following subsections of R18-8-264, and are on file with the DEQ and the Office of the Secretary of State.
- B. *No Change*
- C. § 264.1, entitled “Purpose, scope, and applicability”, paragraph (g)(8)(i)(D) is amended as follows:  
(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602)207-2330 or (800)~~324-5677~~ 234-5677, extension 2330.]
- D. *No Change*
  - 1. *No Change*
  - 2. *No Change*
- E. *No Change*
- F. *No Change*
- G. § 265.71, entitled “Use of manifest system”, paragraph (a)(4) is amended as follows:  
Within 30 days after the delivery, send a copy of the manifest to the generator [and submit 1 copy of each manifest to the DEQ, in accordance with R18-8-265(~~H~~)(I)]; and
- H. *No Change*
- I. *No Change*
  - 1. *No Change*
  - 2. *No Change*
- J. *No Change*
- K. *No Change*
- L. §§ 264.143, entitled “Financial assurance for closure”, paragraph (h)<sub>2</sub> and 264.145, entitled “Financial assurance for post-closure care”, paragraph (h)<sub>2</sub> are amended by ~~deleting the following from the 3rd sentence in each citation: “If the facilities covered by the mechanism are in more than 1 Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions; replacing the 3rd sentences in each citation with the following: “Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona.”~~
- M. *No Change*
- N. *No Change*
- O. *No Change*
  - 1. *No Change*
  - 2. *No Change*
  - 3. *No Change*
  - 4. *No Change*
  - 5. *No Change*
  - 6. *No Change*

**R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Dis-**

**posal Facilities**

- A. All of 40 CFR 265 and accompanying appendices, as amended as of July 1, ~~1997~~1998 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, are incorporated by reference and modified by the following subsections of R18-8-265, and are on file with the DEQ and the Office of the Secretary of State.
- B. *No Change*
- C. § 265.1, entitled “Purpose, scope, and applicability”, paragraph (c)(11)(i)(D) is amended as follows:  
(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602)207-2330 or (800)~~324-5677~~ 234-5677, extension 2330.]
- D. *No Change*
  - 1. *No Change*
  - 2. *No Change*
- E. *No Change*
- F. *No Change*
- G. § 265.71, entitled “Use of manifest system”, paragraph (a)(4) is amended as follows:  
Within 30 days after the delivery, send a copy of the manifest to the generator [and submit 1 copy of each manifest to the DEQ, in accordance with R18-8-265~~(H)~~ (I)]; and
- H. *No Change*
- I. *No Change*
- J. *No Change*
- K. *No Change*
  - 1. *No Change*
  - 2. *No Change*
  - 3. *No Change*
- L. *No Change*
- M. §§ 265.143, entitled “Financial assurance for closure”, paragraph (g), and 265.145, entitled “Financial assurance for post-closure care”, paragraph (g), are amended by ~~deleting the following from the 3rd sentence in each citation: “If the facilities covered by the mechanisms are in more than 1 Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions.”~~ replacing the 3rd sentences in each citation with the following: “Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona.”

**R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities**

- A. All of 40 CFR 266 and accompanying appendices as amended as of July 1, ~~1997~~1998 (and no future editions), are incorporated by reference and are on file with the DEQ and the Office of the Secretary of State.
- B. § 266.100, entitled “Applicability” paragraph (b) is amended as follows:
  - (b) The following hazardous wastes and facilities are not subject to regulation under this subpart:
    - (1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 [(as incorporated by R18-8-261)] of this Chapter. Such used oil is subject to regulations under [A.R.S. §§ 49-810 through ~~49-815~~49-818] rather than this subpart;
    - (2) *No Change*
    - (3) *No Change*
    - (4) *No Change*

**R18-8-268. Land Disposal Restrictions**

All of 40 CFR 268 and accompanying appendices, as amended as of July 1, ~~1997~~1998 (and no future editions), with the exception of Part 268, Subpart B, are incorporated by reference and are on file with the DEQ and the Office of the Secretary of State. In addition, all amendments to Part 268 as amended at 63 Federal Register, 46332, 47410, and 48124 on August 31, 1998, September 4, 1998, and September 9, 1998, respectively, are incorporated by reference and on file with the DEQ and the Office of the Secretary of State.

**R18-8-270. The Hazardous Waste Permit Program**

- A. All of 40 CFR 270, as amended as of July 1, ~~1997~~1998 (and no future editions), with the exception of §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64, is incorporated by reference and modified by the following subsections of R18-8-270 and is on file with the DEQ and the Office of the Secretary of State.
- B. *No Change*
  - 1. *No Change*

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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- a. *No Change*
- b. *No Change*
- c. *No Change*
- 2. *No Change*
  - a. *No Change*
  - b. *No Change*
- C. § 270.1, entitled “Purpose and scope of these regulations”, paragraph (c)(3)(i)(D) is amended as follows:  
(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602)207-2330 or (800)~~324-5677~~234-5677, extension 2330.]
- D. *No Change*
- E. *No Change*
- F. *No Change*
- G. *No Change*
- H. *No Change*
  - 1. *No Change*
    - a. *No Change*
    - b. *No Change*
    - c. *No Change*
    - d. *No Change*
  - 2. *No Change*
  - 3. *No Change*
    - a. *No Change*
    - b. *No Change*
    - c. *No Change*
  - 4. *No Change*
  - 5. *No Change*
  - 6. *No Change*
    - a. *No Change*
    - b. *No Change*
  - 7. *No Change*
    - a. *No Change*
    - b. *No Change*
    - c. *No Change*
    - d. *No Change*
    - e. *No Change*
    - f. *No Change*
    - g. *No Change*
    - h. *No Change*
    - i. *No Change*
    - j. *No Change*
  - 8. *No Change*
  - 9. *No Change*
- I. *No Change*
- J. *No Change*
- K. *No Change*
- L. *No Change*
- M. *No Change*
- N. *No Change*
- O. *No Change*
- P. *No Change*
- Q. *No Change*
- R. *No Change*

**R18-8-271. Procedures for Permit Administration**

- A. All of 40 CFR 124 and the accompanying appendix as amended as of July 1, ~~1997~~1998, (and no future editions), relating to HWM facilities, with the exception of §§ 124.1(b) through (e), 124.2, 124.4, 124.16, 124.20 and 124.21, are incorpo-

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

rated by reference and modified by the following subsections of R18-8-271 and are on file with the DEQ and the Office of the Secretary of State.

- B.** *No Change*
- C.** *No Change*
- D.** *No Change*
- E.** *No Change*
- F.** *No Change*
- G.** *No Change*
- H.** *No Change*
- I.** *No Change*
- J.** *No Change*
- K.** *No Change*
- L.** *No Change*
- M.** *No Change*
- N.** *No Change*
- O.** *No Change*
- P.** *No Change*
- Q.** *No Change*
- R.** *No Change*
- S.** *No Change*
- T.** *No Change*

**R18-8-273. Standards for Universal Waste Management**

**A.** All of 40 CFR 273, as amended as of July 1, ~~1997~~1998 (and no future editions), is incorporated by reference and modified by the following subsections of R18-8-273 and are on file with the DEQ and the Office of the Secretary of State.

**B.** *No Change*

**C.** *No Change*

- 1. *No Change*
  - a. *No Change*
  - b. *No Change*
- 2. *No Change*
  - a. *No Change*
  - b. *No Change*

**D.** *No Change*

**E.** *No Change*

**F.** § 273.13, entitled "Waste management" is amended by adding paragraph (d) as follows:

"(d) Universal waste lamps. A small quantity handler of universal waste shall manage universal waste lamps in a way that prevents releases of any universal waste or component of any universal waste to the environment, as follows:

(1) A small-quantity handler shall manage universal waste lamps in a way that minimizes lamp breakage. The small-quantity handler shall:

- (i) Contain unbroken lamps in packaging that will minimize breakage during normal handling, and
- (ii) Contain broken lamps in packaging that will minimize releases of lamp fragments and residues.

(2) A small-quantity handler of universal waste lamps shall immediately contain all releases of residues from hazardous waste lamps.

(3) A small-quantity handler of universal waste lamps shall determine whether any materials (that is, mercury, residues, or other solid wastes) resulting from the release exhibit a characteristic of hazardous waste, and if so, shall manage the waste in accordance with all applicable requirements in 40 CFR 260 through 272 (as incorporated by R18-8-260 through R18-8-271).

(4) If the mercury, residues, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.

(5) A small quantity handler of universal waste may remove mercury-containing arc tubes from universal waste lamps if the handler:

- (i) Removes the arc tubes in a manner designed to prevent breakage of the arc tubes;
- (ii) Removes the arc tubes only over or in a containment device (for example, a tray or pan sufficient to contain any mercury released from an arc tube in case of breakage);
- (iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken arc tubes from the containment device to a container that meets the requirements of 40 CFR 262.34 (as incorporated by R18-8-262);

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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- (iv) Immediately transfers any mercury resulting from spills or leaks from broken arc tubes from the containment device to a container that meets the requirements of 40 CFR 262.34 (as incorporated by R18-8-262);
- (v) Ensures that the area in which arc tubes are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;
- (vi) Ensures that employees removing arc tubes are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
- (vii) Stores removed arc tubes in closed, non-leaking containers that are in good condition and are no greater than 5 gallons in size; and
- (viii) Before shipment, minimizes empty space in containers either by the addition of packing material on top of the arc tubes or by filling the containers to minimize the empty space.”

**G.** *No Change*

**H.** § 273.33, entitled “Waste management” is amended by adding paragraph (d) as follows:

“(d) Universal waste lamps. A large-quantity handler of universal waste shall manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

- (1) A large-quantity handler shall manage universal waste lamps in a way that minimizes lamp breakage. The large-quantity handler shall:
  - (i) Contain unbroken lamps in packaging that will minimize breakage during normal handling, and
  - (ii) Contain broken lamps in packaging that will minimize releases of fragments and residues.
- (2) A large-quantity handler of universal lamps shall immediately contain all releases of residues from hazardous waste lamps.
- (3) A large-quantity handler of universal waste lamps shall determine whether any materials (that is, mercury, residues, or other solid wastes) resulting from the release exhibit a characteristic of hazardous waste, and if so, shall manage the waste in accordance with all applicable requirements in 40 CFR 260 through 272 (as incorporated by R18-8-260 through R18-8-271).
- (4) If the mercury, residues, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.
- (5) A large quantity handler of universal waste may remove mercury-containing arc tubes from universal waste lamps if the handler:
  - (i) Removes the arc tubes in a manner designed to prevent breakage of the arc tubes;
  - (ii) Removes the arc tubes only over or in a containment device (for example, a tray or pan sufficient to contain any mercury released from an arc tube in case of breakage);
  - (iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken arc tubes from the containment device to a container that meets the requirements of 40 CFR 262.34 (as incorporated by R18-8-262);
  - (iv) Immediately transfers any mercury resulting from spills or leaks from broken arc tubes from the containment device to a container that meets the requirements of 40 CFR 262.34 (as incorporated by R18-8-262);
  - (v) Ensures that the area in which arc tubes are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;
  - (vi) Ensures that employees removing arc tubes are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
  - (vii) Stores removed arc tubes in closed, non-leaking containers that are in good condition and are no greater than 5 gallons in size; and
  - (viii) Before shipment, minimizes empty space in containers either by the addition of packing material on top of the arc tubes or by filling the containers to minimize the empty space.”

**I.** *No Change*

**J.** *No Change*

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOLID WASTE MANAGEMENT**

**PREAMBLE**

**1. Sections Affected**  
R18-13-702

**Rulemaking Action**  
Amend

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

---

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

Authorizing Statutes: A.R.S. § 49-104

Implementing Statutes: A.R.S. §§ 49-762 and 49-857

**3. A list of all previous notices appearing in the Arizona Administrative Register.**

None. This is an exempt rulemaking.

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

Name: Deborah K. Blacik or Martha L. Seaman

Address: Department of Environmental Quality  
Rule Development Section, M0836A-829  
3033 North Central Avenue  
Phoenix, AZ 85012

Telephone: (602) 207-2223, (800) 234-5677 ext 2223 (AZ only)

Fax: (602) 207-2251

TTD: (602) 207-4829

**5. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking process:**

In this rule making, the Arizona Department of Environmental Quality (Department) is amending R18-13-702(J) to update hourly rate fees for the review of a solid waste facility plan including the special waste management plan component. The Department is also amending Schedule B to reduce the initial fee for review of a substantial change to a solid waste facility plan for a municipal solid waste landfill from \$1,187 to \$766.

The historical perspective for R18-13-702 is as follows: In 1983, the Arizona Legislature required the Department to conduct plan review and approve or disapprove plans for solid waste facilities operating within the state. In 1990, the Arizona Legislature included a special waste management plan component as a part of the plan review for a solid waste facility that treated, disposed, or stored special waste. In 1995, the Department adopted the solid waste plan review fee rules R18-13-701 and R18-13-702 in a rulemaking that was exempt from the Administrative Procedure Act. These rules became effective on July 1, 1996. In 1997 the Department amended R18-13-702 to include fees for the special waste management plan component of the plan in a rulemaking that was subject to the Administrative Procedure Act. In preparation for establishing the fees and hourly rates to be charged, the Department contracted with the independent accounting firm of Arthur Andersen & Co. (AA&C), to conduct a study for the Department. In determining the hourly rate, AA&C reviewed the number of hours spent by program staff in reviewing various types of solid waste facility plans and the costs the Department incurred in conducting those plan reviews. The fee study was completed in November 1994 and was the basis for the rates and fees established in the solid waste plan review fee rules and the special waste management plan component fee rule. Based on the AA&C study, effective July 1, 1996, the hourly rate for review of a solid waste facility plan was set at \$38.30 in R18-13-702(J). Effective July 1, 1997, the hourly rate for review of a special waste management plan component also was set at \$38.30.

The existing rules for solid waste facility plan review fees including the special waste management plan component clarify what Department costs are included in the hourly rate, what labor hours spent in the review of a plan will be charged to the applicant and explain the Department's billing procedure, payment by the applicant, and the consequences of failure to pay the bill.

In 1999, the Arizona Legislature exempted the rulemaking concerning the fees for the special waste management plan component from the requirements of the Administrative Procedures Act. Therefore, this exempt rulemaking includes the special waste management plan component in its amendments.

The amendment of R18-13-702 to update in the hourly rate from \$38.30 to \$42.91 is based on a 1999 study conducted by the Solid Waste Section of the Department. The 1999 study used the same basic methodology that was employed in the 1994 study that was the basis for the fees charged in the current R18-13-702. The 1999 study compared the current salaries, the employee related expenses, the operating and equipment costs, and the overhead costs with those in the 1994 study to determine the 1999 hourly rate. Like the current hourly rate, the updated hourly rate includes time at the facility inspecting the site, time at public hearings, time at meetings with the public, and time at pre-application conferences but does not include training necessary for review of the plan, travel time to and from the facility, or supervisory time spent in a technical review capacity.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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The Department bases the reduction in initial fees for review of a substantial change to a solid waste facility plans for municipal solid waste landfills in Schedule B on its experience in reviewing these plans; the majority of these plans require less Departmental time to review than originally anticipated when this rule was adopted. This fee reduction will benefit the applicants by reducing initially the fees they will be submitting to the Department.

The exempt rulemaking for solid waste facility plan review fees is authorized and required by A.R.S. § 49- 762(F) which provides:

“F. The department shall collect from the applicant a reasonable fee based on the department's reasonable direct costs, not including indirect costs for the processing, review, approval or dis-approval of the plan, to be reviewed on an annual basis. The director may amend an existing rule or adopt a new rule to establish criteria for those costs. That rulemaking is exempt from title 41, chapter 6, except that the director shall provide for reasonable notice and a hearing.”

The exempt rulemaking for the special waste management plan component of the solid waste facility plan review fees is authorized by A.R.S. § 49-857(C) which provides:

“C. The director shall collect from the applicant a reasonable fee based on the state's total costs in processing the plan. The director may amend an existing rule or adopt a new rule to establish criteria for those costs. The rulemaking is exempt from title 41, chapter 6, except that the director shall provide for reasonable notice and a hearing.”

**6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material.**

None.

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

Not applicable.

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

Not applicable.

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

Not applicable.

**10. The time, place and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:**

Date: August 23, 1999

Time: 10 a.m.

Location: Department of Environmental Quality, Room 1710  
3033 N. Central  
Phoenix, AZ 85012

(Please call (602) 207-4795 for special accommodations pursuant to the Americans with Disabilities Act.)

Nature: Public hearings on the proposed rules, with opportunity for formal comments on the record.

The close of written comment is August 23, 1999, at 5 p.m.

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

Not applicable.

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

Not applicable.

**13. The full text of the rules follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY**

**SOLID WASTE MANAGEMENT**

**ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES**

**R18-13-702. Solid Waste Facility Plan Review Fees**

**ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES**

**R18-13-702. Solid Waste Facility Plan Review Fees**

- A.** With each solid waste facility plan submitted for approval pursuant to A.R.S. § 49-762, the applicant shall remit an initial fee in accordance with 1 of the schedules in this subsection, unless otherwise provided in subsection (B) of this Section. This Section also lists the maximum fees for which the owner or applicant shall be billed for a plan submitted to the Department for approval. All fees paid shall be payable to the State of Arizona. Fees paid to the Department shall be deposited into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

Schedule A New - Solid Waste Facility Plan Review Fees		
	Initial	Maximum
Solid Waste Facilities Plans: MSWLF	\$5,936	\$37,074
C & D Landfill and Other Non-MSWLF	\$2,987	\$22,826
Other Solid Waste Facilites	\$1,609	\$15,473
Special Waste Management Plan Component	\$556	\$2,383

Schedule B Substantial Change or Update of Demonstration of Financial Responsibility in accordance with A.R.S. § 49-770 - Solid Waste Facility Plan Review Fees		
	Initial	Maximum
Solid Waste Facilities Plans: MSWLF	<del>\$1,187</del> \$766	\$18,537
C & D Landfill and Other Non-MSWLF	\$597	\$11,413
Other Solid Waste Facilites	\$322	\$7,736
Special Waste Management Plan Component	\$278	\$1,191

Schedule C Closure - Solid Waste Facility Plan Review Fees		
	Initial	Maximum

**Arizona Administrative Register**  
**Notices of Proposed Rulemaking**

Solid Waste Facilities Plans:		
MSWLF	\$1,379	\$9,728
C & D Landfill and Other Non-MSWLF	\$1,532	\$10,417
Other Solid Waste Facilites	\$1226	\$11,949
Special Waste Management Plan Component	\$111	\$477

- B.** For a complex plan, fees shall be determined as follows:  
The initial fee submitted with the plan shall be equal to the initial fee for the single component with the highest initial fee as set forth in schedules in subsection (A). The maximum fee shall be the sum total of the maximum fee for each individual component as set forth schedules in subsection (A).
- C.** For each plan being reviewed, the Department shall issue an itemized interim bill to the applicant with each letter of deficiency or letter of intent to approve the facility plan. The applicant shall pay the interim bill within 45 days of receipt of the bill. If the interim bill is not paid within 45 days, the Department shall mail a notice of the past due balance to the applicant. If the applicant does not pay the interim bill within 30 days of receipt of the notice of past due balance, the Department shall either cease review of the plan or withhold final approval of the plan pending payment of the interim bill.
- D.** The Department shall issue a final itemized bill at the same time the Department issues the approval to operate or informs the applicant in writing of denial of approval. If the actual cost of reviewing the plan is less than the initial fee and any interim fees paid, the difference between the actual cost and the amount listed and paid shall be returned to the applicant with a final itemized bill within 30 days of the issuance of the approval to operate, or denial of the approval. If the actual cost of plan review is greater than the corresponding amount listed, the Department shall send the applicant a final itemized bill for the difference between the initial fee and any interim fees paid and the actual cost of reviewing the plan, except that the final bill shall not exceed the applicable maximum fee specified in subsection (A) or (B). Such difference shall be paid in full within 45 days of receipt of the bill.
- E.** The Department shall keep a record of all fees due, including the costs associated with denial of approval. Any amount due the Department shall be paid to the Department within 45 days of issuance of the approval. If the final bill is not paid within the 45 days, the Department shall mail a notice of past due balance to the applicant. Failure to pay the amount due within 15 days of receipt of the notice of past due balance shall result in the automatic initiation of proceedings by the Department for suspension of the approval, in accordance with A.R.S. § 41-782, and the suspension shall continue until full payment is received at the Department. If full payment is not received at the Department within 365 days of the date of the approval, the approval shall be revoked in accordance with A.R.S. § 41-782. The Department shall review no further plans for an entity which has not paid all fees due for a previous approval or denial of approval.
- F.** When determining actual cost under subsection (D), the Department shall use an hourly billing rate for all direct labor hours spent working on the review of a plan, plus any direct cost specified in subsection (I), which were incurred but are not included in the hourly billing rate.
- G.** Billable labor hours spent working on the review of a solid waste facility plan shall consist of time spent by solid waste plan review technical staff on tasks specifically related to the processing, approval, or denial of a particular solid waste facility plan, including time at the facility or proposed site inspecting the facility or site, time at a public hearing, time at meetings with the public, or time at meetings with the applicant or the applicant's representatives, including the time at a preapplication conference.
- H.** Direct labor hours shall not include any of the following:
1. Training necessary for review of a specific plan.
  2. Travel to or from any facility, meetings or hearings which is necessary in conjunction with a plan review.
  3. Time by clerical or supervisory staff, unless the supervisory staff is filling in for a particular technical staff member in that person's absence.
- I.** Other allowable direct costs that the Department shall include in the plan review fee, if applicable, are any of the following:
1. Laboratory analysis charges.
  2. Public notice advertising.
  3. Presiding officer expenses.
  4. Court reporter expenses.
  5. Facility rentals.
  6. Contract services.
  7. Other reasonable, direct, plan review-related expenses documented in writing by the Department.

*Arizona Administrative Register*  
**Notices of Proposed Rulemaking**

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- J.** ~~Except as provided in subsection (M), the~~ The hourly rate ~~shall be \$38.30~~ is \$42.91, beginning ~~July 1, 1996~~ October 1, 1999. If the fee schedule or hourly rate is not changed, the current fee schedule and hourly rate shall remain in effect for ~~the following each successive~~ fiscal year. The hourly rate ~~shall be~~ is based on an annual sum of the following solid waste facility plan review program related costs divided by the total number of direct labor hours allocated for solid waste facility plan review for that year:
1. Salary and the costs of employee benefits for plan review technical employees directly involved in the review of solid waste facility plans.
  2. Salary and costs of employee benefits for plan review support employees, such as supervisory and clerical personnel, prorated on a per employee bases.
  3. Other operating expenses attributable to all solid waste facility plan review employees.
  4. Per diem expenses and travel expenses.
  5. Capital equipment.
- K.** Except as provided in subsection (M) of this Section, an applicant who has submitted an administratively complete plan for a solid waste facility plan approval before July 1, 1996, shall not be required to remit an initial fee and shall be billed only for those direct labor hours and other direct costs incurred by the Department on or after July 1, 1996. If a solid waste facility plan is not administratively complete on July 1, 1996, an initial fee for that type of plan shall be paid at the time of resubmission.
- L.** An applicant who has submitted an administratively complete plan for a special waste management component before July 1, 1997, shall not be required to remit an initial fee and shall be billed only for direct hours and other direct costs incurred by the Department on or after July 1, 1997. If a special waste management component plan is not administratively complete before July 1, 1997, an initial fee for that type of plan shall be paid at the time of resubmission.
- M.** The fees listed in Schedules A, B, and C for the special waste management plan component of a solid waste facility plan are effective July 1, 1997.