

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 17. DEPARTMENT OF ENVIRONMENTAL QUALITY POLLUTION PREVENTION

PREAMBLE

- 1. Sections Affected**
R18-17-102
- 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. § 49-104
Implementing statute: A.R.S. § 49-968
- 3. The effective date of the rules:**
February 2, 2003
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 1560, March 29, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Dale Anderson
Address: Arizona Department of Environmental Quality
Waste Programs Division
Facility Assistance Unit
1110 W. Washington
Phoenix, AZ 85007
Telephone: (602) 771-4104 or (800) 234-5677, enter 771-4104 (Arizona only)
Fax: (602) 771-4538
E-mail: daa@ev.state.az.us
TTD: (602) 771-4829
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**

The purpose of this rulemaking is to identify the current toxic substances list. A.R.S. § 49-968 requires the Director to adopt by rule any substance the Environmental Protection Agency (EPA) has established as a toxic substance under the federal Pollution Prevention Act (PPA) of 1990 (42 U.S.C. 13102(3)), which is equivalent to the chemical list under Emergency Planning and Community Right-to-Know Act (EPCRA) Section § 313. This rulemaking incorporates by reference the 2001 EPCRA toxic substance list adopted by the EPA. Since the EPA may modify the toxic substance list under the PPA from year to year, this rule is amended annually to update ADEQ's toxic substance list to incorporate by reference the EPA's most current list.

Facilities are required to use this list in completing (1) a pollution prevention plan and any amendments to maintain the plan required under A.R.S. § 49-963 for industry, and A.R.S. § 49-972 for state agencies; and (2) an annual toxic data report required under A.R.S. § 49-962 for industry and A.R.S. § 49-973 for state agencies. The toxic data report contains (1) a progress report summarizing the status of all active goals included in the original plan or added through past amendments; (2) the EPA's toxic chemical release inventory federal "Form R" or "state Form R" (if required); and (3) an amendment to maintain the plan (if required). A federal "Form R" is required under Section § 313 of EPCRA, a "state Form R" is required under A.R.S. § 49-962 for industry, and a "state agency Form R" is required under A.R.S. § 49-973 for state agencies.

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The ADEQ expects the probable impact of this rule to be minimal or nonexistent because facilities are currently required to submit the EPA's "Form R" (for each required Form R chemical where thresholds are exceeded) to the EPA and the Arizona Emergency Response Commission (AERC), which is based on this toxic substances list. All facilities are required to submit a toxic data progress report and plan to ADEQ focusing on this federal toxic substance list under PPA Section § 313, irrespective of the first and subsequent rule amendments.

A.R.S. § 49-968 exempts this rulemaking from the requirements of the Administrative Procedure Act other than for public notice requirements.

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

None

8. 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; this rule will not diminish a previous grant of authority of a political subdivision of this state.

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

a. Identification of the proposed rulemaking:

This rulemaking updates the incorporation by reference found in R18-17-102, relating to the chemical list for reporting.

b. Identification of persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

A total of 258 persons who are active pollution prevention plan filers, as follows:

- Persons required to complete a "Form R," under the Pollution Prevention Act (PPA)
- Persons required to complete a "state Form R" under A.R.S. § 49-962
- Agencies required to complete a "state agency Form R" under A.R.S. § 49-973
- Persons required to submit a toxic data report and plan to the Department

c. Cost benefit analyses:

The Department expects this rule amendment to have minimal to no economic impact. The Emergency Planning and Community Right-to-Know Act (EPCRA) § 313 currently requires many Arizona facilities to complete an annual "Form R," using the current federal list under the PPA, and submit it to the EPA, the AERC and the Department, or to complete a "state Form R" under A.R.S. § 49-962 or "state agency Form R" under A.R.S. § 49-973 and send it only to the Department. Arizona facilities submit a toxic data report and plan to the Department, focusing on the most current federal toxic substance list under PPA, irrespective of the first and subsequent rule amendments by the Department.

Since these forms are already being prepared, sent and processed, the only possibility of increased impact would be if an increased number of entities was required to use the list. It is impossible to determine how many facilities that do not already report, will be required to report because of chemicals added to the list in the year 2001. In any event, these entities would be required to use the new list because the list is already in effect and required for reporting to the Environmental Protection Agency (EPA). The Department believes there will be no entities required to use the list as a sole result of this rulemaking. The cost benefit analyses presented below assumes there will be no entities required to report as a result of this rulemaking, that would not already have been required to do so, and so no new costs will be incurred as a result of this rulemaking.

In fact, this rule is expected to reduce costs and effort for most entities, since the facilities required to complete Form R for the EPA must use the year 2001 list. Without this rulemaking, they would have to complete a second Form R, using the year 2000 list, thus doubling the effort and cost required to complete the forms. The cost reduction resulting from this rulemaking has not been quantitatively estimated, due to the impossibility of determining who at each facility is assigned to prepare the forms, and how much each preparer is paid. Overall, the Department anticipates that benefits will outweigh any costs that might accrue, for all impacted entities.

i. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The Arizona Department of Environmental Quality is the implementing agency. The Department already processes forms, reports and plans prepared using the year 2000 list, which are submitted pursuant to the existing R18-17-102. The Department does not expect that any facilities will be required to submit forms, plans or reports for the first time as a result of this rulemaking. Therefore, the Department expects the level of effort required to process forms, plans and reports will not change, and so no additional costs will be incurred.

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

The political subdivisions of this state that are required to submit forms, reports and plans pursuant to the existing R18-17-102 will be impacted by this rulemaking. These political subdivisions are already required to submit these documents. Therefore, the Department expects the level of effort required to prepare and submit forms, plans and reports will not change, and so no additional costs will be incurred. There will be a benefit associated with using a single list for preparing documents for the EPA and the Department.

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

The businesses that are required to submit forms, reports and plans pursuant to the existing R18-17-102 will be impacted by this rulemaking. These businesses are already required to submit these documents. Therefore, the Department expects the level of effort required to prepare and submit forms, plans and reports will not change, and so no additional costs will be incurred. There will be a benefit associated with using a single list for preparing documents for the EPA and the Department.

- d. General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking:

The businesses, agencies and political subdivisions affected by this rulemaking are already required to submit these documents. The Department already processes documents submitted. Therefore, the Department expects the level of effort required for entities to prepare and submit forms, plans and reports, and for the Department to process them will not change, and so there will be no impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

- e. A statement of probable impact of the of the proposed rulemaking on small businesses:

- i. Identification of the small businesses subject to the proposed rulemaking:

The small businesses that are required to submit forms, reports and plans pursuant to the existing R18-17-102 will be impacted by this rulemaking.

- ii. Administrative and other costs required for compliance with the proposed rulemaking:

These small businesses are already required to submit these documents. Therefore, the Department expects the level of effort required to prepare and submit forms, plans and reports will not change, and so no additional costs will be incurred. There will be a benefit associated with using a single list for preparing documents for the EPA and the Department. The cost reduction resulting from this rulemaking has not been quantitatively estimated, due to the impossibility of determining who at each facility is assigned to prepare the forms, and how much each preparer is paid.

- iii. Description of the methods the agency may use to reduce the impact on small businesses:

Because this rule imposes no additional impacts to small businesses, it was neither necessary nor feasible to reduce impacts or develop a less costly alternative for small businesses.

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

The Department believes this rulemaking will have no impact on consumers or the general public. This rule is expected to reduce costs and effort for the facilities required to complete Form R for the EPA. The Department does not believe these savings will be passed to consumers.

- f. Probable effect on state revenues:

The Department expects no impact to state revenues.

- g. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:

Because this rule imposes no additional impacts to businesses, the implementing agency, other agencies, political subdivisions of the state, private persons or consumers, it was neither necessary nor feasible to develop less intrusive or less costly alternatives.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

The agency received no comments regarding this rulemaking.

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

Not applicable

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

Table II entitled "EPCRA Section 313 Chemical List for Reporting Year 2001 (including Toxic Chemical Categories)" as found in "Toxic Chemical Release Inventory Reporting Forms and Instructions, Revised 2001 Version," adopted by the U.S. Environmental Protection Agency as of February 2002 is incorporated by reference in R18-17-102.

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 17. DEPARTMENT OF ENVIRONMENTAL QUALITY
POLLUTION PREVENTION**

ARTICLE 1. GENERAL

Section

R18-17-102. Toxic Substances List

ARTICLE 1. GENERAL

R18-17-102. Toxic Substances List

Under A.R.S. § 49-968 the Director adopts the substances listed in Table II entitled "EPCRA Section 313 Chemical List for Reporting Year ~~2000~~ 2001 (including Toxic Chemical Categories)" as found in "Toxic Chemical Release Inventory Reporting Forms and Instructions, Revised 2001 Version," adopted by the U.S. Environmental Protection Agency as of February ~~2001~~ 2002, and no future additions or amendments, is incorporated by reference.