NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT SECTION

[R05-472]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Article 3	Amend
R2-10-301	Amend

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

Authorizing statute: A.R.S. § 41-621

Implementing statute: A.R.S. § 41-621

3. The effective date of the rules:

February 4, 2006

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 2150, June 3, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 3018, August 12, 2005

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

Name:	Julie Cruse, Administrative Manager Risk Management Section
Address:	Arizona Department of Administration 100 N. 15th Ave., 3rd Floor, Suite 301 Phoenix, AZ 85007
Telephone:	(602) 542-1492
Fax:	(602) 542-1473
or	
Name:	Rob Smook Rules Administrator
Address:	Arizona Department of Administration 1501 W. Madison Phoenix, AZ 85007
Telephone:	(602) 542-6161
Fax:	(602) 542-3125

6. An explanation of the rule, including the agency's reason for initiating the rule:

The purpose of this rulemaking is to address the issues identified in the previous five-year review report approved by the Governor's Regulatory Review Council. The rulemaking establishes approval procedures for state agencies to follow when seeking insurance or entering into contractual agreements that expand the liabilities of the state.

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 rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not utilize a study for evaluating or justifying the rulemaking.

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

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

The purpose of the rule is to protect the state from claims that should be otherwise covered by a contractor's insurance that provides coverage for negligence caused by the contractor. Underwriting the risks of state agencies is an essential function of the Department; therefore, a rule establishing these approval procedures is necessary to prevent state agencies from entering into agreements that would prejudice the rights of the state. Because small businesses are currently required to meet minimum insurance requirements, the economic impact to the small businesses would be minimal. There should be little, if any, impact on state revenues.

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

Based on suggestions from Council staff, minor, non-substantive changes were made in the rules to improve clarity. The suggestions included grammatical and other changes necessary to clarify the rules. In addition, subsection (F) language relating to minimum insurance requirements was removed for the final rulemaking. No substantive changes were made to the rules.

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

The close of record for the proposed rules was September 12, 2005. The Department did not receive any written or oral comments during the comment period. However, the agency did receive a verbal comment after the close of record by Steve Holland with the University of Arizona on October 10, 2005 regarding some concerns on how his agency would conduct the administration of contracts. In response, the Department removed subsection (F) for the final rulemaking to address their concerns.

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

None

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

None

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

No.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT SECTION

ARTICLE 3. ~~PURCHASE OF INSURANCE/SELF-INSURANCE/CONTRACTS AND INSURANCE~~ INSURANCE: PURCHASE AND CONTRACTS

Section
R2-10-301. ~~General Provisions~~ Insurance: Purchase and Contracts

ARTICLE 3. ~~PURCHASE OF INSURANCE/SELF-INSURANCE/CONTRACTS AND INSURANCE~~ INSURANCE: PURCHASE AND CONTRACTS

R2-10-301. ~~General Provisions~~ Insurance: Purchase and Contracts

A. ~~All agencies of the state~~ An agency seeking to purchase property, liability, or workers' compensation ~~requiring~~ insurance shall ~~advise~~ request RM's ~~of the need for insurance~~ approval in writing at least 90 days ~~prior to~~ before the desired effective date of coverage.

~~B.~~ ~~No agency shall purchase or be reimbursed~~ RM shall not reimburse an agency for the purchase of ~~any~~ property, liability, or workers' compensation insurance ~~which~~ that has not been approved by RM.

~~C.~~**B.** ~~All agencies of the state~~ An agency shall submit a written ~~notify and obtain prior~~ request for approval ~~from~~ to RM before ~~agreeing to do any~~ the agency does one or more of the following:

1. ~~Name~~ Names a non-state entity as an additional insured in a contract;
2. ~~Issue~~ Provides a Certificate of Insurance;
3. ~~Indemnify~~ Indemnifies, ~~or hold~~ holds harmless, or limits the liability of any party to a contract, lease, or other written agreement; or
4. ~~Agree to a waiver of~~ Waives the state's right to ~~subrogation~~ subrogate with regard to any party to a contract, lease, or other written agreement.

C. The written request prescribed in subsection (B) shall be signed by the agency director and include all of the following:

1. The circumstances of the request;
2. Whether the party to the contract, lease, or written agreement is a sole source for the state;
3. The level or additional risk of loss to the state resulting from the requested action;
4. Whether the requested action helps the agency accomplish the agency's mission; and
5. An explanation of why the action to be approved is in the best interest of the state.

D. ~~When~~ If a contract requires the state to be named as an additional insured, ~~it~~ the contracting agency shall ~~require the contracting agency~~ place the name of the contracting agency and the state ~~to be named~~ on the additional insured endorsement.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

[R05-473]

PREAMBLE

1.

Sections Affected	**Rulemaking Action**
R3-11-101	Amend
R3-11-102	Amend
R3-11-105	Amend
R3-11-108	Amend
Table 1	Amend
R3-11-109	Amend
R3-11-201	Amend
R3-11-203	Amend
R3-11-304	Amend
R3-11-401	Amend
R3-11-402	Amend
R3-11-403	Amend
R3-11-501	Amend
R3-11-502	Amend
R3-11-606	Amend
R3-11-803	Amend
R3-11-805	Amend
R3-11-807	Amend
R3-11-902	Amend
R3-11-903	Amend
R3-11-904	Amend

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

Authorizing statute: A.R.S. § 32-2207(8)

Implementing statutes: A.R.S. §§ 32-2201, 32-2204(A), 32-2207(2), 32-2207(3), 32-2207(8), 32-2207(9), 32-2207(10), 32-2213, 32-2214, 32-2215, 32-2216(B), 32-2217, 32-2218, 32-2219, 32-2232(12), 32-2234, 32-2242, 32-2247, 32-2248, 32-2250, 32-2272, 32-2273, 32-2275, 32-2281, 41-1072 through 41-1079, 41-1092.09

3. The effective date of the rules:

February 4, 2006

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 2447, July 1, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 2780, July 29, 2005

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

Name: Jenna Jones, Executive Director

Address: 1400 W. Washington, Suite 240
Phoenix, AZ 85007

Telephone: (602) 364-1739

Fax: (602) 364-1039

E-mail jenna.jones@vetbd.state.az.us

6. An explanation of the rule, including the agency's reason for initiating the rule:

The Board is amending its rules by addressing issues identified in its Five-Year-Review Report approved by the Governor's Regulatory Review Council on December 7, 2004. Most of the changes are technical in nature and are being made to improve clarity, conciseness, and understandability, update references, and correct statutory and rule timeframes and citations. Additionally, the Board is changing all references to the national board examination and continuing competency examination to the North American Veterinary Licensing Examination because the national board examination and continuing competency examination were last offered in 2000. The Board is adding a timeframe for action on a request for waiver of continuing education, specifying the continuing education information that must accompany a renewal application, adding requirements in Article 5, and updating its requirements in Article 9. Finally, the Board is adding continuing education requirements for a veterinary technician.

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 rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Board did not review or rely on any study.

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

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

Annual cost/revenue changes are designated as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when greater than $10,000.

The rulemaking affects the Board, applicants, veterinary medical premises, licensees, temporary permittees, certificate holders, and consumers seeking veterinary medical services.

The Board bears moderate costs for writing the rule and related economic, small business, and consumer impact statement and mailing the new rules to interested persons.

The addition in R3-11-502 that requires a responsible veterinarian to place a message on the veterinary medical premise voice mail should have minimal impact on a veterinary medical premise. Requiring a veterinarian to enter the date a written entry is made to the medical record, if the entry is made on a date other than when the veterinary medical services were provided should have a minimal impact on a veterinarian or veterinary medical premises.

The Board does not believe that the technical changes in the rules impose additional costs on a licensee, temporary permittee, or applicant for a veterinary medical license.

A certificate holder may incur minimal costs to complete 10 hours of continuing education during the two years immediately preceding license renewal. The Arizona Veterinary Medical Association (AZVMA) intends to offer courses at a rate of $10.00 to $20.00 per credit hour. The AZVMA will benefit from the revenue it receives for providing continuing education to veterinary technicians. The amount could range from moderate to substantial, depending on the number of certificate holders who choose to obtain continuing education from the AZVMA. Additionally, some veterinary medical premises may choose to pay for continuing education for a veterinary technician.

Clarity in the rules benefits a licensee, temporary permittee, an applicant for a veterinary medical license, certificate holder, and consumer by providing the expected parameters of veterinary and veterinary technician practice. A veterinary medical premise that chooses to pay for continuing education for a veterinary technician may incur minimal costs. None of the rules in Article 7 are being amended so the remainder of the rules should have no direct impact on a veterinary medical premise.

Additionally, consumers benefit from the requirement for continuing education for veterinary technicians because the requirement assures that a veterinary technician is kept up-to-date on current veterinary practices.

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

The Board made the technical and grammatical changes suggested by the Council staff.

11. A summary of the comments made regarding the rule and the agency response to them:
The Board received no comments about the rules.

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

13. Incorporations by reference and their location in the rules:
None

14. Was this rule previously made as an emergency rule?
No.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. APPLICATION AND EXAMINATION FOR LICENSURE

ARTICLE 3. TEMPORARY PERMITTEES

ARTICLE 4. CONTINUING EDUCATION REQUIREMENTS

ARTICLE 5. STANDARDS OF PRACTICE

ARTICLE 6. VETERINARY TECHNICIANS

ARTICLE 8. DRUG DISPENSING

Section
R3-11-803. Packaging Requirements
R3-11-805. Storage
R3-11-807. Dispensing a Controlled Substance or Prescription-only Drug

ARTICLE 9. INVESTIGATIONS AND HEARINGS

Section
R3-11-902. Informal Interview
R3-11-903. Formal Hearing
R3-11-904. Rehearing or Review of Decisions

ARTICLE 1. GENERAL PROVISIONS

R3-11-101. Definitions

1. No change
2. No change
3. "Continuing education" means completing or presenting a workshop, seminar, lecture, conference, class, or instruction related to the:
   a. ~~practice~~ Practice of veterinary medicine~~.~~ if a veterinarian, or
   b. Work of a veterinary technician if a veterinary technician.
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
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
23. No change

R3-11-102. Board Meetings

~~**A.**~~ The Board shall:
   1. ~~hold~~ Hold its annual meeting in June of each year; and
   2. ~~The Board shall make~~ Make the date, time, and place of ~~an~~ its annual meeting available to the public at least 20 days before the date of the annual meeting.

~~**B.** The Chair shall set a special meeting of the Board and instruct the executive director of the Board to notify each Board member of the special meeting date, time, and place at least 5 days before the special meeting date.~~

R3-11-105. Fees

A. Veterinarian fees are as follows:
   1. No change
   2. No change
   3. ~~National board examination, application only - $225.00~~ North American Veterinary Licensing Examination, application only - $100.00
   4. ~~Clinical competency test, application only - $200.00~~
   5. ~~Regular license application, national board examination, clinical competency examination application, and state~~

~~examination - $400.00~~
~~6.~~4. No change
~~7.~~5. No change
~~8.~~6. No change
~~9.~~7. No change
~~10.~~8.No change
~~11.~~9.No change
~~12.~~10.No change

B. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

C. No change
1. No change
2. No change
3. No change
4. No change
5. 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

E. No change
F. No change
G. No change
H. No change

R3-11-108. Time-frames for Licensure, Certification, and Permit Approvals

A. No change
B. No change
C. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1.
1. The administrative completeness review time-frame begins:
   a. For approval to take a state~~, national, or clinical competency~~ veterinary examination, the North American Veterinary Licensing Examination, ~~or~~ a national veterinary technician examination, or an Arizona veterinary technician examination, when the Board receives an application packet;
   b. No change
   c. For approval or denial of a veterinary medical license, when the applicant takes a state~~, national, or clinical competency~~ veterinary examination or the North American Veterinary Licensing Examination required by A.R.S. § 32-2214;
   d. For approval or denial of a veterinary technician certificate, when the applicant takes a national veterinary technician examination or Arizona veterinary technician examination required ~~in~~ by A.R.S. § 32-2243; or
   e. No change
2. No change
3. No change
4. No change

D. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of administrative completeness.
1. No change
2. The Board shall send a written notice approving the applicant to take an examination or granting a license to an applicant who meets the qualifications and requirements in A.R.S. § 32-2201 through ~~32-2281~~ § 32-2296 and this Chapter.
3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. § 32-2201 through § ~~32-2281~~ 32-2296 and this Chapter.

E. No change
1. No change
2. No change

F. No change
G. No change

Table 1. Time-frames (in days)

Type of Applicant	Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Veterinary Medical License by Examination (R3-11-201)	Approval to Take ~~a National and Clinical Competency~~ the North American Veterinary Licensing Examination	A.R.S. § 32-2214	60	15	45
Veterinary Medical License by Examination, Endorsement, or for a Specialty License (R3-11-201)	Approval to Take a State Examination	A.R.S. § 32-2214	60	15	45
Temporary Permittee (R3-11-301)	Temporary Permit	A.R.S. § 32-2216	30	15	15
Veterinary License by Examination, Endorsement, for a Specialty License, or Temporary Permittee (R3-11-201 & R3-11-301)	Veterinary License	A.R.S. § 32-2212 A.R.S. § 32-2213	60	15	45
Veterinary Technician (R3-11-606)	Approval to Take a National Veterinary Technician Examination or State Examination	A.R.S. § 32-2243	60	15	45
Veterinary Technician (R3-11-606)	Veterinary Technician Certificate	A.R.S. § 32-2242 A.R.S. § 32-2244	60	30	30
Veterinary Medical Premises (R3-11-707)	Veterinary Medical Premises License	A.R.S. § 32-2271 A.R.S. § 32-2272	90	30	60
Licensee (R3-11-405)	Approval for a Continuing Education Waiver	A.R.S. § 32-2207(8)	60	30	30

R3-11-109. Office of the Ombudsman-Citizens Aide
~~Upon request, the~~ The Board shall notify the public about the existence of the office of the ombudsman-citizens aide by ~~provide~~ providing the ombudsman-citizens aide's name, address, and telephone number ~~of the ombudsman-citizens aide~~ on the Board's web site.

ARTICLE 2. APPLICATION AND EXAMINATION FOR LICENSURE

R3-11-201. Application for a Veterinary Medical License
A. No change
1. No change
2. No change
3. No change

B. Unless waived by A.R.S. § 32-2215(D), an applicant shall arrange to have an official transcript of the applicant's scores from the ~~national board examination and clinical competency examination~~ North American Veterinary Licensing Examination sent directly to the Board office by the professional examination service preparing the examination.

C. If an applicant has passed the~~ national and clinical competency examinations~~ North American Veterinary Licensing Examination and is required to take only the state examination, the applicant shall submit the application no later than 30

days before the date the applicant intends to take the state examination.

D. If an applicant is required to take the ~~national, clinical competency,~~ North American Veterinary Licensing Examination and state ~~examinations~~ examination, the applicant shall submit ~~the~~ an application no later than 60 days before the date the applicant intends to take the examinations.

R3-11-203. Information Required for Examination Qualification

A. No change
B. No change
C. No change
D. No change
E. An applicant who has successfully passed the ~~National Board Examination and the Clinical Competency Test~~ North American Veterinary Licensing Examination within five calendar years preceding application for examination in Arizona shall request that a transcript of the scores be forwarded to the Board directly from the ~~Professional Examination Service~~ professional examination service.
F. At the time of application, an applicant shall submit to the Board a passport type photograph of the applicant no larger than 1½ x 2 inches that was taken during the preceding six months.
G. No change

ARTICLE 3. TEMPORARY PERMITTEES

R3-11-304. Extension of Temporary Permits

The Board shall extend a temporary permit as allowed by A.R.S. § 32-2216(B), only if the temporary permittee submits the application required by R3-11-301, qualifies under A.R.S. § 32-2216(B) and this Article, and is scheduled to take the next state examination following ~~a failed state examination~~ issuance of the extension.

ARTICLE 4. CONTINUING EDUCATION REQUIREMENTS

R3-11-401. Continuing Education

A. During the two-year period preceding license expiration, ~~each applicant for license renewal~~ a licensee shall ~~have completed~~ complete 20 credit hours of Board-approved ~~courses or programs relating to the practice of veterinary medicine~~ continuing education:
  1. A maximum of two hours may be in practice management; and
  2. ~~no more than~~ A maximum of five hours may be noncontact education, of which two hours may be by tapes.

B. A ~~Licensees~~ licensee receiving an initial license in an even-numbered year ~~are~~ is required to ~~earn~~ complete ~~ten~~ 10 credit hours of continuing education ~~prior to their~~ before the licensee's initial renewal date. Thereafter, ~~they are~~ the licensee ~~subject to the requirements of subsection (A) of this rule~~ shall complete 20 credit hours of continuing education for the licensing period.
C. During the two-year period preceding certificate expiration, a certificate holder shall complete 10 credit hours of Board-approved continuing education.
D. A certificate holder receiving an initial certificate in an even-numbered year shall complete five credit hours of continuing education before the certificate holder's initial renewal date. Thereafter, the certificate holder shall complete 10 credit hours of continuing education for the licensing period.

R3-11-402. Approval of Continuing Education

The following continuing education is approved by the Board:

A. For a veterinarian:
  1. Continuing education taught in ~~schools~~ a school of veterinary medicine; or
  2. Continuing education sponsored by the Arizona Veterinary Medical Association, American Association of Veterinary State Boards, or a state or national veterinary association or academy approved by the Board.

B. For a veterinary technician:
  1. Continuing education taught in a veterinary technician school or school of veterinary medicine;
  2. Continuing education sponsored by the Arizona Veterinary Medical Association or American Association of Veterinary State Boards; or
  3. Continuing education approved by the Board that is sponsored by a state or national veterinary technician association or academy.

R3-11-403. Documentation of Attendance

Except as stated in R3-11-401(B) ~~and (C)~~, a licensee or certificate holder shall submit a written document of continuing education with a renewal application that ~~is accompanied by a list of the required number of credit hours of approved continuing education.~~ includes:
  1. The name of the licensee or certificate holder;

2. The title of each continuing education course;
3. The date of completion of each continuing education course;
4. The number of credit hours of each continuing education course; and
5. A statement, signed and dated by the licensee or certificate holder, verifying the information in the document.

ARTICLE 5. STANDARDS OF PRACTICE

R3-11-501. Ethical Standards

1. No change
2. No change
3. No change
4. No change
5. No change
6. A veterinarian shall ensure that emergency services are consistent with A.R.S. § 32-2201 through § ~~32-2281~~ 32-2296, this Chapter, and the needs and standards of the locality where the emergency medical services are provided.
7. No change
8. No change
9. No change

R3-11-502. Standards of Practice

A. No change

B. A responsible veterinarian shall ensure that a notice of where veterinary medical services may be obtained when the veterinary medical premises is not open for business:
   1. Is placed on the voice mail of the veterinary medical premises; and
   2. Contains the name, telephone number, and address of the veterinarian or veterinary medical premises that is available to provide veterinary medical services.

~~**B.**~~**C.** No change

~~**C.**~~**D.** No change

~~**D.**~~**E.** No change

~~**E.**~~**F.** No change

~~**F.**~~**G.** No change

~~**G.**~~**H.** No change

1. No change
2. No change
3. No change
4. No change
5. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change

~~**H.**~~**I.** No change

~~**I.**~~**J.** No change

1. No change
2. No change

~~**J.**~~**K.** No change

1. No change
2. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
3. Maintain a dispensing log on the veterinary medical premises, separate from the inventory record for two years from the date of entry that contains for each controlled substance dispensed the:
   a. No change
   b. Strength and route of administration of the controlled substance,
   c. No change

d. No change
e. No change
f. No change
g. No change

~~K.~~**L.** Except as provided in subsection ~~(M)~~ (N), a veterinarian shall maintain on the veterinary premises for three years after the last date an animal receives veterinary medical services a written medical record containing the:

1. No change
2. No change
3. Date of veterinary services and date a written entry is made to the medical record, if the entry is made on a date other than when the veterinary medical services were provided;
4. Results of examination, including temperature, heart rate, respiratory rate, tentative or definitive diagnosis, and general condition of the animal, except for livestock;
5. No change
6. Name of each medication administered including ~~dosage~~ concentration, amount, and frequency, except when the medication is only offered in one size and strength;
7. Name of each medication prescribed including ~~dosage~~ concentration, amount, and frequency;
8. No change
9. No change
10. No change

~~L.~~**M.** No change

1. No change
2. No change
3. No change
4. No change
5. No change

~~M.~~**N.** No change

1. Is exempt from the requirements of subsection ~~(K)~~ (L);
2. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
   g. No change
3. No change

~~N.~~**O.** No change

1. No change
2. No change

ARTICLE 6. VETERINARY TECHNICIANS

R3-11-606. Application for a Veterinary Technician Certificate

No earlier than January 1 and no later than 65 days before an examination date, an applicant for a veterinary technician certificate shall submit an application packet to the Board that contains:

1. A notarized application form, signed by the applicant, containing:
   a. No change
   b. No change
   c. No change
   d. No change
      i. No change
      ii. If application is based upon experience, the applicant shall submit the information required in ~~subsections (A) (2) and (3)~~ subsection (3);
2. No change
3. No change
4. No change

ARTICLE 8. DRUG DISPENSING

R3-11-803. Packaging Requirements

A. A veterinarian shall dispense ~~4~~ four ounces or less of a prescription-only drug in a childproof container unless the animal owner waives this requirement.
B. No change
C. A veterinarian may dispense more than ~~4~~ four ounces of a bulk prescription-only drug in a non-childproof container.
D. A veterinarian may dispense a prescription-only ~~products~~ drug in the manufacturer's original dispensing package without repackaging the ~~product~~ prescription-only drug in a child-proof container.

R3-11-805. Storage

A. No change
B. No change
C. A dispensing veterinarian shall store prescription-only drugs and prescription-only devices ~~shall be stored~~ in compliance with state and federal laws and in compliance with the manufacturer's requirements.

R3-11-807. Dispensing a Controlled Substance or Prescription-only Drug

A. No change
1. No change
   a. No change
   b. No change
   c. No change
2. No change
   a. No change
   b. No change
   c. No change
3. A dispensing veterinarian shall review the label of a repackaged controlled substance and the patient's medical record and ensure that the label complies with R3-11-502 ~~and R3-11-502(J)~~ and state and federal laws before the controlled substance is dispensed.

B. No change
1. No change
   a. No change
   b. No change
   c. No change
   d. No change
2. No change

ARTICLE 9. INVESTIGATIONS AND HEARINGS

R3-11-902. Informal Interview

A. No change
1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
2. During the informal interview~~.~~:
   a. ~~the~~ The Board may:
      ~~a.~~i. No change
      ~~b.~~ii. No change
      ~~c.~~iii. No change
   b. The licensee may question witnesses.
3. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change

B. No change

C. No change

R3-11-903. Formal Hearing

A. No change

B. If a formal hearing under A.R.S. § 32-2234 is to be held directly before the Board, the requirements in A.R.S. § 41-1092 through 41-1092.11 and the following apply:

1. The Board shall provide a written complaint and notice of formal hearing to a licensee at the licensee's last known address of record by personal service or certified mail, return receipt requested at least ~~20~~ 30 days before the date set for the formal hearing;
2. No change
3. No change
4. No change
5. No change
6. No change

R3-11-904. Rehearing or Review of Decisions

A. No change

B. No change

C. No change

D. No change

E. No change

F. No change

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later. If a motion for rehearing or review is granted, the Board shall hold the rehearing or review within ~~120~~ 90 days from the date the Board issues the order for rehearing or review.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY

[R05-484]

PREAMBLE

1. Sections Affected | **Rulemaking Action**

R4-24-206 | Amend

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

Authorizing statute: A.R.S. § 32-2003(5) and (17)

Implementing statute: A.R.S. § 32-2029

3. The effective date of the rules:

February 4, 2006

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 2234, June 10, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 2688, July 22, 2005

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

Name:	Heidi Herbst Paakkonen, Executive Director
Address:	Board of Physical Therapy 1400 W. Washington, Ste. 230 Phoenix, AZ 85007
Telephone:	(602) 542-3095
Fax:	(602) 542-3093
E-mail:	Heidi.herbst-paakkonen@ptboard.state.az.us

6. An explanation of the rule, including the agency's reason for initiating the rule:

To enable the Board to fulfill its responsibility to promote the safe and professional practice of physical therapy and to maintain the level of service provided by the Board, fees for an original or renewal license or certificate are being increased.

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 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:

American Physical Therapy Association 2005 Median Income of Physical Therapists Summary Report; American Physical Therapy Association, 1111 North Fairfax Street, Alexandria, VA 22314-1488; www.apta.org; 1-800-999-2782

American Physical Therapy Association 2004 Median Income of Physical Therapist Assistants Summary Report; American Physical Therapy Association, 1111 North Fairfax Street, Alexandria, VA 22314-1488; www.apta.org; 1-800-999-2782

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

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

The Board, which has not raised licensing fees since 2000, has determined that the funds generated by the current fee structure are insufficient to enable it to fulfill its responsibility to promote the safe and professional practice of physical therapy. As a result, the Board is increasing fees. This will have an economic impact on licensed physical therapists and certified physical therapy assistants who pay the increased fees. If a business that employs a physical therapist or physical therapy assistant pays the licensing fees for its employee, the business will have increased costs. Licensing fees, which are a cost of doing business, may be passed on to consumers of physical therapy.

Rather than make equal increases in the fees charged to physical therapists and physical therapy assistants, the Board considered their significantly unequal earning power and made disparate increases.

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

No changes were made between the proposed and final rule.

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

An oral proceeding was held on September 7, 2005. No one attended. No written comments were submitted.

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

None

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

None

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

No.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY

ARTICLE 2. LICENSING AND EXAMINATION PROVISIONS

Section
R4-24-206. ~~License, Certificate, and Examination~~ Fees

ARTICLE 2. LICENSING AND EXAMINATION PROVISIONS

R4-24-206. ~~License, Certificate, and Examination~~ Fees

~~A.~~ ~~The Board shall charge the following fees for licensing, certification, and examinations:~~

~~1. Original application for license or certificate:~~

~~a. Twelve months or more, $200 for a physical therapist and $150 for a physical therapist assistant;~~

~~b. Less than 12 months, $150 for a physical therapist and $100 for a physical therapist assistant;~~

~~2. Examination or each re-examination for a physical therapist or physical therapist assistant, $285;~~
~~3. Biennial renewal, $100 for a physical therapist and $50 for a physical therapist assistant;~~
~~4. Duplicate license or certificate, $10 for both a physical therapist and a physical therapist assistant; and~~
~~5. Reinstatement, $100 for a physical therapist and $50 for a physical therapist assistant, in addition to the renewal fee.~~

~~**B.** The Board shall charge $5 for each copy of its statutes and rules booklet.~~

Under the authority provided by A.R.S. § 32-2029, the Board establishes and shall collect the following fees, which are not refundable unless A.R.S. § 41-1077 applies:

1. For a physical therapist:
   a. Application for an original license if the applicant applies on or after September 1 in an even-numbered year and no later than August 31 in an odd-numbered year, $260;
   b. Application for an original license if the applicant applies on or after September 1 in an odd-numbered year and no later than August 31 in an even-numbered year, $190;
   c. Renewal, $160;
   d. Reinstatement of a lapsed license, $100 plus the renewal fee; and
   e. Duplicate license, $10.
2. For a physical therapist assistant:
   a. Application for an original certificate if the applicant applies on or after September 1 in an even-numbered year and no later than August 31 in an odd-numbered year, $160;
   b. Application for an original certificate if the applicant applies on or after September 1 in an odd-numbered year and no later than August 31 in an even-numbered year, $120;
   c. Renewal, $55;
   d. Reinstatement of a lapsed certificate, $50 plus the renewal fee; and
   e. Duplicate certificate, $10.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

[R05-483]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-22-101	Amend
R9-22-102	Amend
R9-22-106	Repeal
R9-22-114	Repeal
R9-22-115	Repeal

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

Authorizing statute: A.R.S. § 36-2903.01

Implementing statute: A.R.S. §§ 36-2903.01 & 36-2907(F)

3. The effective date of the rules:

December 6, 2005

The rules are effective on filing with the Office of the Secretary of State as allowed under A.R.S. § 41-1032(A)(4). These rules provide a public benefit by clarifying the terms in the definition language. There is no penalty associated with a violation of the rules.

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 3182, August 19, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 3350, September 9, 2005

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

Name: Linda Barry

Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4484

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

The Administration is amending the rules to revise and clarify the definitions for the acute care program. The rulemaking contains one Section, R9-22-106, that relates to a Five-Year Rule Review approved by the Governor's Regulatory Review Council on December 3, 2002. The Administration is updating the definition rules to make them consistent with current practices and with changes to federal law as well as to make the rules clear, concise, and understandable.

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 rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Administration did not review any study relevant to these rules.

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

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

It is anticipated that the contractors, members, providers, Arizona Department of Health Services/Behavioral Health Services, the Department of Economic Security, and the Administration will be minimally impacted by the changes to the definition rule language. The rules provide definitions for the AHCCCS acute care program. The Administration is amending the rules to revise and clarify the definitions. The Administration is updating the existing rules to make them consistent with current practices and federal law changes and to make them clear, concise, and understandable.

It is anticipated that the private sector, including small businesses or political subdivisions, will be nominally impacted since the changes are intended to clarify and revise the existing rules. The Administration, contractors, providers, and members will benefit due to the increased clarity of the rules.

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

Location	A description of the changes between the proposed rules and final rules.
General	The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.
General	Other technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

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

No comments were received by the agency.

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

None

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

None

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

No.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 1. DEFINITIONS

Section
R9-22-101. Location of Definitions
R9-22-102. Scope of Services ~~Related~~ related Definitions
R9-22-106. ~~Request for Proposals (RFP) Related Definitions~~ Repealed
R9-22-114. ~~AHCCCS Medical Coverage for Families and Individuals Related Definitions~~ Repealed
R9-22-115. ~~AHCCCS Medical Coverage for People Who Are Aged, Blind, or Disabled Related Definitions~~ Repealed

ARTICLE 1. DEFINITIONS

R9-22-101. Location of Definitions

A. Location of definitions. Definitions applicable to this Chapter are found in the following:

Definition	Section or Citation
"Accommodation"	~~R9-22-107~~ R9-22-701
"Act"	~~R9-22-114~~ R9-22-101
"Active case"	R9-22-109
"ADHS"	~~R9-22-112~~ R9-22-102
"Administration"	A.R.S. § 36-2901
~~"Administrative law judge"~~	~~R9-22-108~~
~~"Administrative review"~~	~~R9-22-108~~
~~"Advanced Life Support" or "ALS"~~	~~R9-25-101~~
"Adverse action"	~~R9-22-114~~ R9-22-101
"Affiliated corporate organization"	~~R9-22-106~~ R9-22-101
"Aged" 42 U.S.C. 1382c(a)(1)(A) and	~~R9-22-115~~ R9-22-1501
"Aggregate"	~~R9-22-107~~ R9-22-701
"AHCCCS"	R9-22-101
"AHCCCS inpatient hospital day or days of care"	~~R9-22-107~~ R9-22-701
"AHCCCS registered provider"	R9-22-101
"Ambulance"	A.R.S. § 36-2201
"Ancillary department"	~~R9-22-107~~ R9-22-701
"Annual assessment period"	R9-22-109
"Annual assessment period report"	R9-22-109
"Annual enrollment choice"	R9-22-117
"APC"	R9-22-701
"Appellant"	~~R9-22-114~~ R9-22-101
"Applicant"	R9-22-101
"Application"	R9-22-101
"Assignment"	R9-22-101
"Attending physician"	R9-22-101
"Authorized representative"	~~R9-22-114~~ R9-22-101
"Auto-assignment algorithm"	R9-22-117
"Baby Arizona"	~~R9-22-114~~ R9-22-1401
~~"Basic Life Support" or "BLS"~~	~~R9-25-101~~
"Behavior management services"	R9-22-112
"Behavioral health evaluation"	R9-22-112
"Behavioral health medical practitioner"	R9-22-112
"Behavioral health professional"	R9-20-101
"Behavioral health recipient"	R9-22-102
"Behavioral health service"	R9-22-112
"Behavioral health technician"	R9-20-101
"Behavior management services"	R9-22-112

"BHS"	~~R9-22-114~~ R9-22-1401
"Billed charges"	~~R9-22-107~~ R9-22-701
"Blind"	~~R9-22-115~~ R9-22-1501
"Board-eligible for psychiatry"	R9-22-112
"Burial plot"	~~R9-22-114~~ R9-22-1401
"Capital costs"	~~R9-22-107~~ R9-22-701
"Capped fee-for-service"	R9-22-101
"Caretaker relative"	~~R9-22-114~~ R9-22-1401
"Case"	R9-22-109
"Case record"	R9-22-109
"Case review"	R9-22-109
"Cash assistance"	~~R9-22-114~~ R9-22-1401
"Categorically-eligible"	R9-22-101
"Certified psychiatric nurse practitioner"	R9-22-112
"Children's Rehabilitative Services" or "CRS"	R9-22-102
"Clean claim"	A.R.S. § 36-2904
"Clinical supervision"	R9-22-112
"CMDP"	R9-22-117
"CMS"	R9-22-101
~~"Complainant"~~	~~R9-22-108~~
"Continuous stay"	R9-22-101
"Contract"	R9-22-101
"Contractor"	A.R.S. § 36-2901
~~"Copayment"~~	~~R9-22-107~~
"Corrective action plan"	R9-22-109
"Cost-to-charge ratio"	~~R9-22-107~~ R9-22-701
"Covered charges"	~~R9-22-107~~ R9-22-701
"Covered services"	R9-22-102
"CPT"	~~R9-22-107~~ R9-22-701
"Critical Access Hospitals"	R9-22-701
~~"CRS"~~	~~R9-22-114~~
"Cryotherapy"	R9-22-120
"Date of eligibility posting"	~~R9-22-107~~ R9-22-701
"Date of notice"	R9-22-108
"Day"	R9-22-101
"DBHS"	R9-22-102
"DCSE"	~~R9-22-114~~ R9-22-1401
"De novo hearing"	42 CFR 431.201
"Dentures"	R9-22-102
"Department"	A.R.S. § 36-2901
"Dependent child"	A.R.S. § 46-101
"DES"	R9-22-101
"Diagnostic services"	R9-22-102
"Director"	R9-22-101
"Disabled"	~~R9-22-115~~ R9-22-1501
~~"Discussions"~~ "Discussion"	~~R9-22-106~~ R9-22-101
"Disenrollment"	R9-22-117
"District"	R9-22-109
"DME"	R9-22-102
"DRI inflation factor"	~~R9-22-107~~ R9-22-701
"E.P.S.D.T. services"	42 CFR 441 Subpart B
"Eligible person"	A.R.S. § 36-2901
"Emergency behavioral health condition for the non-FES member"	R9-22-102
"Emergency behavioral services for the non-FES member"	R9-22-102
"Emergency medical condition for the non-FES member"	~~42 U.S.C. 1396b(v)(3)~~ R9-22-102

"Emergency medical services for the non-FES member"	R9-22-102
"Emergency services costs"	A.R.S. § 36-2903.07
"Encounter"	~~R9-22-107~~ R9-22-701
"Enrollment"	R9-22-117
"Enumeration"	R9-22-101
"Equity"	R9-22-101
"Error"	R9-22-109
"Experimental services"	R9-22-101
"Existing outpatient services"	R9-22-701
~~"Error"~~	~~R9-22-109~~
"FAA"	~~R9-22-114~~ R9-22-1401
"Facility"	R9-22-101
"Factor"	42 CFR 447.10
"FBR"	R9-22-101
"Fee-For-Service" or "FFS"	~~R9-28-101~~ R9-22-102
"FES member"	R9-22-102
"FESP"	R9-22-101
"Finding"	R9-22-109
"First-party liability"	~~R9-22-110~~ R9-22-1001
"Foster care maintenance payment"	42 U.S.C. 675(4)(A)
"Federal poverty level" ~~("FPL")~~ or "FPL"	~~A.R.S. § 1-215~~ A.R.S. § 36-2981
"FQHC"	R9-22-101
"Freestanding children's hospital"	R9-22-701
"Global Insights Prospective Hospital Market Basket"	R9-22-701
"Grievance"	~~R9-22-108~~ R9-34-202
"GSA"	R9-22-101
"Health care practitioner"	R9-22-112
~~"Hearing"~~	~~R9-22-108~~
"Hearing aid"	R9-22-102
"HCPCS"	R9-22-701
"HIPAA"	R9-22-701
"Home health services"	R9-22-102
"Homebound"	~~R9-22-114~~ R9-22-1401
"Hospital"	R9-22-101
"Intermediate Care Facility for the Mentally Retarded" or "ICF-MR"	42 CFR 483 Subpart I
"ICU"	~~R9-22-107~~ R9-22-701
"IHS"	R9-22-117
"IMD" or "Institution for Mental Diseases"	42 CFR 435.1009 and R9-22-112
"Income"	~~R9-22-114~~ R9-22-1401
"Inmate of a public institution"	42 CFR 435.1009
"Interested party"	~~R9-22-106~~ R9-22-101
"LEEP"	R9-22-120
"Legal representative"	R9-22-101
"Level I trauma center"	R9-22-2101
"License" or "licensure"	R9-22-101
"Liquid assets"	R9-22-1401
"Mailing date"	~~R9-22-114~~ R9-22-101
"Management evaluation review"	R9-22-109
"Medical education costs"	~~R9-22-107~~ R9-22-701
"Medical expense deduction"	~~R9-22-114~~ R9-22-1401
"Medical record"	R9-22-101
"Medical review"	~~R9-22-107~~ R9-22-701
"Medical services"	A.R.S. § 36-401
"Medical supplies"	R9-22-102

"Medical support"	~~R9-22-114~~ R9-22-1401
"Medically necessary"	R9-22-101
~~"Medicare claim"~~	~~R9-22-107~~
"Medicare HMO"	R9-22-101
"Member"	A.R.S. § 36-2901
"Mental disorder"	A.R.S. § 36-501
"National Standard code sets"	R9-22-701
"New hospital"	~~R9-22-107~~ R9-22-701
"Nursing facility" or "NF"	42 U.S.C. 1396r(a)
"NICU"	~~R9-22-107~~ R9-22-701
"Non-IHS Acute Hospital"	R9-22-701
"Non-FES member"	R9-22-102
"Noncontracting provider"	A.R.S. § 36-2901
"Nonparent caretaker relative"	~~R9-22-114~~ R9-22-1401
"Notice of Findings"	R9-22-109
~~"OAH"~~	~~R9-22-108~~
"Occupational therapy"	R9-22-102
"Offeror"	~~R9-22-106~~ R9-22-101
"Ownership interest"	42 CFR 455.101
"Operating costs"	~~R9-22-107~~ R9-22-701
"Outlier"	~~R9-22-107~~ R9-22-701
"Outpatient hospital service"	~~R9-22-107~~ R9-22-701
"Ownership change"	~~R9-22-107~~ R9-22-701
"Partial Care"	R9-22-112
~~"Party"~~	~~R9-22-108~~
"Peer group"	~~R9-22-107~~ R9-22-701
"Performance measures"	R9-22-109
"Pharmaceutical service"	R9-22-102
"Physical therapy"	R9-22-102
"Physician"	R9-22-102
~~"Prior Period Coverage" or "PPC"~~	~~R9-22-107~~
"Post-stabilization ~~care~~ services"	~~42 CFR 422.113~~ R9-22-102 or 42 CFR 422.113
"Practitioner"	R9-22-102
"Pre-enrollment process"	~~R9-22-114~~ R9-22-1401
"Preponderance of evidence"	R9-22-109
"Prescription"	R9-22-102
"Primary care provider (PCP)"	R9-22-102
"Primary care provider services"	R9-22-102
"Prior authorization"	R9-22-102
~~"Private duty nursing services"~~	~~R9-22-102~~
"Procedure code"	R9-22-701
"Proposal"	~~R9-22-106~~ R9-22-101
"Prospective rates"	~~R9-22-107~~ R9-22-701
~~"Prospective rate year"~~	~~R9-22-107~~
"Psychiatrist"	R9-22-112
"Psychologist"	R9-22-112
"Psychosocial rehabilitation services"	R9-22-112
"Public hospital"	R9-22-701
"Qualified alien"	A.R.S. § 36-2903.03
"Quality management"	~~R9-22-105~~ R9-22-501
"Radiology"	R9-22-102
"Random sample"	R9-22-109
"RBHA" or "Regional Behavioral Health Authority"	R9-22-112
~~"Rebasing"~~ "Rebase"	~~R9-22-107~~ R9-22-701
"Referral"	R9-22-101
"Rehabilitation services"	R9-22-102
"Reinsurance"	~~R9-22-107~~ R9-22-701

"Remittance advice"	~~R9-22-107~~ R9-22-701
"Resources"	~~R9-22-114~~ R9-22-1401
"Respiratory therapy"	R9-22-102
~~"Respondent"~~	~~R9-22-108~~
"Responsible offeror"	~~R9-22-106~~ R9-22-101
"Responsive offeror"	~~R9-22-106~~ R9-22-101
"Revenue code"	R9-22-701
"Review"	~~R9-22-114~~ R9-22-101
"Review period"	R9-22-109
"RFP"	~~R9-22-106~~ R9-22-101
"Scope of services"	R9-22-102
~~"SDAD"~~	~~R9-22-107~~
"Section 1115 Waiver"	A.R.S. § 36-2901
"Service location"	R9-22-101
"Service site"	R9-22-101
~~"S.O.B.R.A."~~	~~R9-22-101~~
"Specialist"	R9-22-102
~~"Specified relative"~~	~~R9-22-114~~
"Speech therapy"	R9-22-102
"Spendthrift restriction"	~~R9-22-114~~ R9-22-1401
"Spouse"	R9-22-101
"SSA"	42 CFR 1000.10
"SSI"	42 CFR 435.4
"SSN"	R9-22-101
"Stabilize"	42 U.S.C. 1395dd
"Standard of care"	R9-22-101
"Sterilization"	R9-22-102
"Subcontract"	R9-22-101
"Submitted"	A.R.S. § 36-2904
"Summary report"	R9-22-109
"SVES"	~~R9-22-114~~ R9-22-1401
"Third-party"	~~R9-22-110~~ R9-22-1001
"Third-party liability"	~~R9-22-110~~ R9-22-1001
"Tier"	~~R9-22-107~~ R9-22-701
"Tiered per diem"	~~R9-22-107~~ R9-22-701
"Title IV-D"	~~R9-22-114~~ R9-22-1401
"Title IV-E"	~~R9-22-114~~ R9-22-1401
"Tolerance level"	R9-22-109
"Trauma and Emergency Services Fund"	A.R.S. § 36-2903.07
"Tribal Facility"	R9-22-101
"Unrecovered trauma readiness costs"	R9-22-2101
"Utilization management"	~~R9-22-105~~ R9-22-501
"WWHP"	R9-22-120

B. General definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

"Act" means the Social Security Act.

"Adverse action" means an action taken by the Department or Administration to deny, discontinue, or reduce medical assistance.

"Affiliated corporate organization" means any organization that has ownership or control interests as defined in 42 CFR 455.101, and includes a parent and subsidiary corporation relationships.

"AHCCCS" means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to a member.

"AHCCCS registered provider" means a provider or noncontracting provider who:

Enters into a provider agreement with the Administration under R9-22-703(A); and

Meets license or certification requirements to provide ~~AHCCCS~~ covered services.

"Appellant" means an applicant or member who is appealing an adverse action by the Department or Administration.

"Applicant" means a person who submits or whose authorized representative submits, a written, signed, and dated appli-

cation for AHCCCS benefits.

"Application" means an official request for AHCCCS medical coverage made under this Chapter.

"Assignment" means enrollment of a member with a contractor by the Administration.

"Attending physician" means a licensed allopathic or osteopathic doctor of medicine who has primary responsibility for providing or directing preventive and treatment services for a fee-for-service member.

"Authorized representative" means a person who is authorized to apply for medical assistance or act on behalf of another person.

"Capped fee-for-service" means the payment mechanism by which a provider of care is reimbursed upon submission of a valid claim for a specific ~~AHCCCS~~ covered service or equipment provided to a member. A payment is made in accordance with an upper, or capped, limit established by the Director. This capped limit can be either a specific dollar amount or a percentage of billed charges.

"Categorically-eligible" means a person who is eligible under A.R.S. §§ 36-2901(6)(a)(i), (ii), or (iii) ~~and~~ or 36-2934.

"CMS" means the Centers for Medicare and Medicaid Services.

"Continuous stay" means ~~the~~ a period during which a member receives inpatient hospital services without interruption beginning with the date of admission and ending with the date of discharge or date of death.

"Contract" means a written agreement entered into between a person, an organization, or other entity and the Administration to provide health care services to a member under A.R.S. Title 36, Chapter 29, and this Chapter.

"Day" means a calendar day unless otherwise specified.

"DES" means the Department of Economic Security.

"Discussion" means an oral or written exchange of information or any form of negotiation.

"Director" means the Director of the Administration or the Director's designee.

"Eligible person" means ~~a person as defined in~~ the same as in A.R.S. § 36-2901.

"Enumeration" means the assignment of a specific nine-digit identification number to a person by the Social Security Administration.

"Equity" means the county assessor full cash value or market value of a resource minus valid liens, encumbrances, or both.

~~"Experimental services" means services that are associated with treatment or diagnostic evaluation that meets one or more of the following criteria:~~

~~Is not generally and widely accepted as a standard of care in the practice of medicine in the United States;~~

~~Does not have evidence of safety and effectiveness documented in peer-reviewed articles in medical journals published in the United States; or~~

~~Lacks authoritative evidence by the professional medical community of safety and effectiveness because the services are rarely used, novel, or relatively unknown in the professional medical community.~~

"Experimental services" means services that are associated with treatment or diagnostic evaluation and that are not generally and widely accepted as a standard of care in the practice of medicine in the United States unless:

The weight of the evidence in peer-reviewed articles in medical journals published in the United States supports the safety and effectiveness of the service; or

In the absence of peer-reviewed articles, for services that are rarely used, novel, or relatively unknown in the general professional medical community, the weight of opinions from specialists who provide the service attests to the safety and effectiveness of the service.

"Facility" means a building or portion of a building licensed or certified by the Arizona Department of Health Services as a health care institution~~,~~ under A.R.S. Title 36, Chapter 4~~,~~ to provide a medical service, a nursing service, or other health care or health-related service.

"FBR" means Federal Benefit Rate, the maximum monthly Supplemental Security Income payment rate for a member or a married couple.

"FESP" means ~~a~~ the federal emergency services program ~~covered~~ under R9-22-217~~,~~ which covers services to treat an emergency medical or behavioral health condition for a member who is determined eligible under A.R.S. § 36-2903.03(D).

"FQHC" means federally qualified health center.

"GSA" means a geographical service area designated by the Administration within which a contractor provides, directly or through a subcontract, a covered health care service to a member enrolled with ~~that~~ the contractor.

"Hospital" means a health care institution that is licensed as a hospital by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as amended, or is currently determined, by the Arizona Department of Health Services as the CMS designee, to meet the requirements of certification.

"Interested party" means an actual or prospective offeror whose economic interest may be directly affected by the issuance of an RFP, the award of a contract, or by the failure to award a contract.

"Legal representative" means a custodial parent of a child under 18, a guardian, or a conservator.

"License" or "licensure" means a nontransferable authorization that is ~~awarded~~ granted based on established standards in law~~, is issued~~ by a state or a county regulatory agency or board~~,~~ and allows a health care provider to lawfully render a health care service.

"Mailing date" when used in reference to a document sent first class, postage prepaid, through the United States mail, means the date:

Shown on the postmark;

Shown on the postage meter mark of the envelope, if no postmark; or

Entered as the date on the document, if there is no legible postmark or postage meter mark.

"Medical record" means ~~all~~ a ~~documents~~ document that ~~relate~~ relates to medical ~~and~~ or behavioral health services provided to a member by a physician or other licensed practitioner of the healing arts and that ~~are~~ is kept at the site of the provider.

"Medically necessary" means a covered service is provided by a physician or other licensed practitioner of the healing arts within the scope of practice under state law to prevent disease, disability, or other adverse health conditions or their progression, or prolong life.

"Medicare HMO" means a health maintenance organization that has a current contract with Centers for Medicare and Medicaid Services for participation in the Medicare program under 42 CFR 417 Subpart L.

"Offeror" means an individual or entity that submits a proposal to the Administration in response to an RFP.

"Proposal" means all documents, including best and final offers, submitted by an offeror in response to an RFP by the Administration.

"Referral" means the process by which a member is directed by a primary care provider or an attending physician to another appropriate provider or resource for diagnosis or treatment.

"Responsible offeror" means an individual or entity that has the capability to perform the requirements of a contract and that ensures good faith performance.

"Responsive offeror" means an individual or entity that submits a proposal that conforms in all material respects to an RFP.

"Review" means a review of all factors affecting a member's eligibility.

"RFP" means Request for Proposals, including all documents, whether attached or incorporated by reference, that are used by the Administration for soliciting a proposal under 9 A.A.C. 22, Article 6.

"Service location" means a location at which a member obtains a covered ~~health care~~ service provided by a physician or other licensed practitioner of the healing arts under the terms of a contract.

"Service site" means a location designated by a contractor as the location at which a member is to receive covered ~~health care~~ services.

"Spouse" means a person who has entered into a contract of marriage~~,~~ recognized as valid by ~~Arizona~~ this state.

"SSN" means Social Security number.

"Standard of care" means a medical procedure or process that is accepted as treatment for a specific illness~~, or~~ injury, or medical condition through custom, peer review, or consensus by the professional medical community.

"Subcontract" means an agreement entered into by a contractor with any of the following:

A provider of health care services who agrees to furnish covered services to a member;

A marketing organization; or

Any other organization or person who agrees to perform any administrative function or service for ~~a~~ the contractor specifically related to securing or fulfilling the contractor's obligation to the Administration under the terms of a contract.

"Tribal Facility" means a facility that is operated by an Indian tribe and that is authorized to provide services pursuant to Public Law 93-638, as amended.

R9-22-102. Scope of Services ~~Related~~ related Definitions

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

"ADHS" means the Arizona Department of Health Services.

"Behavioral health recipient" means a Title XIX or Title XXI acute care member who is eligible for, and is receiving, behavioral health services through ADHS/DBHS.

"Children's Rehabilitative Services" means the program within ADHS that provides covered medical services and covered support services in accordance with A.R.S. § 36-261.

"Covered services" means the health and medical services described in Articles 2 and 12 of this Chapter as being eligible for reimbursement by AHCCCS.

"DBHS" means the Division of Behavioral Health Services within the Arizona Department of Health Services.

"Dentures" and "Denture services" means a partial or complete set of artificial teeth and related services that are determined to be medically necessary and the primary treatment of choice, or an essential part of an overall treatment plan, and designed to alleviate a medical condition as determined by the primary care provider in consultation with the dental service provider.

"Diagnostic services" means services provided for the purpose of determining the nature and cause of a condition, illness, or injury.

"DME" means durable medical equipment, which is an item or appliance that can withstand repeated use, is designed to serve a medical purpose, and is not generally useful to a person in the absence of a medical condition, illness, or injury.

"Emergency behavioral health condition for the non-FES member" means a condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in:

1. Placing the health of the person, including mental health, in serious jeopardy;
2. Serious impairment to bodily functions;
3. Serious dysfunction of any bodily organ or part; or
4. Serious physical harm to another person.

"Emergency behavioral health services for the non-FES member" means those behavioral health services provided for the treatment of an emergency behavioral health condition.

"Emergency medical condition for the non-FES member" means treatment for a medical condition, including labor and delivery, which manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

1. Placing the member's health in serious jeopardy;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part.

"Emergency medical services for the non-FES member " means services provided ~~after~~ for the treatment of an ~~the sudden onset of a~~ emergency medical condition. ~~manifesting itself by acute symptoms of sufficient severity, including severe pain~~, ~~that the absence of immediate medical attention could~~ ~~reasonably be expected to result in:~~

~~Placing the patient's health in serious jeopardy;~~

~~Serious impairment to bodily functions; or~~

~~Serious dysfunction of any bodily organ or part.~~

"FES member" means a person who is eligible to receive emergency medical and behavioral health services through the FESP under R9-22-217.

"Fee-For-Service" or "FFS" means a method of payment by the AHCCCS Administration to a registered provider on an amount per service basis for a person not enrolled with a contractor.

"Hearing aid" means an instrument or device designed for, or represented by the supplier as, aiding or compensating for impaired or defective human hearing, and includes any parts, attachments, or accessories of the instrument or device.

"Home health services" means ~~the~~ services and supplies that are provided by a home health agency that coordinates in-home intermittent services for curative, habilitative care~~. This~~ , including ~~includes~~ home-health aide services, licensed nurse services, and medical supplies, equipment, and appliances.

"Medical supplies" means consumable items that are designed specifically to meet a medical purpose.

"Non-FES member" means a person who is AHCCCS eligible and entitled to full AHCCCS services.

"Occupational therapy" means ~~the~~ medically prescribed treatment provided by or under the supervision of a licensed occupational therapist, to restore or improve an individual's ability to perform tasks required for independent functioning.

"Pharmaceutical service" means medically necessary medications that are prescribed by a physician, practitioner, or dentist under R9-22-209.

"Physical therapy" means treatment services to restore or improve muscle tone, joint mobility, or physical function provided by or under the supervision of a registered physical therapist.

"Physician" means a person licensed as an allopathic or osteopathic physician under A.R.S. Title 32, Chapter 13 or Chapter 17.

"Post-stabilization services" means covered services related to an emergency medical or behavioral health condition provided after the condition is stabilized.

"Practitioner" means a physician assistant licensed under A.R.S. Title 32, Chapter 25, or a certified nurse practitioner licensed under A.R.S. Title 32, Chapter 15.

"Prescription" means an order to provide covered services~~, which~~ that is signed or transmitted by a provider authorized to prescribe ~~or order~~ the services.

"Primary care provider" or "PCP" means an individual who meets the requirements of A.R.S. § 36-2901(12) and (13), and who is responsible for the management of a member's health care.

"Primary care provider services" means healthcare services provided by and within the scope of practice, as defined by law, of a licensed physician, certified nurse practitioner, or licensed physician assistant.

"Prior authorization" means the process by which the Administration or contractor, whichever is applicable, authorizes, in advance, the delivery of covered services contingent on the medical necessity of the services.

~~"Private duty nursing services" means nursing services provided to a member who requires more individual and continuous care than is available from a visiting nurse, or routinely provided by the nursing staff of a nursing facility or ICF-MR, and that are provided by a registered nurse or licensed practical nurse.~~

"Radiology" means professional and technical services rendered to provide medical imaging, radioisotope services, and radiation oncology.

"Rehabilitation services" means physical, occupational, and speech therapies, and items to assist in improving or restoring a person's functional level.

"Respiratory therapy" means treatment services to restore, maintain, or improve respiratory functions that are provided by, or under the supervision of, a respiratory therapist licensed according to A.R.S. Title 32, Chapter 35.

"Scope of services" means the covered, limited, and excluded services under Articles 2 and 12 of this Chapter.

"Specialist" means a Board-eligible or certified physician who declares himself or herself as a specialist and practices a specific medical specialty. For the purposes of this definition, Board-eligible means a physician who meets all the requirements for certification but has not tested for, or has not been issued certification.

"Speech therapy" means medically prescribed diagnostic and treatment services provided by, or under the supervision of, a certified speech therapist.

"Sterilization" means a medically necessary procedure, not for the purpose of family planning, to render an eligible person or member barren in order to:

Prevent the progression of disease, disability, or adverse health conditions; or

Prolong life and promote physical health.

R9-22-106. ~~Request for Proposals (RFP) Related Definitions~~ Repealed

~~In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:~~

~~"Affiliated corporate organization" means any organization that has ownership or management interests as defined in 42 CFR 455.101, and includes a parent and subsidiary corporation relationships. 42 CFR 455.101, September 30, 1986, is incorporated by reference and on file with the Administration and the Secretary of State. This incorporation by reference contains no future editions or amendments.~~

~~"Discussions" means an oral or written exchange of information or any form of negotiation.~~

~~"Interested party" means an actual or prospective offeror whose economic interest may be directly affected by the issuance of an RFP, the award of a contract, or by the failure to award a contract.~~

~~"Offeror" means a person or entity that submits a proposal to the Administration in response to an RFP.~~

~~"Proposal" means all documents, including best and final offers, submitted by an offeror in response to an RFP by the~~

~~Administration.~~

~~"Responsible offeror" means a person or entity who has the capability to perform the contract requirements and that ensures good faith performance.~~

~~"Responsive offeror" means a person or entity that submits a proposal that conforms in all material respects to an RFP.~~

~~"RFP" means Request for Proposals, including all documents, whether attached or incorporated by reference, that are used by the Administration for soliciting a proposal under 9 A.A.C. 22, Article 6.~~

R9-22-114. ~~AHCCCS Medical Coverage for Families and Individuals Related Definitions~~ Repealed

~~In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:~~

~~"Act" means the Social Security Act.~~

~~"Adverse action" means an action taken by the Department to deny, discontinue, or reduce medical assistance.~~

~~"Appellant" means an applicant or member who is appealing an adverse action by the Department.~~

~~"Authorized representative" means a person who is authorized to apply or act on behalf of another person.~~

~~"Baby Arizona" means the public or private partnership program that provides a pregnant woman an opportunity to apply for AHCCCS medical coverage at a Baby Arizona provider's office through a streamlined eligibility process.~~

~~"BHS" means Behavioral Health Services, Arizona Department of Health Services.~~

~~"Burial plot" means a space reserved in a cemetery, crypt, vault, or mausoleum for the remains of a deceased person.~~

~~"Caretaker relative" means a parent or other specified relative who maintains a family setting for a dependent child and who exercises responsibility for the day-to-day physical care, guidance, and support of that child.~~

~~"Cash assistance" means a program administered by the Department that provides assistance to needy families with dependent children under 42 U.S.C. 601 et seq.~~

~~"CRS" means ADHS Children's Rehabilitation Services.~~

~~"DCSE" means the Division of Child Support Enforcement, which is the division within the Department that administers the Title IV-D program and includes a contract agent operating a child support enforcement program on behalf of the Department.~~

~~"Dependent child" means a child defined in A.R.S. § 46-101.~~

~~"FAA" means the Family Assistance Administration, the administration within the Department's Division of Benefits and Medical Eligibility with responsibility for providing cash and food stamp assistance to a member and for determining eligibility for AHCCCS medical coverage.~~

~~"Foster care maintenance payment" means a monetary amount defined in 42 U.S.C. 675(4)(A).~~

~~"Homebound" means a person who is confined to home because of physical or mental incapacity.~~

~~"Income" means combined earned and unearned income.~~

~~"Mailing date," when used in reference to a document sent first class, postage prepaid, through the United States mail, means the date:~~

~~Shown on the postmark;~~

~~Shown on the postage meter mark of the envelope, if no postmark; or~~

~~Entered on the document as the date of its completion, if no legible postmark or postage meter mark or if the mark is illegible.~~

~~"Medical expense deduction" means the cost of :~~

~~A medical service or supply that would be covered if provided to an AHCCCS member of any age under 9 A.A.C. 22, Articles 2 and 12;~~

~~A medical service or supply that would be covered if provided to an ALTCS member under 9 A.A.C. 28, Articles 2 and 11;~~

~~Other necessary medical services provided by a licensed practitioner or physician;~~

~~Assistance with daily living provided the assistance is documented in an individual plan of care except when provided by the spouse of a applicant or the parent of a minor child;~~

~~Medical services provided in a licensed nursing home, supervisory care facility, adult foster home, or in another residential care facility licensed by the Arizona Department of Health Services;~~

~~Purchasing and maintaining animal guide or service animal for the assistance of the member of the MED family unit; or~~

~~Health insurance premiums, deductibles, and coinsurance, if the insured is a member of the MED family unit.~~

~~"Medical support" means an obligation of a natural or adoptive parent to provide health care coverage in the form of health insurance or court-ordered payment for medical care.~~

~~"Nonparent caretaker relative" means a person, other than a parent, who is related by blood, marriage, or lawful adoption to the dependent child and who:~~

~~Maintains a family setting for the dependent child; and~~

~~Exercises responsibility for the day-to-day care of the dependent child.~~

~~"Pre-enrollment process" means the process that provides an applicant the opportunity to choose an AHCCCS health plan before the determination of eligibility is completed.~~

~~"Resources" means real and personal property, including liquid assets.~~

~~"Review" means a review of all factors affecting an unit's a family's eligibility.~~

~~"Specified relative" natural or adoptive parent or a stepparent and any other nonparent relative related by blood or adoption including a spouse of these persons even if death or divorce terminates the marriage. Specified relative may include:~~

~~Grandmother;~~

~~Grandfather;~~

~~Brother;~~

~~Sister;~~

~~Uncle;~~

~~Aunt;~~

~~First cousin;~~

~~Nephew;~~

~~Niece;~~

~~Persons of preceding generations as denoted by prefixes grand or great, or to the fifth degree grandparent; and~~

~~First cousins once removed.~~

~~"Spendthrift restriction" means a legal restriction on the use of a resource that prevents a payee or beneficiary from alienating the resource.~~

~~"SVES" means the State Verification and Exchange System, a system through which the Department exchanges income and benefit information with the Internal Revenue Service, Social Security Administration, State Wage, and Unemployment Insurance Benefit data files.~~

~~"Title IV-D" of the Social Security Act means 42 U.S.C. 651-669, the statutes establishing the child support enforcement and establishment of paternity program.~~

~~"Title IV-E" of the Social Security Act means 42 U.S.C. 670-679, the statutes establishing the foster care and adoption assistance programs.~~

R9-22-115. ~~AHCCCS Medical Coverage for People Who Are Aged, Blind, or Disabled Related Definitions~~ Repealed

~~In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:~~

~~"Aged" means a person who is 65 years of age or older, specified in 42 U.S.C. 1382c(a)(1)(A).~~

~~"Blind" means a person who has been determined blind by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(2).~~

~~"Disabled" means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E).~~

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

[R05-467]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-22-210	Amend
R9-22-210.01	New Section
R9-22-217	Amend
R9-22-1205	Amend
R9-22-1208	Repeal

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

Authorizing statute: A.R.S. § 36-2903.01(F)

Implementing statute: A.R.S. § 36-2907(F), A.R.S. § 36-2903.03(D)

3. The effective date of the rules:

December 6, 2005

AHCCCS is requesting an immediate effective date for these rules under A.R.S. § 41-1032(A)(1) and (A)(4). This rulemaking provides a public benefit by making the emergency services rules more clear, concise, and understandable. The rules implement the federal requirements contained in the Balanced Budget Act of 1997 (BBA) for managed care organizations that provide emergency services. The rules provide many protections that preserve the public health of AHCCCS members who receive emergency services. One important protection is that payment cannot be denied for members who receive emergency services for the reason that the providers are outside the AHCCCS provider network. This will result in members not being deterred from going outside the network for emergency services. Additionally, the BBA prohibits prior authorization for emergency services. Therefore, the rules state that the Administration and AHCCCS contractors cannot deny payment due to the lack of prior authorization for emergency services. The rules also meet the criteria for an immediate effective date because there is no penalty for violation of the rules.

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 1895, May 7, 2004

Notice of Proposed Rulemaking: 11 A.A.R. 1598, May 6, 2005

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

Name: Jane McVay

Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4135

Fax: (602) 253-9115

E-mail: Jane.McVay@azahcccs.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

The primary reason for initiating these rules is to implement the emergency service requirements for managed care organizations contained in the Balanced Budget Act (BBA) of 1997 and the implementing regulations that became effective August 13, 2003. Emergency services include medical and behavioral health services. The rules make the emergency medical and behavioral health service rules more clear, concise, understandable, and user-friendly. AHCCCS members are eligible to receive behavioral health services through subcontractors of the Arizona Department of Health Services (ADHS), Division of Behavioral Health Services (DBHS), under a contract between AHCCCS and ADHS/DBHS. Behavioral health services are also provided to Native Americans through the Indian Health Service (IHS) or Tribal 638 facilities. Tribal 638 facilities are operated by a federally- recognized American Indian or Alaska Native tribe or tribal organization under an agreement with the federal government and provide diagnostic, therapeutic (surgical and nonsurgical), and rehabilitation services to Native American members of the tribe under the Indian

Self-Determination and Education Assistance Act (P.L. 93-638). If a covered behavioral health service is not available from the IHS or a Tribal 638 facility, the Native American member must enroll with a Tribal Regional Behavioral Health Authority (TRBHA), if available, or a Regional Behavioral Health Authority (RBHA), to receive services.

At the present time, a contractor is required to provide emergency inpatient behavioral health services for up to three days per episode, not to exceed 12 days per contract year (October 1 to September 30), for an AHCCCS member who is not yet enrolled with a TRBHA or a RBHA. The rules clarify that ADHS/DBHS is responsible for all inpatient emergency behavioral health services for a member enrolled with a contractor on the earlier of:

1. The date on which the member becomes a behavioral health recipient (a member who receives behavioral health services through ADHS/DBHS); or
2. The seventy-third hour from admission for inpatient emergency behavioral health services.

AHCCCS contractors are financially responsible for inpatient emergency behavioral health services provided to a member who is enrolled with a contractor and is not a behavioral health recipient, for the first seventy-two hours.

In addition, the rules include notification requirements by providers for members enrolled with a contractor who receive emergency medical and behavioral health services, and for Fee-For-Service (FFS) members who receive these services. The rulemaking makes the following additional, significant changes:

- Establishes post-stabilization procedures. The AHCCCS contractor is financially responsible for post-stabilization services obtained for a non-Federal Emergency Services (FES) enrolled member within or outside the network.
- Specifies the verification requirements for emergency medical and behavioral health services.
- Clarifies that lack of prior authorization cannot be used as a basis for denying emergency medical and behavioral health services.
- Sets provider notification requirements to AHCCCS for emergency medical services for FFS members on admission to a hospital intensive care unit for emergency medical and behavioral health services.
- Updates the service provider licensing terminology for providers who may bill independently for behavioral health services.
- Prohibits denial of payment by the AHCCCS Administration and AHCCCS contractors for emergency medical services due to lack of prior authorization, on the basis of lists of diagnoses or symptoms, or because the provider does not have a subcontract.
- Provides that ADHS/DBHS or its subcontractor is responsible for all non-inpatient emergency behavioral health services for non-FES members.

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 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:

No studies were reviewed in relation to these rules.

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

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

AHCCCS anticipates that the economic impact of the rules on members and small businesses will be minimal. These rule changes conform to the requirements of the Balanced Budget Act (BBA) of 1997. The rules are consistent with the current contract between AHCCCS and ADHS/DBHS and the contract between AHCCCS and the health plans, which have been in effect for the past two years.

AHCCCS believes that providers, non-FES FFS members, and FES members will prefer and benefit from the longer 72-hour notification period. Setting a consistent time period of 72 hours for notification by providers for hospitalizations of FFS and FES members receiving medical and behavioral health services will make it easier for AHCCCS-registered providers to comply. Providers of emergency services to members enrolled with contractors will also benefit from the enlarged notification time-frame of not less than 11 days. Other changes, such as the clarification that prior authorization is not required for FES and non-FES members to obtain emergency medical and behavioral health services, will not deter members from going outside the network for emergency services. System improvements that are now available to contractors will provide information on members who are enrolled with RBHA's and will facilitate coordination of care for members.

The rules provide many protections that preserve the public health of AHCCCS members who receive emergency medical services. One important protection is that payment cannot be denied on the basis that members receive emergency medical services from providers that are outside the AHCCCS provider network. This will result in members not being deterred from going outside the network for emergency services. Due to the fact that the BBA prohibits prior authorization for emergency medical services, AHCCCS contractors cannot deny payment for lack of prior authorization for emergency medical services.

These rules make the emergency medical and behavioral health service provisions more clear, concise, and understandable for members, ADHS/DBHS, subcontractors of ADHS/DBHS, and AHCCCS contractors. The rules are expected to have a minimal fiscal impact on all affected agencies and members.

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

AHCCCS has removed the scope of services related definitions contained in R9-22-102 from this rulemaking and placed them in another rule package that amends definitions in Article 1 to remedy technical rulemaking issues.

In R9-22-210(B) and R9-22-210.01(A), the final rules substitute "emergency room provider" for "emergency department provider" to conform to the Balanced Budget Act of 1997. The rules are modified to include a definition of fiscal agent.

In R9-22-210(C), the final rules modify the heading to: "Post-stabilization services for non-FES members enrolled with a contractor." R9-22-210(C)(3) was revised to refer to post-stabilization services obtained that are not prior authorized by the contractor (rather than the Administration) to reflect actual practice.

In R9-22-217(E), notification by providers to the Administration for FES members for emergency medical and behavioral health service inpatient admissions to the intensive care unit (ICU) of a hospital is changed from 24 hours from presentation of a FES member to 72 hours to be consistent with other emergency inpatient admissions. This change was made in response to a public comment and is not a substantive change because the change only relaxes the notification time-frame for providers for FES members admitted for inpatient emergency services. The rules provide the same time-frame for FES members admitted to the ICU for emergency services. Taken as a whole, this change reduces the burden on providers and has no detrimental impact on the public. The Administration also modified the language to clarify that FES members may receive emergency services, including medical and behavioral health services.

In R9-22-1205(H)(1), emergency behavioral health services are required to be provided for an emergency behavioral health condition, which is a condition that places the health of the person in serious jeopardy or would result in physical harm to the person. The final rules remove the language "or is otherwise determined in need of immediate unscheduled behavioral health services" as contained in the proposed rulemaking. This Section contains other changes to clarify behavioral health services and make them consistent with other rules.

In R9-22-210 and R9-22-210.01, provisions regarding post-stabilization services and requirements were relettered and renumbered to conform to the Secretary of State's rule writing format. The rules conform notification provisions of both sections for inpatient admissions.

The rules also substitute "member" for references to the word "patient."

In R9-22-1205, the rules change references from "licensed independent social worker" to "licensed clinical social worker."

AHCCCS made grammatical and stylistic changes at the suggestion of the Governor's Regulatory Review Council staff.

The rules also contain additional changes as described in item 11.

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

#	Subsection	Comment	Recommendation
1.	R9-22-210(A)(4)(b)	The commenter objects to provisions directing the provider to follow the contractor's prior authorization requirements for non-emergency medical services. **Gammage and Burnham**	**Disagree.** The rule language states that if a non-FES member's medical condition does not require emergency medical services, the provider shall follow the prior authorization requirements of the Administration, or the contractor, whichever are applicable. The Balanced Budget Act of 1997 (BBA) does not prohibit contractors from establishing prior authorization requirements, which some AHCCCS contractors have. These plan policies on prior authorization requirements are available to the public.

2.	R9-22-210(A)(6)(c)	The rule language allows the AHCCCS Administration and AHCCCS contractors to deny payment for failing to provide timely notification. The commenter recommends clarifying that timely notification is not needed in any case where the contractor has actual notice from any other source that the patient has presented for services. **Gammage and Burnham**	Agree. The final rules revise R9-22-210(A)(6)(c) as follows: "The provider failed to provide timely notification under subsection (B)(4) to the contractor or the Administration, as appropriate, and the contractor does not have actual notice from any other source that the member has presented for services."
3.	R9-22-210(B)(3)	The commenter requested clarification that references to "hospital" include any site considered a "dedicated emergency department" under federal Emergency Medical Treatment and Labor Act (EMTALA) regulations. The commenter also requested extending the notification limit to urgent care centers. **Gammage and Burnham**	**Disagree.** The BBA and EMTALA are different laws with different criteria that address different issues. These provisions are not interchangeable. The BBA specifically uses the terms "hospitals, emergency room providers, and fiscal agents" in 42 CFR 438.114(d)(1)(ii): EMTALA uses a different term: "dedicated emergency department," which is not used in the BBA. AHCCCS is using the terms "hospitals, emergency room providers, and fiscal agents" from the BBA in this rule. AHCCCS does not support extending the EMTALA provisions to entities specified in the BBA requirements. The BBA prohibits a health plan from refusing to cover emergency services based on the emergency room provider, hospital, or fiscal agent failing to notify the health plan within 10 days of member presentation. This BBA prohibition against denial of emergency services due to the lack of timely notification applies specifically to hospitals, emergency room providers, and fiscal agents that provide emergency services to a person with an emergency medical condition. No other provider types are specified in the federal regulation. If the federal government intended this rule to apply to other providers, this would have been stated in the final rule. As specified in this BBA requirement, the 10-day notification time-frame applies to hospitals and emergency room providers. An urgent care center cannot reasonably be considered a hospital under BBA regulations.
4.	R9-22-210(A)(5)(b)	In the second line, the commenter requests the rules change "Administration" to "contractor." **Gammage and Burnham**	**Disagree.** The comment does not apply to this rule.

5.	R9-22-210(A)(5)(b)	The commenter recommends adding a definition of pre-stabilization to include all services rendered in a hospital emergency department. The commenter is concerned that the prior authorization requirement for post-stabilization services will delay medical treatment. The commenter is also uncertain of the Administration's intent in using the phrase "medical post-stabilization services" as opposed to post-stabilization services and is concerned that use of the term "medical post-stabilization services" excludes behavioral health post-stabilization services. **Gammage and Burnham**	**Disagree.** The BBA is silent on pre-stabilization services. However, it does address post-stabilization services. These final rules comply with the federal regulations and do not go beyond them. The attending physician or practitioner treating the member for the emergency medical condition determines when the member is sufficiently stabilized for transfer or discharge. The physician's decision is binding on the AHCCCS contractor. The agency adopted the one hour requirement to obtain prior authorization for post-stabilization services from 42 CFR 438.113(c) of the federal BBA regulations. The provisions in R9-22-210 (C) are based on the BBA. These provisions on prior authorization allow the treating physician to continue to maintain the patient's stabilized condition while waiting for prior authorization from the contractor physician. With respect to the commenter's concern about use of the phrase post-stabilization services, the rules address medical and behavioral post-stabilization services separately. R9-22-210(C) deals with medical post-stabilization services. R9-22-210.01(B) provides the requirements for behavioral health post-stabilization services.
6.	R9-22-210(C)	The commenter believes the different notification requirements of 72 hours for ICU care and 24 hours for all other emergency inpatient care are burdensome. The commenter suggests use of a 72-hour notification period. **Gammage and Burnham**	**Agree.** The final rules change notification for emergency medical services to 72 hours in R9-22-210(D)(3). There is also a 72- hour notification for emergency medical and behavioral health services provided to FES members in R9-22-217.
7.	R9-22-210.01(A)(3)(b)	The rules state that ADHS is responsible for all inpatient behavioral health services for all AHCCCS Fee-For-Service members. In the past the Administration has paid for the initial 72 hours for these members if they are not RBHA-enrolled. The commenter inquired if this is a substantial change of responsibility or is inadvertent. **Gammage and Burnham**	This is a substantial change that was made to clarify that ADHS/DBHS or its subcontractor is responsible for all inpatient behavioral health services for all FFS members. The current rules do not clearly state who is responsible for inpatient behavioral health services for FFS members.
8.	R9-22-210.01(A)(5)	Requiring a provider to verify enrollment is unreasonable because AHCCCS does not have behavioral health enrollment information needed to verify RBHA enrollment. Contractors should be obligated to affirmatively disclose that a member is also enrolled in an AHCCCS limited scope plan or with a commercial payer and should bear financial risk for failing to do so. **Gammage and Burnham**	**Agree.** The AHCCCS automated verification system has been modified. The system provides RBHA enrollment information. The providers are responsible for disclosing that a member is enrolled in an AHCCCS limited scope plan or with a commercial payer.

9.	R9-22-217(E)	The commenter recommends use of a 72-hour notification period for FES members for emergency medical and behavioral health services for services received in the Intensive Care Unit (ICU) and other emergency inpatient admissions. **Gammage and Burnham**	**Agree.** The rule language was modified to provide the 72-hour notification for emergency medical and behavioral health services received by an FES member who presents to a hospital for emergency inpatient services.
10.	R9-22-1205(H)(1)	The definition of behavioral health services applicable to RBHA's is different from that applied to contractors. The commenter is concerned that by using different terminology for emergency behavioral health services, AHCCCS may unintentionally create gaps in coverage. If the intent is to broaden coverage, clarify the language by adding: "Emergency behavioral health services includes, but is not limited to services as defined by R9-22-210." **Gammage and Burnham**	**Agree.** The rule changes are as follows: "ADHS shall ensure that emergency behavioral health services are available 24 hours-per-day, seven days-per-week in each GSA for an emergency behavioral health condition as defined in R9-22-102."

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:

None

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

No.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 2. SCOPE OF SERVICES

Section
R9-22-210. Emergency Medical ~~and Behavioral Health~~ Services for Non-FES Members
R9-22-210.01. Emergency Behavioral Health Services for Non-FES Members
R9-22-217. Services Included in the Federal Emergency Services Program

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

Section
R9-22-1205. Scope and Coverage of Behavioral Health Services
R9-22-1208. ~~Grievance and Request for Hearing Process~~ Repealed

ARTICLE 2. SCOPE OF SERVICES

R9-22-210. Emergency Medical ~~and Behavioral Health~~ Services for Non-FES Members

~~**A.** For members enrolled with a contractor, AHCCCS contractors shall reimburse providers for emergency services as defined by and to the extent required by 42 U.S.C. 1396u-2.~~

~~**B.** Verification. A provider of emergency services shall verify a member's eligibility and enrollment status through the Administration to determine the need for notification to a contractor for a member, or the Administration for a FFS member, and to determine the party responsible for payment of services rendered.~~

~~C. Access. A contractor shall ensure access to an emergency room and emergency medical or behavioral health services, which are available 24 hours per day, seven days per week in each contractor's service area. A contractor shall ensure that the use of an examining or a treatment room is available if required by a physician or a practitioner for the provision of emergency services.~~

~~D. Behavioral health evaluation. A behavioral health evaluation provided by a psychiatrist or a psychologist is covered as an emergency service under this Section if required to evaluate or stabilize an acute episode of mental disorder or substance abuse.~~

~~E. Prior authorization. An emergency service does not require prior authorization; however, a provider shall comply with the following notification requirements to a contractor:~~

~~1. A provider and a noncontracting provider furnishing emergency services to a member shall notify a member's contractor within 12 hours from the time a member presents for services;~~

~~2. If a member's medical condition is determined by the provider not to be an emergency medical condition, a provider shall:~~

~~a. Notify the member's contractor before initiation of treatment; and~~

~~b. Follow the prior authorization requirements and protocol of the contractor regarding treatment of the member's nonemergency medical condition. Failure of the provider to obtain prior authorization is cause for denial.~~

~~F. Post-stabilization services. After a member's emergency medical condition is stabilized, a provider or a noncontracting provider shall request authorization from the contractor for post-stabilization services under 42 U.S.C. 1396u-2.~~

~~G. A provider of emergency services for a FFS member is not required to notify the Administration.~~

A. General provisions.

1. Applicability. This Section applies to emergency medical services for non-FES members. Provisions regarding emergency behavioral health services for non-FES members are in R9-22-210.01. Provisions regarding emergency medical and behavioral health services for FES members are in R9-22-217.
2. Definitions.
   a. For the purposes of this Section, contractor has the same meaning as in A.R.S. § 36-2901. Contractor does not include ADHS/DBHS, or a subcontractor of ADHS/DBHS, or Children's Rehabilitative Services.
   b. For the purposes of this Section and R9-22-210.01, fiscal agent means a person who bills and accepts payment for a hospital or emergency room provider.
3. Verification. A provider of emergency medical services shall verify a person's eligibility status with AHCCCS, and if eligible, determine whether the person is enrolled with AHCCCS as non-FES FFS or is enrolled with a contractor.
4. Prior authorization.
   a. Emergency medical services. Prior authorization is not required for emergency medical services for non-FES members.
   b. Non-emergency medical services. If a non-FES member's medical condition does not require emergency medical services, the provider shall obtain prior authorization as required by the terms of the provider agreement under R9-22-714(A) or the provider's subcontract with the contractor, whichever is applicable.
5. Prohibition against denial of payment. The Administration and a contractor shall not limit or deny payment for emergency medical services for the following reasons:
   a. On the basis of lists of diagnoses or symptoms,
   b. Prior authorization was not obtained, or
   c. The provider does not have a subcontract.
6. Grounds for denial. The Administration and a contractor may deny payment for emergency medical services for reasons including but not limited to:
   a. The claim was not a clean claim;
   b. The claim was not submitted timely; and
   c. The provider failed to provide timely notification under subsection (B)(4) to the contractor or the Administration, as appropriate, and the contractor does not have actual notice from any other source that the member has presented for services.

B. Additional requirements for emergency medical services for non-FES members enrolled with a contractor.

1. Responsible entity. A contractor is responsible for the provision of all emergency medical services to non-FES members enrolled with the contractor.
2. Prohibition against denial of payment. A contractor shall not limit or deny payment for emergency medical services when an employee of the contractor instructs the member to obtain emergency medical services.
3. Notification. A contractor shall not deny payment to a hospital, emergency room provider, or fiscal agent for an emergency medical service rendered to a non-FES member based on the failure of the hospital, emergency room provider, or fiscal agent to notify the member's contractor within 10 days from the day that the member presented for the emergency medical service.
4. Contractor notification. A hospital, emergency room provider, or fiscal agent shall notify the contractor no later than the11th day after presentation of the non-FES member for emergency inpatient medical services. A contractor may

deny payment for a hospital's, emergency room provider's, or fiscal agent's failure to provide timely notice.

C. Post-stabilization services for non-FES members enrolled with a contractor.

1. After the emergency medical condition of a member enrolled with a contractor is stabilized, a provider shall request prior authorization from the contractor for post-stabilization services.
2. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that have been prior authorized by the contractor;
3. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, but are administered to maintain the member's stabilized condition within one hour of a request to the contractor for prior authorization of further post-stabilization services;
4. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, but are administered to maintain, improve, or resolve the member's stabilized condition if:
   a. The contractor does not respond to a request for prior authorization within one hour;
   b. The contractor authorized to give the prior authorization cannot be contacted; or
   c. The contractor representative and the treating physician cannot reach an agreement concerning the member's care and the contractor physician is not available for consultation. In this situation, the contractor shall give the treating physician the opportunity to consult with a contractor physician. The treating physician may continue with care of the member until the contractor physician is reached or:
      i. A contractor physician with privileges at the treating hospital assumes responsibility for the member's care;
      ii. A contractor physician assumes responsibility for the member's care through transfer;
      iii. The contractor's representative and the treating physician reach agreement concerning the member's care; or
      iv. The member is discharged.
5. Transfer or discharge. The attending physician or practitioner actually treating the member for the emergency medical condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the contractor.

D. Additional requirements for FFS members.

1. Responsible entity. The Administration is responsible for the provision of all emergency medical services to non-FES FFS members.
2. Grounds for denial. The Administration may deny payment for emergency medical services if a provider fails to provide timely notice to the Administration.
3. Notification. A provider shall notify the Administration no later than 72 hours after a FFS member receiving emergency medical services presents to a hospital for inpatient services. The Administration may deny payment for failure to provide timely notice.

R9-22-210.01. Emergency Behavioral Health Services for Non-FES Members

A. General provisions.

1. Applicability. This Section applies to emergency behavioral health services for non-FES members. Provisions regarding emergency medical services for non-FES members are in R9-22-210. Provisions regarding emergency medical and behavioral health services for FES members are in R9-22-217.
2. Definition. For the purposes of this Section, contractor has the same meaning as in A.R.S. § 36-2901. Contractor does not include ADHS/DBHS, a subcontractor of ADHS/DBHS, or Children's Rehabilitative Services.
3. Responsible entity for inpatient emergency behavioral health services.
   a. Members enrolled with a contractor.
      i. ADHS/DBHS. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services to non-FES members with psychiatric or substance abuse diagnoses who are enrolled with the contractor, from one of the following time periods, whichever comes first:
         (1) The date on which the member becomes a behavioral health recipient; or
         (2) The seventy-third hour after admission for inpatient emergency behavioral health services.
      ii. Contractors. Contractors are responsible for providing inpatient emergency behavioral health services to non-FES members with psychiatric or substance abuse diagnoses who are enrolled with a contractor and are not behavioral health recipients, for the first seventy-two hours after admission.
   b. FFS members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services for non-FES FFS members with psychiatric or substance abuse diagnoses.
4. Responsible entity for non-inpatient emergency behavioral health services for non-FES members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all non-inpatient emergency behavioral health services for non-FES members.
5. Verification. A provider of emergency behavioral health services shall verify a person's eligibility status with AHCCCS, and if eligible, determine whether the person is a member enrolled with AHCCCS as non-FES FFS or is enrolled with a contractor, and determine whether the member is a behavioral health recipient as defined in R9-22-102.

6. Prior authorization.
   a. Emergency behavioral health services. Emergency behavioral health services do not require prior authorization.
   b. Non-emergency behavioral health services. When a non-FES member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the prior authorization requirements of a contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.
7. Prohibition against denial of payment. A contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services to a non-FES member for the following reasons:
   a. On the basis of lists of diagnoses or symptoms;
   b. Prior authorization was not obtained;
   c. The provider does not have a contract;
   d. An employee of the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS instructs the member to obtain emergency behavioral health services; or
   e. The failure of a hospital, emergency room provider, or fiscal agent to notify the member's contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS within 10 days from the day the member presented for the emergency service.
8. Grounds for denial. A contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS may deny payment for emergency behavioral health services for reasons including but not limited to the following:
   a. The claim was not a clean claim,
   b. The claim was not submitted timely, or
   c. The provider failed to provide timely notification to the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS.
9. Notification. A hospital, emergency room provider, or fiscal agent shall notify a contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, whichever is appropriate, no later than the 11th day from presentation of the non-FES member for emergency inpatient behavioral health services.
10. Behavioral health evaluation. An emergency behavioral health evaluation is covered as an emergency behavioral health service for a non-FES member under this Section if:
    a. Required to evaluate or stabilize an acute episode of mental disorder or substance abuse; and
    b. Provided by a qualified provider who is:
       i. A behavioral health medical practitioner as defined in R9-22-112, including a licensed psychologist, a licensed clinical social worker, a licensed professional counselor, a licensed marriage and family therapist; or
       ii. An ADHS/DBHS-contracted provider.
11. Transfer or discharge. The attending physician or the provider actually treating the non-FES member for the emergency behavioral health condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.

B. Post-stabilization requirements for non-FES members.
1. A contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have been prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS.
2. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain the member's stabilized condition within one hour of a request to the contractor, ADHS/DBHS, or a subcontractor for prior authorization of further post-stabilization services;
3. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain, improve, or resolve the member's stabilized condition if:
   a. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, does not respond to a request for prior authorization within one hour;
   b. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS authorized to give the prior authorization cannot be contacted; or
   c. The representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician cannot reach an agreement concerning the member's care and the contractor's, ADHS/DBHS' or the subcontractor's physician, is not available for consultation. The treating physician may continue with care of the member until ADHS/DBHS', the contractor's, or the subcontractor's physician is reached, or:
      i. A contractor physician with privileges at the treating hospital assumes responsibility for the member's care;
      ii. ADHS/DBHS', a contractor's, or a subcontractor's physician assumes responsibility for the member's care

through transfer;
iii. A representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician reach agreement concerning the member's care; or
iv. The member is discharged.

R9-22-217. Services Included in the Federal Emergency Services Program

~~**A.** General. For the purposes of this Section, emergency medical condition means a person in the FESP program is limited to services necessary to treat the sudden onset of a medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:~~
~~1. Placing the patient's health in serious jeopardy,~~
~~2. Serious impairment to bodily functions, or~~
~~3. Serious dysfunction of any bodily organ or part.~~
~~**B.** Services are not covered unless all of the criteria in subsection (A) are met at the time the service is rendered. An emergency medical condition shall be determined on a case-by-case basis.~~

A. Definition. For the purposes of this Section, an emergency medical or behavioral health condition for a FES member means a medical condition or a behavioral health condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
1. Placing the member's health in serious jeopardy,
2. Serious impairment to bodily functions,
3. Serious dysfunction of any bodily organ or part, or
4. Serious physical harm to another person.

B. Services. Emergency services for a FES member mean those medical or behavioral health services provided for the treatment of an emergency condition.

C. Covered services. Services are considered emergency services if all of the criteria specified in subsection (A) are satisfied at the time the services are rendered and timely notification as specified in subsection (E) is given. The Administration shall determine whether an emergency condition exists on a case-by-case basis.

D. Prior authorization. Prior authorization is not required for emergency services for FES members.

E. Notification. A provider shall notify the Administration no later than 72 hours after a FES member receiving emergency behavioral health services presents to a hospital for inpatient services. The Administration may deny payment for failure to provide timely notice.

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-22-1205. Scope and Coverage of Behavioral Health Services

A. Inpatient behavioral health services. The following inpatient services ~~shall be~~ are covered subject to the limitations and exclusions in this Article.
1. Covered ~~Inpatient~~ inpatient behavioral health services ~~provided in a Medicare (Title XVIII) certified hospital~~ include all behavioral health services, medical detoxification, accommodations and staffing, supplies, and equipment~~.~~ ~~The behavioral health service~~ if the service ~~shall be~~ is provided under the direction of a physician in a Medicare-certified:
   a. ~~A general~~ General acute care hospital, or
   b. ~~An inpatient~~ Inpatient psychiatric hospital.
2. Inpatient service limitations:
   a. Inpatient services, other than emergency services specified in this Section, ~~shall be~~ are not covered unless prior authorized.
   b. Inpatient services and room and board ~~shall be~~ are reimbursed on a per diem basis. The per diem rate ~~and shall be inclusive~~ includes ~~of~~ all services, except the following licensed or certified providers may bill independently for services:
      i. A licensed psychiatrist,
      ii. A certified psychiatric nurse practitioner,
      iii. A licensed physician assistant,
      iv. A licensed psychologist,
      v. A ~~certified~~ licensed ~~independent~~ clinical social worker,
      vi. A ~~certified~~ licensed marriage and family therapist,
      vii. A ~~certified~~ licensed professional counselor, ~~or~~
      viii. A licensed independent substance abuse counselor, or
      ~~viii~~ix. A behavioral health medical practitioner.
   c. A member age 21 through 64 is eligible for behavioral health services provided in a hospital listed in ~~Section~~ subsection (A)(1)(b) that meets the criteria for an IMD up to 30 days per admission and no more than 60 days per

contract year as allowed under the Administration's Section 1115 Waiver with CMS.

B. Level ~~I~~ ~~Residential Treatment Center Services.~~ 1 residential treatment center services. ~~The following~~ Services provided in a ~~Residential Treatment Center services~~ residential treatment center ~~shall be~~ as defined in R9-20-101 are covered subject to the limitations and exclusions under this Article.

1. Level ~~I~~ 1 ~~Residential Treatment Center~~ residential treatment center services ~~shall be~~ are not covered unless provided under the direction of a licensed physician in a licensed Level ~~I~~ 1 ~~Residential Treatment Center~~ residential treatment center accredited by an AHCCCS-approved accrediting body as specified in contract.
2. Covered ~~Residential Treatment Center~~ residential treatment center services include room and board and treatment services for ~~mental~~ behavioral health and substance abuse conditions.
3. Residential ~~Treatment Center~~ treatment center service limitations~~:~~.
   a. Services ~~shall be~~ are not covered unless prior authorized, except for emergency services as specified in this Section.
   b. Services ~~shall be~~ are reimbursed on a per diem basis. ~~and shall be inclusive~~ The per diem rate includes ~~of~~ all services, except the following licensed or certified providers may bill independently for services:
      i. A licensed psychiatrist,
      ii. A certified psychiatric nurse practitioner,
      iii. A licensed physician assistant,
      iv. A licensed psychologist,
      v. A ~~certified~~ licensed ~~independent~~ clinical social worker,
      vi. A ~~certified~~ licensed marriage and family therapist,
      vii. A ~~certified~~ licensed professional counselor, ~~or~~
      viii. A licensed independent substance abuse counselor, or
      ~~viii.~~ ix. A behavioral health medical practitioner.
4. The following ~~services~~ may be billed independently if prescribed by a provider as specified in this Section who is operating within the scope of practice:
   a. Laboratory~~,~~ services,
   b. Radiology~~,~~ services, and
   c. Psychotropic medication.

C. Covered ~~Level~~ level ~~Sub-acute Facility Services~~ ~~I~~ 1 sub-acute agency services. ~~The following~~ Services provided in a sub-acute ~~facility~~ agency as defined in R9-22-101 ~~services shall be~~ are covered subject to the limitations and exclusions under this Article.

1. Level ~~I~~ 1 sub-acute ~~facility~~ agency services ~~shall be~~ are not covered unless provided under the direction of a licensed physician in a licensed Level ~~I~~ 1 sub-acute ~~facility~~ agency that is accredited by an AHCCCS-approved accrediting body as specified in contract.
2. Covered ~~Level I~~ level 1 sub-acute agency services include room and board and treatment services for ~~mental~~ behavioral health and substance abuse conditions.
3. Services ~~shall be~~ are reimbursed on a per diem basis. ~~and shall be~~ The per diem rate ~~inclusive of~~ includes all services, except the following licensed or certified providers may bill independently for services:
   a. A licensed psychiatrist,
   b. A certified psychiatric nurse practitioner,
   c. A licensed physician assistant,
   d. A licensed psychologist,
   e. A ~~certified~~ licensed ~~independent~~ clinical social worker,
   f. A ~~certified~~ licensed marriage and family therapist,
   g. A ~~certified~~ licensed professional counselor, ~~or~~
   h. A licensed independent substance abuse counselor, or
   ~~h.~~ i. A behavioral health medical practitioner.
4. The following ~~services~~ may be billed independently if prescribed by a provider as specified in this Section~~:~~ who is operating within the scope of practice:
   a. Laboratory~~,~~ services,
   b. Radiology~~,~~ services, and
   c. Psychotropic medication.
5. A member age 21 through 64 is eligible for behavioral health services provided in a ~~subacute facility~~ level 1 sub-acute agency that meets the criteria for an IMD for up to 30 days per admission and no more than 60 days per contract year as allowed under the ~~Administrations's~~ Administration's Section 1115 Waiver with CMS.

D. ~~ADHS licensed~~ Level ~~II Behavioral Health Residential Services.~~ 2 behavioral health residential agency services. ~~The following Level II Behavioral Health Residential services~~ Services provided in a level 2 behavioral health residential agency ~~shall be~~ are covered subject to the limitations and exclusions in this Article.

1. Level ~~II Behavioral Health~~ 2 behavioral health residential agency services ~~shall be~~ are not covered unless provided by

a licensed Level ~~II~~ 2 behavioral health residential agency~~.~~ as defined in R9-20-101.

2. Covered ~~Services~~ services ~~shall be inclusive~~ include ~~of~~ all ~~covered~~ services except room and board.
3. The following licensed or certified providers may bill independently for services:
   a. A licensed psychiatrist,
   b. A certified psychiatric nurse practitioner,
   c. A licensed physician assistant,
   d. A licensed psychologist,
   e. A ~~certified~~ licensed ~~independent~~ clinical social worker,
   f. A ~~certified~~ licensed marriage and family therapist,
   g. A ~~certified~~ licensed professional counselor,~~ or~~
   h. A licensed independent substance abuse counselor, or
   ~~h.~~i. A behavioral health medical practitioner.

E. ~~ADHS licensed~~ Level ~~III Behavioral Health Residential Services.~~ 3 behavioral health residential agency services. ~~The following~~ Services provided in a licensed Level ~~III Behavioral Health Residential~~ 3 behavioral health residential agency ~~services~~ as defined in R9-22-101 ~~shall be~~ are covered subject to the limitations and exclusions under this Article.

1. Level ~~III Behavioral Health~~ 3 behavioral health residential agency services ~~shall be~~ are not covered unless provided by a licensed Level ~~III~~ 3 behavioral health residential agency.
2. Covered ~~Services~~ services ~~shall be inclusive of all covered services except room and board.~~ include all non-emergency travel, non-legend drugs as defined in A.R.S. § 32-1975, non-customized medical supplies, and clinical supervision of the level 3 behavioral health residential agency staff. Room and board are not covered services.
3. The following licensed and certified providers may bill independently for services:
   a. A licensed psychiatrist,
   b. A certified psychiatric nurse practitioner,
   c. A licensed physician assistant,
   d. A licensed psychologist,
   e. A~~ certified~~ licensed ~~independent~~ clinical social worker,
   f. A ~~certified~~ licensed marriage and family therapist,
   g. A ~~certified~~ licensed professional counselor,~~ or~~
   h. A licensed independent substance abuse counselor, or
   ~~h.~~i. A behavioral health medical practitioner.

F. Partial care. ~~The following partial~~ Partial care services ~~shall be~~ are covered subject to the limitations and exclusions in this Article.

1. Partial care ~~shall be~~ services are not covered unless provided by ~~an~~ a licensed ~~agency qualified to provide~~ and AHCCCS-registered behavioral health agency that provides a regularly scheduled day program of individual member, group, or family activities that are designed to improve the ability of the member to function in the community. Partial care services include basic, therapeutic, and medical day programs.
2. Partial care service exclusions. ~~School attendance and educational hours shall not be included as a partial care service and shall not be billed concurrently with these services.~~ Educational services that are not therapeutic and are not included in the member's behavioral health treatment plan are excluded from per diem reimbursement for partial care services.

G. Outpatient services. ~~The following outpatient~~ Outpatient services ~~shall be~~ are covered subject to the limitations and exclusions in this Article.

1. Outpatient services ~~shall~~ include the following:
   a. Screening provided by a behavioral health professional or a behavioral health technician~~;~~ as defined in R9-22-101;
   b. ~~Initial behavioral~~ A behavioral health evaluation provided by a behavioral health professional~~;~~ or a behavioral health technician;
   ~~c. Ongoing behavioral health evaluation by a behavioral health professional or a behavioral health technician;~~
   ~~d.~~c. Counseling including individual therapy, group, and family therapy provided by a behavioral health professional or a behavioral health technician;
   ~~e.~~d. Behavior management services ~~provided by qualified individuals or agencies as specified in contract;~~ ~~and~~ as defined in R9-22-112; and
   ~~f.~~e. Psychosocial rehabilitation services ~~provided by qualified individuals or agencies as specified in contract.~~ as defined in R9-22-112.
2. Outpatient service limitations~~:~~.
   a. The following ~~practitioners~~ licensed or certified providers may bill independently~~:~~ for outpatient services:
      i. A licensed psychiatrist,
      ii. A certified psychiatric nurse practitioner,
      iii. A licensed physician assistant as defined in ~~this Article,~~ R9-22-1201.

iv. A licensed psychologist,
v. A ~~certified~~ licensed ~~independent~~ clinical social worker,
vi. A ~~certified~~ licensed professional counselor,
vii. A ~~certified~~ licensed marriage and family therapist,
viii. A licensed independent substance abuse counselor,
~~viii~~ix. A behavioral health medical practitioner,
~~ix~~x. A therapeutic foster parent, and
~~x.~~xi. ~~Other AHCCCS registered providers as specified in contract.~~ An outpatient clinic or a Level IV transitional agency licensed under 9 A.A.C. 20, Article 1, that is an AHCCCS-registered provider.

b. ~~Other behavioral health professionals and qualified persons~~ A behavioral health practitioner not specified in subsection (G)(2)(a)(i) through (G)(2)(x), ~~shall be employed by, or contracted with, an~~ who is contracted with or employed by an AHCCCS-registered behavioral health agency~~.~~, shall not bill independently.

H. ~~Behavioral health emergency services.~~ Emergency behavioral health services. The following emergency behavioral health services are covered subject to the limitations and exclusions under this Article.

1. ~~A RBHA~~ ADHS shall ensure that ~~behavioral health emergency services~~ emergency behavioral health services are provided by ~~the~~ qualified ~~personnel~~ service providers under R9-22-1206. ~~The emergency services~~ ADHS shall ensure that emergency behavioral health services ~~shall be~~ are available 24 hours-per-day, seven days-per-week in ~~the RBHA's~~ each ~~service area~~ ~~in~~ GSA for an emergency ~~situations when a member is a danger to self or others or is otherwise determined in need of immediate unscheduled behavioral health services.~~ behavioral health condition as defined in R9-22-102. ~~Behavioral health emergency services may be provided on either an inpatient or outpatient basis.~~
2. ~~A contractor shall provide behavioral health emergency services under R9-22-210(D) on an inpatient basis not to exceed three days per emergency episode and 12 days per contract year, for a member not yet enrolled with a RBHA.~~
3. ~~An inpatient emergency service provider shall verify the eligibility and enrollment of a member through the Administration to determine the need for notification to a contractor or a RBHA and to determine the party responsible for payment of services under Article 7.~~
4. ~~Behavioral health emergency service limitations:~~
   a. ~~An emergency behavioral health service does not require prior authorization. The provider shall, however, comply with the notification requirements under R9-22-210.~~
   b. ~~A behavioral health service for an unrelated condition, that requires evaluation, diagnosis, and treatment shall be prior authorized by a RBHA.~~
2. Emergency behavioral health services for non-FES members are provided under ~~R9-22-210.~~ R9-22-210.01. Emergency behavioral health services for FES members are provided under R9-22-217.

I. Other covered behavioral health services. Other covered behavioral health services include:

1. Case management as defined in R9-22-1201;
2. Laboratory and radiology services for behavioral health diagnosis and medication management;
3. Psychotropic medication and related medication;
4. ~~Medication monitoring,~~ Monitoring, administration, and adjustment for psychotropic medication and related medications;
5. Respite care;
6. Therapeutic foster care services provided in a ~~family foster home~~ professional foster home defined in 6 A.A.C. 5, Article 58 or an adult therapeutic foster home as defined in 9 A.A.C. 20, ~~Articles~~ Article 1~~; and 15;~~
7. Personal ~~assistance; and~~ care services, including assistance with daily living skills and tasks, homemaking, bathing, dressing, food preparation, oral hygiene, self-administration of medications, and monitoring of the behavioral health recipient's condition and functioning level provided by a licensed and AHCCCS-registered behavioral health agency or a behavioral health professional, behavioral health technician, or behavioral health paraprofessional as defined in 9 A.A.C. 20, Article 1; and.
8. Other support services to maintain or increase the member's self-sufficiency and ability to live outside an institution.

J. Transportation services.

1. Emergency transportation ~~shall be~~ is covered for a behavioral health emergency under R9-22-211. ~~Emergency~~ Coverage for emergency transportation is limited to behavioral health emergencies.
2. Non-emergency transportation ~~shall be~~ is covered if used to travel to and from a registered provider of ~~covered~~ behavioral health ~~service providers.~~ services.

R9-22-1208. ~~Grievance and Request for Hearing Process~~ Repealed

~~A.~~ ~~Processing a grievance. A grievance for an adverse action for a behavioral health service shall be processed as specified in 9 A.A.C. 22, Articles 8 and 13 and under A.R.S. §§ 36-2903.01, 36-3413, and 41-1092 et seq. The grievance and request for hearing process is illustrated in 9 A.A.C. 22, Article 8, Exhibit A.~~

~~B.~~ ~~Member request for hearing. A member's request for hearing for a grievance under this Article shall be conducted as specified in 9 A.A.C. 22, Article 8.~~

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

[R05-482]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R15-5-150	Amend
Article 11	Amend
R15-5-1101	New Section
R15-5-1102	New Section
R15-5-1103	Repeal
R15-5-1104	Repeal
R15-5-1105	Repeal
R15-5-1106	Amend
R15-5-1107	Repeal
R15-5-1109	Repeal
R15-5-1111	Amend
R15-5-1112	Repeal
R15-5-1112	New Section

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

Authorizing statute: A.R.S. § 42-1005

Implementing statutes: A.R.S. §§ 42-5061, 42-5066

3. The effective date of the rules:

February 6, 2006

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 9 A.A.R. 3892, September 5, 2003

Notice of Rulemaking Docket Opening: 9 A.A.R. 5154, November 28, 2003

Notice of Proposed Rulemaking: 10 A.A.R. 766, March 5, 2004

Notice of Supplemental Proposed Rulemaking: 10 A.A.R. 3554, September 3, 2004

Notice of Oral Proceeding on Proposed Rulemaking: 10 A.A.R. 4208, October 15, 2004

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

Name: Hsin Pai, Tax Analyst

Address: Arizona Department of Revenue
Tax Policy and Research Division
1600 W. Monroe, Room 810
Phoenix, AZ 85007

Telephone: (602) 716-6851

Fax: (602) 716-7995

E-mail: hpai@azdor.gov

Please visit the Department's web site to track the progress of these rules and other agency rulemaking matters at www.azdor.gov/tra/draftdoc.htm.

6. An explanation of the rule, including the agency's reason for initiating the rule:

This rulemaking clarifies the Department's positions regarding the imposition of Arizona transaction privilege tax on businesses that: (1) are subject to tax under the retail and job printing classifications and (2) engage in sales of various forms of printing and photography. The amendments provide taxpayers with greater delineation of the scope of business activities subject to tax under the respective classifications, including definitions for the terms "image developing," "job printing," and "photography," and explain the application of related exemptions found in A.R.S. §§ 42-5061 and 42-5066.

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 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

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

There should be no significant economic impact resulting from adoption of the rules. The business activities that fall within the scope of this rulemaking are all currently subject to transaction privilege tax under either the retail or job printing classification, both of which have the same state tax rate. The rulemaking does, however, provide the public with greater guidance on the parameters of these classifications as they apply to the activities. Because the amendments clarify and more accurately explain the scope and nature of the imposition of or exemptions from transaction privilege tax for sales of photography and printing, a minimal impact may occur for certain vendors due to increased compliance measures. The Department expects that the benefits of the amended rules to the public and the agency from achieving a better understanding of the exemptions will be greater than the costs.

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

The following subsections describe the changes from the supplemental proposed rules that appear in the final rules *infra*:

a. In response to a comment received by the Department (see Paragraph 11(k) *infra*), in the definitions found in A.A.C. R15-5-150(A)(3), R15-5-1101(1), and R15-5-1101(3), the Department has replaced use of the term "digital or analog storage medium" with "data storage medium." The Department concluded that using the term "data storage medium" would clarify the rules without altering the scope of media types covered by the definition. The change is consequently not substantial in nature.

b. The Department added references in A.A.C. R15-5-150(A) to the statutory definitions for "motion picture" and "motion picture production company" that govern the motion picture production tax incentives enacted by Laws 2005, ch. 317, and also added a definition for "qualified motion picture production company" to reference those taxpayers entitled to transaction privilege and use tax exemptions under the new legislation. Language has also been added in A.A.C. R15-5-150(C) of the final rules to address the new exemptions. Because the clarification does not modify or change any general principles of the rules regarding sales of photography as previously proposed in the September 3, 2004 Notice of Supplemental Proposed Rulemaking, but rather, merely references a new retail classification exemption enacted during the course of the rulemaking, the change is not substantial in nature.

c. In response to a comment received by the Department (see Paragraph 11(d) *infra*) on a grammatical error found in A.A.C. R15-5-150(B), the Department has amended the first sentence of the provision to read "*derived from* a sale" instead of "*of* a sale" (emphasis added). This change is not substantial in nature.

d. In response to a comment received by the Department (see Paragraph 11(j) *infra*) requesting the inclusion of a reference to "location scouting fees" to the second sentence of A.A.C. R15-5-150(B), the Department has amended the provision. Additionally, in response to a question by the Governor's Regulatory Review Council staff, the reference to "location changes" [*sic*, location charges] has been removed. The reference was intended by the Department to refer to fees that are more specifically and clearly addressed by the "location scouting fees" reference. As the clarifications do not modify an interpretation under the rules as previously proposed in the September 3, 2004 Notice of Supplemental Proposed Rulemaking, the change is not substantial in nature.

e. In response to a suggestion by the Governor's Regulatory Review Council staff, A.A.C. R15-5-150(B) has been clarified to better incorporate the application of the A.A.C. R15-5-104(C) "inconsequentiality test" to sales of photography. As the clarification does not modify an interpretation under the rules as previously proposed in the September 3, 2004 Notice of Supplemental Proposed Rulemaking, the change is not substantial in nature.

f. In response to a comment received by the Department (see Paragraph 11(c) *infra*) regarding A.A.C. R15-5-150(C), the Department has removed the language that was provided in A.A.C. R15-5-150(C) in the September 3, 2004 Notice of Supplemental Proposed Rulemaking. The clarification is not substantial in nature.

g. In response to a comment received by the Department (see Paragraph 11(g) *infra*), the Department has amended the third sentence of A.A.C. R15-5-1101(B) by deleting "digital printing" as an example of a job printing activity due to confusion and ambiguity caused by the term. The deletion of the term is minor, as the examples provided in the rule are merely illustrative in nature. As such, the change is not substantial in nature.

h. In response to a suggestion by the Governor's Regulatory Review Council staff, the Department has conformed references to a printer's shipments or deliveries outside the state for use outside the state, which are exempt under A.R.S. § 42-5066(B)(2). The Department has also deleted references to "interstate or foreign commerce"

as redundant and unnecessary wording. The changes are not substantial in nature.

i. In response to a comment received by the Department (see Paragraph 11(h) *infra*), the Department expounded upon the general provisions of A.A.C. R15-5-1102 by adding a subsection (E) to address a specific question regarding the tax treatment of printing that is delivered to a location outside of Arizona. Because the new subsection merely provides further exposition on language that was already contained in the Notice of Supplemental Proposed Rulemaking, the change is not substantial in nature.

j. In response to a comment received by the Department (see Paragraph 11(i) *infra*) requesting a reference to retail classification exemptions that potentially apply to sales of materials to job printers, the Department has amended A.A.C. R15-5-1106 to include a reference to A.R.S. § 42-5061. As the clarification does not modify any interpretation under the rules as previously proposed in the September 3, 2004 Notice of Supplemental Proposed Rulemaking, the change is not substantial in nature.

k. In response to a comment received by the Department (see Paragraph 11(e) *infra*) addressing situations in which sales of photography would be considered inconsequential elements of nontaxable activities, A.A.C. R15-5-150(B) has been amended to clarify the application of A.R.S. §§ 42-5061(A)(1) and (A)(2) to such scenarios. The change incorporates the Department's established interpretations of these statutory exemptions, as detailed in Paragraph 11(e), and is thus not substantial in nature.

l. In response to a comment received by the Department after the close of the official comment period (see Paragraph 11(n) *infra*) regarding the examples provided under A.A.C. R15-5-1101(2), the third sentence of the rule has been amended to clarify that the list provides examples of *methods* of job printing. The change is not substantial in nature.

m. The Department has made minor stylistic and grammar-related changes suggested by the Governor's Regulatory Review Council staff.

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

The following subsections provide summaries of comments made regarding the Notice of Supplemental Proposed Rulemaking and the Department's responses to each comment:

a. *Comment*: Two industry associations submitted written comments and a tax practitioner submitted an oral comment disagreeing with the Department's decision to address electronic-based printing and distribution of printing in the A.A.C. Title 15, Article 11 job printing classification rules. The commenters questioned whether the scope of the job printing classification encompasses transactions involving digital forms of tangible personal property. Another tax practitioner submitted a related oral comment questioning the inclusion of digital forms of photographic images in A.A.C. R15-5-150, as it concerns sales of photography.

Response: The Department responded to this concern in the Notice of Supplemental Proposed Rulemaking, noting that during the April 5, 2004 oral proceeding held for the proposed rules, several attendees raised concerns about the Department's use of medium- and technology-neutral terminology in explaining the application of Arizona transaction privilege tax. Equal treatment of traditional and electronic forms of tangible personal property, reflected in the prior and present versions of the rules, is imperative to achieving parity in taxation. The Department's rules discussing taxable job printing activities that result in digital forms of printing are consistent with the Department's treatment of sales of electronic property as tangible personal property. A.R.S. § 42-5001(16) broadly defines "[t]angible personal property" as "personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses." This definition has existed in nearly identically worded form since the compilation of excise tax statutes in this state. *See* Ariz. Code § 73-1302 (1939); Laws 1935, ch. 77, art. II, § 1. The Department's longstanding position is that gross receipts derived from sales and leases of all forms of tangible personal property are taxable unless otherwise exempt. *See* State v. Jones, 137 P.2d 970 (Ariz. 1943) (sales of music emanating from taxpayer's jukeboxes constitute taxable sales of tangible personal property); A.A.C. R15-5-1853(C) (Supp. 87-2) (gross receipts derived from sale of non-custom electronic data processing programs are taxable as retail sales of tangible personal property); Ariz. Tax Ruling No. 1-17-83 (June 1, 1983) ("[m]ass-produced or standard software available to any purchaser" are subject to tax as "tangible personal property as music tapes and records, books and computer games"); Ariz. Transaction Privilege Tax Ruling TPR 93-48 (taxation of computer hardware, software, and related services); *see also* Ariz. Private Taxpayer Ruling LR04-010 (Nov. 15, 2004); Ariz. Private Taxpayer Ruling LR04-007 (Aug. 31, 2004); Ariz. Private Taxpayer Ruling LR02-020 (Nov. 5, 2002); Ariz. Private Taxpayer Ruling LR95-010 (Oct. 12, 1995).

A separate but related issue raised by this comment involves delineating the scope of the job printing classification to include electronic-based copying and reproduction activities. A general maxim for tax statutes is that they be given strict construction against the taxing authority and resolved in favor of the taxpayer. *See, e.g.*, State *ex rel.* Ariz. Dep't of Revenue v. Capitol Castings, Inc., 88 P.3d 159, 161 (Ariz. 2004); Energy Squared, Inc. v. Ariz. Dep't of Revenue, 56 P.3d 686, 689 (Ariz. Ct. App. 2002). Nevertheless, the approach is a default position used when ambiguity or uncertainty exists in the statute. *See Energy Squared, id.* More specifically, it is ambiguity that continues to be present after completing the normal process of statutory construction, which involves first looking to the words of the statute itself and according the statute its "plain meaning" if clear. *See, e.g.*, Centric-

Jones v. Town of Marana, 937 P.2d 654, 658 (Ariz. Ct. App. 1996). If there is any ambiguity, the rules of statutory construction then require the statute to be construed *as a whole*, considering its context, language, subject matter, historical background, effect and consequences, and spirit and purpose. *See* State Tax Comm'n v. Wallapai Brick & Clay Prods., 330 P.2d 988, 992-93 (Ariz. 1958); *Centric-Jones*, *id.*; State ex rel. Ariz. Dep't of Revenue v. Phoenix Lodge No. 708, Loyal Order of Moose, Inc., 928 P.2d 666, 671 (Ariz. Ct. App. 1996). That ambiguities are interpreted in favor of the taxpayer does not mean that courts should give words of a statute a "constricted or unnatural meaning" to support such an interpretation; instead, the language must be given its "full" or "plain and ordinary" meaning. *See Loyal Order of Moose*, *id.*; Wilderness World, Inc. v. Ariz. Dep't of Revenue, 895 P.2d 108 (Ariz. 1995). When interpreting a tax statute, courts follow the doctrine of *ejusdem generis*, which requires that an activity being taxed be substantially of the same kind, class, or character as those activities specifically enumerated in the statute. *See* Wilderness World Inc. v. Ariz. Dep't of Revenue, 882 P.2d 1281 (Ariz. Ct. App. 1993) (reversed in part on other grounds).

In clarifying specific applications of the statute in the administrative rules, the Department has had no need to strain the terms used in A.R.S. § 42-5066 to make taxable those activities that would otherwise be nontaxable. Instead, the Department has clarified the parameters of the job printing classification for taxpayers by discussing the application of transaction privilege tax to activities that are of the same nature and character as those already discussed in statute and current regulation, and by distinguishing what business activities and services are nontaxable. A.R.S. § 42-5066 states that the job printing classification includes "copying." The plain and ordinary meaning of the term "copying," as used in the statute, is intrinsically broad, and the final amended rules merely clarify that copying is taxable regardless of whether the copies of documents or data generated are physical "hard" copies or electronic. The Department has avoided merging into the "copying" concept of the job printing classification those activities that only tangentially involve or do not involve copying activities *by printers*, in keeping with the intent and purpose of the classification to tax the activities of those engaged in the business of "job printing, engraving, embossing, and copying."

b. *Comment*: The Department received an oral comment from a tax practitioner asking about the transaction privilege tax treatment of fees paid to the owner of a photograph that transfers a copy of the image to another for a particular use (*e.g.*, reproduction in a magazine), in a manner that does not constitute an outright retail sale.
Response: From a technical standpoint, this question may involve the personal property rental classification found at A.R.S. § 42-5071, depending on the contractual arrangement between the owner and user, and as such would be beyond the scope of the immediate rulemaking, which affects only the retail and job printing classifications. Nevertheless, the comment concerns a related aspect involving photography that warrants a brief explanation in this notice. Just as sales of photography can involve photographic images that are conveyed in various forms yet still constitute sales of tangible personal property subject to transaction privilege tax under the retail classification, leases and rentals of photography are subject to tax under the personal property rental classification. For such leases and rentals, A.R.S. § 42-5071(A)(7) provides an exemption for those images "used by this state on internet web sites, in magazines or in other publications that encourage tourism." Nevertheless, leases and rentals of images are distinguished from amounts derived by holders of copyright interests *solely* from transfers and assignments of such rights (*e.g.*, through a technology transfer agreement), if the latter transactions do not implicate any transfers of tangible personal property for consideration and otherwise fall outside the scope of activities subject to transaction privilege tax. Again, the parameters of what constitutes a taxable lease or rental of tangible personal property rather than a nontaxable transfer and assignment of intangible rights over such property depends on the particular terms of a contract and would not be unique to the area of photography as opposed to any other form of tangible personal property. Consequently, the Department does not perceive a need to amend A.A.C. R15-5-150 at this time.

c. *Comment*: The Department received an oral comments before and after the close of the official comment period from a tax practitioner who questioned whether the sale of photography to a person who incorporates the photography into a publication would qualify as an exempt sale for resale, suggesting that A.A.C. R15-5-150(C) as proposed in the September 3, 2004 Notice of Supplemental Proposed Rulemaking should be amended to address the issue. The tax practitioner raised a hypothetical in which an advertising agency hires a third-party "representative" to provide a photographic image, whereupon the representative hires a photographer to actually take and supply the image. The photographer sells the image to the representative for a fee, and the representative then sells the image without further editing or manipulation to an advertising agency for the fee it paid plus a markup.
Response: The intent of A.A.C. R15-5-150(C) was limited, in that it was merely to reword the general exclusion of sales for resale from transaction privilege tax under the retail classification for purposes of photography. Nevertheless, upon reviewing the source of confusion caused by the rephrasing, as was evident from this comment, the Department found that an explanation was no longer necessary for clarification. The original explanation at A.A.C. R15-5-150(C) was intended to provide the treatment of sales for resale of developing and printing activities. These exempt sales, which this rulemaking now clarifies are sales subject to tax under the *job printing* classification rather than the retail classification, are now fully addressed in A.A.C. R15-5-1112. As this particular

issue involving developing and printing activities no longer applies in the area of retail sales of photography, there is no longer a need to specifically address sales for resale in this provision. The Department has thus removed the proposed amended language in A.A.C. R15-5-150(C) stating that "[g]ross income or gross proceeds of a sale of photography to a business that resells the supplied image as a retail sale of tangible personal property are not taxable" under the retail classification. This removal has also been noted in Paragraph 10(e) *supra*.

The Department does not perceive a present need to include additional language to address the scenario raised by the practitioner in the hypothetical. The facts do not suggest a situation that distinguishes the transactions from any other sale or transfer of tangible personal property, where gross receipts of a sale of tangible personal property for resale are not subject to tax under the retail classification because the transaction does not constitute "selling at retail." In the hypothetical, the sale of the image by the photographer to the representative would be a nontaxable sale for resale, while the gross receipts of the representative from the representative's subsequent sale to the advertising agency would be subject to tax.

d. *Comment*: The Department received an oral comment from a tax practitioner who suggested that, in the first sentence of A.A.C. R15-5-150(B), "[g]ross income or gross proceeds derived *of* a sale" should instead read "[g]ross income or gross proceeds derived *from* a sale."

Response: The Department agrees with the suggestion and has amended the rules. A description of the change has been provided under Paragraph 10(c) *supra*.

e. *Comment*: The Department received an oral comments from a tax practitioner before and after the close of the official comment period regarding the transaction privilege tax consequences for instances in which the A.A.C. R15-5-104(C) "inconsequential element" provision would not apply to a business engaging in sales of photography. The practitioner asked whether the Department contemplated that activities such as editing would constitute a service in addition to a sale because it would not be a part of the process of taking and supplying a customer with an image. The practitioner also questioned whether gross income derived from fees for the process of taking images should be included as part of a vendor's taxable gross receipts for the sale of photography.

Response: Before specifically addressing this comment, it is worth reiterating that Arizona transaction privilege tax is a tax on the privilege of conducting business in the state, and is measured by the *gross receipts* of the taxpayer. *See, e.g.*, DaimlerChrysler Servs. N. Am., LLC v. Ariz. Dep't of Revenue, 110 P.3d 1031, 1036 (Ariz. Ct. App. 2005) (citing *Arizona State Tax Commission v. Southwest Kenworth*, 561 P.2d 757, 760 (Ariz. Ct. App. 1977)). Specifically, the retail classification for transaction privilege tax found at A.R.S. § 42-5061 imposes the tax on the "gross proceeds of sales or gross income derived from the business." By statutory definition, "gross proceeds of sales" and "gross income" broadly includes, among other things, "the value proceeding or accruing from the sale of tangible personal property" without any deduction on account of the cost of property sold, materials used, labor or service performed, interest paid, expense of any kind or losses. *See* A.R.S. §§ 42-5001(5), 42-5001(7). Consequently, a taxpayer's various costs incurred in such areas are generally subject to tax unless otherwise exempted by statute.

There are two potentially operative exemptions in responding to this comment: A.R.S. §§ 42-5061(A)(1) and (A)(2). A.R.S. § 42-5061(A)(1) exempts the gross proceeds of sales or gross income derived from "[p]rofessional or personal service occupations or businesses which involve sales or transfers of tangible personal property only as inconsequential elements." A.R.S. § 42-5061(A)(2) exempts the gross proceeds of sales or gross income derived from "[s]ervices rendered in addition to selling tangible personal property at retail."

A.R.S. § 42-5061(A)(1) exemption

Regarding application of the A.R.S. § 42-5061(A)(1) exemption, the Department has explained that professional and personal service occupations "are those wherein the professional is able to engage in the occupation by virtue of a state sanctioned or state issued license to engage in that occupation" (*e.g.*, lawyers, doctors, cosmeticians, etc.), whereas examples of "service businesses," which are also covered by the exemption, include "vehicle maintenance garages, pest control, lawn maintenance and other like services." *See* Ariz. Transaction Privilege Tax Ruling 90-2 (Aug. 1, 1990). In the context of a professional or personal service occupation or service business, "the services are geared toward the particular needs of the customer with the final product/service meeting those specific needs" wherein the final product need not be in tangible form, and the exemption generally covers those inconsequential sales or transfers of tangible personal property that are utilized by the person engaged in the occupation or business in the actual operation thereof or to facilitate the service (*e.g.*, shampoo used by a hair stylist to wash a customer's hair). *Id.* Assuming they meet the inconsequentiality test now provided under A.A.C. R15-5-104(C), such sales and transfers are exempt from transaction privilege tax under A.R.S. § 42-5061(A)(1), while the sales or purchases of the tangible personal property *to* the occupation or business (*i.e.*, the final consumer of the property for taxation purposes) would be subject to either transaction privilege or use tax. In contrast, sales or transfers of tangible personal property that fall outside the scope of the exemption include sales of items that are not tailored specifically to a particular customer and are otherwise normally available from a merchant in a retail transaction (*e.g.*, hair salon's sale to a customer of a bottle of shampoo). *See id.* Such transactions would be subject to transaction privilege tax under A.R.S. § 42-5061, unless

another exemption applies.

For purposes of the comment, a business could exclude costs such as editing if: (1) the business constitutes either a professional or personal service occupation or a service business and (2) the sale or transfer of the tangible personal property meets the inconsequentiality test currently provided in A.A.C. R15-5-104(C). The business of photography is not a professional or personal service occupation, as one does not enter into the business by virtue of a state sanctioned or state-issued license. Moreover, as is evident by a historical review of the Department's administrative regulation in the area, the business of photography as defined has been taxable under the retail classification and is not considered a service business. *See* A.A.C. R15-5-150 (amended effective Aug. 9, 1993) (a photographer's gross receipts derived from sales of photography—"the operation of taking, developing, processing, or printing pictures, prints, or images on or from film, video, or similar media"—are taxable under the retail classification); A.A.C. R15-5-1836 (Supp. 81-2) ("[s]ales by photographers of pictures taken and printed by them are taxable as retail sales," and "developing of films and making of prints of pictures taken by others, are taxable sales"). Consequently, assuming that the business implicated in the tax practitioner's comment engages in sales of photography and does not constitute a professional or personal service occupation, it would have to constitute a service business to fall within the A.R.S. § 42-5061(A)(1) exemption. While a business that engages in a wide spectrum of activities may constitute such a "service business," a business that only makes sales of photography as defined in the rules would not constitute a service business, as it is engaged in business activity subject to tax under the retail classification.

A.R.S. § 42-5061(A)(2) exemption

In *Arizona Transaction Privilege Tax Ruling* TPR 93-31 (May 10, 1993), the Department provided that the A.R.S. § 42-5061(A)(2) exemption generally applies to gross income derived from service activities rendered in addition to retail sales that fall into one (or more) of three categories: (1) repair labor, (2) installation labor, and (3) instruction and training. Nevertheless, TPR 93-31 explained that the three categories "are not intended to be an exclusive listing." Consequently, the A.R.S. § 42-5061(A)(2) exemption could cover other services that are rendered in addition to a retail sale *if*, like the three categories of services described above, the services are performed separate from—and thus "in addition to"—the sale of tangible personal property.

To address one of the practitioner's concerns (*i.e.*, the inclusion of a photographer's fees for the process of taking images in the photographer's taxable gross receipts for the sale of photography), if a retailer-taxpayer creates the tangible personal property it subsequently sells at retail, activities that fall within the scope of the exemption would have to be distinct from those involved in the actual creation of the tangible personal property at issue. The principle is that, to constitute exempt gross receipts derived from a service "in addition to" the sale, such exempt receipts cannot include taxable gross receipts derived from the vendor's costs of selling at retail, which, in the instance of a vendor that creates the property it subsequently sells, would include costs it passes on to the consumer for creating the product. *See* State Tax Comm'n v. Holmes & Narver, Inc., 548 P.2d 1162, 1165 (Ariz. 1976); Trico Elec. Co-op. v. State Tax Comm'n, 288 P.2d 782, 784 (Ariz. 1955); Walden Books Co. v. Ariz. Dep't of Revenue, 12 P.3d 809, 812 (Ariz. Ct. App. 2000); City of Phoenix v. Ariz. Rent-a-Car Sys., Inc., 893 P.2d 75, 79 (if activities of the taxpayer are incidental such that they are inseparable from the principal business and interwoven with the operation thereof to the extent that they are in effect an essential part of the major business, they will not be treated as a separate business for taxation purposes). *See also Walden Books*, 12 P.3d at 812 (income from services that are part of retail sales are included in the retail classification tax base because they are not services rendered in addition to selling tangible personal property at retail).

As was alluded to by the tax practitioner's comment, services provided in connection with a sale of photography that do not constitute an activity that is part of the process of "photography" as defined—to wit, taking and supplying the customer with an image—could constitute services rendered in addition to the sale of tangible personal property and be exempt under A.R.S. § 42-5061(A)(2). Nevertheless, many fees for intermediary activities that are part of the process of supplying a customer with a photographic image are part of a photographer's taxable gross receipts for the sale of photography, such as charges for the editing and production of images as well as sitting fees. Consequently, the Department has not included a general reference to "editing" services in the examples provided under A.A.C. R15-5-104(C).

Due to the level of elaboration that was necessary under the wording of A.A.C. R15-5-150(B) as provided in the Notice of Supplemental Proposed Rulemaking and resulting confusion caused by it, the Department has provided additional language that should assist readers in recognizing the application of the A.R.S. §§ 42-5061(A)(1) and (A)(2) exemptions to sales of photography (see Paragraph 10(k) *supra*).

f. *Comment*: The Department received an oral comment from a tax practitioner inquiring about the distinction in tax treatment between taxable sales of photography as addressed by A.A.C. R15-5-150 and certain nontaxable sales of commissioned artwork under A.A.C. R15-5-151. Specifically, he asked whether the rule could address differences between forms of photography such as commercial advertising photography and portrait photography.

Response: As discussed in A.A.C. R15-5-151(C), a creating artist's sale of a *painting, drawing, etching, sculp-*

ture, or piece of craftwork that is not a reproduction of an original work is nontaxable if the sale constitutes either a casual sale as defined in A.A.C. R15-5-2001(1) or "commissioned artwork"—that is, a "custom, one-of-a-kind art creation made by the individual artist pursuant to the particular requirements of a specific purchaser." Otherwise, the gross receipts of any person making regular sales of "paintings, drawings, etchings, sculptures, craftwork, other artwork or reproductions of such items to final consumers" are taxable, as explained in A.A.C. R15-5-151(A).

For purposes of A.A.C. R15-5-150, the "creations" at issue would be photographic images. Such an image can constitute artwork that is produced pursuant to a specific purchaser's particular requirements, but does not constitute a "painting, drawing, etching, sculpture, or a piece of craftwork" in the plain and ordinary meaning of these terms. Consequently, even if a photographic image constitutes artwork, the gross receipts of the photographer as the creating artist would be nontaxable only if the sale of the image is a casual sale—"an occasional transaction of an isolated nature made by a person who is not engaged in the business of selling, within or without the state, the same type or character of property as that which was sold." *See* A.A.C. R15-5-2001(1).

Based on this tax treatment, distinctions between forms of photography would not be relevant. Consequently, the Department does not perceive a need to amend the rules to address them.

g. *Comment*: The Department received an oral comment from an industry representative that expressed confusion over the term "digital printing" used as an example of a job printing activity under A.A.C. R15-5-1101(B).
Response: The Department agrees that the example causes unnecessary ambiguity and confusion and has deleted the term from the list of examples. This change has also been noted in Paragraph 10(f) *supra*.

h. *Comment*: In an oral comment, an industry representative asked for further clarification regarding the tax treatment of activities in which printing is distributed to a large number of recipients located within and without the state (*e.g.*, by direct mail or broadcast fax), due to the exemption under A.R.S. § 42-5066(B)(2) for printing shipped or delivered out of Arizona for use outside the state.
Response: The Department has amended A.A.C. R15-5-1102 by adding a subsection (E) that provides taxpayers with a general explanation of the exemption and an example of how they may substantiate such exempt sales. The change has also been noted in Paragraph 10(g) *supra*.

i. *Comment*: In written comment, two industry representatives asked for further clarification of the applicability of the retail classification exemptions under A.R.S. § 42-5061 to sales of materials to job printers.
Response: The Department has amended A.A.C. R15-5-1106 to specifically include a reference to A.R.S. § 42-5061 exemptions. The change has also been noted in Paragraph 10(h) *supra*.

j. *Comment*: In an oral comment, a tax practitioner asked if the list in A.A.C. R15-5-150(B) of the level of services that qualify the sale of photography as an inconsequential element could be expanded to include: photography fees (*i.e.*, for taking shots); creative fees; production; fees paid to stylists, assistants, and producers; assistance; fees for image editing (*e.g.*, manipulation of digital images with Adobe Photoshop®); charges for delivery by traditional or electronic means, and location scouting fees.
Response: The Department's response to the comment in Paragraph 11(e) *supra* provides an explanation of why the Department has decided not to include photography fees; creative fees; production; fees paid to stylists, assistants, and producers; and fees for image editing in the list. The Department also believes that including "assistance" in A.A.C. R15-5-150(B) would create greater confusion rather than provide additional guidance because of overly broad nature of the term. Delivery charges are already separately addressed by A.A.C. R15-5-133 for the purpose of all transactions subject to tax under the retail classification. The Department has amended the examples in A.A.C. R15-5-150(B) to include a reference to location scouting fees. This change is also noted in Paragraph 10(d) *supra*.

k. *Comment:* The Department received an oral comment expressing confusion over the term "digital or analog storage medium" used in A.A.C. R15-5-150(A), R15-5-1101(A), and R15-5-1101(C) of the September 3, 2004 Notice of Supplemental Proposed Rulemaking.
Response: Upon review, the Department determined that the term "digital or analog" describes forms of images that can be stored by any medium used in photography, and does not clarify that qualifying media can be anything capable of storing images. Consequently, the Department has decided to amend the rules by using the more generic term "data storage medium," as noted in Paragraph 10(a) *supra*.

l. *Comment*: A tax practitioner submitted an oral comment to the Department after the close of the official comment period inquiring whether the term "production activities" as used in A.A.C. R15-5-150(B) is limited in scope to those activities associated with production of a motion picture.
Response: Courts interpret administrative rules using the same method applied for statutes, interpreting them "to result in a fair and sensible meaning, giving the words and phrases used their ordinary meanings unless the context indicates otherwise." *See* Samaritan Health Servs. v. Ariz. Health Care Cost Containment Sys. Admin., 875 P.2d 193, 196 (Ariz. Ct. App. 1994). The term "production activities" is not defined in A.A.C. R15-5-150 or elsewhere in the Article, as the Department intended for the plain and ordinary meaning of the term to be used. A standard dictionary definition for "production" reveals that the term can mean, *inter alia*: "something that is pro-

duced naturally or as the result of labor and effort : PRODUCT"; "a literary or artistic work," "theatrical representation," or "an action resembling an elaborate theatrical performance"; and "the act or process of producing, bringing forth, or making." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1810 (1993).

Upon reviewing this definition, the Department believes that the practitioner's concern that the term could be interpreted to only apply to motion picture production activities is reasonable. Consequently, the Department has decided to amend the rules to address this issue as part of the changes described in Paragraph 10(k) *supra*.

m. *Comment*: An industry association representative submitted an oral comment after the close of the official comment period inquiring whether the job printing classification rules could be amended to exempt a printer's gross income derived from postage fees when the fees are separately stated and the printer has included no markup to its customer.

Response: A.R.S. § 42-5066, which addresses the job printing classification, does not provide an exemption for gross income derived from services that might be characterized as ancillary or in addition to sales of taxable activities, such as charges for shipping and handling; consequently, an administrative rule cannot provide for such an exemption. A.A.C. R15-5-1102(A) reflects this rationale in providing that "[g]ross income or gross proceeds derived from all of a printer's costs or expenses of filling a customer's printing order are subject to tax under this Article."

n. *Comment*: An industry association representative submitted an oral comment after the close of the official comment period inquiring whether the third sentence of the definition of "job printing" found at A.A.C. R15-5-1101(2) could be amended by deleting the reference to "inkjet printing" as an example of job printing. The representative stated that members of their association that constitute "mailing houses" regularly print, using inkjet printing techniques, mailing address information to mass-mailed media (*e.g.*, store catalogs) as part of their business of distributing the mass mailings on behalf of their customers. The representative stated that these mailing houses do not consider themselves subject to tax under the job printing classification and are not currently remitting transaction privilege tax on the gross receipts of such inkjet printing activity.

Response: Before responding directly to the concern raised in the comment, the Department recognized potential confusion caused by the wording of the third sentence of A.A.C. R15-5-1101(2), in that it purports to provide a list of "[e]xamples of job printing activities." In actuality, the sentence provides a list of methods by which job printing can be performed. Thus, for instance, a printer subject to tax under the job printing classification is taxable on its gross receipts derived from charges for photocopying performed for a client, whereas a law firm that is not subject to tax under the job printing classification is not taxable on its gross receipts derived from charges to a client for providing a photocopy of work product. For clarification purposes, the sentence has been amended as described in Paragraph 10(l) to specify that the list provides examples of methods of job printing.

Upon review, the Department can find no distinction to justify the removal of inkjet printing—used in the rule to refer generally to the method of printing wherein characters, images, and other data are produced by projecting electrically charged ink onto a surface. If a business described as a mailing house by the industry representative derives gross receipts from the business of copying or reproducing customer-provided data in a manner described in the definition at A.A.C. R15-5-1101(2), then the Department would consider the business's gross receipts subject to tax under the job printing classification. Whether any portion of the business's gross receipts beyond those derived from inkjet printing fall within the tax base for the classification in such a scenario would be determined using the three-part test enunciated by the Arizona Supreme Court in *State Tax Commission v. Holmes & Narver, Inc.*, 548 P.2d 1162 (Ariz. 1976). The test generally provides that if: (1) it can be readily ascertained without substantial difficulty which portion of the business is for services other than those subject to tax under the classification, (2) the amounts in relation to the company's total taxable business under the classification are not inconsequential, and (3) the services at issue cannot be said to be incidental to the taxable business, the gross income derived from such services are not included as part of the tax base for the business and are not subject to tax. *See* 548 P.2d at 1166.

The *Holmes & Narver* test, also known colloquially as the "separate-line-of-business" test, is applicable across transaction privilege tax classifications and, as such, is not a principle unique to the job printing classification. As such, the Department concludes that it would be inappropriate to include specific reference to the test in A.A.C. Title 15, Chapter 5, Article 11, which is limited in application to the job printing classification.

o. *Comment*: An industry association representative submitted an oral comment to the Department after the close of the official comment period, inquiring whether gross income derived from activities that are performed by a printer subject to tax under the job printing classification but that are not specified as being part of the tax base under A.R.S. § 42-5066 can be separated from the printer's taxable business by way of separate contracts.

Response: Contract bifurcation alone is not conclusive in whether gross receipts derived from a particular activity are subject to tax, and indeed, the *Holmes and Narver* court stated that "[s]uch a conclusion would honor substance over form." 548 P.2d at 1165-66. The appropriate analysis has been described in Paragraph 11(n) *supra*.

p. *Comment*: The Department received written comment from a tax practitioner after the close of the official com-

ment period, repeating a concern the practitioner previously raised as part of comments on the March 5, 2004 Notice of Proposed Rulemaking regarding A.A.C. R15-5-1106. The rule in the March 5 notice provided that the gross proceeds of sales to a printer of materials that do not become an ingredient or component part of a printing are "subject to tax under the retail classification . . . unless exempt." Nevertheless, since the subsequent September 3, 2004 Notice of Supplemental Proposed Rulemaking, the rule has provided that "[s]ales to a printer" of such materials "fall under the retail classification . . . and are subject to tax unless otherwise exempt under A.R.S. § 42-5061." Both versions of A.A.C. R15-5-1106 gave, as an example of the materials at issue, "film processing chemicals." The commenter stated that the language "refers to taxing 'materials that do not become an ingredient or component part of a printing,'" which he asserts is erroneous in the case of film processing materials because "[a]pproximately 68% of the photo processing chemicals do, in fact, become ingredient and component parts of the finished product" and "are transferred to the ultimate customer, at least in the photo processing industry."

Response: A.A.C. R15-5-1106 does not discuss whether sales to a printer of materials that do not become an ingredient or component part of a printing are subject to tax, because the ultimate taxability of such materials does not depend on whether they become ingredient or component parts. Rather, the rule states that such sales are considered within the framework of the A.R.S. § 42-5061 retail classification, and consequently, in light of the numerous exemptions applicable for that classification. For instance, A.R.S. § 42-5061(A)(39) exempts from transaction privilege tax gross receipts derived from sales of "liquid, solid or gaseous chemicals" used in

> printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involves direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process.

The specific inclusion of film processing chemicals to the rule in A.A.C R15-5-1106 responds to the prior inquiries to the Department regarding the applicability of transaction privilege tax to sales of such chemicals, and in which the Department had to reference to A.R.S. § 42-5061(A)(39) exemption under the retail classification. *See* Ariz. Private Taxpaying Ruling LR03-004 (May 9, 2003). The plain language of the rule does not state a determination of taxability for sales of such materials, but rather, directs the reader to look to the rubric of the retail classification rather than the job printing classification to analyze whether they are subject to transaction privilege tax.

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:

Not applicable

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

Not applicable

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 1. RETAIL CLASSIFICATION

Section
R15-5-150. Sale of Photography

ARTICLE 11. ~~SALES~~ TRANSACTION PRIVILEGE TAX – JOB PRINTING CLASSIFICATION

Section
R15-5-1101. ~~Repealed~~ Definitions
R15-5-1102. ~~Repealed~~ Printer's Sale of Printing
R15-5-1103. ~~Examples of printed articles~~ Repealed
R15-5-1104. ~~Definitions~~ Repealed
R15-5-1105. ~~Printing facilities located out of state~~ Repealed
R15-5-1106. Sale of ~~materials~~ Materials to a Printer
R15-5-1107. ~~Typesetting services~~ Repealed
R15-5-1109. ~~Interstate and Foreign Transactions~~ Repealed

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-150. Sale of Photography

A. ~~The following definitions apply for purposes of this rule:~~ In this Section:
1. ~~"Photographer" means a person who engages in the business of photography.~~ "Motion picture" has the same meaning as prescribed in A.R.S. § 41-1517.
2. "Motion picture production company" has the same meaning as prescribed in A.R.S. § 41-1517.
~~2.~~ 3. "Photography" means the ~~operation~~ process of taking~~, developing, processing, or printing pictures, prints, or~~ and supplying images ~~on or from~~ to customers, using film, video, or ~~other similar media~~ another data storage medium.
4. "Qualified motion picture production company" means a motion picture production company that holds a valid certificate issued pursuant to A.R.S. § 42-5009(H), establishing the company's qualification for the A.R.S. § 42-5061(B)(23) exemption.

B. ~~Gross receipts derived from sales~~ Gross income or gross proceeds derived from a sale of photography ~~by a photographer~~ are ~~taxable~~ subject to tax under ~~the retail classification~~ this Article, unless, under A.A.C. R15-5-104(C), the sale of such photography is considered an inconsequential element of nontaxable activities that are associated with the sale. Examples of nontaxable activities that are associated with a sale of photography include research; script consulting; director, crew, and equipment charges; preproduction or postproduction charges; location scouting fees; and music charges. Activities that are associated with the sale of photography are nontaxable if one of the following applies:
1. The vendor is engaged in both a professional or personal service occupation or a service business under A.R.S. § 42-5061(A)(1) and the business of selling photography at retail; or
2. The activities are not part of the manufacture, creation, or fabrication of photography and are not otherwise subject to tax under another Article of this Chapter.

C. ~~Developing of films and making of prints of pictures taken by others are taxable. Developing and printing for drugstores and other retailers are sales for resale.~~ Gross income or gross proceeds derived from a sale of photography used directly in motion picture production by a qualified motion picture production company are exempt from tax under this Article pursuant to A.R.S. § 42-5061(B)(23).

ARTICLE 11. ~~SALES~~ TRANSACTION PRIVILEGE TAX – JOB PRINTING CLASSIFICATION

R15-5-1101. ~~Repealed~~ Definitions

For purposes of this Article, the following definitions apply:
1. "Image developing" means the copying or reproducing by a printer of an image by any means from film, paper, video, or another data storage medium to photographic print paper or another storage medium that can visually display the image.
2. "Job printing" means the copying or reproducing by a printer of documents or data directly or indirectly provided by the printer's customer, including by another person at the customer's direction, for the ultimate purpose of producing a physical or electronic copy of the document or data. The document or data can be textual or pictorial, and may be received by the printer in physical or electronic form. Examples of methods of job printing include dye sublimation, electrostatic printing, flexography, gravure, inkjet printing, laser printing, lithography, offset printing, optical scanning, photocopying, photofinishing, reprographic printing, screen printing, thermography, xerography, and similar means of duplication.
3. "Photography" means the process of taking and supplying images to customers, using film, video, or another data storage medium.
4. "Printer" means a person that copies or reproduces textual or pictorial material by any means, process, or method of job printing, engraving, embossing, or copying, but that does not distribute the copied or reproduced material on the person's own behalf.
5. "Printing" means a finished product in physical or electronic form produced by a printer through job printing, engraving, embossing, or copying and that is held for sale by the printer.
6. "Qualifying health care organization" has the same meaning as prescribed in A.R.S. § 42-5001(10).
7. "Qualifying hospital" has the same meaning as prescribed in A.R.S. § 42-5001(11).

R15-5-1102. ~~Repealed~~ Printer's Sale of Printing

A. Gross income or gross proceeds derived from all of a printer's costs or expenses of filling a customer's printing order are subject to tax under this Article. Examples of costs or expenses include charges for set-up, die cutting, embossing, folding, and binding operations.

B. Gross income or gross proceeds derived from an Arizona printer's sale of printing within Arizona are subject to tax even when the printer conducts the job printing, engraving, embossing, or copying activity outside the state, unless the printing is shipped or delivered outside the state for use outside the state.

C. If a printer ships or delivers printing to be used outside the state to a common carrier for transportation to a location outside the state, the common carrier is deemed to be the agent of the printer for purposes of determining whether the printing has been shipped or delivered outside the state, regardless of who is responsible for payment of the freight charges.

D. A printer may substantiate a shipment or delivery of printing outside the state by one of the following records:

1. An internal delivery order that is supported by receipts for expenses incurred in delivery of printing and signed on the delivery date by the person who delivers the printing;
2. A common carrier's receipt or bill of lading;
3. A parcel post receipt;
4. An export declaration;
5. A receipt from a licensed broker; or
6. Proof of export or import, signed by a customs officer.

E. Gross income or gross proceeds derived from an Arizona printer's charges for the distribution of printing are generally subject to tax under this Article. In the absence of documentation listed in subsection (D), it remains the taxpayer's burden to substantiate that the gross income or gross proceeds derived from a sale of printing are not taxable because the printing is shipped or delivered outside the state for use outside the state, pursuant to A.R.S. § 42-5066(B)(2). A printer substantiates that printing is shipped or delivered outside the state for use outside the state if the printer shows that the address or number to which the printer distributes the printing does not identify or is incapable of identifying an in-state location.

R15-5-1103. ~~Examples of printed articles~~ Repealed

~~The printing or other reproduction of books, periodicals, magazines, business or professional stationery, and of any other articles copied or reproduced by printers, engravers, embossers, or copiers, is included under this classification.~~

R15-5-1104. ~~Definitions~~ Repealed

~~A printer is defined as any person who copies or reproduces an article by any means, process, or method. A printer is subject to the tax, even though conducting the actual printing outside the state, unless the end product is sold outside the state to out-of-state purchasers. Examples include: multigraphing, lithographing, photostating, multilithing, and other similar means of duplicating.~~

R15-5-1105. ~~Printing facilities located out of state~~ Repealed

~~A printer in this state is subject to the tax on his income from sales within this state even though the printing or reproduction equipment is located in another state.~~

R15-5-1106. Sale of ~~materials~~ Materials to a Printer

~~**A.** The income from sales made by a job printer of materials on which no printing or other reproduction is done is subject to tax under the retail classification (see Article 18).~~

~~**B.** The sale~~ Sales to a printer of ~~articles~~ materials ~~which~~ that do not become ~~a~~ an ingredient or component part of ~~the printed or reproduced item~~ a printing ~~is subject to tax~~ fall under the retail classification (see Article ~~18~~ 1 of this Chapter) ~~when sold to a user or consumer~~ and are subject to tax unless otherwise exempt under A.R.S. § 42-5061. Examples of such ~~articles~~ materials include~~:~~ color process plates, electrotypes, ~~color process plates,~~ film processing chemicals, printing plates, and wood mounts. In contrast, sales by the printer of any such materials that are job printed, engraved, embossed, or copied by the printer for the printer's customer constitute sales of printing and fall under this Article. An example is a printer's sale to a customer of a printing plate upon which the printer has performed job printing, engraving, embossing, or copying activity for the customer.

R15-5-1107. ~~Typesetting services~~ Repealed

~~Casting and setting monotype, linotype, and photoplates for others are deemed to be services and are not subject to tax. Income from reproduction proofs furnished to a printer in connection with these services is not taxable. However, sales of reproduction proofs to non-printers are taxable.~~

R15-5-1109. ~~Interstate and Foreign Transactions~~ Repealed

~~**A.** Gross receipts from sales of job printing, engraving, embossing or copying made in interstate or foreign commerce by a vendor within this state are deductible from the tax base if the vendor ships or delivers the job printing to a location outside of Arizona for use outside of Arizona.~~

~~**B.** In meeting the above requirement, if delivery is made by the vendor to a common carrier for transportation to a location outside Arizona, the common carrier is deemed to be the agent of the vendor for purposes of this rule regardless of who is~~

~~responsible for payment of the freight charges.~~

~~C.~~ ~~Suitable records for substantiating out-of-state shipments may include:~~

~~1. Internal delivery orders supported by receipts of expenses incurred in delivering the property and signed on the delivery date by the person who delivers the property;~~
~~2. Common carrier's receipt or bill of lading;~~
~~3. Parcel post receipt;~~
~~4. Export declaration;~~
~~5. Receipt from a licensed broker; or~~
~~6. Proof of export or import signed by a customs officer.~~

R15-5-1111. ~~Cost of printing~~ Miscellaneous Costs of a Printer Are Not Deductions

A. A ~~job~~ printer ~~who sublets the printing or other reproduction of an article may not deduct the cost thereof~~ shall not deduct the cost of subletting job printing, engraving, embossing, or copying activities.

B. A ~~job~~ printer ~~may~~ shall not ~~take a deduction for~~ deduct the cost of labor or materials employed in the job printing, engraving, embossing, or copying activity of another person.

R15-5-1112. ~~Photography~~ Sale of Image Developing

A. ~~Photography does not fall within this classification but is included under the retail classification (see Article 18).~~ Gross income or gross proceeds derived from a sale of image developing in which the image developing is not part of a sale of photography are subject to tax under this Article.

B. Gross income or gross proceeds derived from a sale of image developing to a business that resells the image developing are nontaxable under this Article.

C. Gross income or gross proceeds derived from a sale of image developing either to a qualifying health care organization that uses the image developing solely to provide health and medical related educational and charitable services or to a qualifying hospital are nontaxable under this Article. An example is image developing of x-ray film or photographs.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

[R05-470]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R18-2-101	Amend
R18-2-333	Amend
R18-2-901	Amend
R18-2-1101	Amend

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

Authorizing statutes: A.R.S. §§ 49-104(A)(10) and 49-404(A)

Implementing statute: A.R.S. § 49-425(A)

3. The effective date of the rules:

February 4, 2006

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 2235, June 10, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 2580, July 8, 2005

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

Name: Michele Mutchek

Address: ADEQ, Air Quality Planning Section
1110 W. Washington
Phoenix, AZ 85007

Telephone: (602) 771-2371 (Any ADEQ number may be reached in-state by dialing 1-800-234-5677 and asking for that extension.)

Fax: (602) 771-2366

E-mail: Mutchek.Michele@azdeq.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

Summary. The Arizona Department of Environmental Quality (ADEQ) is adopting new and updated incorporations by reference of the following federal regulations in state rules: Acid Rain, New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAP). In addition, ADEQ is updating its definition of "Volatile Organic Compounds (VOC)" to reflect recent changes in the federal definition. A typographical error has also been corrected at R18-2-901(9) of the state rules. The phrase "standards of performance for" appeared twice in this subsection and one of the duplicate phrases has been removed.

VOC Revision. EPA's November 29, 2004 rulemaking excluded four more compounds from the definition of VOC at Title 40 CFR § 51.100. These compounds were: 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C[3]F[7]OCH[3]) (known as HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (known as HFE-7500, HFE-s702, T-7145, and L-15381); 1,1,1,2,3,3,3-heptafluoropropane (known as HFC227ea); and methyl formate (HCOOCH[3]). A fifth compound, t-butyl acetate, will continue to be considered a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOC and shall be uniquely identified in emission reports, but t-butyl acetate will not be defined as a VOC for purposes of VOC emissions limitations or VOC content requirements. These revisions will be reflected in the ADEQ definition of VOC at R18-2-101(127).

Acid Rain. Federal Regulations already incorporated by reference from Title 40 CFR Parts 72, 74, 75, and 76, have been updated from July 1, 2003 to July 1, 2004, at R18-2-333. This includes only minor and technical changes. ADEQ is obligated under state and federal law to incorporate federal acid rain requirements in the permits issued by ADEQ. (See R18-2-306(A)(2) and 40 CFR 70.6(a)(1))

NSPS and NESHAP Regulations. Federal Regulations already incorporated by reference from 40 CFR Parts 60, and 63, have been updated from July 1, 2003 to July 1, 2004, at R18-2-901 and R18-2-1101(B). Federal Regulations already incorporated by reference from 40 CFR Parts 61, have been updated from July 1, 2002 to July 1, 2004, at R18-2-1101(A). As explained further below, this includes new subparts in Part 63 and significantly revised subparts in Parts 60 and 61.

Federal Regulations Proposed to be Incorporated.

ACID RAIN—40 CFR PART 72, 74, 75, AND 76

SUBPARTS ADDED: None

SUBPARTS SIGNIFICANTLY REVISED: None

NSPS —40 CFR PART 60

SUBPARTS ADDED: None

SUBPARTS SIGNIFICANTLY REVISED:

Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984 [Added at: 68 FR 59328, 10/15/2003] On April 8, 1987, the Environmental Protection Agency (EPA) promulgated the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. On March 27, 2000, the EPA issued a memorandum which stated that process tanks are "storage vessels" under the definition in the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. On May 26, 2000, the American Forest and Paper Association (AF&PA) filed a petition for judicial review of the March 27, 2000 memorandum. In the October 15, 2003 action, the EPA promulgated final rule amendments which were proposed pursuant to a settlement agreement with AF&PA regarding their petition for judicial review of the March 27, 2000 memorandum. The final rule amendments exempted certain storage vessels by capacity and vapor pressure, exempted process tanks, and added the process tank definition. The EPA also amended the performance standards to exempt storage

vessels that are subject to the National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.

NESHAP —40 CFR PART 61

SUBPARTS ADDED: None

SUBPARTS SIGNIFICANTLY REVISED:

Subpart M—National Emission Standards for Hazardous Air Pollutants for Asbestos [Added at 68 FR 54790, 09/18/2003] This EPA action amended the citation for labeling containers of asbestos waste materials, based on requirements in the Occupational Safety and Health Administration (OSHA) asbestos standard for the construction industry for proper labeling of asbestos waste. The amendments were made to correctly cite the appropriate numbering of the provisions in the OSHA regulations. The amendments were made by direct final rule.

NESHAP – 40 CFR PART 63

SUBPARTS ADDED:

Subpart C—List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List [Added at 61 FR 30816, 06/18/1996; 65 FR 47342, 08/02/2000; and 69 FR 69320, 11/29/2004] These EPA actions removed or modified substances from the EPA's list of Hazardous Air Pollutants (HAP) in three separate rulemakings. The first rulemaking removed caprolactam from the HAP list. This rulemaking was initiated in response to a petition to delete the substance, which was filed by AlliedSignal, Inc., BASF Corporation, and DSM Chemicals North America. The second rulemaking revised the definition of glycol ethers to exclude each individual compound in a group called the surfactant alcohol ethoxylates (SAED) and their derivatives from the glycol ethers category in the HAP list. It was issued by EPA in response to an analysis of potential exposure and hazards of SAED that was prepared by the Soap and Detergent Association and submitted to EPA. The third rulemaking removed the compound ethylene glycol monobutyl ether (EGBE) (2-Butoxyethanol) from the group of glycol ethers in the HAP list. This June 18, 1996 action was taken in response to a petition to delete the substance submitted by the Ethylene Glycol Ethers Panel of the American Chemistry Council (formerly the Chemical Manufacturers Association) on behalf of EGBE producers and consumers. In each of these actions, EPA determined that there were adequate data on the health and environmental effects of these substances to determine that emissions, ambient concentrations, bioaccumulation, or deposition of these substances may not reasonably be anticipated to cause adverse human health or environmental effects.

Special note on EGBE: Although this chemical was removed from the federal HAP list in the November 29, 2004 rule, several of the EPA actions below preceded this removal and still list EGBE as a HAP emitted.

Subpart EEEE—National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) [Added at 69 FR 5038, 02/03/2004] This EPA action promulgated NESHAP for new and existing organic liquids distribution (OLD) (non-gasoline) operations, which are carried out at storage terminals, refineries, crude oil pipeline stations, and various manufacturing facilities. The EPA estimated that approximately 5,900 tons per year (tpy) of HAP are emitted from facilities in this source category. Although a large number of organic HAP are emitted nationwide from these operations, benzene, ethylbenzene, toluene, vinyl chloride, and xylenes are among the most prevalent. The EPA estimated that the final standards would result in the reduction of HAP emissions from major sources with OLD operations by 60 percent.

Subpart FFFF—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing [Added at 68 FR 63852, 11/10/2003] This EPA action promulgated NESHAP for miscellaneous organic chemical manufacturing facilities. The final rule established emission limits and work practice standards for new and existing miscellaneous organic chemical manufacturing process units, wastewater treatment and conveyance systems, transfer operations, and associated ancillary equipment. The HAP emitted from miscellaneous organic chemical manufacturing facilities include toluene, methanol, xylene, hydrogen chloride, and methylene chloride. EPA estimated that the final rule would reduce HAP emissions by 16,800 tpy for existing facilities that manufacture miscellaneous organic chemicals.

Subpart IIII—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks [Added at 69 FR 22602, 04/26/2004] This EPA action promulgated NESHAP for automobile and light-duty truck surface coating operations located at major sources of HAP. According to EPA, the primary HAP emitted by these operations were toluene, xylene, glycol ethers, methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), ethylbenzene, and methanol. The final standards are expected to reduce nationwide organic HAP emissions from major sources in this source category by approximately 60 percent.

As noted below, this April 26, 2004 EPA action also amended the Surface Coating of Miscellaneous Metal Parts and Products NESHAP (40 CFR Part 63, Subpart MMMM) and the Surface Coating of Plastic Parts and Products NESHAP (40 CFR Part 63, Subpart PPPP) to clarify the interaction between these rules and Subpart IIII.

Subpart KKKK—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans [Added at 68 FR 64432, 11/13/2003] This EPA action promulgated NESHAP for metal can surface coating operations located at major sources of HAP. According to EPA, the HAP emitted by facilities in the metal can surface coating source category included EGBE and other glycol ethers, xylenes, hexane, MIBK, and MEK. The final standards are expected to reduce nationwide HAP emissions from major sources in this source category by approximately 6,800 tpy or 70 percent from the baseline organic HAP emissions of 9,600 tpy.

Subpart MMMM—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products [Added at 69 FR 130, 01/02/2004 and amended at 69 FR 22602, 04/26/2004] This EPA action promulgated NESHAP for miscellaneous metal parts and products surface coating operations located at major sources of HAP. The organic HAP emitted by facilities in the miscellaneous metal parts and products surface coating source category include xylenes, toluene, MEK, phenol, cresols/cresylic acid, glycol ethers (including EGBE), styrene, MIBK, and ethyl benzene. The final standards are expected to reduce nationwide organic HAP emissions from major sources in this source category by approximately 48 percent.

Subpart PPPP—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products [Added at 69 FR 20968, 04/19/2004 and amended at 69 FR 22602, 04/26/2004] This EPA action promulgated NESHAP for plastic parts and products surface coating operations located at major sources of HAP. According to EPA, the organic HAP emitted by facilities in the plastic parts and products surface coating source category included MEK, MIBK, toluene, EGBE and other glycol ethers, and xylenes. The final standards are expected to reduce nationwide organic HAP emissions from major sources in this source category by approximately 80 percent.

Subpart YYYY—National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines [Added at 69 FR 10512, 03/05/2004] This EPA action promulgated NESHAP for stationary combustion turbines. The EPA identified stationary combustion turbines as major sources of HAP emissions such as formaldehyde, toluene, benzene, and acetaldehyde. In the final NESHAP, the EPA divided the stationary combustion turbine category into eight subcategories, including lean premix gas-fired turbines, lean premix oil-fired turbines, diffusion flame gas-fired turbines, diffusion flame oil-fired turbines, emergency turbines, turbines with a rated peak power output of less than 1.0 megawatt, turbines burning landfill or digester gas, and turbines located on the North Slope of Alaska. They also adopted a final emission standard requiring control of formaldehyde emissions for all new or reconstructed stationary combustion turbines in the four lean premix and diffusion flame subcategories. The EPA estimated that 20 percent of the stationary combustion turbines affected by the final rule would be located at major sources. The final rule would protect public health by reducing exposure to air pollution, by reducing total national HAP emissions by an estimated 98 tpy in the 5th year after the rule is promulgated.

Subpart ZZZZ—National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines [Added at 69 FR 33474, 06/15/2004] This EPA action promulgated national emission standards for NESHAP for stationary reciprocating internal combustion engines (RICE) with a site-rating of more than 500 brake horsepower. The EPA identified stationary RICE as major sources of HAP emissions such as formaldehyde, acrolein, methanol, and acetaldehyde. The EPA estimated that 40 percent of stationary RICE would be located at major sources and thus, subject to the final rule. The final rule would protect public health by reducing exposure to air pollution by reducing total national HAP emissions by an estimated 5,600 tpy in the 5th year after the rule is promulgated.

Subpart AAAAA—National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants [Added at 69 FR 394, 01/05/2004] This EPA action promulgated NESHAP for the lime manufacturing source category. The lime manufacturing emission units regulated would include lime kilns, lime coolers, and various types of processed stone handling operations. The EPA identified the lime manufacturing industry as a major source of HAP emissions including, but not limited to, hydrogen chloride, antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, mercury, nickel, and selenium. Implementation of the final NESHAP would reduce non-volatile and semi-volatile metal HAP emissions from the lime manufacturing industry source category by approximately 6.5 tpy and would reduce emissions of particulate matter by 5,900 tpy.

Subpart EEEEE—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries [Added at 69 FR 21906, 04/22/2004] This EPA action promulgated NESHAP for iron and steel foundries. The HAP emitted by facilities in the iron and steel foundries source category include metal and organic compounds. For iron and steel foundries that produce low alloy metal castings, metal HAP emitted are primarily lead and manganese with smaller amounts of cadmium, chromium, and nickel. For iron and steel foundries that produce high alloy metal or stainless steel castings, metal HAP emissions of chromium and nickel can be significant. Organic HAP emissions include acetophenone, benzene, cumene, dibenzofurans, dioxins, formaldehyde, methanol, naphthalene, phenol, pyrene, toluene, triethylamine, and xylene. When fully implemented, the final rule would reduce HAP emissions from iron and steel foundries by over 820 tpy.

Subpart GGGGG—National Emission Standards for Hazardous Air Pollutants: Site Remediation [Added at 68 FR 58172, 10/8/2003] This EPA action promulgated NESHAP from site remediations. The final rule implements the CAA section 112(d) to control HAP emissions at major sources where remediation technologies and practices are used at the site to clean up contaminated environmental media (e.g., soils, groundwaters, or surface waters) or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media. The final rule applies to certain types of site remediation activities that are conducted at a facility where non-remediation

sources are a major source of HAP emissions. Some site remediations already regulated by rules established under the Comprehensive Environmental Response and Compensation Liability Act or the Resource Conservation and Recovery Act would not be subject to the final rule. The HAP emitted by site remediation activities can include benzene, ethyl benzene, toluene, vinyl chloride, xylenes, and other VOC.

Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing [Added at 68 FR 69164, 12/11/2003] This EPA action promulgated NESHAP for miscellaneous coating manufacturing facilities. The final rule established emission limits and work practice requirements for new and existing miscellaneous coating manufacturing operations, including process vessels, storage tanks, wastewater, transfer operations, equipment leaks, and heat exchange systems. According to EPA, the HAP emitted from miscellaneous coating manufacturing facilities included toluene, xylene, glycol ethers, methyl ethyl ketone, and methyl isobutyl ketone. The final rule would reduce HAP emissions by 4,900 tpy for existing facilities that manufacture miscellaneous coatings.

Subpart IIIII—National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants [Added at 68 FR 70904, 12/19/2003] This EPA action promulgated NESHAP, specifically mercury emissions, from mercury cell chlor-alkali plants. The final rule would limit mercury air emissions from these plants. Mercury cell chlor-alkali plants are a subcategory of the chlorine production source category listed under the authority of section 112(c)(1) of the CAA. The chlorine production source category was also identified as a source of mercury under section 112(c)(6) that must be subjected to standards. In addition, mercury cell chlor-alkali plants were listed as an area source category under section 112(c)(3) and (k)(3)(B) of the CAA. The final rule would reduce mercury emissions by about 3,068 kilograms per year from the levels allowed by the existing Mercury NESHAP. In addition, in this final December 19, 2003 action, pursuant to section 112(d)(4) of the CAA, EPA chose not to regulate chlorine and hydrochloric acid emissions from the mercury cell chlor-alkali plant subcategory.

Subpart RRRRR—National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing [Added at 68 FR 61868, 10/30/2003] This EPA action promulgated NESHAP for taconite iron ore processing facilities. The final standards established emission limitations for HAP emitted from new and existing ore crushing and handling operations, ore dryers, indurating furnaces, and finished pellet handling operations. The HAP emitted by taconite iron ore processing facilities include metal compounds (such as manganese, arsenic, lead, nickel, chromium, and mercury), products of incomplete combustion (including formaldehyde), and the acid gases hydrogen chloride and hydrogen fluoride.

Subpart TTTTT—National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining [Added at 68 FR 58615, 10/10/2003] This EPA action promulgated NESHAP for primary magnesium refining facilities. The EPA identified primary magnesium refining facilities as a major source of HAP emissions. The HAP emitted by facilities in the primary magnesium refining source category include chlorine, hydrochloric acid, dioxin/furan, and trace amounts of several HAP metals.

SUBPARTS SIGNIFICANTLY REVISED: None

Relationship to Other Proposed Rule. It should be noted that this rule amends R18-2-101 at the same time as another currently pending ADEQ rulemaking related to National Ambient Air Quality Standards (NAAQS). The proposed NAAQS rule was published in the Arizona Administrative Register on December 17, 2004, and would add a definition for "PM2.5" in R18-2-101. It would also update ADEQ's incorporation by reference for Appendix 2, which traditionally occurred in this rulemaking. The NAAQS rule was approved by the Governor's Regulatory Review Council at its June 7, 2005 meeting. It will be effective before this rulemaking and affect the numbering in R18-2-101.

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 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

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

Rule Identification

This proposed rulemaking, known as "NSPS/NESHAP/VOC 2004," amends four sections of A.A.C. Title 18, Chapter 2, Articles 1, 3, 9, and 11 (R18-2-101, R18-2-333, R18-2-901, and R18-2-1101).

Background

This rulemaking updates federal regulations by incorporating them by reference. These updates impact the following: New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants (NESHAP), and Acid Rain. ADEQ also is updating its definition of "Volatile Organic Compounds" (VOCs) to reflect recent changes in the federal definition.

As a result, this rulemaking updates federal NSPS and NESHAP requirements from July 1, 2003 to July 1, 2004 (R18-2-901 and R18-2-1101(B)), and requirements from July 1, 2002 to July 1, 2004 (R18-2-1101(A)). Additionally, this rulemaking makes minor and technical changes to Acid Raid by updating requirements from July 1, 2003 to July 1, 2004; adds four compounds to the list of excluded compounds from the definition of VOCs (R18-2-101(126)). Although some chemical compounds are deregulated, NESHAPs were promulgated for several process operations with anticipated reductions in hazardous air emissions by facilities across the nation. Potentially, a reduction in hazardous air emissions could occur in Arizona.

Costs

There are no additional costs to the regulated community when a state agency incorporates an already effective federal standard verbatim. The costs of compliance already have occurred, and were considered when the federal regulation was proposed and adopted. These rules impose no additional costs on the regulated community, small businesses, political subdivisions, or members of the public.

Costs to ADEQ are those that may accrue for implementation and enforcement of the standards as state law. Although there will be some small incremental costs due to this rulemaking, ADEQ does not intend to hire any additional employees to implement or enforce these rules.

Benefits

Benefits accrue to the regulated community when a state agency incorporates a federal regulation in order to become the primary implementer of the regulation, because the state agency is closer to those being regulated and, therefore, is generally easier to contact and to work with to resolve differences, compared with the U.S. EPA, whose regional office for Arizona is in San Francisco. Local implementation also reduces travel and communication costs.

Health benefits accrue to the general public whenever enforcement of environmental laws takes place. Adverse health effects from air pollution result in a number of economic and social consequences. Hazardous air pollutants include numerous chemical compounds that could produce cancer and other significant health effects (e.g., respiratory diseases, birth defects, eye irritation, and adverse impacts to the nervous system).

Examples of adverse health costs include the following:

1. Medical costs: these include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare, for example.
2. Work loss: this includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.
3. Increased costs for chores and caregiving: these include special caregiving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual's ability to undertake some or all normal chores, and he or she may require caregiving.
4. Other social and economic costs: these include restrictions on or reduced enjoyment of leisure activities, discomfort or inconvenience, pain and suffering, anxiety about the future, and concern and inconvenience to family members and others.

Conclusion

In conclusion, ADEQ expects the incremental costs associated with this rulemaking to be low, and apply solely to ADEQ. Air quality benefits are expected to be generally high. In addition, there are benefits to industry from being regulated by a geographically nearer government entity.

No adverse economic impacts are expected to accrue to political subdivisions, private businesses, or on their revenues or expenditures. Furthermore, no new employment is expected to occur. There are no adverse economic impacts on small businesses, although some regulatory benefits will accrue to them.

No anticipated economic impacts are expected to occur for consumers. Benefits to private persons as members of the general public are discussed above. There will be no direct impact on state revenues. There are no other, less costly alternatives for achieving the goals of this rulemaking. The rules are no less stringent and no more stringent than the federal regulations on each subject.

Rule impact reduction on small businesses. A.R.S. § 41-1035 requires ADEQ to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives (see below) for the rulemaking. The five listed methods are:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

The statutory objectives which are the basis of the rulemaking. The general statutory objectives that are the basis of this rulemaking are contained in the statutory authority cited in number 2 of this preamble. The specific objectives are as follows:

1. Implement rules necessary for EPA delegation of Clean Air Act § 111 (NSPS) program to Arizona.
2. Implement rules necessary for EPA § 112(1) program delegation to Arizona (NESHAP).
3. Implement rules necessary for acid rain program delegation to ADEQ.

ADEQ has determined that there is a beneficial impact on small businesses in transferring implementation of these rules to ADEQ. In addition, for all of these objectives, ADEQ is required to adopt the federal rules without reducing stringency. ADEQ, therefore, has found that it is not legal or feasible to adopt any of the five listed methods in ways that reduce the impact of these rules on small businesses. Finally, where federal rules impact small businesses, EPA is required by both the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act to make certain adjustments in its own rulemakings.

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

The phrase "as applicable requirements" was added after the phrase "are incorporated by reference" in the first paragraphs of R18-2-333, R18-2-901, R18-2-1101(A), and R18-2-1101(B).

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

Comment 1: One commenter suggested that the phrase "as applicable requirements" be added after the phrase "are incorporated by reference" in the first paragraphs of R18-2-901 and R18-2-1101. The commenter suggested this revision to make both the NSPS and NESHAP rules "applicable requirements" as defined in R18-2-101(14)(a), and for the purposes of R18-2-304 permit applications and R18-2-306 permit contents for sources.

Response: ADEQ agrees with the commenter and is also adding the suggested phrase to the Acid Rain incorporation by reference at R18-2-333.

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:

New incorporations by reference (subparts or larger)	Location
40 CFR 63, Subparts C, EEEE, FFFF, IIII, KKKK, MMMM, PPPP, YYYY, ZZZZ, AAAAA, EEEEE, GGGGG, HHHHH, IIIII, RRRRR, and TTTTT	R18-2-1101(B)
Incorporations by reference updated to 7/1/04 (may include new sections)	**Location**
40 CFR 72, 74, 75, and 76	R18-2-333(A)
40 CFR 60, listed subparts and accompanying appendices	R18-2-901
40 CFR 61, listed subparts and accompanying appendices	R18-2-1101(A)
40 CFR 63, listed subparts and accompanying appendices	R18-2-1101(B)

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

No.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

Section
R18-2-101. Definitions

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section
R18-2-333. Acid Rain

ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS

Section
R18-2-901. Standards of Performance for New Stationary Sources

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

Section
R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

ARTICLE 1. GENERAL

R18-2-101. Definitions
In addition to the definitions prescribed in A.R.S. § 49-101, 49-401.01, 49-421, 49-471, and 49-541, in this Chapter, unless otherwise specified:

1. No change
2. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. 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
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
11. No change
    a. No change
    b. No change
    c. No change
12. No change
13. No change
14. No change
    a. No change
    b. No change
15. No change
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22. No change
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25. No change
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    b. No change

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127. "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions. This includes any such organic compound other than the following:
    a. Methane;
    b. Ethane;
    c. Methylene chloride (dichloromethane);
    d. 1,1,1-trichloroethane (methyl chloroform);
    e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
    f. Trichlorofluoromethane (CFC-11);
    g. Dichlorodifluoromethane (CFC-12);
    h. Chlorodifluoromethane (HCFC-22);
    i. Trifluoromethane (HFC-23);
    j. 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);
    k. Chloropentafluoroethane (CFC-115);
    1. 1,1,1-trifluoro 2,2-dichioroethane (HCFC-123);
    m. 1,1,1,2-tetrafluoroethane (HFC-134a);
    n. 1,1-dichloro 1-fluoroethane (HCFC-141b);
    o. 1 -chloro 1,1-difluoroethane (HCFC-142b);
    p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
    q. Pentafluoroethane (HFC-125);
    r. 1,1,2,2-tetrafluoroethane (HFC-134);
    s. 1,1,1-trifluoroethane (HFC-143a);

t. 1,1-difluoroethane (HFC-152a);
u. Parachlorobenzotrifluoride (PCBTF);
v. Cyclic, branched, or linear completely methylated siloxanes;
w. Acetone;
x. Perchloroethylene (tetrachloroethylene);
y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
z. 1,3-dichioro-1,1,2,2,3-pentafluoropropane (HCFC-225 cb);
aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
bb. Difluoromethane (HFC-32);
cc. Ethylfluoride (HFC-161);
dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
ee. 1, 1,2,2,3-pentafluoropropane (HFC-245ca);
ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);
gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);
hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);
ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);
kk. Chlorofluoromethane (HCFC-31);
ll. 1 chloro-1-fluoroethane (HCFC-151a);
mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C4F9OCH3);
oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3);
pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C4F90C2H5);
qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OC2H5;
rr. Methyl acetate;
ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C_3F7OCH_3, HFE—7000);
tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE – 7500);
uu. 1,1,1,2,3,3,3-hentafluoropropane (HFC 227ea); and
vv. Methyl formate (HCOOCH3); and
~~ss~~ww. Perfluorocarbon compounds that fall into these classes:
  i. Cyclic, branched, or linear, completely fluorinated alkanes.
  ii. Cyclic, branched, or linear, completely fluornated ethers with no unsaturations.
  iii. Cycle, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or
  iv. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
xx. The following compound is VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

128. No change

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-333. Acid Rain

A. 40 CFR 72, 74, 75 and 76 and all accompanying appendices, adopted as of July 1, ~~2003~~2004, (and no future amendments) are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington D.C. 20402-9328.

B. When used in 40 CFR 72, 74, 75 or 76, "Permitting Authority" means the Arizona Department of Environmental Quality and "Administrator" means the Administrator of the United States Environmental Protection Agency.

C. If the provisions or requirements of the regulations incorporated in this Section conflict with any of the remaining portions of this Title, the regulations incorporated in this Section apply and take precedence.

ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS

R18-2-901. Standards of Performance for New Stationary Sources

Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS), and all accompanying appendices, adopted as of July 1, ~~2003~~2004, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by

the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart D - Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
3. Subpart Da - Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
4. Subpart Db - Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units.
5. Subpart Dc - Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.
6. Subpart E - Standards of Performance for Incinerators.
7. Subpart Ea - Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced after December 20, 1989 and on or Before September 20, 1994.
8. Subpart Eb - Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996.
9. Subpart Ec - ~~Standards of Performance for~~ Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.
10. Subpart F - Standards of Performance for Portland Cement Plants.
11. Subpart G - Standards of Performance for Nitric Acid Plants.
12. Subpart H - Standards of Performance for Sulfuric Acid Plants.
13. Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.
14. Subpart J - Standards of Performance for Petroleum Refineries.
15. Subpart K - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
16. Subpart Ka - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
17. Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
18. Subpart L - Standards of Performance for Secondary Lead Smelters.
19. Subpart M - Standards of Performance for Secondary Brass and Bronze Production Plants.
20. Subpart N - Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
21. Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
22. Subpart O - Standards of Performance for Sewage Treatment Plants.
23. Subpart P - Standards of Performance for Primary Copper Smelters.
24. Subpart Q - Standards of Performance for Primary Zinc Smelters.
25. Subpart R - Standards of Performance for Primary Lead Smelters.
26. Subpart S - Standards of Performance for Primary Aluminum Reduction Plants.
27. Subpart T - Standards of Performance for Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
28. Subpart U - Standards of Performance for Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
29. Subpart V - Standards of Performance for Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
30. Subpart W - Standards of Performance for Phosphate Fertilizer Industry: Triple Superphosphate Plants.
31. Subpart X - Standards of Performance for Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
32. Subpart Y - Standards of Performance for Coal Preparation Plants.
33. Subpart Z - Standards of Performance for Ferroalloy Production Facilities.
34. Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
35. Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
36. Subpart BB - Standards of Performance for Kraft Pulp Mills.
37. Subpart CC - Standards of Performance for Glass Manufacturing Plants.
38. Subpart DD - Standards of Performance for Grain Elevators.
39. Subpart EE - Standards of Performance for Surface Coating of Metal Furniture.
40. Subpart GG - Standards of Performance for Stationary Gas Turbines.
41. Subpart HH - Standards of Performance for Lime Manufacturing Plants.
42. Subpart KK - Standards of Performance for Lead-Acid Battery Manufacturing Plants.
43. Subpart LL - Standards of Performance for Metallic Mineral Processing Plants.
44. Subpart MM - Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.

45. Subpart NN - Standards of Performance for Phosphate Rock Plants.
46. Subpart PP - Standards of Performance for Ammonium Sulfate Manufacture.
47. Subpart QQ - Standards of Performance for Graphic Arts Industry: Publication Rotogravure Printing.
48. Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.
49. Subpart SS - Standards of Performance for Industrial Surface Coating: Large Appliances.
50. Subpart TT - Standards of Performance for Metal Coil Surface Coating.
51. Subpart UU - Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.
52. Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
53. Subpart WW - Standards of Performance for Beverage Can Surface Coating Industry.
54. Subpart XX - Standards of Performance for Bulk Gasoline Terminals.
55. Subpart AAA - Standards of Performance for New Residential Wood Heaters.
56. Subpart BBB - Standards of Performance for Rubber Tire Manufacturing Industry.
57. Subpart DDD - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
58. Subpart FFF - Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.
59. Subpart GGG - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries.
60. Subpart HHH - Standards of Performance for Synthetic Fiber Production Facilities.
61. Subpart III - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
62. Subpart JJJ - Standards of Performance for Petroleum Dry Cleaners.
63. Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
64. Subpart LLL - Standards of Performance for Onshore Natural Gas Processing; SO2 Emissions.
65. Subpart NNN - Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
66. Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.
67. Subpart PPP - Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants.
68. Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.
69. Subpart RRR - Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
70. Subpart SSS - Standards of Performance for Magnetic Tape Coating Facilities.
71. Subpart TTT - Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
72. Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries.
73. Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.
74. Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills.
75. Subpart AAAA - Standards of Performance for Small Municipal Waste Combustion Units for Which Construction Is Commenced after August 30, 1999, or for Which Modification or Reconstruction Is Commenced after June 6, 2001.
76. Subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced after November 30, 1999, or for Which Modification or Reconstruction Is Commenced on or after June 1, 2001.

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

A. Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs), and all accompanying appendices, adopted as of July 1, ~~2002~~2004, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart C - Beryllium.
3. Subpart D - Beryllium Rocket Motor Firing.
4. Subpart E - Mercury.
5. Subpart F - Vinyl Chloride.
6. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
7. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
8. Subpart M - Asbestos.

9. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
10. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
11. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
12. Subpart V - Equipment Leaks (Fugitive Emission Sources).
13. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
14. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
15. Subpart FF - Benzene Waste Operations.

B. Except as provided in R18-2-1102, the following subparts of 40 CFR 63, NESHAPs for Source Categories, and all accompanying appendices, adopted as of July 1, ~~2003~~2004, or the specific date provided below, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart B - Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j).
3. Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List, includes amendments adopted as of November 29, 2004.
~~3.~~4. Subpart D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants.
~~4.~~5. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
~~5.~~6. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
~~6.~~7. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
~~7.~~8. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
~~8.~~9. Subpart J - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production.
~~9.~~10. Subpart L - National Emission Standards for Coke Oven Batteries.
~~10.~~11. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
~~11.~~12. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
~~12.~~13. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
~~13.~~14. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
~~14.~~15. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
~~15.~~16. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
~~16.~~17. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
~~17.~~18. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
~~18.~~19. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
~~19.~~20. Subpart X - National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting.
~~20.~~21. Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.
~~21.~~22. Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
~~22.~~23. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
~~23.~~24. Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
~~24.~~25. Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
~~25.~~26. Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
~~26.~~27. Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
~~27.~~28. Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
~~28.~~29. Subpart KK - National Emission Standards for the Printing and Publishing Industry.
~~29.~~30. Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.
~~30.~~31. Subpart MM - National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.
~~31.~~32. Subpart OO - National Emission Standards for Tanks - Level 1.
~~32.~~33. Subpart PP - National Emission Standards for Containers.

~~33.~~34. Subpart QQ - National Emission Standards for Surface Impoundments.
~~34.~~35. Subpart RR - National Emission Standards for Individual Drain Systems.
~~35.~~36. Subpart SS - National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
~~36.~~37. Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1.
~~37.~~38. Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards.
~~38.~~39. Subpart VV - National Emission Standards for Oil-Water Separators and Organic-Water Separators.
~~39.~~40. Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2.
~~40.~~41. Subpart XX - National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
~~41.~~42. Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.
~~42.~~43. Subpart CCC - National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
~~43.~~44. Subpart DDD - National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
~~44.~~45. Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.
~~45.~~46. Subpart GGG - National Emission Standards for Pharmaceuticals Production.
~~46.~~47. Subpart HHH - National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities.
~~47.~~48. Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
~~48.~~49. Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.
~~49.~~50. Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.
~~50.~~51. Subpart MMM - National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
~~51.~~52. Subpart NNN - National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
~~52.~~53. Subpart OOO - National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins.
~~53.~~54. Subpart PPP - National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production.
~~54.~~55. Subpart QQQ - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting.
~~55.~~56. Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.
~~56.~~57. Subpart TTT - National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
~~57.~~58. Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
~~58.~~59. Subpart VVV - National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.
~~59.~~60. Subpart XXX - National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese.
~~60.~~61. Subpart AAAA - National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.
~~61.~~62. Subpart CCCC - National Emission Standards for Hazardous Air Pollutants: Manufacture of Nutritional Yeast.
63. Subpart EEEE - National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline).
64. Subpart FFFF - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.
~~62.~~65. Subpart GGGG - National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.
~~63.~~66. Subpart HHHH - National Emissions Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.
67. Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.
~~64.~~68. Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.
69. Subpart KKKK - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.
70. Subpart MMMM - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.
~~65.~~71. Subpart NNNN - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.
~~66.~~72. Subpart OOOO - National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.
73. Subpart PPPP - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

~~67.~~74. Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.
~~68.~~75. Subpart RRRR - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.
~~69.~~76. Subpart SSSS - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.
~~70.~~77. Subpart TTTT - National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.
~~71.~~78. Subpart UUUU - National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.
~~72.~~79. Subpart VVVV - National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.
~~73.~~80. Subpart WWWW - National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.
~~74.~~81. Subpart XXXX - National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.

82. Subpart YYYY - National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
83. Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
84. Subpart AAAAA - National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants
~~75.~~85. Subpart BBBBB - National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
~~76.~~86. Subpart CCCCC - National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.
87. Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
~~77.~~88. Subpart FFFFF - National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing.
89. Subpart GGGGG - National Emission Standards for Hazardous Air Pollutants: Site Remediation.
90. Subpart HHHHH - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
91. Subpart IIIII - National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
~~78.~~92. Subpart JJJJJ - National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.
~~79.~~93. Subpart KKKKK - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.
~~80.~~94. Subpart LLLLL - National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.
~~81.~~95. Subpart MMMMM - National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations.
~~82.~~96. Subpart NNNNN - National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.
~~83.~~97. Subpart PPPPP - National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands.
~~84.~~98. Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.
99. Subpart RRRRR - National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
~~85.~~100. Subpart SSSSS - National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.
101. Subpart TTTTT - National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE MANAGEMENT

[R05-469]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

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

2. The statutory authority for the rulemaking, 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. The effective date of the rules:

February 4, 2006

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 869, February 25, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 2598, July 8, 2005

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

Name: Denise L. McConaghy, Senior Enforcement Officer

Address: Arizona Department of Environmental Quality
Office of Administrative Counsel
1110 W. Washington
Phoenix, AZ 85007

Telephone: (602) 771-4110 or (800) 234-5677, enter 771-4110 (Arizona only)

Fax: (602) 771-2251

TTD: (602) 771-4829

E-mail: mcconaghy.denise@azdeq.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

Summary

The Department of Environmental Quality (DEQ) has amended the state's hazardous waste rules to incorporate the new text in the federal regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This rulemaking will fulfill the United States Environmental Protection Agency's (EPA's) reauthorization requirement that states implementing the hazardous waste management program incorporate amendments promulgated in the federal regulations through adoption of those changes into the state rules. This rulemaking also complies with A.R.S. § 49-922, which requires DEQ to adopt rules implementing a program that is equivalent to and consistent with federal hazardous waste regulations. Arizona's hazardous waste rules are largely identical to the federal regulations authorized by RCRA, as amended by HSWA, because the rules have incorporated the federal regulations by reference. Arizona's hazardous waste rules, found in 18 A.A.C. 8, Article 2, are well established and have been effective since 1984. The amendments in this rulemaking adopt changes to the federal regulations promulgated between July 1, 2002, and June 30, 2004, with the exception of the adoption of corrections to one of these regulation changes, which corrections were promulgated on October 25, 2004.

Explanation of the rules

The EPA has delegated to DEQ implementation of the hazardous waste management program in Arizona. The sections in Article 2 (the Arizona regulations) are reviewed and amended regularly to incorporate the new text from the applicable federal regulations. These rule reviews and amendments are made in order to fulfill EPA's reauthorization requirement: that states implementing the hazardous waste management program incorporate amendments promulgated in the federal regulations through adoption of those changes into state rules. The EPA requires that Arizona be periodically reauthorized to manage the federal hazardous waste program. Without this reauthorization, the EPA, rather than DEQ, would administer the hazardous waste program in Arizona. DEQ first received authorization to implement the RCRA program in 1985. DEQ seeks to continue administering Arizona's hazardous waste program, and thus complies with the federal requirements for reauthorization; this includes adopting changes to the state rules that reflect the recent amendments to federal RCRA regulations. This rulemaking incorporates federal amendments promulgated as of June 30, 2004, and corrections to one of these federal amendments, which corrections were promulgated on October 25, 2004.

The federal regulations are found in the Code of Federal Regulations (CFR) at 40 CFR 260 through 273. Formerly, subsection (A) of sections R18-8-261, 262, 264, 265, 266, 268, and 270 incorporated by reference the federal regulations published at 40 CFR 261, 262, 264, 265, 266, 268, and 270 as of July1, 2002. This rulemaking replaced July 1, 2002, with July 1, 2004, in the incorporations by reference for subsection (A) of sections R18-8-261, 262, 264, 265, 266, 268, and 270 with the exception of subsection 40 CFR 262.34 (j), which is incorporated by reference as of October 25, 2004.

EPA promulgated changes to the RCRA regulations since Arizona incorporated the July 1, 2001, and July 1, 2002, amendments. These subsequent changes were published in the *Federal Register*. DEQ staff relied on the *Federal Register* notices for descriptions of the amendments and for EPA's assessment of the economic impacts of the changes.

In addition to incorporating the federal regulations, on occasion the Arizona rules tailor the new text of the federal regulations, when necessary, to conform the language to Arizona's rules for administering the hazardous waste program. DEQ does not intend the changes to the incorporated text, when made, to substantively change the federal regulations. For example, the federal regulations refer to the EPA as the implementing agency, but because Arizona is authorized to administer its hazardous waste program, most references to the implementing agency as "EPA" are replaced with "DEQ." Such tailoring for Arizona purposes was not needed for this particular rulemaking, however.

DEQ believes this rulemaking will benefit the public. Most of the federal regulations incorporated by reference in this rulemaking are required for reauthorization. Adoption of federal regulations will also benefit the regulated community, in particular, by promoting regulatory uniformity among states.

Description of the Federal Register notices that made changes to the incorporated federal regulations between July 1, 2002, and June 30, 2004; and on October 25, 2004:

67 FR 48393-48415 – Zinc Fertilizers Made from Recycled Hazardous Secondary Materials

EPA issued a final rule that established a more consistent regulatory framework for the practice of making zinc fertilizer products from recycled hazardous secondary materials and established conditions for excluding hazardous secondary materials used to make zinc fertilizers from the regulatory definition of solid waste. This revision also established new product specifications for contaminants in zinc fertilizers made from those secondary materials. It did not seek to address any other aspect of contaminants in fertilizers. In summary, this revision: removed the exemption from land disposal restrictions (LDR) treatment standards for zinc fertilizers made from electric arc furnace dust (K061); established a conditional exclusion from the RCRA regulatory definition of solid waste for secondary materials that are legitimately recycled to make zinc micronutrient fertilizers; and established conditions (chiefly concentration limits for certain heavy metals and dioxins) under which zinc fertilizers produced from hazardous secondary materials are not classified as solid wastes, and hence not subject to RCRA subtitle C regulation.

67 FR 62618-62625 – Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries

This revision granted a national treatability variance from the LDR treatment standards for radioactively contaminated cadmium-, mercury-, and silver-containing batteries by designating new treatment subcategories for these wastes in response to a rulemaking petition from the Department of Energy. EPA determined that the treatment standards of thermal recovery for cadmium batteries and of roasting and retorting for mercury batteries were technically inappropriate because any recovered metals would likely contain residual radioactive contamination and not be usable. The numerical treatment standard for silver batteries was also deemed inappropriate because of the potential increase in radiation exposure to workers associated with manually segregating silver-containing batteries for the purpose of treatment. Macroencapsulation in accordance with the provisions for treatment standards for hazardous debris was designated as the required treatment prior to land disposal for the new waste subcategories. This will allow safe disposal of these radioactively contaminated materials.

67 FR 77687-77692 – NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors-Corrections

On September 30, 1999, EPA promulgated regulations to control emissions of hazardous air pollutants from incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous wastes. EPA subsequently promulgated three rules that revised these regulations: a Direct Final Rule published on July 3, 2001, an Interim Standards Rule published on February 13, 2002, and a Final Amendments Rule published on February 14, 2002. In this revision EPA corrected technical errors in those regulations.

The corrections included a clarification on when a Notification of Compliance must be submitted for a source that conducts performance testing before the compliance date.

Other corrections were made to conform the regulations to address the original intent of the subject rule as expressed in the applicable preamble. For example, when amending compliance date extension requirements, EPA did not make a conforming change to 40 CFR § 270.19(e) to address changes to those requirements. This action revised 40 CFR § 270.19(e) to reflect the intended changes.

69 FR 21737-21754 – National Environmental Performance Track Program

This revision amended 40 CFR 262.34 to allow large quantity hazardous waste generators who are members of EPA's National Performance Track Program up to 180 days, and in certain cases 270 days, to accumulate their hazardous waste without a RCRA permit or interim status, provided that these generators meet certain conditions. It also provided simplified reporting requirements for facilities that are members of Performance Track and governed by Maximum Available Control Technology (MACT) of the Clean Air Act. EPA intended the changes to provide regulatory relief and they do not impose new regulatory requirements. These provisions are intended to serve as incentives for facilities to join the Performance Track Program.

69 FR 62217-62224 – National Performance Track Program; Corrections

This revision corrected language errors in the preamble of the original rule, and reinserted regulatory language that was included in the proposed rule but was inadvertently omitted in the final rule for 40 CFR §§ 262.34(j)(3)(i), 262.34(j)(3)(ii), and 262.34(j)(7).

69 FR 22602-22661 – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light Duty Trucks

This revision promulgated national emission standards for hazardous air pollutants (NESHAP) for automobile and light-duty truck surface coating operations at major sources of hazardous air pollutants (HAP). It amended RCRA Air Emission Standards for Equipment Leaks at 40 CFR parts 264 and 265, subpart BB, for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) to exempt air emissions from certain activities covered by the final national emission standards for hazardous air pollutants (NESHAP).

Generally, subpart BB of 40 CFR part 264 applies to equipment that contains or contacts RCRA hazardous waste with organic concentrations of at least 10 percent by weight. Subpart BB was designed to minimize air emissions from leaks from equipment such as pumps, valves, flanges and connections. To avoid duplication between subpart BB and the final NESHAP, EPA exempts equipment from subpart BB if it is subject to the Surface Coating of Automobiles and Light-Duty Trucks NESHAP.

Department-initiated changes

Each section of the rules provides a web page address for the Government Printing Office, where a reader can obtain a copy of the part of the Code of Federal Regulations that is referenced. That Web page address has changed. Therefore, DEQ amended some of the sections solely to correct the Web page address, as well as correcting the Web page address in sections where other amendments are made.

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 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

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

Identification of the final rulemaking

This rulemaking incorporates into Arizona hazardous waste rules changes in the federal hazardous waste regulations promulgated as of July 1, 2004, and (for one amendment correction) October 25, 2004. It accomplishes this by amending rules codified in Arizona Administrative Code Title 18, Chapter 8, Article 2, to replace July 1, 2002, with July 1, 2004, and adds October 25, 2004 (for 40 CFR 262.34(j)), in the incorporations by reference, in compliance with A.R.S. § 49-922.

DEQ believes this rulemaking will benefit the state. Most of the federal regulations incorporated by reference in this rulemaking are required for reauthorization. Adoption of federal regulations also benefits stakeholders, in particular, by promoting regulatory uniformity between states.

Limitations of the data

Adequate data was not reasonably available to comply with the requirements of A.R.S. § 41-1055(B). The following discussion is offered pursuant to A.R.S. § 41-1055(C). DEQ was unable to estimate the number of facilities impacted by some of the changes made in the incorporated federal regulations. Two databases contain information on regulated facilities and entities: the Arizona Unified Repository for Informational Tracking of the Environment (AZURITE) and the Revenue Management System (RMS). These databases were not set up to track certain information, and updates do not always keep pace with all data needs. In this instance, DEQ could not determine the numbers of the following impacted entities:

a. Entities that were also state agencies;
b. Entities that were also subdivisions of the state;
c. Entities that were also small businesses.

Methods used to obtain data

DEQ used the AZURITE and RMS databases whenever possible to find the number of entities affected by the changes. DEQ then filled data gaps by using the knowledge of experienced DEQ staff. Some of the rule changes have no significant economic impact in Arizona. An explanation of why there is no impact is provided for these changes. For other incorporated changes, none of the impacted entities exist in Arizona, and thus, there was no economic impact.

Executive Order 12866 (58 FR 51735, October 4, 1993), requires the EPA to determine whether regulatory actions are significant. Only significant actions are subject to federal Office of Management and Budget review. A "significant regulatory action" is one that may:

(1) Have an annual effect on the national economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
(3) Materially alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligation of recipients thereof; or
(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or through principles set out in Executive Order 12866.

The costs and benefits of incorporating updated federal regulations include the costs of all the changes made to the federal regulations between July 1, 2002, and June 30, 2004, and for the October 25, 2004, amendment correction. These amendments were published in the *Federal Register*, and when the amendments constituted "significant regulatory actions", economic impact information was included in the publication. A list of all *Federal Register* publications used to develop the economic impact statement for the rulemaking is stated earlier in this document.

The EPA determined that four of the six amendments to the federal regulations described below were not "significant regulatory actions." For those amendments to the federal regulations that impact Arizona entities, a summary of the economic information in each *Federal Register* notice follows.

Data sources

DEQ staff relied on the *Federal Register* notices to develop this economic impact statement. The public may view these notices online at http://www.gpoaccess.gov/fr/index.html, or by visiting DEQ's offices. Each study references its underlying data.

Summaries of economic information in the Federal Register notices

67 FR 48393-48415 established a more consistent regulatory framework for the practice of making zinc fertilizer products from recycled hazardous secondary materials.

Persons directly affected by this amendment:

This revision potentially affects 3 to 4 zinc micronutrient producers, one zinc producer, one steel mill, and 23 brass fume dust generators and some intermediate handlers (e.g., brokers) who manage hazardous secondary materials. EPA determined that this rule was a significant regulatory action. However, the economic analysis suggests that this rule was not economically significant. EPA estimated the total annual cost savings from this rule to be $2.14 million for all facilities. There are currently no affected entities in Arizona.

67 FR 62618-62625 granted a national treatability variance from the LDR treatment standards for radioactively contaminated cadmium-, mercury-, and silver-containing batteries by designating new treatment subcategories for these wastes.

Persons affected by this amendment:

Entities potentially regulated by this action are those that generate, treat, and dispose radioactive batteries. Regulated categories and entities likely to be regulated include Department of Energy facilities, nuclear waste generators and treatment and disposal facilities. Few of these types of facilities operate in Arizona. This revision offers a different and safer technical approach, macroencapsulation, in lieu of the current technical approaches of recovery and stabilization. It minimizes worker exposure to radioactivity and the potential for release, which DEQ encourages. It is expected to have no significant adverse economic impact on regulated entities, small businesses, state agencies and subdivisions, or consumers.

67 FR 77687-77692 revised 40 CFR Part 63 and 270 to correct several technical errors made in the NESHAP final rule so that it is easier to understand and implement. Because these corrections and clarifications did not create new requirements, there is no economic impact from this notice.

69 FR 21737-21754 revised 40 CFR 262.34 to allow large quantity hazardous waste generators who are members of EPA's National Performance Track Program up to 180 days, and in certain cases 270 days, to accumulate their hazardous waste without a RCRA permit or interim status, provided that these generators meet certain conditions. EPA intended the changes to provide regulatory relief and they do not impose new regulatory requirements.

Persons affected by this amendment:

Categories and entities potentially regulated by this revision include all entities regulated by EPA, pursuant to its authority under the various environmental statutes, who voluntarily decide to join the Performance Track Program. Thus, potential respondents may fall under any North American Industry Classification System (NAICS) Code. This rulemaking will result in cost savings to entities, including any small entities, who are members of the Performance Track Program. Participation by facilities in Performance Track is voluntary, and so is participation by state or local government agencies. There are no significant or unique effects on state, local, or tribal governments; however, there may be some minor effects incurred by these entities. EPA has projected these costs to be very low.

69 FR 62217-62224 amended 40 CFR 262 to correct the inconsistency between the preamble and regulatory language, and to correct the inadvertently omitted applicable regulatory provisions. Because these corrections did not create new requirements, there is no economic impact from this notice.

69 FR 22602-22661 revised RCRA air emission standards, found in 40 CFR § 264 and 265, for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) to exempt air emissions from certain activities that are covered by the final NESHAP rule. Other changes implemented by this revision, including requiring operations to meet HAP emission standards reflecting the application of MACT, are outside the scope of the RCRA program.

Persons affected by this amendment:

Categories and entities potentially regulated by this revision are listed by the NAICS codes 336111, 336112, and 336113. It includes automobile and light truck assembly plants, and producers of automobile and light-duty truck bodies. EPA determined that this revision was a significant regulatory action. However, there are currently no affected entities in Arizona.

Probable effect of the rule on state revenues:

DEQ is not imposing any new or additional fees through this rulemaking; hence, there are no expected economic impacts on state revenues.

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

ADEQ proposed incorporating federal updates to Part 261 as of July 1, 2004, but overlooked making a conforming change to R18-2-261(H) and did not list the EPA regulation in the preamble. Although EPA characterized their final rule as eliminating "drafting errors and ambiguities in the used oil management standards" (see 68 FR 44659, July 30, 2003), EPA urged states to adopt the clarification. To completely adopt this clarification, ADEQ changed subsection (H) as shown below in the final rule:

H. § 261.5, titled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators," paragraph (j) is amended as follows:

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR 279 [(as incorporated by A.R.S. § 49-802 into Arizona law)] of this Chapter ~~if it is destined to be burned for energy recovery~~. Any material produced from such a mixture by processing, blending, or other treatment is also regulated under 40 CFR 279 ~~if it is destined to be burned for energy recovery~~.

In addition to the above change, minor grammatical and formatting changes were made to the final rules to improve clarity and understandability.

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

No comments were made regarding the rules.

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:

Federal Citation	State Citation
40 CFR 261	R18-8-261(A)
40 CFR 262	R18-8-262(A)
40 CFR 264	R18-8-264(A)
40 CFR 265	R18-8-265(A)
40 CFR 266	R18-8-266(A)
40 CFR 268	R18-8-268(A)
40 CFR 270	R18-8-270(A)

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

No.

15. 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. Hazardous Waste Permit Program
R18-8-271. Procedures for Permit Administration

ARTICLE 2. HAZARDOUS WASTES

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

A. No change
B. No change
C. All of 40 CFR 260 and the accompanying appendix, revised as of July 1, 2002 (and no future editions), with the exception of 40 CFR 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33, is incorporated by reference, ~~and~~ modified by the following subsections, and ~~are~~ on file with the Department of Environmental Quality (DEQ). Copies of 40 CFR 260 are available at www.~~access.gpo.gov/cgi-bin/cfrassemble.cgi~~ gpoaccess.gov/cfr/index.html.
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
i. No change
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f. No change
i. No change
ii. No change
iii. No change
iv. No change
v. No change

E. No change
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2. No change
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11. No change
12. No change
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17. No change
18. No change
19. No change
20. No change
21. No change

22. No change
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    b. No change
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
    c. No change
4. No change
5. No change
6. No change
    a. No change
    b. 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

N. No change

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

A. All of 40 CFR 261 and accompanying appendices, revised as of July 1, ~~2002~~ 2004 (and no future editions), ~~are~~ is incorporated by reference, ~~and~~ modified by the following subsections, and ~~are~~ on file with the DEQ. Copies of 40 CFR 261 are available at www.~~access.gpo.gov/cgi-bin/cfrassemble.cgi~~ gpoaccess.gov/cfr/index.html.

B. No change
C. No change
D. No change
E. No change
F. No change
G. No change
H. § 261.5, titled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators," paragraph (j) is amended as follows:

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR 279 [(as incorporated by A.R.S. § 49-802 into Arizona law)] of this Chapter ~~if it is destined to be burned for energy recovery~~. Any material produced from such a mixture by processing, blending, or other treatment is also regulated under 40 CFR 279 ~~if it is destined to be burned for energy recovery~~.

I. No change
J. No change
K. No change

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

A. All of 40 CFR 262 and the accompanying appendix, ~~as amended~~ revised as of July 1, ~~2000~~ 2004, (and no future editions), with the exception of subsection 40 CFR 262.34(j), which is incorporated by reference as of October 25, 2004, is ~~are~~

incorporated by reference, ~~and~~ modified by the following subsections, and ~~are~~ on file with the DEQ ~~and the Office of the Secretary of State~~. Copies of 40 CFR 262 are available at www.gpoaccess.gov/cfr/index.html.

B. No change
1. No change
2. No change
3. No change

C. No change
D. No change
E. No change
F. No change
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, revised as of July 1, 1999 (and no future editions), is incorporated by reference, ~~and~~ modified by the following subsections of R18-8-263, and on file with the DEQ. Copies of 40 CFR 263 are available at www.~~access.gpo.gov/cgi-bin/cfrassemble.cgi~~ gpoaccess.gov/cfr/index.html.

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, revised as of July 1, ~~2002~~ 2004 (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149, 264.150, and 264.301(l), ~~are~~ is incorporated by reference, ~~and~~ modified by the following subsections, and ~~are~~ on file with the DEQ. Copies of 40 CFR 264 are available at www.~~access.gpo.gov/cgi-bin/cfrassemble.cgi~~ gpoaccess.gov/cfr/index.html.

B. No change
C. No change
D. No change
1. No change
2. No change

E. No change
F. No change
G. No change
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I. No change
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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 Disposal Facilities

A. All of 40 CFR 265 and accompanying appendices, revised as of July 1, ~~2002~~ 2004 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, ~~are~~ is incorporated by reference, ~~and~~ modified by the following subsections, and ~~are~~ on file with the DEQ. Copies of 40 CFR 265 are available at www.~~access.gpo.gov/cgi-bin/cfrassemble.cgi~~ gpoaccess.gov/cfr/index.html.

B. No change

C. No change

D. No change

1. No change
2. 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

1. No change
2. No change
3. No change

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, revised as of July 1, ~~2002~~ 2004 (and no future editions), ~~are~~ is incorporated by reference, ~~and~~ modified by the following subsections, and ~~are~~ on file with the DEQ. Copies of 40 CFR 266 are available at www.~~access.gpo.gov/cgi-bin/cfrassemble.cgi~~ gpoaccess.gov/cfr/index.html.

B. No change

R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, revised as of July 1, ~~2002~~ 2004 (and no future editions), with the exception of Part 268, Subpart B, ~~are~~ is incorporated by reference and ~~are~~ on file with the DEQ. Copies of 40 CFR 268 are available at www.~~access.gpo.gov/cgi-bin/cfrassemble.cgi~~ gpoaccess.gov/cfr/index.html.

R18-8-270. Hazardous Waste Permit Program

A. All of 40 CFR 270, revised as of July 1, ~~2002~~ 2004 (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, and ~~is~~ on file with the DEQ. Copies of 40 CFR 270 are available at www.~~access.gpo.gov/cgi-bin/cfrassemble.cgi~~ gpoaccess.gov/cfr/index.html.

B. No change

1. No change
   a. No change
   b. No change
   c. No change
2. No change
   a. No change
   b. No change

C. No change

D. No change

E. No change

F. No change

G. No change

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   b. No change
   c. No change
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   b. No change
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   j. No change
8. No change
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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

R18-8-271. Procedures for Permit Administration

A. All of 40 CFR 124 and the accompanying appendix, revised as of July 1, 2002 (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~~ is incorporated by reference, ~~and~~ modified by the following subsections, and ~~are~~ on file with the DEQ. Copies of 40 CFR 124 are available at www.~~access.gpo.gov/cgi-bin/cfrassemble.cgi~~ gpoaccess.gov/cfr/index.html.

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

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

[R05-471]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R19-2-103	Amend
R19-2-121	Amend
R19-2-303	Amend
R19-2-309	Amend

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

Authorizing statute: A.R.S. §§ 5-104(A)(2) and (T)

Implementing statute: A.R.S. §§ 5-104, 5-107.01, 5-108

3. The effective date of the rules:

February 4, 2006

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 816, February 18, 2005

Notice of Rulemaking Docket Opening: 11 A.A.R. 3129, August 12, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 2070, June 3, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 3072, August 12, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 1648, May 6, 2005

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

Name: Nan Mitchell

Address: Arizona Department of Racing
1110 W. Washington St., Suite 260
Phoenix, AZ 85007

Telephone: (602) 364-1700

Fax: (602) 364-1703

6. An explanation of the rule, including the agency's reason for initiating the rule:

The rule changes to R19-2-121 and R19-2-309 were initiated at the direction of the members of the Arizona Racing Commission. The Arizona stewards have the least authority for implementing disciplinary action for violation of Department statutes and rules regarding horse and greyhound racing of stewards throughout the nation. This additional authority is necessary to protect the health, safety and welfare of racing participants and the general public and act as a deterrent to violations. There are also many grammar, style and format changes that modernize the language in R19-2-309.

The rule changes to R19-2-103 and R19-2-303 were also initiated at the direction of the members of the Arizona Racing Commission. These changes will allow applicants to submit all or a portion of the permit application electronically and are meant to modernize and streamline the process currently used by applicants for permits to conduct horse and greyhound race meets.

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 rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not rely on any study in this rulemaking.

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:
None

9. The summary of the economic, small business, and consumer impact:
The economic benefits provided by the changes to R19-2-103 and R19-2-303 will accrue to both the Department and the applicants. It is estimated that the changes allowing electronic filing will save a minimum of $10,000 to both the Department and the permit applicants for every three-year licensing cycle.

The economic benefits provided by the changes to R19-2-121 and R19-2-309 will be minimal. The changes will affect those licensees who are fined more than $500. Monies collected as a result of the imposition of the fines will be deposited into the State's General Fund, but it is hoped that the imposition of greater penalties will deter and/or reduce the offensive conduct.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
There have been numerous non-substantive changes made to modernize the language in the rules.

11. A summary of the comments made regarding the rule and the agency response to them:
The agency did not receive any written comments to the rules.

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

13. Incorporations by reference and their location in the rules:
None

14. Was this rule previously made as an emergency rule?
No.

15. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

ARTICLE 1. HORSE RACING

Section
R19-2-103. Permit Applications
R19-2-121. Officials

ARTICLE 3. GREYHOUND RACING

Section
R19-2-303. Permit Applications
R19-2-309. Officials

ARTICLE 1. HORSE RACING

R19-2-103. Permit Applications

A. ~~Any person or persons, associations, or corporation desiring to hold or conduct a horse racing meeting within the state of Arizona shall file with the Commission 10 copies of a permit application as set forth in A.R.S. § 5-107.~~
A person or persons, associations, or corporations desiring to hold or conduct a horse racing meeting within the state of Arizona shall file with the Commission its permit application that contains the information required in A.R.S. § 5-107 in paper copy and in an electronic medium. All electronic media submissions shall be compatible with the Department's computer system and software. If any addendum to the permit application cannot be submitted in an electronic medium, the applicant shall submit the addendum in a paper copy.

B. No change
C. No change
D. No change
E. No change
F. No change

1. No change
   a. No change
   b. No change
   c. No change
2. No change
3. No change
   a. No change
   b. No change
   c. No change
4. No change

R19-2-121. Officials

A. No change
1. No change
2. No change
3. No change
4. No change
5. No change
   a. No change
   b. No change
   c. No change
6. No change
7. No change

B. No change
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C. No change

D. No change
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   e. No change
   f. ~~Pursuant to~~ Under subsection (E)(6)~~of this Section~~, the stewards may impose a civil penalty in an amount not ~~exceeding~~ to exceed ~~$500~~ $1,000 on any person subject to ~~their~~ the stewards' control for violation of these rules. After a hearing, the stewards may suspend a person violating any of these rules for up to 60 days and may rule off ~~licensees~~ a licensee violating any of these rules. The stewards may impose both a civil penalty and suspension for the same violation. The stewards may refer any ruling made by them to the Director, recommending further action, including license revocation.
   g. No change
   h. No change
   i. No change
4. No change
5. No change
   a. No change
   b. No change
      i. No change

ii. No change
c. No change
6. No change
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b. No change
c. No change
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j. No change
k. No change
7. No change

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c. No change
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G. No change

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   e. No change
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7. No change
   a. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
8. No change

Q. No change
1. No change
2. No change
3. No change

ARTICLE 3. GREYHOUND RACING

R19-2-303. Permit Applications

A. ~~Any person or persons, associations, or corporation desiring to hold or conduct a horse racing meeting within the state of Arizona shall file with the Commission 10 copies of a permit application as set forth in A.R.S. § 5-107.~~
A person or persons, associations, or corporations desiring to hold or conduct a greyhound racing meeting within the state of Arizona shall file with the Commission its permit application that contains the information required in A.R.S. § 5-107 in paper copy and in an electronic medium. All electronic media submissions shall be compatible with the Department's

computer system and software. If any addendum to the permit application cannot be submitted in an electronic medium, the applicant shall submit the addendum in a paper copy.

B. No change
C. No change
D. No change
E. No change
F. No change
1. No change
   a. No change
   b. No change
   c. No change
2. No change
3. No change
   a. No change
   b. No change
   c. No change
4. No change

R19-2-309. Officials

A. Generally
1. ~~The term~~ "~~track~~ Track official" means the following persons employed by ~~the~~ a permittee and approved and licensed by the Department: Director of Racing, one steward, mutuel manager, clerk of scales, starter, timer, paddock judge, veterinarian, track superintendent, racing secretary, assistant racing secretary, chart writer, kennel master, and operator of the mechanical lure.
2. The following ~~shall be~~ are the "Department ~~officials~~ Officials" appointed by and representing the Department ~~as their representatives~~: two stewards, state mutuel supervisor, a Department veterinarian, and an investigator.
3. No change
4. No change
5. No change
   a. No change
   b. No change
   c. No change
6. No change
7. ~~No one interested~~ A person with an interest in the result of a race because of an ownership interest in ~~any~~ an entered greyhound, a ~~bets~~ bet, or in any other manner ~~shall~~ may not act as an official at the meeting.
8. "Employee" means any person, other than a track official, who is employed by a permittee.

B. Prohibited acts
1. ~~No~~ An official ~~or his or her~~ or the official's assistant shall not purchase mutuel tickets on races.
2. ~~No~~ An official ~~or his or her~~ or the official's assistant shall not consume alcoholic beverages while on duty.
3. ~~No~~ A licensee or a race track employee shall not accept, ~~either~~ directly or indirectly, any bribe, gift, or gratuity in any form ~~which~~ that is intended to or might influence the results of any race or the conduct of any racing meeting.
4. ~~No~~ An official or employee shall not write or solicit dog insurance at any meeting.

C. Each official and employee shall report all observed violations of these rules to the stewards.

D. Complaints
1. ~~Any~~ A grievance or complaint against a track official, an employee of the permittee, or a licensee shall be ~~made~~ submitted to the stewards in writing within five days of the alleged objectionable act or behavior. The ~~grievance or complaint shall be made to the~~ stewards~~, who~~ shall consider the matter, take whatever action is deemed to be appropriate, and make a full report of their action to the Department.
2. ~~Any~~ A grievance or complaint against an official or employee of the Department shall be reported to the Director or the Director's designee in writing within five days of the alleged objectionable act or behavior. ~~The grievance or complaint shall be made to the Deputy Director of the Department who shall refer the matter to the Department.~~
3. No change

E. Stewards
1. Two stewards appointed by the Director and one steward appointed by the permittee and licensed by the Director shall supervise each racing meeting.
   a. ~~Stewards' duties~~ The Stewards shall ~~include being~~ be in attendance at the office of the racing secretary or on the grounds of the permittee on any day ~~in which~~ that entries are ~~being~~ taken or racing is ~~being~~ conducted, and ~~representing~~ represent the Department in all matters pertaining to ~~the~~ interpretation of the Department's rules ~~adopted by the Department~~.
   b. No change

c. If a steward is unable to perform ~~his or her~~ the steward's duties for an extended period of time, ~~he or she~~ the steward shall immediately notify the Director ~~of that fact~~ so that an alternate steward may be named to act in ~~his or her~~ the steward's place.

2. No change

3. The stewards shall ~~have the power to~~ interpret the rules and ~~to~~ decide all questions not specifically covered by ~~said~~ the rules. In ~~all such~~ these interpretations, ~~the orders~~ an order of the stewards ~~shall supersede~~ supersedes ~~the orders~~ an order of the permittee.
   a. No change
   b. The stewards shall investigate and render a decision promptly on each objection properly made to them ~~pursuant to~~ under R19-2-320 ~~of these rules~~. ~~Each ruling shall be signed by a majority of the stewards.~~ A majority of the stewards shall sign each ruling.
   c. No change
   d. No change
   e. No change
   f. Under subsection (E)(6), ~~The~~ the stewards may impose a civil penalty in an amount not ~~exceeding~~ ~~$500~~ to exceed $1,000 on any person subject to ~~their~~ the stewards' control for violation of these rules. ~~In addition, after~~ After a hearing ~~pursuant to subsection (E)(6)~~, the stewards may suspend~~,~~ a person violating any of these rules for ~~a period of time~~ up to 60 days~~, any person violating any of these rules~~ and may rule off a ~~licensees~~ licensee violating any of these rules. ~~Nothing in these rules shall prevent the~~ The stewards ~~from imposing~~ may impose both a civil penalty and suspension for the same violation. The stewards may refer any ruling made by them to the Director recommending further action, including ~~the revocation of a~~ license revocation. ~~suspended by them.~~
   g. ~~In all cases where~~ When the state laboratory reports or other evidence shows the administration or presence of a foreign substance, the stewards shall immediately investigate the matter~~,~~ and may disqualify the affected greyhound, ~~may~~ suspend the trainer or other ~~person(s)~~ person involved, refer the matter to the Director, and ~~may~~ impose a fine.
   h. ~~Every~~ A person or ~~entry~~ greyhound expelled or ruled off by ~~any~~ a recognized racing authority for corrupt~~,~~ ~~or~~ fraudulent~~,~~ or improper practice or conduct is ruled off wherever these rules have force.
   i. When a person ~~has been suspended~~ is under suspension, the stewards shall rule off or expel every greyhound wholly or partly owned by ~~him or her~~ the person. ~~shall also be ruled off or expelled, so long as his or her~~ while the suspension continues. ~~He or she~~ The person under suspension is ~~shall~~ not ~~be~~ qualified, whether acting as agent or otherwise, to subscribe for, or to enter or ~~to~~ run any greyhound in any race, in either ~~his or her own~~ the person's name or that of any other person~~;~~. ~~and no~~ A greyhound of which ~~he or she~~ the person under suspension is wholly or partly the owner, or which is under ~~his or her~~ the person's care, management, training, or supervision, or in the winnings of which ~~he or she~~ the person has any interest, ~~shall be~~ is not qualified to be entered to run in any race. If an entry is received from ~~any~~ a person~~,~~ or ~~of any~~ for a greyhound that stands ruled off or expelled, ~~is received, such~~ the entry ~~shall be~~ is void, and any entry or subscription money is ~~forfeit~~ forfeited. ~~Any~~ A person who wins any money or prize ~~won~~ under ~~said~~ a voided entry shall ~~be returned~~ return the money or prize to the track.

4. The stewards may excuse a greyhound that has left the paddock for the post if they consider ~~such a~~ the greyhound to be crippled, disabled, or unfit to run.

5. No change
   a. The stewards shall promptly display the numbers of the first ~~three~~ four greyhounds in each race in order of their finishes. If the stewards differ in their placing, the majority shall prevail.
   b. No change
      i. No change
      ii. If it is considered advisable to consult a picture from the photo finish ~~camera~~ device, the stewards may post ~~such~~ the placements ~~as~~ that are~~,~~ in their opinions~~,~~ unquestionable without waiting for a picture. After consulting the picture they ~~may~~ shall ~~make~~ post the other placements. ~~In no case, however, shall the~~ A race may not be declared official until the stewards have determined the greyhounds finishing first, second, ~~and~~ third~~,~~ and fourth.
   c. ~~Nothing in these~~ The rules shall not ~~be construed to~~ prevent the stewards from correcting an error before the display of the sign "official" or from recalling the sign "official" ~~in case~~ if it ~~has been~~ is displayed through error.

6. ~~When the stewards have reason to believe that a rule has been violated by any person, the procedure shall be as follows:~~ The stewards shall adhere to the following procedure when they have reason to believe that a rule has been violated by any person:
   a. ~~The person shall be summoned to a hearing at which all stewards shall be present.~~ The stewards shall summon the person to a hearing with all the stewards present.
   b. ~~Twenty-four-hour notice of said hearing shall be given to the person in writing on a form supplied by the Department. This notice shall be timed and dated, and the person notified shall sign it. The original shall remain with~~

~~the stewards and shall be part of the case file. A copy shall be given to the person summoned.~~ The stewards shall give 24-hours' notice of the hearing to the person, in writing, on a form supplied by the Department. The stewards shall time and date the notice, and the person notified shall sign it. The stewards shall retain the original and include it as part of the case file. The steward shall give a copy to the person summoned.

c. ~~No penalty shall be imposed until such hearing.~~ The steward shall not impose a penalty until the hearing.

d. ~~Nonappearance of the summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the stewards.~~ The stewards shall construe nonappearance of the summoned person as a waiver of the right to a hearing before the stewards.

e. ~~The person summoned shall be permitted to present witnesses on his or her own behalf.~~ The stewards shall permit the person summoned to present witnesses on the person's own behalf.

f. ~~If there is substantial evidence to find a violation of these rules, appropriate action, including suspension or civil penalty or both, shall be taken by the stewards.~~ The stewards shall take appropriate action, including suspension, civil penalty, or both if there is substantial evidence to find a violation of these rules. The stewards shall promptly forward their written decision or ruling to the Director and to the ~~party~~ person in question.

g. No change

h. ~~Any license suspended by the steward shall be recovered and forwarded to the Department.~~ The stewards shall recover and forward to the Department any license they suspend.

i. ~~All matters within their jurisdiction shall be determined by a majority vote of the stewards.~~ A majority vote of the stewards shall determine all matters within their jurisdiction.

j. The stewards ~~shall~~ have the power to modify, change, or remit any ruling imposed by them.

k. ~~Civil penalties imposed by the stewards shall be paid to the Department promptly for deposit with the state treasurer.~~ A licensee against whom a civil penalty is assessed shall promptly pay to the Department the civil penalty for deposit with the state treasurer.

7. During the term of suspension of ~~any~~ an owner, trainer, or other person on ~~any~~ a track under the jurisdiction of the Department, ~~it shall be the duty of the stewards and of the permittee to see that the~~ the stewards and the permittee shall ensure that a ruling against the ~~offender~~ owner, trainer, or other person is enforced.

F. Racing secretary

1. ~~The duties of the~~ The racing secretary shall ~~include~~:
   a. ~~Reporting~~ Report to the stewards all violations of these rules or of the rules of the permittee ~~which~~ that come to the racing secretary's attention~~.~~; and
   b. ~~Keeping~~ Keep a complete record of all races.
2. The racing secretary or ~~authorized representative~~ the racing secretary's designee shall inspect all papers and documents dealing with owners and trainers, ~~partnership~~ partner agreements, appointments of authorized agents, and adoption of kennel names. The racing secretary may demand production of ~~such~~ documents and papers ~~in order to satisfy the racing secretary as~~ to verify their validity and authenticity and to ensure that the rules have been ~~complied with~~ followed.
3. The racing secretary shall write the conditions of all races and ~~shall~~ publish them sufficiently before closing time for entries to allow them to be read by all owners and trainers. ~~Conditions may not be altered~~ The racing secretary shall not alter the conditions after the time set for closing ~~and shall not conflict with racing rules~~. The racing secretary shall not write races that conflict with the rules.
4. The racing secretary shall act as the official handicapper in all races.
5. The racing secretary shall determine the character and condition of substitute and extra races, and shall submit them to the stewards ~~shall approve them~~ for approval.
   a. ~~No~~ A substitute or extra ~~races~~ race shall not carry ~~less~~ a lower guaranteed purse than the ~~race which~~ race that ~~they replace~~ it replaces.
   b. No change
6. The racing secretary or ~~his or her~~ the racing secretary's designee shall conduct the drawing of all races and immediately ~~thereafter shall~~ post an overnight listing of the greyhounds in each race.
7. No change

G. No change

H. Starter

~~1.~~ ~~The starter shall have:~~

~~a.~~ ~~Complete jurisdiction over the starting of any field of greyhounds, authority to give orders necessary to ensure a fair start, and authority to recommend to the stewards the fining or suspension of any person violating his or her orders.~~

~~b.~~ ~~The greyhound shall be started from a type of starting box approved by the Department, and there shall be no start until, and no recall after, the doors of the starting box have opened. The starter shall report causes of delay, if any should occur, to the stewards.~~

~~c.~~ ~~A false start, due to any faulty action of the starting box, break in the machinery, or other cause, is void. The~~

~~greyhounds may be started again as soon as practicable, or the race may be canceled at the discretion of the stewards.~~

1. The starter has complete jurisdiction over the start of any field of greyhounds, authority to give orders necessary to ensure a fair start, and authority to recommend to the stewards that a person who violates the starter's orders be fined or suspended.
2. A greyhound shall start from a starting box approved by the Department. A starter shall ensure there is no start until, and no recall after, the doors of the starting box have opened. The starter shall report any cause of delay to the stewards.
3. A false start due to any faulty action of the starting box, break in the machinery, or other cause, is void. The greyhounds may be started again as soon as practicable or the race may be canceled at the discretion of the stewards.

I. No change

1. The ~~duties of the~~ clerk of the scales shall ~~include~~:
   a. ~~Weighing~~ Weigh all greyhounds in and out~~.~~;
   b. ~~Posting of~~ Post the scale sheet of weights promptly after weighing~~.~~;
   c. ~~Preventing~~ Prevent any greyhound from passing the scales or running with an overweight or an underweight of more than ~~1 1/2~~ two pounds. The clerk of scales shall promptly notify the paddock judge, who ~~will~~ shall report to the stewards, any infraction of the rules as to weight or weighing~~.~~; and
   d. ~~Reporting~~ Report all late scratches and weights on a bulletin board located in a place conspicuous to the wagering public.
2. No change
3. ~~All greyhounds shall be weighed in and weighed out with the muzzle, collar, and lead strap.~~ The clerk of scales shall weigh in and weigh out all greyhounds with the muzzle, collar, and lead strap.
4. The clerk of scales shall keep a list of all greyhounds known as "weight losers" and ~~he or she shall~~ notify the presiding steward as to the weight loss before each race.

J. No change

1. No change
   a. ~~It shall be the duty of the~~ The paddock judge ~~to~~ shall check all greyhounds for each race.
   b. ~~No~~ A greyhound ~~shall be permitted to~~ shall not start in a schooling or purse race ~~that has not~~ unless it has been fully identified and checked against the card index system of identification maintained by ~~each~~ the permittee. The ~~identification cards~~ paddock judge shall ~~be filled in and completed by the paddock judge~~ complete an identification card for each greyhound before ~~greyhounds are~~ the greyhound is entered for a schooling or ~~for a~~ purse race.
   c. ~~Each~~ A permittee shall keep and maintain a card index system ~~of~~ for identification of each greyhound racing at ~~the~~ a meeting. The cards shall ~~show~~ contain the names of the owner and trainer~~,~~ and the breeding, weight, color, sex, and ~~the~~ characteristic markings, tattoos, ~~and~~ scars, and other identification features peculiar to the greyhound.
2. Under the supervision of the paddock judge, the kennel master shall unlock the kennels immediately before weigh-in time to see that the kennels are in perfect repair and that nothing has been deposited in any of the kennels for the ~~greyhound's~~ greyhounds' consumption. ~~He or she~~ The kennel master shall ~~see~~ ensure that the kennels are sprayed, disinfected, and kept in proper sanitary condition. ~~He or she or his or her~~ The kennel master or assistant ~~must~~ shall receive the greyhounds from ~~the trainer~~ their trainers, one at a time, ~~see~~ ensure that the greyhounds are placed in their ~~kennel~~ kennels, and remain on guard from that time until the greyhounds are removed for the last race.
3. As each greyhound is weighed in ~~there~~ the clerk of scales shall ~~be~~ attach an identification tag ~~attached~~ to ~~its~~ the collar indicating the number of the race in which the greyhound is entered and its post position. ~~This~~ The tag shall not be removed until the greyhound has been weighed out and blanketed.
4. The paddock judge shall not allow anyone to weigh in a greyhound for racing unless ~~he or she~~ the person has ~~in his or her possession~~ a valid owner's, trainer's, or assistant trainer's license issued by the Department.
5. After the greyhounds are placed in the lockout kennels, ~~no person other than~~ only the kennel master, racing ~~officials~~ official, a person ~~or persons~~ approved by the Department, or a designated ~~representatives~~ representative of the Department ~~shall be~~ is allowed in or near the lockout kennels.
6. No change
7. Before leaving the paddock for the starting box, the paddock judge shall ensure that every greyhound ~~must be~~ is equipped with a regulation muzzle and blanket. The paddock judge shall approve the muzzles and blankets ~~used shall be approved by the paddock judge~~ and ~~shall be~~ carefully ~~examined by him or her~~ examine them in the paddock before the greyhound leaves for the post.
8. No change
9. No change

K. Timer

1. The timer shall accurately record the official time of each race, which shall be taken from the opening of the doors of

the starting box. ~~This position may be combined with that of steward.~~ A steward may also perform this function.

2. ~~Each~~ A permittee shall ~~be required to~~ install an automatic timing device approved by the Department. The timer shall use the time shown on the timing device as the official time of the race if ~~he or she~~ the timer is satisfied that the timing device is functioning properly. ~~Otherwise he or she~~ If the timing device is not functioning properly, the timer shall use the time shown on the stopwatch ~~which he or she shall operate~~ the timer operates. The track announcer shall announce the time to the public ~~When~~ if the stopwatch time is used as the official time of the race~~,~~. ~~it shall be so announced to the public.~~

L. Chart writer

1. The chart writer shall compile the information necessary for a program ~~which shall be~~ printed for each racing day~~,~~ ~~and shall contain~~ The program shall list the names of the greyhounds that are to run in each of the races for that day. ~~These~~ The names shall appear in the order of ~~their~~ post ~~positions~~ position~~,~~ ~~the said post positions to be~~ designated by numerals placed at the left and in line with the names of the greyhounds in each race~~,~~. ~~which~~ The numerals shall also be prominently displayed on each greyhound.
2. All past performances as shown in the program shall be in dated order of the races or official schoolings ~~held~~, with the last performance appearing on the first line. ~~, etc.~~ The program or form sheet shall also contain the name, color, sex, date of whelping, breeding, established racing weight, number of starts in official races and number of times finishing first, second, and third, name of the owner and trainer, distance of the race, the track record, and any other information that will enable the public to properly judge the greyhound's ability.

~~3. Program or form sheet must also contain name, color, sex, date of whelping, breeding, established racing weight, number of starts in official races and number of times finishing first, second, and third, name of owner and trainer, distance of race, track record, and such other information as will enable the public to properly judge the greyhound's ability.~~

~~4.~~3. ~~In case the name~~ When the name of a greyhound is changed, both the new name~~, together with~~ and the former name~~,~~ shall be published in the official entries and program ~~until after the greyhound has started three times~~ for the greyhound's next three starts.

M. Veterinarians

1. ~~There shall be two official veterinarians, approved by the Department and~~ The Department shall approve official veterinarians licensed to practice veterinary medicine in the state of Arizona. ~~One veterinarian shall be employed by the permittee and one veterinarian shall be employed by the Department.~~ Each permittee shall employ one official veterinarian who is known as the track veterinarian. The Department shall employ the other official veterinarian.
2. No change
3. The track veterinarian shall be present during all official races and all official schooling races and shall observe each greyhound as it enters the lockout kennel, examine it when it enters the paddock ~~prior to~~ before the race, and recommend to the stewards that ~~any~~ a greyhound be scratched ~~which he or she~~ when the veterinarian deems the greyhound unsafe to race or physically unfit to produce a satisfactory effort in a race.
4. The track veterinarian shall place ~~any~~ a greyhound deemed unsafe, unsound, or unfit on a suspension list ~~which~~ and shall ~~be posted~~ post the list in a conspicuous place available to all owners, trainers, and officials.
5. ~~Once~~ After a greyhound ~~has been~~ is placed on a suspension list, it ~~may be allowed to~~ shall not race ~~only after~~ until it ~~has been~~ is removed from the list by the track veterinarian with the approval of the Department veterinarian.
6. The Department veterinarian shall inspect and report to the Department the condition of ~~on each and~~ every kennel ~~where greyhounds are kenneled~~ at the track of the permittee. ~~These~~ The inspections shall be made at ~~such times as the Department shall~~ a time of the Department's choosing. ~~specify and the~~ The report filed with the Department shall cover the general physical condition of the dogs, sanitary conditions of the kennels, segregation of bitches in season, segregation of sick ~~dog~~ dogs, the types of medicine found in use, and any other matters or conditions ~~which~~ that ~~he or she~~ the Department veterinarian deems worthy of note.
7. The entry of ~~any~~ a greyhound on the Department veterinarian~~'s~~' suspension list ~~may be~~ is accepted only after final approval by both the track and Department ~~veterinarian~~ veterinarians and after a minimum of three calendar days from the date ~~placing of~~ the greyhound was placed on the veterinarian~~'s~~' list ~~have elapsed~~.
8. Every veterinarian licensed by the Department shall keep a written record of ~~their practice~~ the veterinarian's practice on the grounds of a permittee relating to greyhounds participating in racing.
   a. No change
      i. The name of the greyhound treated;
      ii. The nature of the greyhound's ailment;
      iii. The type of treatment prescribed and performed for the ~~greyhounds~~ greyhound; and
      iv. No change
   b. The veterinarian ~~This record~~ shall ~~be kept~~ keep this record for practice engaged in at all licensed tracks.
   c. The veterinarian ~~This record~~ shall ~~be produced~~ produce this record without delay upon request of the stewards or the Department.
   d. No change

e. Only ~~veterinarians~~ a veterinarian licensed by the Department shall administer to or prescribe for ~~greyhounds~~ a greyhound on the premises of ~~any~~ a permittee except in case of emergency.

f. ~~All new and experimental medications and drugs used on the grounds shall be approved by the Department, acting on the recommendation of the Department veterinarian.~~ A new or experimental medication or drug shall not be used on the grounds of a permittee unless the Department, acting on the recommendation of the Department veterinarian, approves the new or experimental medication or drug.