

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 23. DEPARTMENT OF HEALTH SERVICES ORAL HEALTH

[R07-386]

PREAMBLE

1. Sections Affected

Article 1
R9-23-101
Article 2
R9-23-201
R9-23-202
R9-23-203
Article 3
R9-23-301
R9-23-302
R9-23-303
R9-23-304

Rulemaking Action

New Article
New Section
New Article
New Section
New Section
New Section
New Article
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New Section
New Section
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. §§ 36-136(A)(7) and 36-136(F)
Implementing statute: A.R.S. §§ 36-104(1)(c), 36-132(A)(10), and 36-138

3. The effective date of the rules:

January 8, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 42, January 5, 2007
Notice of Expiration of Rules under A.R.S. § 41-1056(E): 13 A.A.R. 121, January 12, 2007
Notice of Rulemaking Docket Opening: 13 A.A.R. 793, March 9, 2007
Notice of Proposed Rulemaking: 13 A.A.R. 1972, June 8, 2007

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

Name: Joyce Flieger, Office Chief
Office of Oral Health

Address: Department of Health Services
1740 W. Adams St., Suite 205
Phoenix, AZ 85007

Telephone: (602) 542-1866
Fax: (602) 542-2936
E-mail: fliegej@azdhs.gov
or

Notices of Final Rulemaking

Name: Kathleen Phillips
Rules Administrator and Administrative Counsel

Address: Department of Health Services
1740 W. Adams St., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

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

A.R.S. § 36-104(1)(c)(i) requires the Arizona Department of Health Services (Department) to administer community health services, including preventive dental care. A.R.S. § 36-132(A)(10) requires the Department to encourage, administer, and provide dental health care services, and to help coordinate local dental public health programs, in cooperation with the Arizona Dental Association. A.R.S. § 36-138 establishes the oral health fund consisting of money received by the Department as reimbursement from the Arizona Health Care Cost Containment System (AHCCCS) for dental services provided by the Department.

The Department is making oral health program rules at Title 9, Chapter 23, Articles 1 through 3 of the Arizona Administrative Code. Article 1 will contain definitions for the Department's oral health programs. Article 2 will contain the rules for the Arizona Dental Sealant Program. Article 3 will contain the rules for the Arizona Fluoride Mouthrinse Program. The rules will conform to current statutory authority, rulemaking format and style requirements, industry practice, and Department policy.

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

The Department did not review or rely on any study during this rulemaking.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:

As authorized under A.R.S. §§ 36-104(1)(c)(i), 36-132(A)(10), and 36-138, the Department administers dental sealant and fluoride mouthrinse programs for some Arizona schoolchildren through participating schools. The Department is making rules for these oral health programs at 9 A.A.C. 23, Articles 1 through 3.

Currently, the Department is providing oral health services to Arizona's low-income school children by managing and funding the Arizona Dental Sealant Program and the Arizona Fluoride Mouthrinse Program. For the Arizona Dental Sealant Program, the Department contracts with county health departments and other entities to arrange for licensed dentists and dental hygienists to provide dental sealants and dental screenings at participating schools. The Arizona Fluoride Mouthrinse Program is a school-based program that supplies participating schools with fluoride mouthrinse for its students. For the Arizona Fluoride Mouthrinse Program, the Department purchases the fluoride mouthrinse and sends it to the participating schools.

In the 2005-2006 school year, the Department's Arizona Dental Sealant Program provided an estimated 8,461 children with dental sealants at 160 participating schools and the Department's Arizona Fluoride Mouthrinse Program provided approximately 20,875 children with fluoride mouthrinse at 85 participating schools. Under A.R.S. § 36-138, the Department receives reimbursement from AHCCCS for AHCCCS-enrolled children who have dental sealants applied to their teeth. The Department receives approximately \$25.00 per tooth in AHCCCS reimbursement monies. On average, a participating child has three teeth sealed. In the 2005-2006 school year, 3208 of the 8461 children who received sealants were AHCCCS-enrolled children. The Department was reimbursed \$240,000.00 by AHCCCS for an estimated 9624 teeth sealed on AHCCCS-enrolled children participating in the Arizona Dental Sealant Program. The AHCCCS reimbursement monies are used to sustain, maintain, and expand the Arizona Dental Sealant Program by paying for personnel for data entry, purchasing new equipment, maintaining equipment, and expanding the reach of the Arizona Dental Sealant Program to new areas and more schools.

The proposed rules are consistent with the Department's current application process for approval in the Arizona Dental Sealant Program and the Arizona Fluoride Mouthrinse Program. Therefore, the Department believes that the proposed rules will impose a minimal burden on the following groups: county health departments contracted with the Department for the Arizona Dental Sealant Program, schools participating in the Arizona Dental Sealant Program, schools participating in the Arizona Fluoride Mouthrinse Program, and the Department. These groups will benefit from clear, concise, and understandable rules for the Arizona Dental Sealant Program and the Arizona Fluoride Mouthrinse Program. Children receiving dental sealants or fluoride mouthrinse through the programs will continue to benefit from better oral health as a result of tooth decay prevention. The parents of these children, participating

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schools, the general public, and the state's health care system will continue to benefit from healthier Arizona children. The benefits from the rules outweigh the costs.

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

The Department has made the following technical and grammatical changes to improve clarity, conciseness, and understandability:

- The heading to Article 1 has been changed from "General Provisions" to "Definitions" to reflect that Article 1 contains the definitions for the Chapter.
- In R9-23-101, a definition for "dental care" has been added to clarify what services a school receives after being approved to participate in the Arizona Dental Sealant Program.
- In R9-23-101, a definition for "dental sealant services" has been added to clarify what services a school receives after being approved to participate in the Arizona Dental Sealant Program.
- In R9-23-201, "and receive dental sealant services" has been added.
- In R9-23-202(4), "grade" has been changed to "grades."

R9-23-301(A)(5) has been changed from "The anticipated number of children that will participate in the Arizona Fluoride Mouthrinse Program during the next school year" to "The number of children the contact person anticipates will participate in the Arizona Fluoride Mouthrinse Program during the next school year."

- In R9-23-302(4), the comma has been deleted between "community" and "whose."
- R9-23-303(2) has been changed from "Maintain the child's record of participation in the Arizona Fluoride Mouthrinse Program for a child as long as the child is attending the school" to "Maintain a record of the dates the child participated in the Arizona Fluoride Mouthrinse Program for as long as the child is attending the school."
- R9-23-304(A)(5) and (A)(8), "participate" is now "participated."
- R9-23-304(A)(9) has been changed from "The anticipated number of children that will participate in the Arizona Fluoride Mouthrinse Program during the next school year" to "The number of children the contact person anticipates will participate in the Arizona Fluoride Mouthrinse Program during the next school year."
- R9-23-304(B)(3) has been changed from "The Arizona Fluoride Mouthrinse Program was administered at the school for less than eight months" to "The school administered the Arizona Fluoride Mouthrinse Program for eight months or less."

The Department has also made minor grammatical or formatting changes at the request of G.R.R.C. staff.

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

The Department did not receive any comments for this rulemaking.

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

Not applicable

13. Any material incorporated by reference and its location in the text:

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 23. DEPARTMENT OF HEALTH SERVICES
ORAL HEALTH**

ARTICLE 1. ~~EXPIRED~~ DEFINITIONS

Section

R9-23-101. ~~Expired~~ Definitions

ARTICLE 2. ~~EXPIRED~~ ARIZONA DENTAL SEALANT PROGRAM

Section

R9-23-201. ~~Expired~~ Application Process

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- R9-23-202. ~~Expired~~ Approval Criteria for Participation
- R9-23-203. ~~Expired~~ Participation Requirements

ARTICLE 3. ~~EXPIRED~~ ARIZONA FLUORIDE MOUTHRINSE PROGRAM

Section

- R9-23-301. ~~Expired~~ Application Process
- R9-23-302. ~~Expired~~ Approval Criteria for Participation
- R9-23-303. ~~Expired~~ Participation Requirements
- R9-23-304. ~~Expired~~ Continuing Participation

ARTICLE 1. ~~EXPIRED~~ DEFINITIONS

R9-23-101. ~~Expired~~ Definitions

In this Chapter, unless the context otherwise requires:

1. “Child” means an individual who is:
 - a. 18 years of age or less, or
 - b. More than 18 years of age and attending school.
2. “Contact person” means an individual in charge of an oral health program at a school.
3. “Dental care” means oral health prevention, maintenance, and treatment of diseases, injury, or other dental conditions.
4. “Dental sealant services” means activities related to the application of a dental sealant by a dentist or dental hygienist, including dental care provided to a child.
5. “Department” means the Arizona Department of Health Services.
6. “National School Lunch Program” means the federally funded assisted meal program as established under 42 U.S.C. 1751 to 42 U.S.C. 1769h.
7. “Optimally fluoridated” means the level of fluoride in water recommended by the Centers for Disease Control and Prevention to prevent tooth decay.
8. “Parent” has the same meaning as in A.R.S. § 15-101.
9. “School” has the same meaning as in A.R.S. § 36-671.
10. “School year” means the period between July 1 and the following June 30.

ARTICLE 2. ~~EXPIRED~~ ARIZONA DENTAL SEALANT PROGRAM

R9-23-201. ~~Expired~~ Application Process

A. For a school to participate in the Arizona Dental Sealant Program for a school year and receive dental sealant services, a contact person shall submit to the Department a completed application form provided by the Department that contains:

1. The contact person’s name, title, telephone number, fax number, and if applicable, e-mail address;
2. The school’s name, street address, and telephone number;
3. The school’s mailing address if different than the school’s street address;
4. The name of the school district and county where the school is located;
5. The percentage of children attending the school that participated in the National School Lunch Program during the current school year; and
6. The number of children attending second and sixth grades.

B. The Department accepts applications beginning on April 1 for the next school year.

R9-23-202. ~~Expired~~ Approval Criteria for Participation

The Department uses the following criteria when determining whether to approve a school for participation in the Arizona Dental Sealant Program:

1. The amount of funding available for the Arizona Dental Sealant Program.
2. The time and date the Department received the application.
3. The school’s percentage of children attending the school that participated in the National School Lunch Program, and
4. Whether the school has at least 25 children in second and sixth grades when the number of children in each grade is added together.

R9-23-203. ~~Expired~~ Participation Requirements

The contact person for a participating school shall ensure that each child participating in the Arizona Dental Sealant Program has on file at the school a parental consent form provided by the Department that includes:

1. The child’s name, and
2. A parent’s signature indicating permission to participate in the Arizona Dental Sealant Program.

ARTICLE 3. ~~EXPIRED~~ ARIZONA FLUORIDE MOUTHRINSE PROGRAM

R9-23-301. ~~Expired~~ Application Process

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- A.** For a school to participate in the Arizona Fluoride Mouthrinse Program for three years, a contact person shall submit a completed application form provided by the Department to the Department that contains:
1. The contact person's name, title, telephone number, fax number, and if applicable, e-mail address;
 2. The school's name, street address, mailing address, and telephone number;
 3. The name of the school district and county where the school is located;
 4. The grades in the school that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
 5. The anticipated number of children that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
 6. The percentage of children attending the school that participated in the National School Lunch Program during the current school year; and
 7. The flavor and amount of fluoride mouthrinse needed.
- B.** The Department accepts applications beginning on March 1 for the next school year.

R9-23-302. ~~Expired Approval Criteria for Participation~~

The Department uses the following criteria when determining whether to approve a school for participation in the Arizona Fluoride Mouthrinse Program:

1. The amount of funding available for the Arizona Fluoride Mouthrinse Program.
2. The time and date the Department received the application.
3. The school's percentage of children attending the school that participated in the National School Lunch Program.
4. Whether the school is located in a community where the water is not optimally fluoridated.
5. Whether the school participated in the Arizona Fluoride Mouthrinse Program during the previous school year, and
6. If the school did participate in the Arizona Fluoride Mouthrinse Program, whether the school complied with R9-23-304.

R9-23-303. ~~Expired Participation Requirements~~

The contact person for a participating school shall:

1. Ensure that each child participating in the Arizona Fluoride Mouthrinse Program has a parental consent form provided by the Department that includes:
 - a. The child's name, and age;
 - b. The school's name;
 - c. The child's grade;
 - d. A parent's signature indicating permission to participate in the Arizona Fluoride Mouthrinse Program; and
 - e. The date the parent signed the parental consent form;
2. Maintain a record of the dates the child participated in the Arizona Fluoride Mouthrinse Program for as long as the child is attending the school;
3. Request fluoride mouthrinse;
4. Ensure that the fluoride mouthrinse packets are stored at room temperature in a locked storage area inaccessible to children; and
5. Ensure that the mixed fluoride mouthrinse is stored at room temperature and inaccessible to children.

R9-23-304. ~~Expired Continuing Participation~~

A. By March 15 in each year of participation, the contact person for a participating school shall submit to the Department a written program evaluation on a form provided by the Department that includes:

1. The contact person's name, title, address, telephone number, fax number, and if applicable, e-mail address;
2. The school's name, street address, mailing address, and telephone number;
3. The name of the school district and county where the school is located;
4. The number of years the school has participated in the Arizona Fluoride Mouthrinse Program;
5. The percentage of children attending the school that participated in the National School Lunch Program during the current school year;
6. The grades in the school that participated in the Arizona Fluoride Mouthrinse Program;
7. The grades in the school that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
8. The number of children that participated in the Arizona Fluoride Mouthrinse Program during the current school year;
9. The number of children the contact person anticipates will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
10. The number of packets or boxes of fluoride mouthrinse unused at the end of the current school year, if applicable;
11. The number of packets or boxes of fluoride mouthrinse needed for the next school year; and
12. The flavor of fluoride mouthrinse.

B. In addition to the requirements in R9-23-304, the Department may discontinue participation in the Arizona Fluoride Mouthrinse Program if:

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1. A participating school does not submit a program evaluation.
 2. Less than 70% of the children attending the school participated in the Arizona Fluoride Mouthrinse Program, or
 3. The school administered the Arizona Fluoride Mouthrinse Program for eight months or less.
- C. At the end of the third year of participation, if a school wishes to continue participation in the Arizona Fluoride Mouthrinse Program, the school shall apply to participate according to the requirements in R9-23-301.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN'S HEALTH INSURANCE PROGRAM

[R07-388]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 16
R9-31-1614 | Amend
Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 36-2986
Implementing statute: A.R.S. § 36-2989
- 3. The effective date of the rules:**
November 6, 2007

An immediate effective date is authorized under A.R.S. § 41-1032(A)(4) because the rule provides a benefit to the public and a penalty is not associated with a violation of the rule. The rule provides a benefit to the public by clarifying that personal care services which may not be billed separately are not limited to bathing and grooming. The public benefits from eliminating ambiguity regarding these billing matters.
- 4. A list of all previous notices appearing in the Register addressing the final rules:**
Notice of Rulemaking Docket Opening: 13 A.A.R. 2171, June 22, 2007
Notice of Proposed Rulemaking: 13 A.A.R. 2260, June 29, 2007
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Mariaelena Ugarte |
| Address: | AHCCCS
Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034 |
| Telephone: | (602) 417-4693 |
| Fax: | (602) 253-9115 |
| E-mail: | AHCCCSRules@azahcccs.gov |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The rule is intended to clarify that personal care services, which cannot be itemized for separate billing, are not limited to assistance with bathing and grooming.
- 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 study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.
- 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

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

The rule change removes terms that limit the scope of personal care services that are not permitted to be itemized for separate billing. By removing these terms the scope of this service is clarified, that cannot be itemized for separate billing, where it is not limited to bathing and grooming. The change is anticipated to have a minimal economic impact to the Administration and its Contractors.

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

R9-31-216 was removed from the rulemaking and has been revised in another rulemaking.

Minor 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:

The Administration did not receive any comments 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:

Not applicable

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

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN'S HEALTH INSURANCE PROGRAM**

ARTICLE 16. SERVICES FOR NATIVE AMERICANS

Section

R9-31-1614. NF, Alternative HCBS Setting, or HCBS

ARTICLE 16. SERVICES FOR NATIVE AMERICANS

R9-31-1614. NF, Alternative HCBS Setting, or HCBS

- A.** Services provided in a NF, including room and board, an alternative HCBS setting, or a HCBS as defined ~~in R9-28-101~~ under A.R.S. § 36-2939 are covered for a maximum of 90 days per contract year if the member's medical condition would otherwise require hospitalization.
- B.** Except as otherwise provided in 9 A.A.C. 28, the following services are not itemized for separate billing if provided in a NF, alternative HCBS setting, or HCBS:
1. Nursing services, including:
 - a. Administration of medication,
 - b. Tube feeding,
 - c. Personal care ~~service (assistance with bathing and grooming)~~ services, including but not limited to assistance with bathing and grooming,
 - d. Routine testing of vital signs, and
 - e. Maintenance of catheter.
 2. Basic patient care equipment and sickroom supplies, including:
 - a. First aid supplies such as bandages, tape, ointment, peroxide, alcohol, and over the counter remedies;
 - b. Bathing and grooming supplies;
 - c. Identification device;
 - d. Skin lotion;
 - e. Medication cup;
 - f. Alcohol wipes, cotton balls, and cotton rolls;
 - g. Rubber gloves (non-sterile);
 - h. Laxatives;
 - i. Bed and accessories;
 - j. Thermometer;
 - k. Ice bag;

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- l. Rubber sheeting;
 - m. Passive restraints;
 - n. Glycerin swabs;
 - o. Facial tissue;
 - p. Enemas;
 - q. Heating pad; and
 - r. Diapers.
- 3. Dietary services including preparing and administering special diets or adaptive tools for eating;
 - 4. Any service that is included in a NF's room and board charge or a service that is required of the NF to meet a federal mandate, state licensure standard, or county certification requirement;
 - 5. Physical therapy; and
 - 6. Assistive device or non-customized DME.
- C. The Administration shall prior authorize each NF admission outside the IHS or a Tribal Facility's service area.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

[R07-394]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R12-5-405 | 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. § 37-132(A)(1)
Implementing statute: A.R.S. §§ 37-244
- 3. The effective date of the rules:**
January 5, 2008
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 13 A.A.R. 1333, April 13, 2007
Notice of Proposed Rulemaking: 13 A.A.R. 2264, June 29, 2007
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|---|
| Name: | Richard B. Oxford, Director, LIT & T Division |
| Address: | 1616 W. Adams
Phoenix, AZ 85007 |
| Telephone: | (602) 542-4602 |
| Fax: | (602) 542-5223 |
| E-mail: | roxford@land.az.gov |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
R12-5-405 was adopted by the Department in 1976. The Department's rule amendment provides clear instruction to the holder of a Certificate of Purchase (C.P.) that proof of payment of current year's taxes or other assessments must be submitted with the C.P.'s annual installment and interest payment.
In addition, the Department amended an existing provision that restricted the State Land Commissioner's statutory authority to grant, upon request of a C.P. holder, an extension of time to pay the annual installment or interest on a C.P.
A.R.S. § 37-247(C) authorizes the Commission to extend the time for payment of an amount due on a C.P. if a request is made by the C.P. holder within a specified time-frame. A.A.C. Rule R12-5-405(B) formerly authorized the Commissioner to grant an extension of time for payment of principal but only if the interest on the payment has been paid.

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The Commissioner determined that the Rule R12-5-405(B), as written, was not in the best interest of the Trust and that holders of a C.P. should be able to request an extension of time to pay either the principal or interest, or both, that is due as authorized by A.R.S. § 37-247(C).

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 review any study relevant to the rule.

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 Arizona State Land Department manages 9.2 million acres of state-owned "Trust" lands. These lands were granted to the state of Arizona under the provisions of the 1910 federal Enabling Act that provided for Arizona's statehood in 1912. The lands are held in Trust for various beneficiaries including the common schools (K-12) and 13 other institutions. The Trust's beneficiaries receive revenue from leasing, selling, or using State Trust land and its resources.

Trust land management activities to earn revenue can be divided into three categories: (1) surface uses (grazing, agricultural, commercial, and rights-of-way); (2) subsurface uses (mineral and precious metal extraction); and, (3) land and natural products sales (i.e. timber, rock, sand, and gravel).

In FY06, gross revenues from land sales totaled \$544.3 million. Of that total, \$85.4 million was cash and \$461.9 million is being paid over time through State Certificates of Purchase (C.P.). The C.P. holder is required to make annual principal and interest payments.

The Department's amended rule provides clear instruction to the holder of a C.P. that proof of payment of current year's taxes or other assessments must be submitted with the C.P.'s annual installment and interest payment.

In addition, the Department amended an existing provision that restricts the State Land Commissioner's statutory authority to grant an extension of time to pay an annual installment or interest payment on a C.P. A.R.S. § 37-24(C) authorizes the C.P. holder to request an extension of time to make a payment on a C.P. The statute does not differentiate between interest owed and principle owed when considering an extension of time to pay. The same statute authorizes the Commissioner to extend the time for payment on a C.P. for up to five years. The former rule required the interest on the C.P. payment to be paid prior to granting an extension of time to pay the principle. The amended rule will allow the Commissioner to grant an extension of time to pay both interest and principle.

If a C.P. holder defaults on payment, there is no quick way to re-acquire the defaulted state land. Under A.R.S. § 37-247, the Department is required to issue a default notice followed by a notice of cancellation. If the C.P. holder appeals {A.R.S. § 37-247(B)}, reacquisition of the property is further delayed pursuant to the appeals process provided under the Arizona Administrative Procedures Act. The appeals process is lengthy and time consuming. The Department attempts to work with the purchaser to avoid default and to continue with the C.P.

While Trust's beneficiary may incur a temporary delay in receiving monetary benefits from an extended C.P. payment, there would be a permanent loss of monetary benefits during the interval of re-acquisition of the property under a default and cancellation process. This delay would also continue until the property is brought back to market. Some of the actions causing these delays include legal actions to re-acquire the property, re-appraisal of the property, re-advertisement of the property, as well as loss of staff time on other revenue producing projects, etc.

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

The final rules include minor, technical and grammatical changes made at the suggestion of G.R.R.C. staff.

11. A summary of the comments made regarding the rules 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 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:

Notices of Final Rulemaking

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 4. SALES

Section

R12-5-405. Evidence of Taxes and Assessments Being Paid; Extension of Time to Pay

ARTICLE 4. SALES

R12-5-405. Evidence of Taxes and Assessments Being Paid; Extension of Time to Pay

- A. ~~Receipt of taxes and/or assessments having been paid, for the current year must accompany A holder of a Certificate of Purchase shall include, with the annual payments of principal and interest for a the certificate of purchase, proof that taxes and any other assessments have been paid for the current year.~~
- B. ~~No extension of time will be granted for the payment of annual installments of principal on a Certificate of Purchase until current interest on unpaid principal balance has been paid and evidence of taxes and/or assessments having been paid is submitted to the Department. An extension of time to pay an annual installment of principal or interest shall be made in accordance with R12-5-102(B).~~

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

[R07-393]

PREAMBLE

1. Sections Affected

R18-2-210
R18-2-333
R18-2-901
R18-2-902
R18-2-1101
R18-2-1102
Appendix 2

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
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 statutes: A.R.S. § 49-425(A)

3. The effective date of the rules:

January 5, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 312, February 9, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 1617, May 11, 2007

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

Name: Carrie Bojda

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

Telephone: (602) 771-4210 (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: cb7@azdeq.gov

6. An explanation of the rules, including the agency's reasons for initiating the rules:

Summary. The Arizona Department of Environmental Quality (ADEQ) is adopting new and updated incorporations by reference of the following federal regulations in state rules: New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Acid Rain, and other parts of Title 40 Code of Federal Regulations (CFR). The federal regulations would be incorporated as of July 1, 2006.

In addition to the incorporations by reference listed above, ADEQ is also making technical changes to rules in Articles 9, 11, and Appendix 2. These technical changes include updating the mailing address used in R18-2-902(B)(1) and R18-2-1102(B), adding the phrases “as an applicable requirement” and “as applicable requirements” to the incorporations by reference at R18-2-210 and Appendix 2, respectively, and improving the clarity and consistency of language used in Appendix 2.

Acid Rain. Federal Regulations already incorporated by reference from Title 40 CFR Parts 72, 74, 75, and 76, have been updated from July 1, 2004, to July 1, 2006, at R18-2-333. There was one major rulemaking promulgated by the Environmental Protection Agency (EPA) amending federal acid rain rules. It was the Clean Air Interstate Rule (CAIR) promulgated on May 12, 2005 (70 FR 25162). 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 Title 40 CFR Parts 60, 61, and 63, have been updated from July 1, 2004, to July 1, 2006, at R18-2-901, R18-2-1101(A), and R18-2-1101(B). As explained further below, this includes new subparts and significantly revised subparts in Title 40 CFR Parts 60 and 63. Only minor and technical changes were made to Title 40 CFR Part 61.

Appendix 2. The provisions in Appendix 2 have been updated from July 1, 2004, to July 1, 2006. These provisions are cited throughout 18 A.A.C. 2, but are incorporated by reference once in Appendix 2 for convenience. The phrase “as applicable requirements” has also been added to the incorporation by reference to improve the clarity and consistency of language.

R18-2-210. The provisions in R18-2-210 have been updated from July 1, 2004, to July 1, 2006. The phrase “as an applicable requirement” has also been added to the incorporation by reference to improve the clarity and consistency of language. R18-2-210 incorporates by reference area attainment status designations for Arizona approved or designated by EPA pursuant to section 107 of the CAA.

ADEQ's intention in updating all of the incorporations by reference is to continue its delegated authority from EPA to implement and enforce NSPS, NESHAP, and acid rain programs in Arizona.

Descriptions of new federal subparts recently incorporated into Arizona's rules and significantly revised subparts, taken from EPA's Notices of Final Rulemakings appear below.

Federal Regulations Proposed to be Incorporated.

NSPS - 40 CFR PART 60

SUBPARTS ADDED:

Title 40 CFR 60 Subpart EEEE – Standards of Performance for New Stationary Sources: Other Solid Waste Incineration Units [Added at 70 FR 74870; 12/16/05]. EPA is promulgating new source performance standards (NSPS) for new “other” solid waste incineration units (OSWI). A source is subject to the NSPS if construction began on the incineration unit after December 9, 2004. The final rule for OSWI fulfills the requirements of sections 111 and 129 of the CAA. Under CAA section 111, NSPS must be developed for new sources that cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The final rule, which addresses only the incineration of nonhazardous solid wastes, will protect public health by reducing exposure to air pollution.

Title 40 CFR 60 Subpart FFFF – Standards of Performance for Existing Sources: Other Solid Waste Incineration Units [Added at 70 FR 74870; 12/16/05]. EPA is promulgating emission guidelines for existing “other” solid waste incineration units (OSWI). A source will be subject to the emission guidelines if construction began on an incineration unit on or before December 9, 2004. The final rule for OSWI units fulfills the requirements of sections 111 and 129 which require EPA to promulgate emission guidelines for solid waste incineration units. The final rule, which addresses only the incineration of nonhazardous solid wastes, will protect public health by reducing exposure to air pollution.

SUBPARTS SIGNIFICANTLY REVISED:

Title 40 CFR 60 Subpart Da - Standards of Performance for Electric Utility Steam Generating Units for which Construction is Commenced After September 18, 1978 [Amended at 70 FR 51266; 08/30/05]. This action corrects and clarifies certain text of the final rule 70 FR 28606; 05/18/05. These corrections do not affect the substance of the action, nor do they change the rights or obligations of any party. Rather, this action merely corrects certain section designations to eliminate duplication with other rules.

[Amended at 71 FR 9866; 02/27/06]. This amendment revises the existing standards for PM emissions by reducing the numerical emission limits for both utility and industrial-commercial-institutional steam generating units and revises the existing standards for NO_x emissions by reducing the numerical emission limits for utility steam generating units. The amendments also revise the standards for SO₂ emissions for both electric utility and industrial-commercial-institutional steam generating units. The numerical standard for electric utility steam generating units has been reduced and the maximum percent reduction requirement has been increased. A numerical standard has been added for units presently subject to the NSPS and new industrial-commercial-institutional steam generating units and the maximum percent reduction requirement for new units has been increased. Both utility and industrial steam generating units can either meet a numerical limit or demonstrate a percent reduction. Several technical clarifications and compliance alternatives have been added to the existing provisions of the current rules. See also Subparts Db and Dc.

[Amended at 71 FR 33388; 06/09/06]. This action's purpose is to advise that revisions will not be made to the March 29, 2005, final rule entitled "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List," other than explaining in more detail what is meant by the effectiveness element in the term "necessary." A final decision is also being made regarding reconsideration of certain issues in the May 18, 2005, final rule entitled "Standards of Performance for New and Existing Utility Steam Generating Units" (CAMR). The only two substantive changes being made to CAMR involve revisions to the state mercury (Hg) allocations, and to the new source performance standards. Regulatory text is also being finalized that clarifies the applicability of CAMR to municipal waste combustors (MWC) and certain industrial boilers. See also Subparts Db and HHHH.

Title 40 CFR 60 Subpart Db – Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units [Amended at 71 FR 9866; 02/27/06]. This amendment revises the existing standards for PM emissions by reducing the numerical emission limits for both utility and industrial-commercial-institutional steam generating units and revises the existing standards for NO_x emissions by reducing the numerical emission limits for utility steam generating units. The amendments also revise the standards for SO₂ emissions for both electric utility and industrial-commercial-institutional steam generating units. The numerical standard for electric utility steam generating units has been reduced and the maximum percent reduction requirement has been increased. A numerical standard has been added for units presently subject to the NSPS and new industrial-commercial-institutional steam generating units and the maximum percent reduction requirement for new units has been increased. Both utility and industrial steam generating units can either meet a numerical limit or demonstrate a percent reduction. Several technical clarifications and compliance alternatives have been added to the existing provisions of the current rules. See also Subparts Da and Dc.

[Amended at 71 FR 33388; 06/09/06]. This action's purpose is to advise that revisions will not be made to the March 29, 2005, final rule entitled "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List," other than explaining in more detail what is meant by the effectiveness element in the term "necessary." A final decision is also being made regarding reconsideration of certain issues in the May 18, 2005, final rule entitled "Standards of Performance for New and Existing Utility Steam Generating Units" (CAMR). The only two substantive changes being made to CAMR involve revisions to the state mercury (Hg) allocations, and to the new source performance standards. Regulatory text is also being finalized that clarifies the applicability of CAMR to municipal waste combustors (MWC) and certain industrial boilers. See also Subparts Da and HHHH.

Title 40 CFR 60 Subpart Dc – Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units [Amended at 71 FR 9866; 02/27/06]. This amendment revises the existing standards for PM emissions by reducing the numerical emission limits for both utility and industrial-commercial-institutional steam generating units and revises the existing standards for NO_x emissions by reducing the numerical emission limits for utility steam generating units. The amendments also revise the standards for SO₂ emissions for both electric utility and industrial-commercial-institutional steam generating units. The numerical standard for electric utility steam generating units has been reduced and the maximum percent reduction requirement has been increased. A numerical standard has been added for units presently subject to the NSPS and new industrial-commercial-institutional steam generating units and the maximum percent reduction requirement for new units has been increased. Both utility and industrial steam generating units can either meet a numerical limit or demonstrate a percent reduction. Several technical clarifications and compliance alternatives have been added to the existing provisions of the current rules. See also Subparts Da and Db.

Title 40 CFR Subpart 60 Eb – Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors [Amended at 71 FR 27324; 05/10/06]. This action promulgated amendments to the air emission standards for existing and new large Municipal Waste Combustors (MWC) units. For existing MWC units, the goal of this action is to amend the standards to reflect the actual performance levels being achieved by existing MWC units. For new MWC units, the goal of this action is to amend the standard to reflect the performance level achievable by MWC units constructed in the future. Other technical improvements are also being made to the standards for MWC units.

Title 40 CFR 60 Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983 [Amended at 70 FR 8523; 02/22/05]. This action pro-

mulgated amendments to the new source performance standards for electric arc furnaces constructed after October 21, 1974, and on or before August 17, 1983, and the new source performance standards for electric arc furnaces constructed after August 17, 1983. The final amendments added alternative requirements for monitoring emissions from furnace exhausts and made minor editorial corrections.

Title 40 CFR 60 Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983 [Amended at 70 FR 8523; 02/22/05]. This action promulgated amendments to the new source performance standards for electric arc furnaces constructed after October 21, 1974, and on or before August 17, 1983, and the new source performance standards for electric arc furnaces constructed after August 17, 1983. The final amendments added alternative requirements for monitoring emissions from furnace exhausts and made minor editorial corrections.

Title 40 CFR 60 Subpart GG - Standards of Performance for Stationary Gas Turbines [Amended at 69 FR 41346; 07/08/04]. This action promulgated amendments to several sections of the standards of performance for stationary gas turbines in 40 CFR Part 60, subpart GG. The amendments codified several alternative testing and monitoring procedures that have routinely been approved by EPA. The amendments also reflect changes in nitrogen oxides (NOX) emission control technologies and turbine design since the standards were promulgated.

[Amended at 71 FR 9453; 02/24/06]. This action promulgates final action to revise certain portions of the standards of performance for stationary gas turbines. Direct final action is being taken to revise the standards to clarify that EPA is not imposing new requirements for turbines constructed after 1977. Owners and operators of existing and new turbines may use monitoring that meets the pre-existing monitoring requirements. In addition, EPA has described a number of acceptable compliance monitoring options that owners and operators may elect to use for these units.

Title 40 CFR 60 Subpart CCCC – Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units [Amended at 70 FR 55568; 09/22/2005]. This action promulgates amendments to the standards of performance for commercial and industrial solid waste incineration units in 40 CFR Part 60, subpart CCCC. The EPA has completed its reconsideration of certain regulatory definitions that determine the type of sources subject to the EPA's new source performance standards (NSPS) and emission guidelines (EG) for commercial and industrial solid waste incineration (CISWI) units under section 129 of the CAA. With this action, EPA is promulgating revised definitions for the terms "solid waste," "commercial or industrial waste," and "commercial and industrial solid waste incineration unit." The final CISWI definitions of these terms promulgated today are consistent with EPA's February 2004 reconsideration proposal in that EPA will continue to identify CISWI units based on whether such units combust waste without energy recovery. However, the revised definitions promulgated today do not include certain regulatory language proposed in February 2004 to include units with only waste heat recovery in the CISWI source category.

Title 40 CFR 60 Appendix A – Update of Continuous Instrumental Test Methods [Amended at 71 FR 28082; 05/15/06]. This document updates five instrumental test methods that are used to measure air pollutant emissions from stationary sources. These amendments are finalized in this document and reflect changes to the proposal to accommodate public comments. This action is made to improve the methods by simplifying, harmonizing, and updating their procedures. A large number of industries are already subject to provisions that require the use of these methods.

NESHAP - 40 CFR PART 61

SUBPARTS ADDED: None

SUBPARTS SIGNIFICANTLY REVISED: None

NESHAP - 40 CFR PART 63

SUBPARTS ADDED:

Title 40 CFR 63 Subpart DDDD - National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products [Added at 69 FR 45944; 07/30/04]. This action promulgated a NESHAP for the plywood and composite wood products (PCWP) source category under the CAA. The EPA has determined that the PCWP source category contains major sources of hazardous air pollutants (HAP), including, but not limited to, acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. This action will implement section 112(d) of the CAA by requiring all major sources subject to the final rule to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The final rule will reduce national HAP emissions from the PCWP source category by approximately 5,900 to 9,900 megagrams per year (Mg/yr) (6,600 to 11,000 tons per year (tons/yr)). In addition, the final rule will reduce emissions of volatile organic compounds (VOC) by 13,000 to 25,000 Mg/yr (14,000 to 27,000 tons/yr). The EPA is also amending the effluent limitations, guidelines and standards for the timber products processing point source category (vener, plywood, dry process hardboard, particleboard manufacturing subcategories).

Title 40 CFR 63 Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters [Added at 69 FR 55218; 09/13/04]. EPA promulgated NESHAP for industrial, commercial, and institutional boilers and process heaters in this action. The EPA identified industrial, commercial and institutional boilers and process heaters as major sources of HAP emissions. The final rule implements section 112(d) of the CAA by requiring all major sources to meet HAP emissions standards reflecting the

application of MACT. EPA expects the final rule to reduce national HAP emissions by 50,600 to 58,000 tpy. HAPs emitted by facilities in the boiler and process heater source category include arsenic, cadmium, chromium, hydrogen chloride (HCl), hydrogen fluoride, lead, manganese, mercury, nickel, and various organic HAPs. The final rule contains numerous compliance provisions including health-based compliance alternatives for the hydrogen chloride and total selected metals emission limits.

SUBPARTS SIGNIFICANTLY REVISED:

Title 40 CFR 63 Subpart A – National Emission Standards for Hazardous Air Pollutants: General Provisions [Amended at 71 FR 20446; 04/20/06]. This action promulgates amendments to certain aspects of startup, shutdown and malfunction (SSM) requirements affecting sources subject to the NESHAPs in response to a July 29, 2003, petition to reconsider certain aspects of the amendments to the NESHAP General Provisions published on May 30, 2003.

Title 40 CFR 63 Subpart B – National Emission Standards for Hazardous Air Pollutants: Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(g) and 112(j) [Amended at 70 FR 39662; 07/11/05]. Table 1 to subpart B of part 63 is amended to reflect the revised deadlines in a recently amended consent decree. The final rule amendment (and amended consent decree) relates to boilers and hydrochloric acid production furnaces that burn hazardous waste.

Title 40 CFR 63 Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List [Amended at 70 FR 75047; 12/19/05]. The compound methyl ethyl ketone (MEK) is being removed from the list of HAPs in response to a petition submitted by the Ketones Panel of the American Chemistry Council on behalf of the MEK producers and consumers. Based on available information, concerning the potential hazards of and projected exposure to MEK, the EPA has determined that there are adequate data on the health and environmental effects of MEK to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

Title 40 CFR 63 Subpart L - National Emission Standards for Coke Oven Batteries [Amended at 70 FR 19992; 04/15/05]. On October 27, 1993 (58 FR 57898), pursuant to section 112 of the CAA, the EPA issued technology-based national emission standards to control HAP emitted by coke oven batteries. The April 15, 2005, action, amends the standards to address residual risks under section 112(f) and the eight-year review requirements of section 112(d)(6).

Title 40 CFR 63 Subpart M – National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities [Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the NESHAPs. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, did not have a finding of being exempt. See also Subparts N, O, T, RRR, and X.

Title 40 CFR 63 Subpart N - National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. [Amended at 69 FR 42885; 07/19/04]. On January 25, 1995, the EPA promulgated national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks under section 112 of the CAA. On June 5, 2002, the EPA proposed amendments to the rule. The July 19, 2004, action, promulgated amendments to the emission limits, definitions, compliance provisions and performance test requirements in the standards for chromium emissions from hard and decorative chromium electroplating and anodizing tanks.

[Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the NESHAPs. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, was not found to be exempt. See also Subparts M, O, T, RRR, and X.

Title 40 CFR 63 Subpart O – Ethylene Oxide Emissions Standards for Sterilization Facilities [Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the NESHAPs. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, was not found to be exempt. See also Subparts M, N, T, RRR, and X.

Title 40 CFR 63 Subpart Q – National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers [Amended at 71 FR 17729; 04/07/06]. On September 8, 1994, the EPA promulgated NESHAPs for industrial process cooling towers. The rule prohibits the use of chromium-based water treatment chemicals that are known or suspected to cause cancer or have a serious health or environmental effect.

Section 112(f)(2) of the CAA directs EPA to assess the risk remaining (residual risk) after the application of NESHAPs and to promulgate more stringent standards, if warranted, to provide ample margin of safety to protect public health or prevent adverse environmental effect. Also, section 112(d)(6) of the CAA requires EPA to review and revise the standards, as necessary at least every eight years, taking into account developments in practices, processes and

control technologies. On October 25, 2005, based on the findings from EPA's residual risk and technology review, EPA proposed no further action to revise the standards and requested public comment. Today's final action amends the applicability section of the rule in response to public comments received on the proposed action. The final amendment provides that sources that are operated with chromium-based water treatment chemicals are subject to this standard; other industrial process cooling towers are not covered.

Title 40 CFR 63 Subpart T – National Emission Standards for Halogenated Solvent Cleaning [Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the NESHAPs. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, was not found to be exempt. See also Subparts M, N, O, RRR, and X.

Title 40 CFR 63 Subpart X – National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting [Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the NESHAPs. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, was not found to be exempt. See also Subparts M, N, O, T, and RRR.

Title 40 CFR 63 Subpart KK – National Emission Standards for the Printing and Publishing Industry [Amended at 71 FR 29792; 05/24/06]. EPA is taking direct and final action on amendments to the national emission standards for HAPs (NESHAP) for the printing and publishing industry, which were promulgated on May 30, 1996, under the authority of section 112 of the CAA. The direct final rule amendments amend specific provisions in the Printing and Publishing Industry NESHAP to resolve issues and questions raised after promulgation of the final rule and to correct errors in the regulatory text. This action also makes direct final rule amendments to the Paper and Other Web Coating NESHAP and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP to clarify the interaction between these rules and the Printing and Publishing Industry NESHAP. See also Subparts JJJ and OOOO.

Title 40 CFR 63 Part LL – National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants [Amended at 70 FR 66280; 11/02/05]. The amendments to the national emission standards for HAPs (NESHAP) for primary aluminum reduction plants will revise the emission limit for polycyclic organic matter (POM) applicable to one potline subcategory. The amendments will revise the compliance provisions to clarify the dates by which all plants must meet the NESHAP requirements and to specify the time allowed to demonstrate the initial compliance for a new or reconstructed potline, anode bake furnace or pitch storage tank as well as an existing potline or anode bake furnace that has been shutdown and subsequently restarted. These amendments are being made to reduce compliance uncertainties and improve understanding of the NESHAP requirements.

Title 40 CFR 63 Subpart EEE – National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors [Amended at 70 FR 59402; 10/12/05]. This action finalizes national emission standards (NESHAP) for HAPs for hazardous waste combustors (HWCs): hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, industrial/commercial/institutional boilers and process heaters, and hydrochloric acid production furnaces. EPA has identified HWCs as major sources of HAP emissions. These standards implement section 112(d) of the CAA by requiring hazardous waste combustors to meet HAP emission standards reflecting the performance of the maximum achievable control technology (MACT). This action also presents the decision of the EPA regarding the February 28, 2002, petition for rulemaking submitted by the Cement Kiln Recycling Coalition, relating to EPA's implementation of the so-called omnibus permitting authority under section 3005(c) of the Resource Conservation and Recovery Act (RCRA).

Title 40 CFR 63 Subpart RRR – National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production [Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the national emission standards for HAPs (NESHAP). The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, was not found to be exempt. See also Subparts M, N, O, T, and X.

Title 40 CFR 63 Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units [Amended at 70 FR 6930; 02/09/05]. On April 11, 2002, pursuant to section 112 of the CAA, the EPA issued national emission standards to control HAPs emitted from catalytic cracking units, catalytic reforming units, and sulfur recovery units at petroleum refineries. The February 9, 2005, action promulgated amendments to several sections of the existing standards. The amendments changed the affected source designations and add new compliance options for catalytic reforming units that use different types of emission control systems, new monitoring alternatives for catalytic cracking units and catalytic reforming units, and a new procedure for determining the metal or total chloride concentration on catalyst particles. The amendments also defer technical requirements for most continuous parameter monitoring systems, clarify testing and monitoring requirements, and make editorial corrections.

Title 40 CFR 63 Subpart DDDD – National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List [Amended at 71 FR 8342; 02/16/06]. On July 30, 2004, EPA promulgated national emission standards for HAPs (NESHAP) for the plywood and composite wood products (PCWP) source category. The Administrator subsequently received a petition for the reconsideration of certain provisions in the final rule. In addition, following promulgation, stakeholders expressed concern with some of the final rule requirements including definitions, the emissions testing procedures required for facilities demonstrating eligibility for the low-risk subcategory stack height calculations to be used in low-risk subcategory eligibility demonstrations, and permitting and timing issues associated with the low risk subcategory eligibility demonstrations. In two separate Federal Register notices published on July 29, 2005, EPA announced reconsideration of certain aspects of the final rule and proposed amendments to the final rule. This action promulgates amendments to the PCWP NESHAP and provides conclusions following the reconsideration process.

Title 40 CFR 63 Subpart FFFF – National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing [Amended at 70 FR 38554; 07/01/05]. This action amends the NESHAP for miscellaneous organic chemical manufacturing under section 112 of the CAA by clarifying the compliance requirements for flares and the alternative standard, which limits the outlet concentration to 20 parts per million. The NESHAP is amended by extending the vapor balancing alternative to cover transfers from barges to storage tanks, amending the procedures for correcting measured concentrations at the outlet of combustion devices to correct for dilution by supplemental gas and clarifying the signature requirements for the notification of compliance status report. The direct final rule amendments also specify requirements for effluent from control devices, clarify the definition of the term continuous process vent, and correct several reference and drafting errors.

[Amended at 70 FR 51270; 08/30/05]. EPA is withdrawing parts of the direct final rule because adverse comments were received. Adverse comments were received from several commenters regarding requirements for effluent from control devices. Commenters also pointed out erroneous changes made to Table 1 of Subpart FFFF of part 63. Accordingly, the amendments to 40 CFR 63.2485(c)(4) and Table 1 of Subpart FFFF of part 63 are being withdrawn as of August 30, 2005. The provisions for which adverse comments were not received became effective on August 30, 2005.

Title 40 CFR 63 Subpart JJJJ – National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating [Amended at 71 FR 29792; 05/24/06]. EPA is taking direct and final action on amendments to the NESHAPs for the printing and publishing industry that were promulgated on May 30, 1996, under the authority of section 112 of the CAA. The direct final rule amendments amend specific provisions in the Printing and Publishing Industry NESHAP to resolve issues and questions raised after promulgation of the final rule and to correct errors in the regulatory text. This action also makes direct final rule amendments to the Paper and Other Web Coating NESHAP and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP to clarify the interaction between these rules and the Printing and Publishing Industry NESHAP. See also Subparts KK and OOOO.

Title 40 CFR 63 Subpart KKKK – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans [Amended at 71 FR 1378; 01/06/06]. Direct final action is being taken on amendments to the NESHAPs for surface coating of metal cans, which were promulgated on November 13, 2003, under section 112 of the CAA. The direct final rule amendments correct errors and add clarification to sections of the rule.

Title 40 CFR 63 Subpart OOOO – National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles [Amended at 71 FR 29792; 05/24/06]. EPA is taking direct and final action on amendments to the national emission standards for HAPs (NESHAP) for the printing and publishing industry, which were promulgated on May 30, 1996, under the authority of section 112 of the CAA. The direct final rule amendments amend specific provisions in the Printing and Publishing Industry NESHAP to resolve issues and questions raised after promulgation of the final rule and to correct errors in the regulatory text. This action also makes direct final rule amendments to the Paper and Other Web Coating NESHAP and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP to clarify the interaction between these rules and the Printing and Publishing Industry NESHAP. See also Subparts JJJJ and KK.

Title 40 CFR 63 Subpart UUUU – National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing [Amended at 70 FR 46684; 08/10/05]. The EPA is taking direct final action on amendments to the NESHAPs for cellulose products manufacturing, which were issued on June 11, 2002, under section 112 of the CAA. The amendments revise the work practice standards, general and initial compliance requirements, definitions, and General Provisions applicability, as well as correct typographical, formatting, and cross-referencing errors in the final rule. The amendments are being issued as a direct final rule because no adverse comments are expected.

Title 40 CFR 63 Subpart WWWW – National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production [Amended at 70 FR 50118; 08/25/05]. The EPA is taking direct final action on amendments to the national emissions standards for HAPs (NESHAP) for reinforced plastic composites production which were issued April 12, 2003, under section 112 of the CAA. The direct final amendments revise compliance options for open molding, correct errors, and add clarification to sections of the rule.

Title 40 CFR 63 Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters [Amended at 70 FR 76918; 12/28/05]. EPA is promulgating amendments to the NESHAPs for industrial, commercial and institutional boilers and process heaters which

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EPA promulgated on September 13, 2004. After promulgation of the final rule for boilers and process heaters, the Administrator received petitions for reconsideration of certain provisions in the final rule. On July 27, 2005, EPA published a notice of reconsideration and requested public comment on certain aspects of the health-based compliance alternatives. After evaluating public comment on the notice of reconsideration, EPA is retaining the health-based compliance alternatives in the final rule in substantially the same form. However, EPA is making a limited number of amendments to the final rule to improve and clarify the process for demonstrating eligibility to comply with the health-based compliance alternatives contained in the final rule.

Title 40 CFR 63 Subpart SSSSS – National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing [Amended at 71 FR 7415; 02/13/06]. The EPA is taking direct final action on the amendments to the NESHAPs for new and existing refractory products manufacturing facilities that were promulgated on April 16, 2003, under section 112(d) of the CAA. The amendments clarify testing and monitoring requirements and startup and shutdown requirements for batch processes, make certain technical corrections, and add recent changes to be consistent with the NESHAP General Provisions.

ACID RAIN - 40 CFR PART 72, 74, 75, 76

SUBPARTS ADDED:

Title 40 CFR 75 Subpart I – Mercury (Hg) Mass Emission Provisions [Added at 70 FR 28684; 05/18/05]. Within the document that finalizes the Clean Air Mercury Rule (CAMR), 70 FR 28606, Subpart I is to added part 75 to implement requirements for the applicable state or Federal Hg mass emission reduction program for new and existing coal-fired electric utility steam generating units.

SUBPARTS SIGNIFICANTLY REVISED:

Title 40 CFR 72 and 74 – Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call [Amended at 70 FR 25162; 05/12/05]. Based on state obligations to address interstate transport of pollutants under section 110(a)(2)(D) of the CAA, EPA is specifying statewide emissions reduction requirements for SO₂ and NO_x. The EPA is specifying that the emissions reductions be implemented in two stages. The first phase of NO_x reductions starts in 2009 and the first phase on SO₂ reductions starts in 2010; the second phase of reductions for both starts in 2015.

Today's action also includes model rules for multi-state cap and trade programs for annual SO₂ and NO_x emissions for PM_{2.5} and seasonal NO_x emissions for ozone that states can choose to adopt to meet the required emissions reductions in a flexible and cost-effective manner.

The final Clean Air Interstate Rule, which this revision addresses, covers 28 eastern states and the District of Columbia. Air emissions in these states contribute to unhealthy levels of ground-level ozone, fine particles, or both in downwind states. Arizona does not contribute to down wind nonattainment, and, therefore, is not included in the Clean Air Interstate Rule region or the amendments made to the Clean Air Interstate Rule. However, the regulated community in Arizona must comply with the Acid Rain Program Regulations under Title IV of the CAA.

Today's action also includes revisions to the Acid Rain Program regulations under Title IV of the CAA, particularly the regulatory provisions governing the SO₂ cap and trade program. The revisions are made because they streamline the operation of the Acid Rain SO₂ cap and trade program and/or facilitate the interaction of that cap and trade program with the model SO₂ cap and trade program included in today's action. In addition, today's action provides for the NO_x SIP Call cap and trade program to be replaced by the CAIR ozone-season NO_x trading program.

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

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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

NSPS/NESHAP/Acid Rain 2006: A.A.C. Title 18, Chapter 2, Articles 2, 3, 9 and 11; Appendix 2, sections R18-2-210, R18-2-333, R18-2-901, R18-2-902, R18-2-1101, R18-2-1102, Appendix 2.

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 have already 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.

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Costs to ADEQ are those that may accrue for implementation and enforcement of the new standards. Although there were 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, including:

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, the incremental costs associated with this rule are generally low, and apply solely to ADEQ, while the air quality benefits are generally high. In addition, there are benefits to industry from being regulated by a geographically nearer government entity. There are no adverse economic impacts on political subdivisions. There are no adverse economic impacts on private businesses, their revenues or expenditures. The fact that no new employment is expected to occur has been discussed above, in the context of the impact on state agencies. There are no adverse economic impacts on small businesses, although some regulatory benefits will accrue to them. There are no economic impacts for consumers; benefits to private persons as members of the general public are discussed above in terms of enforcement. 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 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 item 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(l) 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. Information related to such may be found in the individual rules described in item 6 of the preamble.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if appli-

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cable):

- 1) The title of 40 CFR Part 63, Subpart NNNN “National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers” within “subparts significantly revised” in the preamble has been corrected to read 40 CFR Part 63, Subpart Q “National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.”
- 2) In R18-2-1102(C) the sentence reading “The Director shall not be delegated authority to deal with equivalency determinations that are nontransferable through Section 112(e)(3) of the Act” should be corrected and the citing of the Clean Air Act should read “Section 112(h)(3) of the Act.” The citing was incorrectly written into the rule and the Notice of Proposed Rulemaking and does not apply to the General Provisions of Article 11.
- 3) In Appendix 2, Test Methods and Protocols, the sentence reading “These amendments are on file with the Department, and items 1-10 are also available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328,” has had the language “items 1-10” stricken. That language should have been stricken in the Notice of Proposed Rulemaking.
- 4) Minor technical and grammatical changes in order to improve the rules’ clarity, conciseness and understandability.

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

Comment 1: One commenter suggested that in the descriptions of “subparts significantly revised” within 40 CFR Part 63, Subpart NNNN “National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers,” was mislabeled as Subpart NNNN. The correct Subpart identification is 40 CFR 63 Subpart Q “National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.”

Response: ADEQ agrees with the commenter and is correcting the Subpart title from “NNNN” to “Q” within the description of 40 CFR Part 63 “subparts significantly revised” in the preamble.

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:

<u>New incorporations by reference (subparts or larger) as of 7/1/06</u>	<u>Location</u>
40 CFR 60, Subparts FFFF and EEEE	R18-2-901
40 CFR 63, Subparts DDDD and DDDDD	R18-2-1101(B)
40 CFR 75, Subpart I	R18-2-333(A)
<u>Incorporations by reference updated to 7/1/06 (may include new Sections)</u>	<u>Location</u>
40 CFR 81.303	18-2-210
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)
40 CFR 50	Appendix 2
40 CFR 50, Appendices A through N	Appendix 2
40 CFR 51, Appendix M, Appendix S, Section IV, and Appendix W	Appendix 2
40 CFR 52, Appendices D and E	Appendix 2
40 CFR 53	Appendix 2
40 CFR 58	Appendix 2
40 CFR 58, all appendices	Appendix 2
40 CFR 60, all appendices	Appendix 2
40 CFR 61, all appendices	Appendix 2
40 CFR 63, all appendices	Appendix 2
40 CFR 75, all appendices	Appendix 2

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

Section

R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations

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

R18-2-902. General Provisions

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

Section

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

R18-2-1102. General Provisions

Appendix 2. Test Methods and Protocols

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations

40 CFR 81.303 as amended as of July 1, ~~2004~~ 2006 (and no future amendments or editions) is incorporated by reference as an applicable requirement and on file with the Department of Environmental Quality. 40 CFR 81.303 is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328.

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, ~~2004~~ 2006, (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, ~~2004~~ 2006, 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

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- 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 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.

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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.
77. Subpart EEEE - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.
78. Subpart FFFF - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced On or Before December 9, 2004.

R18-2-902. General Provisions

- A. As used in 40 CFR 60: "Administrator" means the Director of the Arizona Department of Environmental Quality, except that the Director shall not be authorized to approve alternate or equivalent test methods or alternative standards or work practices.
- B. From the general standards identified in R18-2-901, delete the following:
 1. 40 CFR 60.4. All requests, reports, applications, submittals, and other communications to the Director pursuant to this Article shall be submitted to the Arizona Department of Environmental Quality, Air Quality Division, ~~3033 North Central Avenue~~ 1110 West Washington Street, Phoenix, Arizona ~~85012~~ 85007.
 2. 40 CFR 60.5 and 60.6.
- C. The Director shall not be delegated authority to deal with equivalency determinations or innovative technology waivers as covered in Sections 111(h)(3) and 111(j) of the Act.

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, ~~2004~~ 2006, 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.

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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, ~~2004~~ 2006, ~~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.~~
 4. Subpart D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants.
 5. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
 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.
 7. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
 8. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
 9. Subpart J - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production.
 10. Subpart L - National Emission Standards for Coke Oven Batteries.
 11. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
 12. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
 13. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
 14. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
 15. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
 16. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
 17. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
 18. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
 19. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
 20. Subpart X - National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting.
 21. Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.
 22. Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
 23. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
 24. Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
 25. Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
 26. Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
 27. Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
 28. Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
 29. Subpart KK - National Emission Standards for the Printing and Publishing Industry.
 30. Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.

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

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- ~~74-72.~~ Subpart NNNN - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.
~~72-73.~~ Subpart OOOO - National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.
~~73-74.~~ Subpart PPPP - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.
~~74-75.~~ Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.
~~75-76.~~ Subpart RRRR - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.
~~76-77.~~ Subpart SSSS - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.
~~77-78.~~ Subpart TTTT - National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.
~~78-79.~~ Subpart UUUU - National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.
~~79-80.~~ Subpart VVVV - National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.
~~80-81.~~ Subpart WWWW - National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.
~~81-82.~~ Subpart XXXX - National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.
~~82-83.~~ Subpart YYYY - National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
~~83-84.~~ Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
~~84-85.~~ Subpart AAAAA - National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
~~85-86.~~ Subpart BBBBB - National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
~~86-87.~~ Subpart CCCCC - National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.
88. Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.
~~87-89.~~ Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
~~88-90.~~ Subpart FFFFF - National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing.
~~89-91.~~ Subpart GGGGG - National Emission Standards for Hazardous Air Pollutants: Site Remediation.
~~90-92.~~ Subpart HHHHH - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
~~91-93.~~ Subpart IIIII - National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
~~92-94.~~ Subpart JJJJJ - National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.
~~93-95.~~ Subpart KKKKK - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.
~~94-96.~~ Subpart LLLLL - National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.
~~95-97.~~ Subpart MMMMM - National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations.
~~96-98.~~ Subpart NNNNN - National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.
~~97-99.~~ Subpart PPPPP - National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands.
~~98-100.~~ Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.
~~99-101.~~ Subpart RRRRR - National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
~~100-102.~~ Subpart SSSSS - National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.
~~101-103.~~ Subpart TTTTT - National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

R18-2-1102. General Provisions

- A. When used in 40 CFR 61 or 63, “Administrator” means the Director of the Arizona Department of Environmental Quality except that the Director shall not be authorized to approve alternate or equivalent test methods or alternate standards or work practices, except as specifically provided in Part 63, Subpart B.
- B. From the general standards identified in R18-2-1101(A), delete 40 CFR 61.04. All requests, reports, applications, submittals, and other communications to the Director pursuant to this Article shall be submitted to the Arizona Department of Environmental Quality, Air Quality Division, ~~3033 North Central Avenue~~ 1110 West Washington Street, Phoenix, Arizona ~~85012~~ 85007.
- C. The Director shall not be delegated authority to deal with equivalency determinations that are nontransferable through Section ~~112(e)(3)~~ 112(h)(3) of the Act.

APPENDIX 2. TEST METHODS AND PROTOCOLS

The following test methods and protocols are approved for use as directed by the Department under this Chapter. These standards are incorporated by reference as applicable requirements revised as of July 1, ~~2004~~ 2006, and no future editions or amendments. These standards are on file with the Department, and ~~items 1-10~~ are also available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328.

1. 40 CFR 50;
2. 40 CFR 50, Appendices A through N;
3. 40 CFR ~~Part~~ 51, Appendix M, ~~Appendix S~~, Section IV of Appendix S, and Appendix W;
4. 40 CFR 52, Appendices D and E;
5. 40 CFR 53;
6. 40 CFR 58;
7. 40 CFR 58, all appendices;
8. 40 CFR ~~Part~~ 60, all appendices;
9. 40 CFR ~~Part~~ 61, all appendices;
10. 40 CFR ~~Part~~ 63, all appendices;
11. 40 CFR ~~Part~~ 75, all appendices.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

[R07-396]

PREAMBLE

1. **Sections Affected**
Article 22
R20-6-2201
- Rulemaking Action**
New Article
New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statute the rules are implementing (specific):**
Authorizing statute: A.R.S. § 20-143
Implementing statutes: A.R.S. § 20-143
3. **The effective date of the rule:**
January 5, 2008
4. **List all previous notices appearing in the register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 13 A.A.R. 2454, July 6, 2007
Notice of Proposed Rulemaking: 13 A.A.R. 2628, July 27, 2007
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Margaret McClelland
Address: Department of Insurance
2910 N. 44th St., Second Floor
Phoenix, AZ 85018
Telephone: (602) 364-3471
Fax: (602) 364-3470
E-mail: mmclelland@azinsurance.gov
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The Department adopts a new Article 22 and a new Section, R20-6-2201, in response to the U. S. Congress' direction in Section 9 of the Military Personnel Financial Services Protection Act (Pub. L. No. 109-290). The regulation sets forth standards to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair. The Department incorporates by reference the National Association of Insurance Commissioners (NAIC) Military Sales Practices Model Regulation, with some modifications, for uniformity with the other states in response to Congress' direction in Section 9 of the Military Personnel Financial Services Protection Act (Pub. L. No. 109-290).

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R20-6-2201 incorporates the NAIC model by reference. The model regulation contains purpose of and authority for this rulemaking. It also contains exemptions, definitions, practices declared false, misleading, deceptive or unfair, and severability provisions. Subsection 7(F)(5) of the Model Regulation prohibits exclusion of coverage if the insured's death is related to war. A.R.S. § 20-1226 allows provisions that exclude or restrict coverage of death related to war and other circumstance enumerated in A.R.S. § 20-1226(A)(1). The Department added R20-6-2201(B)(4), which excludes subsection 7(F)(5), for consistency with A.R.S. § 20-1226.

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:

LIFE INSURANCE SALES TO MEMBERS OF THE ARMED FORCES

NAIC REPORT TO CONGRESS

March 29, 2007

Available from the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108.

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

Not applicable

9. Economic, small business and consumer impact:

The rule in this Article is procedural and administrative in nature.

The persons who will be directly impacted by this rulemaking are insurers or insurance producers. The consumers directly impacted by this rulemaking are active duty service members of the United States Armed Forces who may realize monetary savings as a result of not being subject to false, misleading, deceptive and unfair sales practices. Except for active duty service members of the United States Armed Forces, this rulemaking should have no economic impact on consumers or on businesses, including small businesses, or political subdivisions.

The Department does not expect the rulemaking to have any economic impact on any other public agencies.

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

R20-6-2201(B) is revised to add the following:

4. Subsection 7(F)(5) is excluded from this Section.

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

1. Comment

The Department received one comment letter generally in support of NAIC Military Sales Practices Model Regulation (Model Regulation), however, the commenter states:

While the model regulation exempts Servicemembers's Group Life Insurance (SGLI), it fails to exempt State Sponsored Life Insurance (SSLI). The SGLI program and the SSLI program are quite similar. Congress has provided for both programs to provide low cost term life insurance to the military. SGLI and SSLI together are the only life insurance programs authorized by congress that may be deducted from military party. The SSLI program applies specifically to members of the National Guard, and is administered on a state basis. SSLI is legitimized by congress under Public Law 289-93 and Title 37, U.S.C., dated 1974.

The commenter requests that a subsection be added at the end of subsection 4(A) that states:

6. Contracts offered by State Sponsored Life Insurance (SSLI) as authorized by Public Law 93-289, Title 37 U.S.C., Section 707 et seq.;

Response: The Model Regulation was drafted by the NAIC Military Sales Working Group (Working Group) which is made up of representatives from 11 state insurance departments and co-chaired by insurance commissioners of Georgia and Texas, two states with a large military presence and experience with the sales abuses that the Model Regulation intends to prevent. The Working Group reports to the Executive Committee of the NAIC and it is comprised of the four NAIC officers, one past president and three representatives from each of the four NAIC zones.

The commenter's issue was brought to the attention of the Working Group after the Model Regulation became effective. The Working Group issued a statement that confirms that even though the Model Regulation does not specifically exempt SSLI from the model regulation, it believes that subsection 4(A)(2) of the Model Regulation provides the necessary exemption and should eliminate any impediment to the availability of SSLI. The statement cites subsection 4(A)(2) which states:

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This regulation shall not apply to solicitations or sales involving group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund[.]”

The Working Group also suggested that, for further clarification, states may modify the exemption of subsection 4(A)(5) of the Model Regulation to specifically reference SSLI as follows:

This regulation shall not apply to solicitations or sales involving contracts offered by Servicemembers’ Group Life Insurance (SGLI) or Veterans’ Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 *et seq.*; and contracts offered by State Sponsored Life Insurance (SSLI) as authorized by 37 U.S.C. Section 707 *et seq.*

The U.S. Congress, in 37 U.S.C. Section 707 *et seq.*, authorized the SSLI program to be provided to members of the National Guard, which includes the Arizona National Guard. The federal statute supersedes state law if there is a conflict. In this case, the Department does not believe there is a conflict and agrees with the NAIC Working Group that even though not specifically exempted from the Model Regulation, subsection 4(A)(2) of the Model Regulation would provide any necessary exemption and eliminates any perceived impediment to the availability of SSLI. The Department does not intend to add an additional subsection R20-6-2201, as the Department cannot supersede federal law by rule. The Department takes the position that, based on the federal statute and subsection 4(A)(2) of the Model Regulation, there is no impediment to the availability of SSLI in Arizona.

2. Comment.

A commenter requested clarification as to whether R20-6-2201 adopts the Model Regulation with no modification to subsection 7(F)(5) which states:

F. The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

- (5) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured’s death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, e.g., double indemnity, which may be excluded.

Response: The proposed rule did not include a specific exclusion for subsection 7(F)(5) of the Model Regulation; however, A.R.S. § 20-1226 allows for the sale of life insurance products that exclude or restrict coverage for death related to war and other circumstances enumerated in A.R.S. § 20-1226(A)(1). Since subsection 7(F)(5) is in conflict with A.R.S. § 20-1226(A), by operation, the statute controls. Therefore, for clarity, the Department revises R20-6-2201 to exclude subsection 7(F)(5) for consistency with the statute.

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. Incorporation by reference and its location in the rule:

Military Sales Practices Model Regulation in R20-6-2201.

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 22. MILITARY PERSONNEL

Section

R20-6-2201. Military Sales Practices

ARTICLE 22. MILITARY PERSONNEL

R20-6-2201. Military Sales Practices

A. The Department incorporates by reference the National Association of Insurance Commissioners (NAIC) Military Sales Practices Model Regulation June 2007 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and available from the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108.

B. The Model Regulation is modified as follows:

- 1. In addition to the terms defined in the Model Regulation, the following definitions apply:

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- a. “Commissioner” means the Director of the Arizona Department of Insurance.
- b. “Regulation” means Article.
2. Section 3 is modified to insert “A.R.S. § 20-106, 20-142 and 20-143” after “of.”
3. Section 7(E)(5)(b) is modified to insert “A.R.S. § 20-1241 et seq., R20-6-202, and R20-6-209” after “requirements of.”
4. Subsection 7(F)(5) of the Model Regulation is excluded from this Section.