NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the *Arizona Administrative Code*.

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

[R15-74]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R9-22-202	Amend
R9-22-1202	Amend

2. Citations to the agency' s statutory rule making authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 36-2903.01, 36-2907

Implementing statute: A.R.S. §§ 36-2907, 36-2906

3. The effective date of the rule:

July 7, 2015

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

The agency is requesting an immediate effective date upon filing with the Secretary of State as specified described under A.R.S. § 41-1032(A)(4). The rulemaking provides a benefit to the public by clarifying payment responsibility for inpatient hospital services. The rulemaking will result in fewer payment disputes and more timely payment of claims. A penalty is not associated with this rulemaking.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 20 A.A.R. 3375, December 5, 2014

Notice of Proposed Rulemaking: 20 A.A.R. 3334, December 5, 2014

5. The agency's contact person who can answer questions about the rulemaking:

Name: Mariaelena Ugarte
Address: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034
Telephone: (602) 417-4693
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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Administration is proposing a rulemaking to clarify an issue that has been identified

through the administrative hearing process regarding contractor responsibility for covering inpatient hospital services when both physical and behavioral health services are provided during the same hospital stay. The proposed rule will clarify the reimbursement methodology. The Administration is proposing to clarify through rule, its existing policy that the Regional Behavioral Health Authority (RBHA) is responsible for all inpatient hospital services if the principle diagnosis on the hospital claim is a behavioral health diagnosis. Those claims will be paid in accordance with a per diem fee schedule developed by Arizona Department of Health Services (ADHS) and approved by AHCCCS. Hospital claims that do not have a behavioral health diagnosis as the principle diagnosis will be paid by the acute care contractor using the Diagnosis Related Group (DRG) payment methodology. This proposed amendment will benefit hospitals by clarifying to whom claims should be submitted and the amount of reimbursement that the hospital can expect. The Administration intends to initiate and implement this clarification as soon as possible to reduce billing disputes between hospitals and health plans and to reduce unnecessary administrative hearings arising from those disputes.

In addition, the Governor's Office has approved the rulemaking request on April 27, 2015. The rulemaking is consistent with exemption (2)(b) of the Executive Order 2015-01.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:

A study was not referenced or relied upon when revising the proposed regulations.

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

Not applicable.

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

The Administration anticipates no economic impact on the implementing agency, contractors, providers, small businesses and consumers because the change is clarifying an existing process that is currently implemented in policy and it is consistent with the current rule regarding reimbursement pursuant to R9-22-712.61(B).

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No significant changes were made between the proposed rulemaking and the final rulemaking.

Clarification to the last sentence of R9-22-1202(A) was made by stating that the ICD code set is required by AHCCCS claims and encounters. The Administration added this language to clarify that AHCCCS requires use of the ICD code set. In addition, under R9-22-1202(C)(4) clarification was made to indicate that AHCCCS is responsible for "covered" inpatient hospital services and where the principal diagnosis on the claim is "not" a behavioral health diagnosis. The meaning of the language was not changed.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The following comments were received as of the close of the comment period of January 5, 2015:

Item #	Comment From and Date rec'd.	Comment	Analysis/ Recommendation
1.	Nathan Jones Northern AZ Regional Behavioral Health Authority (NARBHA) Legal Council 01/05/15 Verbal comment	We are in full support of this rulemaking. We ask for a couple of clarifying points. We are dedicated to following all the rules and laws and contractual expectations of both DBHS and AHCCCS. 1. Clarify statement 8 of the NOPR which refers to this as an existing process consistent with current rules. To our knowledge capitation rates have not been based on this particular interpretation. For example current ACOM 432 states that RBHA's are not responsible for non-behavioral health professional fees related to co morbid conditions such as diabetes, hypertension, asthma, etc. I point this out only to say that this rulemaking does represent a change to existing methodology by making the RBHA responsible for all inpatient hospital services when the principal diagnosis on the claim is a behavioral health diagnosis. Again, NARBHA supports this change and all we want to do is provide the best service that we possibly can, but we would respectfully suggest since it does represent a change to existing methodology that we will need some time to implement.	1. Current ACOM Policy 432, which requires a RBHA to pay claims with a primary diagnosis of behavioral health, has been in effect since July 2012. Therefore, Therefore, RBHA's were required to comply with this policy as of the effective date of the policy. The economic impact described in section 8 is accurate. Claims for professional fees are filed separately from inpatient facility claims. Payment of professional fees will vary depending on the primary diagnosis on the professional fee claims. Regardless of the principal diagnosis on the inpatient facility claim, payment responsibility for the professional fee is determined by the primary diagnosis on the professional fee claim. For example, if a member has an inpatient stay with a physical health principal diagnosis but the member receives a psych consult during the inpatient stay, that consult is billed separately on a CMS 1500 with a primary diagnosis of behavioral health, which becomes a RBHA financial responsibility.

		One possible suggestion would be that given the fact that the integrated RBHA contract will be coming into effect on 10/01/15, which would seem a logical implementation timeframe and one we would suggest and support. Given that situations relevant to this rulemaking will often arise with respect to persons who are living with a serious mental illness, for that population come 10/01/15 the acute and behavioral health contractors will be one and the same for that population assuming there has not been an opt out. This would enable the RBHA to provide the highest customer service to AHCCCS, DBHS and to the members. We are proposing a possible 10/01/15 implementation date for the agencies consideration.	
		2. Right now NARBHA subjects non-emergent inpatient hospitalization to prior authorization and emergent hospitalizations to retrospective review based on approved criteria pursuant to the AHCCCS Medical Policy Manual. It is anticipated that this rulemaking will be relevant to emergency situations, especially, and as such, NARBHA would suggest some clarification of the impact to non-*inpatient* emergency services, such as the emergency department, ambulances, etc. For example current ACOM 432 states an emergency transportation from the community to the hospital ED is the responsibility of the acute care contractor. Whether the rulemaking will change this aspect, whether the issue of correct diagnosis on claims can be explored and utilization and medical management activities, that is some clarification we would request as well. We are trying to suggest these things are in the states interest and to try and provide the best service we can. An effective corporate compliance program, for example, utilization controls, is all parts of the services we provide to the state. These are furthered by RBHA's being able to do things such as, apply authorization and retrospective review criteria with clinical information available, and ensure things such as the diagnosis code on the claim matches the evidence on the chart.	2. This rulemaking is limited to inpatient facility services. Non-*inpatient* services will be addressed in a separate rulemaking. The comments will be referred to the appropriate parties for consideration when drafting rule related to non-inpatient services.
		3. Finally, NARBHA would like to note that it has not in the memory of any current staff had a claim dispute concerning allocation of financial responsibility between any two plans and the RBHA that has not been resolved amicably without need for a state fair hearing. We think this is evidence of our positive relationship with our provider network and our coordination with the acute care contractors. Once again as part of our service to the state. We respectfully submit that this change should operate prospectively only so that the RBHA can implement it as quickly as possible without changing the resolution of claims that have already been processed in a manner consistent with the understanding of our provider network.	3. See response in item #1 above.
		Thank you for the opportunity to comment. We want to emphasize again that we are in full support of this change. We ask only these clarifying points and make a few suggestions in interest of only being helpful with the implementation of this rule.	

2.	Julie Bosserman Maricopa Medical Center 01/05/15 Verbal comment	We have a few questions. 1. In regards to authorization, NARBHA mentioned that on emergent admissions they do retrospective authorization, in Maricopa County the expectation is that we do prior authorization or notification within the 24 hour or 72 hour based on whether or not the patient is admitted to the ICU or to a floor status. What becomes difficult is when a patient comes in to the medical facility with something to treat medically rather than behavioral health-wise; we are looking to the acute plan for notification, authorization and ongoing concurrent review. It is not until the patient discharges that you actually get the final primary diagnosis. If the patient stays beyond the 24 or 72 hours, and many of ours do, we would exceed the timely notification requirements that are in statute right now. How will this be addressed? 2. This dates back to a time before CRS was integrated; we had similar problems then. We would notify the acute plan and then get a denial for the CRS diagnosis. There was a lot of hand holding where the acute plan would deny and refer to CRS, and CRS would deny and refer back to acute plan. Even when it was integrated where APIPA had both acute and CRS patients, the authorization frequently will be routed into the wrong channel inside United Healthcare. You have a stay where you are providing some medically necessary services and the reimbursement is 0 because it goes here and by the time you get the denial and turn around you miss your timely billing. If you could address somehow those administrative issues with authorization and timely filing of the claim? 3. Regarding credentialing, we have taken two of these cases to hearing and one thing that does come up, because we are providing only medical services in the acute facility, is that all our physicians are internist; none of our physicians are behavioral health doctors. My guess is that they are billing with a psychiatric diagnosis and are not credentialed with the RBHA. So you have a whole credentialing issue that will come up and you will have all your psychiatric physicians that you have gone through the credentialing and now you will need to credential all your medical doctors with the RBHA. 4. My understanding is that rather than the APR DRG reimbursement for a hospital stay it is not going to go to a tiered per day based on the ADHS? 5. That is currently around $670 per day, the APR DRG is hard to compare since that is paid in a lump sum but previous to 10/01/14 we were paid on a tiered per day based on where you're. The ICU day would bring roughly $2,500 and routine floor around $1,000, which is significantly more than the $670 proposed for the tiered per day from ADHS. There will be a significant financial impact to the hospitals making this change if we can get paid and taking a significant cut to the medical reimbursement. 6. In rule R9-22-1202 (A) it refers to the mental disorders in the ICD code set. Is it different than the ADHS list that they use, the addendum. Is it different or the same? 7. In rule R9-22-1202 (D), in regards to FFS members, is AHCCCS going to be responsible for the FFS members when they have a primary behavioral health diagnosis? What is confusing is where it talks about IHS hospitals or a tribal hospital. What we get is a person who is only eligible for emergency services that come in for withdrawal. I assume the rules applicable would be the same where the RBHAs would be responsible for the emergent service. Would they pay under the APR DRG?	1. In the case of individuals enrolled in managed care, we would like to clarify that by both rule and policy emergency admissions do not require Prior Authorization (PA) and notification cannot be required by the managed care contractor any sooner than the 11th day following admission R9-22-210. In reference to FFS, the notification timeframe is 72 hours from the date of admission as cited under R9-22-210; this would only apply when the principal diagnosis is not a behavioral health diagnosis. In the case of the commenter's example the timely notification obligation would have been met to the acute plan. AHCCCS and ADHS/BHS are developing a process in which the acute contractors can assist the RBHA's with authorizing PA and concurrent review through 09/30/15. Effective 10/01/15 the newly awarded integrated RBHA's will be experienced with PA and concurrent review processes. 2. This rule is intended to clarify for providers as well as stakeholders the appropriate entity to which to submit a claim for payment. 3. This rulemaking relates to claims for inpatient hospital services only. Claims for professional fees are filed separately from inpatient facility claims. The professional claim will have no impact on the inpatient facility claim. With respect to those professional claims that have a behavioral health diagnosis, the RBHA is responsible for payment of professional claims. Therefore, those claims should be filed with the RBHA. The acute plan is responsible for payment of professional claims with a physical health diagnosis. Therefore, those claims should be filed with the acute plan. 4. If the principal diagnosis on the inpatient facility claim is behavioral, then the RBHA's will pay the ADHS per diem rate. 5. Pursuant to rule, ADHS pays the per diem rates. The difference in payment is a fiscal impact of the APR-DRG rule changes. 6. The requirement of this proposed rule is to utilize the latest ICD code set in use for purposes of identifying the principal diagnosis. This is currently the ICD9 code set. Please refer your question directly to ADHS regarding use of the addendum. 7. We are assuming that the question is related to services provided to Federal Emergency Services (FES) members. FES members are not assigned to a RBHA. AHCCCS is solely responsible for payment of emergent, behavioral and physical health services for FES members. If the member's service qualifies under the emergency service definition, then the AHCCCS Administration will pay APR DRG rates consistent with R9-22-712.61

3.	Julie Bosserman Maricopa Medical Center 01/05/15 Written comment	The assignment of financial responsibility by principal diagnosis code has created a lot of confusion because:	
		The ACOM states that the T/RBHA is responsible when the member is **medically stable.** Patients admitted for acute care services are not "medically stable" and the services provided are medical, not behavioral. For example, acute alcohol withdrawal might require intravenous sedatives to prevent seizures and intubation with mechanical ventilation for airway protection. These patients can be admitted, treated and discharged from an acute hospital **without** receiving any behavioral health services and the principal diagnosis can be behavioral health. **If financial responsibility is going to be assigned by the principal diagnosis, the rule and ACOM must be very clear that the principal diagnosis determines financial responsibility, not the place of service or the services provided. If the principal diagnosis is behavioral, the T/RBHA may be financially responsible for strictly acute care hospitalizations. If the principal diagnosis is medical, an Acute Contractor might be financially responsible for a behavioral health hospitalization.**	1. This is the reason for this rule clarification. ACOM Policy 432 is under revision as well.
		2. Admission notification is based on place of service. Acute hospitals notify the acute contractor and behavioral health hospitals notify the T/RBHA. Since the principal diagnosis is not assigned until discharge, facilities are likely to miss the timely notification deadlines if the principal diagnosis does not align with the place of service. **How is the rule going to prevent $0 reimbursement for medically necessary services if the acute plan denies for principal behavioral health diagnosis and the T/RBHA denied for late notification?**	2. See Item #2 (1) above.
		3. It is conceivable that an FES patient can be admitted to an acute care facility with an emergency medical condition related to a principal behavioral health diagnosis. **If AHCCCS is responsible for FES reimbursement, how will FES claims with a principal behavioral health diagnosis be adjudicated? Will AHCCCS adjudicate these claims based on the APR-DRG or tier/day? How will the rule ensure these claims are not denied solely on their principal diagnosis?**	3. See Item #2 (7) above.
		4. Is credentialing going to be an issue? Our medical doctors are credentialed with the Acute Contractors because they provide acute services. If financial responsibility is going to be assigned by the principal diagnosis, will our medical doctors need to be credentialed with the T/RBHA in order to bill the T/RBHA for acute hospitalizations coded with a principal behavioral health diagnosis?	See Item #2 (3) above.
		5. Current contracts do not address T/RBHA reimbursement for acute stays. **What is the expected tier/day reimbursement from the T/RBHA? If the default is ADHS's rate of $665.33/day, this is significantly less than the $2,667.33/day ICU tier and the $1041.48/day routine tier reimbursement pre-Oct 2014. Depending on the length of stay, this rate will probably be less than the expected APR-DRG payment also. What can be done to ensure hospitals are not significantly underpaid for their services? Will there be an outlier calculation as there was prior to APR-DRG?**	5. T/RBHAs will pay the ADHS per diem rates; there is no outlier provision with those rates.
		Thank-you for your time and consideration.	

4.	Jason Bezozo Banner Health 01/05/15 Written comments	The Proposed Regulation Perpetuates Confusion On Payment Responsibility Based On Diagnosis and Should Be Clarified Banner was an active participant in the APR-DRG work group. We greatly appreciated the opportunity to assist AHCCCS in crafting this important modernizing change to hospital reimbursement. As with any new reimbursement system, however, no agency, consultant, or work group can anticipate each and every operational or financial repercussion of a new system. Once the focus moves beyond the "big picture" to details, there are invariably unanticipated problems. Such a problem now appears to be emerging with regard to inpatient reimbursement for behavioral health services and medical services originating from behavioral health conditions. Specifically, the proposed R9-22-1202 states, in pertinent part: R9-22-1202. ADHS, Contractor, and Administration and CRS Responsibilities A. ADHS responsibilities. ADHS is responsible for payment of behavioral health services provided to members except as specified under subsection (D) [FFS, ALTCS, and CRS]. ADHS' responsibility for payment of behavioral health services includes claims for inpatient hospital services, which may include physical health services, when the principle diagnosis on the hospital claim is a behavioral health diagnosis. Behavioral health diagnosis are identified as "mental disorders in the latest "ICD code set. . . . C. Contractor responsibilities. A contractor shall: . . . 4. Be responsible for providing inpatient hospital services, which may include behavioral health inpatient hospital services, when the principle diagnosis on the hospital claim is other than a behavioral health diagnosis. (Underlined in original; italic bold added for emphasis). This language corresponds to that appearing in the APR-DRG regulation at R9-22-715.61(B): . . . claims for inpatient services that are covered by a RBHA or TRBHA, where a primary diagnosis is a behavioral health diagnosis, shall be reimbursed as prescribed by ADHS: however, if the primary diagnosis is a medical diagnosis, the claim shall be processed under the DRG methodology. . .. We find this language inherently ambiguous. In discussions with various AHCCCS, RBHA, and acute contractor staff, it appears the agency and its contractors believe AHCCCS now equates the presence of a principal "behavioral health diagnosis" with "behavioral health services." That is, AHCCCS is assuming any time there is a behavioral health diagnosis, the patient receives behavioral health services. Indeed, that is what AHCCCS has stated in the Preamble to these Proposed Rules: The Administration is proposing to clarify through its rule, its existing policy that the RBHA is responsible for all inpatient hospital services if the principle diagnosis on the hospital claim is a behavioral health diagnosis. This assumes a false equivalency between diagnosis and services that is inconsistent with the statutes and regulations taken as a whole, the practice of medicine, the standard of care, and hospital operations industry wide.	1. The objective of this rule is to clarify for hospitals, providers, and other stakeholders which AHCCCS managed care contractor (or T/RBHA) is responsible for the payment of inpatient hospitals stays when services are rendered for both physical and behavioral health conditions. We disagree with the commenter that it is less ambiguous to establish a payment rule based on an analysis of the relative degree to which physical health and behavioral health services are described in the detail of the individual claim. As reflected in the proposed rule, the administration has determined that the payment responsibility will be less ambiguous and will result in fewer claim denials if the responsible AHCCCS managed care contractor (or T/RBHA) is identified by the principal diagnosis on the claim for payment. While each inpatient claim can have multiple line-item services provided during a stay (which services can be either physical or behavioral health related), each claim has only one principal diagnosis.

		The very first sentence of R9-22-1202 begins "ADHS is responsible for payment of behavioral health services . . ." "Behavioral Health Services" is a defined term in R9-22-1201(2)(h), and is restricted to services "for the evaluation and diagnosis or a mental health or substance abuse condition and the planned care, treatment, and rehabilitation of the member." "Behavioral health services" are not treatments of medical conditions that arise or originate in a behavioral health diagnosis. Some examples from actual cases are: • An overdose patient in respiratory distress, on a ventilator and in the ICU for 7 days. • A patient who is in withdrawal and comes to the ED, but has multiple seizures, tachycardia, and an extremely high white blood cell count, who undergoes IV antibiotic treatment and Video EEG. • A chronic smoker who has an acute acerbation of COPD due to smoking, whose physician describes his condition as arising from "tobacco abuse." • A patient with confusion and hallucinations, of unknown etiology, whose work up other than initial drug and alcohol screens was entirely neurological, cardiac, renal and infection related, but was ultimately discharged with a diagnosis of "unspecified psychosis."	
		Conversely, there are patients in psychiatric units or psychiatric hospitals receiving ONLY behavioral health services who have a principal diagnosis that is not in the "behavioral range" and for whom the RBHA will not pay. Key among these are patients being treated for postpartum depression (code 648.44). This is a recognized behavioral condition, treated as such, and one for which AHCCCS has an explicit clinical policy. Yet the RBHAs will not pay for the services because the code "is not within the behavioral range." A.A.C. R9-22-1202 should be revised to be consistent with the clear intent of the definitions as well as actual medical practice and standards in the community – patients who receive medical treatment for conditions or effects of their behavioral health principal diagnosis are the payment responsibility of the payer/contractor responsible for acute medical services. We certainly understand that in this electronic and data driven world, the Administration is seeking a "code based" mechanism to streamline financial operations and data collection. But the Administration should not let its desire for simplicity ignore the realities of patient care or create a "black hole" of unpaid claims. And while we understand that the acute contractors have been told they can override diagnosis code denials or recoupments in the claim dispute process after medical review confirms the medical nature of services, this exception process has not been formalized or made public, and we do not know if it is intended to apply to post October 1 claims. We also do not believe the ADHS and the RBHAs have been given the same permission; we certainly have not seen it in operation.	

		We recommend and request the following changes: 1. The regulation should expressly require that any claim submitted to a payer (ADHS/TRBHA or acute contractor) that denies for improper principal diagnosis code for the payer type be automatically sent for medical review and exception processing based on actual services provided (subject to medical necessity, of course). 2. In addition, we ask that the Administration consider establishing a condition code (similar to the "61" used for outliers) that would flag a claim for medical review and exception processing, which could then be documented in the encounter process. Authorization Problems Created by The Rules Need to Be Addressed. Diagnosis codes are established after the patient is discharged, not at admission. Indeed the very definition of a "principal diagnosis" is: "[T]he condition established after study to be chiefly responsible for the admission. Even though another diagnosis may be more severe than the principal diagnosis, the principal diagnosis, as defined above, is [entered on the UB]. CMS Medicare Claims Processing Manual (100-04), Ch. 23 § 10.2 The process of assigning diagnosis codes starts with the physician notes and other information in the medical records. After discharge, the record goes through a coding system (software and human validation) that matches the medical record to industry-standard coding requirements, and generates the diagnosis and procedure coding for the claim. This process can take several days, depending on the complexity of the claim and claim type. The Administration's rules require that hospitals notify the responsible plan within a specified time for emergencies and seek authorization. The regulations also permit a plan to deny payment of non-emergency claims for failure to obtain authorization. As currently contemplated, however, the responsible plan is determined by information only available after discharge. Even if limited clinical information about the patient is communicated to admitting staff during the admission process, the coding of that information would not be available, and the information may change at discharge. It is inconsistent with the program goal of "cost containment" and efficiency to promulgate rules which require a hospital to notify two plans for every admission or risk losing the ability to be paid due to failure to notify the "right" payer. In most cases, and absent very obvious circumstances, the hospital will notify the acute contractor. For inpatient admissions, the notified plan has opportunity to concurrently review the stay and can refer the case to the alternate contractor if it believes such a referral is appropriate. We believe that R9-22-1202(C) and (E) should be amended to state that if a hospital notifies or receives authorization from either the acute contractor or ADHS/TRBHA, but subsequently bills the claim to a different AHCCCS payer type based on the principal diagnosis code or subsequent instructions from the authorizing plan, the claim cannot be denied for failure to notify or secure authorization. Put more simply, AHCCCS regulations and policies should presume that notice and authorization information is shared by all AHCCCS payers responsible for the patient. This approach will not only protect the hospital from unfair denials for failure to notify or secure authorization, but will encourage closer communication by the AHCCCS constituent contractors, moving the system closer to an integrated model for all members.	

		Adequacy of Behavioral Per Diem for Medical Cases Finally, we must comment on what we believe will be inadequate rates for medical cases with behavioral principal diagnosis codes if these cases remain an ADHS/TRBHA responsibility. As you are aware, ADHS and its TRBHAs historically have not been responsible for patients being treated medically, even if the principal diagnosis code was "behavioral." Instead, the ADHS/TRBHA payment responsibility was limited to circumstances in which the patient had a behavioral health principal diagnosis and was receiving "behavioral health services." The assigned "behavioral" per diem for FY 2014-2015 is $678.64 per day for all levels of acuity in a general acute care hospital. This rate is consistent with prior ADHS/TRBHA rates for behavioral health services and far below the final AHCCCS tiered per diem rates for hospitals. At the end of FY 2013-2014, the psychiatric tier was approximately $820 to $860 per day for Banner hospitals. The ADHS behavioral per diem of $678.64 is obviously lower than this final psychiatric tier. But more important to this discussion of medical treatment, the ADHS rate is only 2/3 of the final routine tier rate (approximately $1000 per day), and only 1/4 of the final ICU tier rate (approximately $2500 per day). We know from our experience that a significant number of patients admitted for withdrawal, suicide attempts, and overdoses are initially admitted to the intensive care unit due to respiratory distress, seizures, cardiac complications, organ failure, fluid or electrolyte imbalances, or other medical complications. Patients are transferred to telemetry or medical floors as their medical condition improves, while still requiring medical treatment. Medical treatment remains the predominant focus until the patient is medically stable and can be discharged to outpatient behavioral treatment or moved to a psychiatric unit or behavioral facility. The cost to Banner for caring for these patients is identical to the cost of caring for any similar medical patient in a general acute care hospital. A per diem based on providing traditional "behavioral health services" is inadequate to cover those costs. To the best of our knowledge, there has been no effort by ADHS or AHCCCS to re-evaluate the behavioral per diem in light of the increase patient acuity that will result from the addition of medical cases to the historic ADHS/TRBHA case mix. We certainly have not been asked to review relevant Banner "principal diagnosis code" claims and encounter data generated by AHCCCS as is typical when the Administration engages in rate setting. If AHCCCS and ADHS are going to persist in using principal behavioral diagnosis code as the determining factor in payer responsibility, the rates should be revisited and, for general acute care hospitals, made commensurate with the final year of the per diems. Thank you again for the opportunity to submit these comments and your consideration. We look forward to continuing to work with AHCCCS and ADHS on the further development of the integrated delivery and payment system through both rule making and policy development. If you have any questions, please contact Jason Bezozo, System Director, Government Relations, at 602-747-8138 or at jason.bezozo@bannerhealth.com.	
5.	Kim Aguirre Northern Cochise Community Hospital 11/21/14 Written comment	We welcome a clear rule to the claim process as we go back and forth trying to obtain payment right now primarily with our Emergency Room claims. Please consider this as you finalize the inpatient process.	1. Although this rule delineates fiscal responsibility for inpatient stays, AHCCCS has published AHCCCS Contractor Operations Manual (ACOM) Policy 432 which addresses the emergency room claim issue.

6.	Julie Bosserman Maricopa Medical Center 11/21/14 Written comment	1. While MIHS appreciates the attempts of this proposed rule to clarify the responsible payer for an inpatient stay, the proposed rule should also clarify that the RHBA is responsible for payment even in situations where the patient was admitted for acute medical services, the Acute Contractor was notified but not the RBHA, and the principal diagnosis on discharge was behavioral health. Conversely, the proposed rule should also clarify that the Acute Contractor is responsible for payment even in situations where the patient was admitted for behavioral health services, the RBHA was notified but not the Acute Contractor, and the principal diagnosis on discharge was medical.	See Item #2 (1) above.
		2. Currently, the acute contractor is notified when a patient is admitted to MMC for medical services and the RBHA is notified when a patient is admitted to Desert Vista or the Behavioral Health Annex for behavioral health services. Since the principal diagnosis is the condition, after study, which occasioned the admission to the hospital, it may not represent the majority of services provided during the hospitalization. The ambiguity arises when the principal diagnosis assigned at discharge changes the responsible payer and the responsible payer has not received timely notification of the admission.	2. See Item #2 (1) above.
		3. Under the proposed rule, the Contractor/RBHA authorizing inpatient services can be prevented from paying a claim secondary to the principal diagnosis on discharge and the claim can be denied by the Contractor/RBHA for lack of notification/prior authorization. It is unclear under the proposed rule where the financial responsibility lies in these circumstances. Is it the RBHA because the principle diagnosis is a behavioral health, even in the absence of prior notification? Or, is it the Contractor as a default payer because the RBHA has denied payment for lack of notification? The proposed rule must make that clear.	3. See Item #2 (1) above.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters have been prescribed.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Although federal law is applicable to the subject matter of the rules, the Administration believes the rules are not more stringent than federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

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

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

ARTICLE 2. SCOPE OF SERVICES

Section
R9-22-202. General Requirements

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

Section
R9-22-1202. ADHS, Contractor, Administration and CRS Responsibilities

ARTICLE 2. SCOPE OF SERVICES

R9-22-202. General Requirements

A. For the purposes of this Article, the following definitions apply:
1. "Authorization" means written, verbal, or electronic authorization by:
   a. The Administration for services rendered to a fee-for-service member, or
   b. The contractor for services rendered to a prepaid capitated member.
2. Use of the phrase "attending physician" applies only to the fee-for-service population.

B. In addition to other requirements and limitations specified in this Chapter, the following general requirements apply:
1. Only medically necessary, cost effective, and federally-reimbursable and state- reimbursable services are covered services.
2. Covered services for the federal emergency services program (FESP) are under R9-22- 217.
3. The Administration or a contractor may waive the covered services referral requirements of this Article.
4. Except as authorized by the Administration or a contractor, a primary care provider, attending physician, practitioner, or a dentist shall provide or direct the member's covered services. Delegation of the provision of care to a practitioner does not diminish the role or responsibility of the primary care provider.
5. A contractor shall offer a female member direct access to preventive and routine services from gynecology providers within the contractor's network without a referral from a primary care provider.
6. A member may receive physical and behavioral health services as specified in Articles 2 and 12.
7. The Administration or a contractor shall provide services under the Section 1115 Waiver as defined in A.R.S. § 36-2901.
8. An AHCCCS registered provider shall provide covered services within the provider's scope of practice.
9. In addition to the specific exclusions and limitations otherwise specified under this Article, the following are not covered:
   a. A service that is determined by the AHCCCS Chief Medical Officer to be experimental or provided primarily for the purpose of research;
   b. Services or items furnished gratuitously, and
   c. Personal care items except as specified under R9-22-212.
10. Medical or behavioral health services are not covered services if provided to:
   a. An inmate of a public institution; or
   b. A person who is in residence at an institution for the treatment of tuberculosis.

C. The Administration or a contractor may deny payment of non-emergency services if prior authorization is not obtained as specified in this Article and Article 7 of this Chapter. The Administration or a contractor shall not provide prior authorization for services unless the provider submits documentation of the medical necessity of the treatment along with the prior authorization request.

D. Services under A.R.S. § 36-2908 provided during the prior period coverage do not require prior authorization.

E. Prior authorization is not required for services necessary to evaluate and stabilize an emergency medical condition. The Administration or a contractor shall not reimburse services that require prior authorization unless the provider documents the diagnosis and treatment.

F. A service is not a covered service if provided outside the GSA unless one of the following applies:
1. A member is referred by a primary care provider for medical specialty care outside the GSA. If a member is referred outside the GSA to receive an authorized medically necessary service, the contractor shall also provide all other medically necessary covered services for the member;
2. There is a net savings in service delivery costs as a result of going outside the GSA that does not require undue travel time or hardship for a member or the member's family;
3. The contractor authorizes placement in a nursing facility located out of the GSA; or
4. Services are provided during prior period coverage or during the prior quarter coverage.

G. If a member is traveling or temporarily residing outside of the GSA, covered services are restricted to emergency care services, unless otherwise authorized by the contractor.

H. A contractor shall provide at a minimum, directly or through subcontracts, the covered services specified in this Chapter and in contract.

I. The Administration shall determine the circumstances under which a FFS member may receive services, other than emergency services, from service providers outside the member's county of residence or outside the state. Criteria

considered by the Administration in making this determination shall include availability and accessibility of appropriate care and cost effectiveness.

J. The restrictions, limitations, and exclusions in this Article do not apply to a contractor electing to provide noncovered services.
1. The Administration shall not consider the costs of providing a noncovered service to a member in the development or negotiation of a capitation rate.
2. A contractor shall pay for noncovered services from administrative revenue or other contractor funds that are unrelated to the provision of services under this Chapter.
3. If a member requests a service that is not covered or is not authorized by a contractor, or the Administration, an AHCCCS-registered service provider may provide the service according to R9-22-702.

K. Subject to CMS approval, the restrictions, limitations, and exclusions specified in the following subsections do not apply to American Indians receiving services through IHS or a tribal health program operating under P.L. 93-638 when those services are eligible for 100 percent federal financial participation:
1. R9-22-205(A)(8),
~~2.~~ ~~R9-22-205(B)(4)(f)~~,
~~3.~~2. R9-22-206,
~~4.~~3. R9-22-207,
~~5.~~4. R9-22-212(C),
~~6.~~5. R9-22-212(D),
~~7.~~6. R9-22-212(E)(8),
~~8.~~7. R9-22-215(C)~~(2)~~ (5), (C)(6), and
~~9.~~8. R9-22-215(C)~~(5)~~ (4).

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-22-1202. ADHS, Contractor, Administration and CRS Responsibilities

A. ADHS responsibilities. ADHS is responsible for payment of behavioral health services provided to members, except as specified under subsection (D). ADHS' responsibility for payment of behavioral health services includes claims for inpatient hospital services, which may include physical health services, when the principal diagnosis on the hospital claim is a behavioral health diagnosis. Behavioral health diagnoses are identified as "mental disorders" in the latest International Classification of Diseases (ICD) code set as required by AHCCCS claims and encounters.

B. ADHS/DBHS may contract with a TRBHA for the provision of behavioral health services for American Indian members. American Indian members may receive covered behavioral health services:
1. From an IHS or tribally operated 638 facility,
2. From a TRBHA, or
3. From a RBHA.

C. Contractor responsibilities. A contractor shall:
1. Refer a member to a RBHA under the contract terms;
2. Provide EPSDT developmental and behavioral health screening as specified in R9-22- 213;
3. Coordinate a member's transition of care and medical records~~.~~; and
4. Be responsible for providing covered inpatient hospital services, which may include behavioral health inpatient hospital services, when the principal diagnosis on the hospital claim is not a behavioral health diagnosis.

D. Administration and CRS responsibilities.
1. The Administration shall be responsible for payment of behavioral health services provided to an ALTCS FFS or an FES member and for behavioral health services provided by IHS and tribally operated 638 facilities. The Administration is also responsible for payment of behavioral health services provided to these members during prior quarter coverage.
2. CRS shall be responsible for payment of behavioral health services provided to members enrolled with CRS.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

[R15-75]

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
R9-22-1001	Amend
R9-22-1002	Amend
R9-22-1003	Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 36-2901, 36-2903(F), 36-2903.01(K), and 36-2915.
Implementing statute: A.R.S. §§ 36-2901, 36-2903(F), 36-2903.01(K), and 36-2915.

3. The effective date of the rule:

July 7, 2015

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

The agency is requesting an immediate effective date upon filing with the Secretary of State as specified and described under A.R.S. § 41-1032(A)(2), which states "To avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction." The rulemaking will bring the agency into compliance with federal law. The agency did not cause a delay or inaction.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 20 A.A.R. 2762, October 10, 2014
Notice of Proposed Rulemaking: 20 A.A.R. 2745, October 10, 2014

5. The agency's contact person who can answer questions about the rulemaking:

Name: Mariaelena Ugarte
Address: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSrules@azahcccs.gov
Web site: www.azahcccs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Administration is conducting a rule-making necessary to conform AHCCCS rules to federal requirements regarding the obligation of health care providers to bill other insurance (when it is known to exist) before billing AHCCCS. With some exceptions, providers must bill legally liable third parties (like private insurance) before billing AHCCCS. However, federal regulations state that in certain circumstances – such as services provided to children and pregnant women – AHCCCS must pay the provider then AHCCCS or its contractors must seek reimbursement from the third party. In addition, there are a few federal exceptions to the general rule that AHCCCS is the payor of last resort. For example, AHCCCS must assume primary responsibility for payment for services covered through the Indian Health Service or medical services that are provided through schools under the federal Individuals with Disabilities Education Act.

Federal laws that describe Title XIX coordination of benefit requirement and the exceptions to cost avoidance of claims are found in 42 U.S.C. 1396a(a)(25), 42 CFR 433.139.

The following federal laws identify the exceptions to Title XIX as the payor of last resort: 42 CFR 431.110 for IHS; 34 CFR 303.510(c) for the Arizona Early Intervention Program; 34 CFR 300.154 for local educational agencies providing services under the Individuals with Disabilities Education Act (IDEA); 42 USC 300ff-15(a)(6); 300ff-27(b)(7)(F); 300ff-64(f)(1); and 300ff-71(i) for grants under the HIV Health Care Services Program and 45 CFR 400.94 for refugee medical assistance programs.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:

A study was not referenced or relied upon when revising these regulations.

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

Not applicable

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

The Administration anticipates a minimal economic impact on health plans since the contractors will have the responsibility to pay the claim upfront and then pursue payment by the primary insurer for prenatal, preventive pediatric, and when a third party insurance is provided by an absent parent. The provider will benefit from this change since the claim related to prenatal, preventive pediatric, and third party insurance provided by an absent parent will not be denied and paid when processed if the claim meets timeliness and medically necessary requirements.
Minimal = $1 - $1M
Moderate = $1M - $10M
Maximum = $10M - on up

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No significant changes were made between the proposed rulemaking and the final rulemaking. Technical changes have been made as a result of the Governors Regulatory Review Council staff's recommendations.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were received as of the close of the comment period of November 10, 2014.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters are applicable.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

This rule is not more stringent than the relevant federal laws referenced below. In part, these laws specify that Title XIX is the payor of last resort, except under limited circumstances, that all reasonable measures be taken to ascertain the legal liability of third parties, that coordination of benefits be implemented, and that the AHCCCS shall make payment for specified services without regard to the liability of a third party such that reimbursement from the third party will take place after payment to the provider. Thus, the Administration is promulgating rule to conform third party liability and coordination of benefit requirements in Article 10 to federal law, describing those entities which are the secondary payor to AHCCCS such as Indian Health Services and Tribal 638 facilities and the Arizona Early Intervention Program. In addition, these rules clarify specific services for which AHCCCS and its Contractors shall "pay and chase" the claim rather than "cost avoid" the claim, including prenatal care for pregnant women and preventive pediatric care.

Federal laws that describe Title XIX coordination of benefit requirement and the exceptions to cost avoidance of claims are found in 42 U.S.C. 1396a(a)(25), 42 CFR 433.139.

The following federal laws identify the exceptions to Title XIX as the payor of last resort: 42 CFR 431.110 for IHS; 34 CFR 303.510(c) for the Arizona Early Intervention Program; 34 CFR 300.154 for local educational agencies providing services under the Individuals with Disabilities Education Act (IDEA); 42 USC 300ff-15(a)(6); 300ff-27(b)(7)(F); 300ff-64(f)(1); and 300ff-71(i) for grants under the HIV Health Care Services Program and 45 CFR 400.94 for refugee medical assistance programs.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

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

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section
R9-22-1001. Definitions
R9-22-1002. General Provisions
R9-22-1003. Cost Avoidance

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-22-1001. Definitions

In addition to the definitions in A.R.S. §§ 36-2901, 36-2923 and 9 A.A.C. 22, Article 1, the following definitions apply to this Article:

"Absent parent" means an individual who is absent from the home and is legally responsible for providing financial and/or medical support for a dependent child.

"Cost avoid" means to deny a claim and return the claim to the provider for a determination of the amount of first- or third-party liability.

"First-party liability" means the obligation of any insurance plan or other coverage obtained directly or indirectly by a member that provides benefits directly to the member to pay all or part of the expenses for medical services incurred by AHCCCS or a member.

"Third-party" means a person, entity, or program that is, or may be, liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

"Third-party liability" means any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished to a member under a state plan.

R9-22-1002. General Provisions

AHCCCS is the payor of last resort unless specifically prohibited by applicable state or federal law. ~~Entities that pay before AHCCCS include but are not limited to~~ AHCCCS is not the payor of last resort when the following entities are the third-party:

1. Indian Health Services (IHS/638), contract health,
2. Title IV-E,
3. Arizona Early Intervention Program (AZEIP), ~~and~~
4. ~~Contract health.~~
4. Local educational agencies providing services under the Individuals with Disabilities Education Act under 34 CFR Part 300,
5. Entities and contractors of entities providing services under grants awarded as part of the HIV Health Care Services Program under 42 USC 300ff et seq., and
6. The Arizona Refugee Resettlement Program operated under 45 CFR Part 400, Subpart (G).

R9-22-1003. Cost Avoidance

A. The Administration's reimbursement responsibility.
1. The Administration shall pay no more than the difference between the Capped Fee-For-Service schedule and the amount of the third-party liability, unless Medicare is the third-party.
2. If Medicare is the third-party that is liable, the Administration shall pay the Medicare copayment, coinsurance, and deductible regardless of the Capped Fee-For-Service Schedule, as described under 9 A.A.C. 29, Article 3.

B. The Contractor's reimbursement responsibility.
1. If the contract between the contractor and the provider does not state otherwise, a contractor shall pay no more than the difference between the contracted rate and the amount of the third-party liability.
2. If the provider does not have a contract with the contractor, a contractor shall pay no more than the difference between the Capped Fee-For-Service rate and the amount of the third-party liability.

C. ~~The requirement to cost avoid applies to all AHCCCS-covered services under Article 2 of this Chapter, unless otherwise specified in this Section~~. The following parties shall take reasonable measures to identify potentially legally liable first- or third-party sources:
1. AHCCCS, the Administration, or a contractor;
2. A provider;
3. A noncontracting provider; and
4. A member.

D. Except as specified under subsection (E), the Administration or a contractor shall cost avoid a claim for AHCCCS covered services under Article 2 if the Administration or a contractor has established the probable existence of a liable party at the time the claim is filed. Establishing liability takes place when the Administration or the contractor receives confirmation that another party is legally responsible for payment of a health care service under Article 2.

~~D.~~E. ~~When the Administration or a contractor determines that a third party may be liable for services provided, the~~ The Administration or contractor shall pay the full amount of the claim according to the Capped-Fee-For-Service Schedule or the contracted rate as described under subsection (B), and then seek reimbursement from any liable parties~~, when~~ if the claim is for:

~~1. The claim is for labor and delivery and postpartum care; or~~
1. Prenatal care for pregnant women,
2. Preventive pediatric services, including E.P.S.D.T. and administration of vaccines to children under the Vaccines for Children (VFC) program; or
~~2.~~3. ~~The liability is from an absent parent, and the claim is for prenatal care or EPSDT services.~~ Services covered by third-party liability that is derived from an absent parent whose obligation to pay support is being enforced by the Division of Child Support Enforcement.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

[R15-76]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**
R9-22-1431 — Repeal

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. § 36-2907.04
Implementing statute: A.R.S. § 36-2907.04

3. The effective date of the rule:
September 5, 2015

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:
Notice of Rulemaking Docket Opening: 20 A.A.R. 2686, October 3, 2014
Notice of Proposed Rulemaking: 20 A.A.R. 2645, October 3, 2014

5. The agency's contact person who can answer questions about the rulemaking:

Name:	Mariaelena Ugarte
Address:	AHCCCS 701 E. Jefferson St. Phoenix, AZ 850
Telephone:	(602) 417-4693
Fax:	(602) 253-9115
E-mail:	AHCCCSrules@azahcccs.gov
Web site:	www.azahcccs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:
The Administration proposes a rulemaking to repeal rules related to the Family Planning Services Extension Program (FPEP) as authorized by A.R.S. § 36-2907.04 subject to the approval of a waiver from the federal government necessary to implement the program. This program provided coverage for family planning services to women who were eligible for AHCCCS during their pregnancy for a two year period following the end of their pregnancy. The federal waiver authorizing these extended benefits ended on December 31, 2013.
See:
These documents will list the FPEP program as a current program in 2013.
http://www.azahcccs.gov/reporting/Downloads/1115waiver/AZ__SNCP%20II%20Amendment_STCs_Final.pdf, and for funding; http://www.azahcccs.gov/reporting/Downloads/AZ_5CityAmendment_CNOMS_CMS.pdf

Then under the 2014 Special Terms and Conditions and Expenditure Authority docs you will find that the program is no longer listed.
See:
http://www.azahcccs.gov/reporting/Downloads/ConformingCMS121514.pdf

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:

A study was not referenced or relied upon when revising this regulation.

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

Not applicable

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

The Administration has petitioned the Governors Regulatory Review Council (GRRC) to allow this rulemaking to be made without an economic impact statement. The petition was approved by GRRC October 7, 2014. The Administration does not anticipate an economic impact since this program has been repealed and unenforced since 2013.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No significant changes were made between the proposed rulemaking and the final rulemaking, The Notice of Final rulemaking text was updated with recent changes made to R9-22-1431 in a rulemaking made effective January 7, 2014. These changes were not captured in the Notice of Proposed rulemaking published on October 3, 2014. This was an oversight on behalf of the rulewriter but considered a technical change since the program ceased to be funded as of December 31, 2013. The differences were: Where the term "Department" was used it was changed to say "Administration or its designee", invalid cross-references were removed and the income % updated to 156%. When necessary, technical changes were made as a result of the Governors Regulatory Review Council staff's recommendations.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were received as of the close of the comment period of November 3, 2014.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters are applicable.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is applicable to the subject matter of the rule, but the rule was not more stringent than federal law. Because the federal waiver governing this program has expired, as identified under item 6, the rule is no longer necessary.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

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

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR FAMILIES AND INDIVIDUALS

Section

R9-22-1431. ~~Family Planning Services Extension Program (FPEP)~~ Repeal

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR FAMILIES AND INDIVIDUALS

R9-22-1431. ~~Family Planning Services Extension Program (FPEP)~~ Repeal

~~**A.** A member who loses eligibility for AHCCCS medical coverage due to the postpartum period ending and who has no other creditable coverage, as specified in 42 U.S.C. 300gg-3(c)(1), may receive up to 24 months of family planning services as provided in this Section and A.R.S. § 36-2907.04.~~

~~**B.** Review of eligibility.~~

~~1. The Administration or its designee shall complete a review of each member's continued eligibility for FPEP at least once every 12 months.~~

~~2. If a member continues to meet all eligibility requirements, the Administration or its designee shall authorize continued eligibility for the FPEP and notify the member of continued eligibility.~~

~~3. The Administration or its designee shall discontinue eligibility and notify the member of the discontinuance if the member:~~

~~a. Has income that exceeds 156 percent of the FPL at the time of the 12-month review,~~

~~b. Fails to comply with a review of eligibility under this subsection, or~~

~~c. Meets any of the criteria under subsection (D).~~

~~**C.** Changes in the member's income after the initial or review eligibility determination shall not impact the member's eligibility during the following 12-month period.~~

~~**D.** The Administration or its designee shall deny or terminate a member from FPEP under this Section if the member:~~

~~1. Voluntarily withdraws from the program;~~

~~2. Cannot be located;~~

~~3. Fails to provide information to the Administration or its designee;~~

~~4. Moves out-of-state;~~

~~5. Has creditable coverage under 42 U.S.C. 300gg-3(c)(1);~~

~~6. Fails to meet the documentation requirements for U.S. citizenship or legal alien status under A.R.S. § 36-2903.03;~~

~~7. Becomes eligible under 9 A.A.C. 22, 9 A.A.C. 28, or 9 A.A.C. 31 for full services under Article 2 of this Chapter;~~

~~8. Becomes sterile; or~~

~~9. Dies.~~

~~**E.** The Administration or its designee shall not reinstate eligibility under this Section after the effective date of a discontinuance of eligibility unless the discontinuance is overturned on appeal or resulted from an administrative error.~~

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ARIZONA LONG-TERM CARE SYSTEM

[R15-77]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R9-28-202	Amend
R9-28-206	Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 36-2939
Implementing statute: A.R.S. § 36-2939

3. The effective date of the rule:

July 7, 2015

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

The agency requested an immediate effective date upon filing with the Secretary of State as specified in A.R.S. § 41-1032(A)(1). This rulemaking will maintain the public health as required by the May 2014 Ninth Circuit Court of Appeals Decision in *Alvarez et al v Betlach*.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 21 A.A.R. 495, April 3, 2015
Notice of Proposed Rulemaking: 21 A.A.R. 487, April 3, 2015

5. The agency's contact person who can answer questions about the rulemaking:

Name: Mariaelena Ugarte
Address: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSrules@azahcccs.gov
Web site: www.azahcccs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

This rulemaking is required as a result of the May 2014 Ninth Circuit Court of Appeals Decision in *Alvarez et al v Betlach*. Litigation challenging AHCCCS coverage of incontinence briefs for members in the ALTCS Program was filed in federal court in 2009 by the Arizona Center for Disability Law. The lawsuit sought to compel AHCCCS to provide incontinence briefs and supplies to members in the Arizona Long Term Care Program who were age 21 years and older and who were incontinent as a result of their disabilities in order to prevent skin breakdown. The current rule applicable to this population limits coverage of incontinence briefs for members age 21 and older to circumstances when medically necessary to treat a medical condition, such as an infection, but not for preventive purposes. The Ninth Circuit Court of Appeals determined that AHCCCS is required to provide coverage of incontinence briefs prescribed for members in the Arizona Long-Term Care Program who are 21 years of age and older when medically necessary to prevent skin breakdown and infection.

*Although the AHCCCS Administration filed a Petition of Certiorari with the United States Supreme Court, the Court denied the Petition. As a r*esult, AHCCCS must comply with the Ninth Circuit Court of Appeals Decision which expands coverage of incontinence briefs to include preventive purposes for ALTCS members age 21 years and older.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:

A study was not referenced or relied upon when revising the regulations for Incontinence Briefs.

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

Not applicable.

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

The Administration anticipates a moderate to high economic impact on the implementing agency, contractors, small businesses and consumers after consideration of national data of incontinence, based on age and gender, which was applied to the ALTCS population. The AHCCCS Administration estimates utilization of incontinence briefs by members in the Arizona Long Term Care Program who are age 21 years and older and who receive services in a home and community based setting (HCBS) to be approximately 25.3%. Accordingly, it is estimated that approximately 8,158 members in the ALTCS Program who are 21 years of age and over and who receive HCBS services may require incontinence briefs for preventive purposes at an estimated annual cost to the Contractors of $13M.
Minimal = under $1M
Moderate = $1M to $10M
High = $10M and above

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No significant changes were made between the proposed rulemaking and the final rulemaking. Technical changes have been made as recommended by the Governor's Regulatory Review Council staff, such as, the conjunction "and" was added to R9-28-202(B)(1).

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The following comments were received as of the close of the comment period of May 4, 2015.

Item #	Rule Cite Line #	Comment From and Date rec'd.	Comment	Analysis/ Recommendation
1.	R9-28-206	Theresa McMahan 03/20/15	Are you aware that "Institutional" includes Skilled Nursing Facilities?	Yes. Please refer to A.A.C. R9-28-204. It is Skilled Nursing Facilities and Intermediate Care Facilities
2.	R9-28-206	Theresa McMahan 03/20/15	Exactly what constitutes a "documented medical condition that causes incontinence of bowel and/or bladder"?	The PCP or attending physician who writes the prescription is responsible for making the determination regarding the member's need for incontinence briefs as delineated in the rule.
3.	R9-28-206	Theresa McMahan 03/20/15	Does this include Severe of Profound Intellectual Disability in the absence of another diagnosis?	The PCP or attending physician who writes the prescription is responsible for making the determination regarding the member's need for incontinence briefs as delineated in the rule.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters are applicable.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

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

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 2. COVERED SERVICES

Section
R9-28-202. ~~Medical~~ Scope of Services
R9-28-206. ALTCS Services that may be Provided to a Member Residing in either an Institutional or HCBS Setting

ARTICLE 2. COVERED SERVICES

R9-28-202. ~~Medical~~ Scope of Services

A. The Administration or a contractor shall cover medical services specified in 9 A.A.C. 22, Article 2 for a member, subject to the limitations and exclusions specified in Article 2, unless otherwise specified in this Chapter.

B. In addition, for members living in an HCBS setting, incontinence briefs for a member 21 years of age and older, including pull-ups, are covered in order to:

1. Treat a medical condition; and
2. Prevent skin breakdown when all the following are met:
   a. The member is incontinent due to a documented medical condition that causes incontinence of bowel and/or bladder,
   b. The PCP or attending physician has issued a prescription ordering the incontinence briefs,
   c. Incontinence briefs do not exceed 180 briefs per month unless the prescribing physician presents evidence of medical necessity for more than 180 briefs per month,
   d. The member obtains incontinence briefs from vendors within the Contractor's network, and

e. Prior authorization has been obtained if required by the Administration, Contractor, or Contractor's designee, as appropriate. Contractors shall not require prior authorization more frequently than every twelve months.

C. Incontinence brief coverage for a member under age 21 is described under R9-22-212.

R9-28-206. ALTCS Services that may be Provided to a Member Residing in either an Institutional or HCBS Setting

The Administration shall cover the following services if the services are provided to a member within the limitations listed:

1. Occupational and physical therapies, speech and audiology services, and respiratory therapy:
   a. The duration, scope, and frequency of each therapeutic modality or service is prescribed by the member's primary care provider or attending physician;
   b. The therapy or service is authorized by the member's contractor or the Administration; and
   c. The therapy or service is included in the members case management plan;
   d. AHCCCS will not cover more than 15 outpatient physical therapy visits for the contract year with the exception of the required Medicare coinsurance and deductible payment as described in 9 A.A.C. 29, Article 3.
2. Medical supplies, durable medical equipment, and customized durable medical equipment, which conform with the requirements and limitations of 9 A.A.C. 22, Article 2 and as described under R9-28-202 for persons in HCBS settings;
3. Ventilator dependent services:
   a. Inpatient or institutional services are limited to services provided in a general hospital, special hospital, NF, or ICF-MR. Services provided in a general or special hospital are included in the hospital's unit tier rate under 9 A.A.C. 22, Article 7;
   b. A ventilator dependent member may receive the array of home and community based services under R9-28-205 as appropriate.
4. Hospice services:
   a. Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months;
   b. Covered hospice services for a member are those allowable under 42 CFR 418.202, December 20, 1994, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments; and
   c. Covered hospice services do not include:
      i. Medical services provided that are not related to the terminal illness, or
      ii. Home delivered meals.
   d. Medicare is the primary payor of hospice services for a member if applicable.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY HAZARDOUS WASTE MANAGEMENT

[R15-73]

PREAMBLE

1. Article, Part or Section Affected (as applicable) — **Rulemaking Action**

R18-8-260	Amend
R18-8-261	Amend
R18-8-262	Amend
R18-8-263	Amend
R18-8-264	Amend
R18-8-265	Amend
R18-8-266	Amend
R18-8-268	Amend
R18-8-270	Amend
R18-8-271	Amend
R18-8-273	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statutes (general) and the implementing statutes (specific):

Authorizing Statutes: A.R.S. §§ 41-1003 and 49-104
Implementing Statute: A.R.S. § 49-922

3. The effective date of the rule:

September 5, 2015

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rules:

Notice of Rulemaking Docket Opening: 20 A.A.R. 103, January 10, 2014
Notice of Proposed Rulemaking: 20 A.A.R. 2501, September 12, 2014

5. The agency's contact person who can answer questions about the rulemaking:

Name: Mark Lewandowski
Address: Arizona Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-2230, or (800) 234-5677, enter 771-2230 (Arizona only)
Fax: (602) 771-4381
E-mail: lewandowski.mark@azdeq.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Summary. The Arizona Department of Environmental Quality (DEQ) is amending the state's hazardous waste rules to incorporate changes in federal regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The amendments in this final rule adopt changes to federal regulations that were in effect as of July 1, 2013 for most sections, and update the general incorporation date in Arizona hazardous waste rules from July 1, 2006 to July 1, 2013. A later incorporation date is established in two Arizona rule sections to capture EPA's solvent-contaminated wipes rule, effective January 31, 2014. This rule also makes technical corrections that the United States Environmental Protection Agency (EPA) has said are necessary to renew Arizona's authorization to implement federal hazardous waste regulations. DEQ-initiated technical corrections are also included. EPA's 2008 rule revising the definition of solid waste is not incorporated by this rulemaking. EPA rules recently vacated by a federal court are also excluded or removed.

Background. Congress passed RCRA in 1976 to establish a national "cradle to grave" regulatory system to control the generation, transportation, treatment, storage and disposal of hazardous wastes. Similar to other national environmental laws, states are encouraged to assume most of the responsibility for the program and become "authorized" to implement RCRA and its underlying regulations. This process ensures national consistency and minimum standards while providing flexibility to states to implement the national standards with state and local solutions.

The requirements for state hazardous waste program authorization are found in 40 CFR 271. Federal hazardous waste regulations change from year to year, so states with authorization such as Arizona have a continuing obligation to revise their programs to keep up with federal changes and remain authorized states. [40 CFR 271.21(e)(1)]

Arizona's hazardous waste rules are found in 18 A.A.C. 8, Article 2 and have been in effect since 1984. EPA granted "final" authorization to Arizona in 1985 to operate its hazardous waste program in Arizona in lieu of the federal hazardous waste program, subject to the limitations imposed by HSWA (see 50 FR 47736, November 20, 1985). EPA last authorized revisions to Arizona's hazardous waste program on March 17, 2004. (69 FR 12544) Due largely to federal and Arizona requirements requiring equivalency with federal regulations (see 42 U.S.C. 6926(b) and A.R.S. § 49-922(A)), Arizona's hazardous waste rules incorporate the federal hazardous waste regulations by reference and are mostly identical to the federal regulations. DEQ regularly compares Arizona's hazardous waste rules to the federal regulations and amends the Arizona rules, as necessary, to comply with state statute and to facilitate continued authorization. Without continued authorization, EPA, rather than DEQ, would administer parts of the hazardous waste program in Arizona. DEQ's objective with this rulemaking is to continue administering the federal hazardous waste program in Arizona in place of EPA. DEQ believes that regular incorporation of changes and additions to federal language into Arizona rules will simplify and facilitate continued authorization.

What EPA regulations are being incorporated in this rule?
The following is a list of changes in federal hazardous waste regulations that were effective as federal law as of July 1, 2013 or January 31, 2014 and that are incorporated into Arizona rules. They are discussed more fully later.

• 2007 Technical Correction. A correction in 40 CFR 273 that reinserts a definition for "on-site" inadvertently omitted in a previous EPA rulemaking; 72 FR 35666, June 29, 2007.

• National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments; 73 FR 18970, April 8, 2008.

• Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019; 73 FR 31756, June 4, 2008.

• Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities; 73 FR 72912, December 1, 2008. Technical corrections at 75 FR 79304, December 20, 2010.

• Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes; 75 FR 1236, January 8, 2010.

• Hazardous Waste Technical Corrections and Clarifications Rule; 75 FR 12989, March 18, 2010.

• Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents, Hazardous Wastes, etc.; 75 FR 78918, December 17, 2010.

• Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Wastes; 76 FR 34147, June 13, 2011.

• Hazardous Waste Technical Corrections and Clarifications Rule; 77 FR 22229, April 13, 2012.

• Revisions to Procedural Rules to Clarify Practices and Procedures Applicable in Permit Appeals Pending Before the Environmental Appeals Board; 78 FR 5281, January 25, 2013.

• Conditional Exclusions from Solid Waste and Hazardous Waste for Solvent-Contaminated Wipes; 78 FR 46447, July 31, 2013; (eff. January 31, 2014).

Two EPA rules that became final just after July 1, 2006 were already incorporated by DEQ in its last hazardous waste rulemaking: one regulating cathode ray tubes, and the other, a large corrections rulemaking. For that reason they are not included in this rulemaking. DEQ's last hazardous waste rulemaking was published at 14 A.A.R. 409, February 8, 2008.

What other changes are being made to Arizona hazardous waste rules?
DEQ is also making a number of technical corrections in this rule. Changes requested by EPA and related to an authorization review of Arizona rules done in 2009 are at R18-8-260(E)(12)(i), R18-8-260(F)(2), renumbered R18-8-260(F)(6)(a) and R18-8-262(I). Arizona initiated changes are located throughout the rule including R18-8-262(H), R18-8-264(H), R18-8-265(H) and (K), R18-8-270(S), and R18-8-271(Q). The textual changes at R18-8-264(H) and R18-8-265(H) reverse an error DEQ made in incorporating EPA's manifest rule in 2006. The textual changes at R18-8-261(I) also correct earlier incorporation errors.

Arizona Performance Track rules. On May 14, 2009, EPA published a notice indicating that it would be terminating its National Environmental Performance Track Program. ADEQ intends to continue its performance track program known as the Arizona Environmental Performance Track Program. DEQ has made changes to R18-8-260(F)(4) to allow remaining RCRA Performance Track incentives to continue under the Arizona program.

Descriptions of EPA regulations incorporated

• 2007 Technical Correction; 72 FR 35666, June 29, 2007. EPA made a technical correction to 40 CFR 273.9 by reinserting a definition for "on-site" that had been inadvertently omitted; 72 FR 35666, June 29, 2007. The definition disappeared between the publication of the July 1, 2005 and July 1, 2006 editions of "40 CFR Parts 266 to 299". It probably was left out during the codification of EPA's Mercury Containing Equipment rule, which was published in the August 5, 2005 FR, and during which § 273.9 was amended. EPA reinserted the previous version of the definition without change.

• National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments; 73 FR 18970, April 8, 2008. In this rulemaking, EPA finalized amendments to the national emission stan-

dards for hazardous air pollutants (NESHAP) for hazardous waste combustors (HWCs), which EPA promulgated on October 12, 2005. EPA clarified several compliance and monitoring provisions, and also corrected several omissions and typographical errors in the final rule. DEQ has determined that none of these types of HWCs exist in Arizona at the present time. DEQ is adopting these amendments under the authority of A.R.S. § 49-922, which directs DEQ to adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of RCRA.

In authorization documents related to the Hazardous Waste portion of this final rule, EPA did not consider the provisions of these amendments to be either more or less stringent than the previous federal requirements, so that states are not required to adopt and seek authorization for them. The EPA rulemaking amended 40 CFR Parts 63, 264, and 266. In this rulemaking, DEQ incorporates into state rule all of the amendments to 264 and 266, without modification. DEQ has proposed to incorporate the amendments to Part 63 in a separate rulemaking. See 20 A.A.R. 1798, July 18, 2014.

• Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019; 73 FR 31756, June 4, 2008. In this rule, EPA amended the list of hazardous wastes from nonspecific sources (called F-wastes) by modifying the scope of the EPA Hazardous Waste No. F019 (wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process). EPA amended the F019 listing to exempt wastewater treatment sludges from zinc phosphating, when such phosphating is used in the motor vehicle manufacturing process, provided that the wastes are not placed outside on the land prior to shipment to a landfill for disposal, and the wastes are placed in landfill units that are subject to or meet the specified landfill design criteria.

In its Federal Register notice for the final rule, EPA stated that the rule was less stringent than the previous federal requirements, so that states are not required to adopt and seek authorization for it. Nevertheless, EPA strongly encouraged states to adopt it. The provisions of the rule must be adopted by an authorized state before they are effective in that state.

The EPA rulemaking amended 40 CFR Parts 261 and 302. In this rulemaking, DEQ is incorporating into state rule the amendments to Part 261, without modification.

• Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities; 73 FR 72912, December 1, 2008. Technical corrections at 75 FR 79304, December 20, 2010. In this rule, EPA finalized an alternative set of generator requirements applicable to laboratories owned by eligible academic entities. The rule provided a flexible and protective set of regulations that address the specific nature of hazardous waste generation and accumulation in laboratories at colleges and universities, as well as other eligible academic entities formally affiliated with colleges and universities. The final EPA rule is optional. Affected entities have the choice of managing their hazardous wastes in accordance with the new alternative regulations or remaining subject to the existing generator regulations.

In its Federal Register notices for the final rule and corrections, EPA considered them to be neither more nor less stringent than the previous federal requirements, so that states are not required to adopt and seek authorization for them. Nevertheless, EPA strongly encouraged states to adopt them. They must be adopted by an authorized state before it can be effective in that state.

The EPA rulemakings amended 40 CFR Parts 261 and 262. In this rulemaking, DEQ is incorporating into state rule all of the amendments to Parts 261 and 262, without modification.

• Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes; 75 FR 1236, March 18, 2010. In this rule, EPA implemented recent changes to the agreements concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD) and established notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country. It also specified that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, and required U.S. receiving facilities to match EPA provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

According to EPA, the rule contains amendments that are both more stringent and less stringent than current federal law. Authorized states must adopt the more stringent parts to maintain authorization. EPA strongly recommends that authorized states adopt those amendments that are less stringent. The EPA rulemaking amended Parts 262, 263, 264, 265, 266, and 271. In this rulemaking, DEQ incorporated into state rule all of the amendments without modification.

• Hazardous Waste Technical Corrections and Clarifications Rule; 75 FR 12989, March 18, 2010. By direct final rule, EPA made a large number of technical changes that correct or clarify several parts of the hazardous waste regulations that relate to hazardous waste identification, manifesting, the hazardous waste generator requirements, standards for owners and operators of hazardous waste treatment, storage and disposal facilities, standards for the management of specific types of hazardous waste and specific types of hazardous waste management facilities, the land disposal restrictions program, and the hazardous waste permit program. The EPA rulemaking amended Parts 260, 261, 262, 263, 264, 265, 266, 268 and 270. On June 4, 2010, EPA withdrew six of the changes. In this rulemaking, DEQ has incorporated into state rule all of the remaining changes without modification.

• Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents, Hazardous
Wastes, etc.; 75 FR 78918, December 17, 2010. In this rule, EPA amended its regulations under RCRA to remove saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded. EPA characterized the changes in the rule as less stringent than the existing Federal requirements. Therefore, States will not be required to adopt and seek authorization for the changes. The EPA rulemaking amended Parts 261 and 268. In this rulemaking, DEQ incorporates into state rule all of the amendments without modification.

• Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Wastes; 76 FR 34147, June 13, 2011. EPA issued a Direct Final Rule to revise the Land Disposal Restrictions (LDR) standards for hazardous wastes from the production of carbamates and carbamate commercial chemical products, off- specification or manufacturing chemical intermediates and container residues that become hazardous wastes when they are discarded or intended to be discarded. EPA characterized the changes in the rule as neither more nor less stringent than the existing Federal requirements. Therefore, States will not be required to adopt and seek authorization for the changes. The rule was promulgated pursuant to HSWA authority and took effect in all states, regardless of their authorization status. The EPA rulemaking amended Parts 268 and 271. In this rulemaking, DEQ incorporates into state rule all of the amendments to Part 268 without modification.

• Hazardous Waste Technical Corrections and Clarifications Rule; 77 FR 22229, April 13, 2012. In this rule, the EPA took final action on two of six technical amendments that were withdrawn in a June 4, 2010, Federal Register partial withdrawal notice. The two technical amendments were: A correction of the typographical error in the entry "K107" in a table listing hazardous wastes from specific sources; and a conforming change to alert certain recycling facilities that they have existing certification and notification requirements under the Land Disposal Restrictions regulations. The EPA changes were to Parts 261 and 266. ADEQ has incorporated those changes without modification.

• Revisions to Procedural Rules to Clarify Practices and Procedures Applicable in Permit Appeals Pending before the Environmental Appeals Board; 78 FR 5281, January 25, 2013; (eff. March 26, 2013) In this rule, EPA revised existing procedures for appeals from RCRA, UIC (underground injection control) and certain water and air permits that are filed with the Environmental Appeals Board (EAB) in an effort to simplify the review process and make it more efficient. Amendments were made to §§ 124.10, 124.16, 124.19, 124.60, 270.42 and 270.155. DEQ opted out of the EAB appeal process for RCRA permits located at 40 CFR 124.19 by 1991 [See R18-8-271(Q)]. DEQ is incorporating only the changes to the part 270 sections with modifications as shown in R18-8-270(P) and (U). In R18-8-271, DEQ is clarifying that it is not incorporating subparts C, D, and G of part 124, which relate to non-RCRA permits, and to RCRA standardized permits, respectively.

• Conditional Exclusions From Solid Waste and Hazardous Waste for Solvent-Contaminated Wipes; 78 FR 46447, July 31, 2013; (parts 260 and 261) (eff. January 31, 2014) In this rule, EPA modified its hazardous waste management regulations for solvent-contaminated wipes by revising the definition of solid waste to conditionally exclude solvent-contaminated wipes that are cleaned and reused and by revising the definition of hazardous waste to conditionally exclude solvent-contaminated wipes that are disposed. The rule's purpose was to provide a consistent regulatory framework appropriate to the level of risk posed by solvent-contaminated wipes while maintaining protection of human health and the environment and reducing overall compliance costs for industry, many of which are small businesses. The rule includes requirements and conditions that are less stringent than those required under the base

RCRA hazardous waste program but is not effective in authorized states until adopted. The EPA changes were to Parts 260 and 261. ADEQ has incorporated those changes without modification.

What regulations are not being incorporated in this rule?

• Standardized Permit Rule; 70 FR 53419, September 8, 2005. In this rule, EPA finalized revisions to the RCRA hazardous waste permitting program to allow for a "standardized permit." In its last two hazardous waste rulemakings, DEQ discussed but did not propose to incorporate the Standardized Permit rule. No facilities have thus far indicated an interest in a standardized permit. At this time, DEQ has decided to continue with this position, and not burden the hazardous waste rules with an extra set of procedures for a class of permits no one is interested in.

• EPA Revisions to the Solid Waste Definition; 73 FR 64668, October 30, 2008. Effective December 29, 2008, EPA revised the definition of solid waste to exclude certain hazardous secondary materials from regulation under Subtitle C of RCRA. For some time, EPA has been revisiting this rule and has stated that it would modify the rule as a result of a June 30, 2009 public meeting and comments it received. EPA proposed revisions to this rule on July 22, 2011. No final EPA action had been taken at the time of this state rulemaking. Therefore, DEQ is not incorporating the 2008 rule by reference at this time. Adoption of the 2008 rule is not required for authorization.

• Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System To Produce Synthesis Gas; 75, January 2, 2008. This rule was vacated by a federal court. See Sierra Club & La. Envtl. Action Network v. EPA; United States Court of Appeals for the District of Columbia Circuit; Decided; June 27, 2014.

• Expansion of RCRA Comparable Fuel Exclusion, 73 FR 77954, December 19, 2008; and Withdrawal of the Emission-Comparable Fuel Exclusion under RCRA, 75 FR 33712, June 15, 2010. A federal court recently nullified these rulemakings and vacated 40 CFR 261(a)(14) and 261.38. See NRDC v. EPA; United States Court of Appeals for the District of Columbia Circuit; Decided June 27, 2014.

• Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities; 79 FR 350, January 3, 2014 (parts 260 and 261) (eff. March 14, 2014). DEQ hazardous waste rules normally incorporate federal regulations revised as of July 1 of a calendar year because this coincides with the revision date for CFR volumes containing Title 40 and makes it simpler to determine the applicable EPA regulations. DEQ makes an exception to this general rule if there is significant stakeholder interest. Through the drafting of this final rule, DEQ received no stakeholder inquiries about this federal regulation. This regulation should be incorporated in DEQ's next hazardous waste rulemaking.

• Modification of the Hazardous Waste Manifest System; Electronic Manifests, 79 FR7517, February 7, 2014, eff. Aug. 6, 2014. This EPA rule was published on February 7, but not effective as a final agency action until August, 2014. In addition, EPA indicated that the actual "implementation and compliance date" would be even later. DEQ will consider this rule for incorporation with its next hazardous waste rulemaking.

• Correction in used oil rebuttable presumption text at 40 CFR 261.3. 79 FR 35290, published and effective. June 20, 2014.

• Revisions to the Export Provisions of the Cathode Ray Tube (CRT) rule. 79 FR 36220, published June 26, 2014, effective December 26, 2014.

7. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to 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 rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

Identification of the rulemaking:

18 A.A.C. 8, Article 2 (For further information, see Part 6 of this preamble.)

Program Description. Under A.R.S. § 49-922 and federal law, Arizona's Hazardous Waste Program is responsible for ensuring that all regulated hazardous waste in Arizona is stored, transported, and disposed of properly, and is largely a preventative program to keep hazardous waste from entering the environment. The program maintains an

inventory of hazardous waste generators, transporters and treatment, storage, and disposal (TSD) facilities in Arizona. Permits are issued, managed, and maintained for TSD facilities; this activity includes permit modifications, renewals, closure plans, and financial assurance reviews. Generators, transporters and TSD facilities are inspected periodically. Hazardous waste complaints are investigated. Compliance data is collected and stored. Hazardous waste is tracked from generation to disposal. Compliance assistance is provided, enforcement actions are pursued against significant violators, and oversight is provided for the remediation of contaminated sites.

DEQ's Hazardous Waste Program regulates a universe of over 1500 facilities, including metal platers, chemical manufacturers, laboratories, explosive and munition manufacturers, pesticide manufacturers, hazardous waste TSD facilities, and military installations. There are currently 13 permitted TSD facilities, 181 to 265 large quantity generators, 901 to 1513 small quantity generators, and 217 to 340 transporters. An EPA report shows that over 200,000 tons of hazardous waste were generated in Arizona in 2011. DEQ processes over 30,000 manifests tracking this waste annually. An EPA report of Arizona's 50 largest hazardous waste generators and other related information from 2011 can be found at www.epa.gov/osw/inforesources/data/br11/state11.pdf

There are eleven separate federal regulations that are incorporated by this rule, spanning 7 years through July 1, 2013, and for one regulation through January 31, 2014. Looking just at the federal regulations to be incorporated, this rulemaking as a whole will decrease the cost of regulatory compliance by a significant amount. However, the rulemaking's significance for ADEQ's continued authorization is equally important as the rule will also minimize the cost of compliance and preserve procedural rights for Arizona businesses by assuring that ADEQ and not EPA is administering the hazardous waste program. Finally, the rulemaking will close the confusing 7 year gap between the federal regulations and the state rules. DEQ believes that the probable benefits of these rules will outweigh the probable costs.

Impact of EPA regulations incorporated. This rule incorporates into Arizona hazardous waste rules eleven federal rulemakings that became effective between approximately October 11, 2005 and January 31, 2014. EPA has characterized ten of the regulations as either equivalent to or less stringent than previous federal regulations, and DEQ anticipates that there will be only positive economic impacts now that they are adopted into state rule. In addition, although none of the ten equivalent or less stringent changes are required for authorization (because states have the right under federal law to be more stringent), some of the changes would not be effective in Arizona unless adopted by the state. Incorporating these rules by reference reduces the regulatory burden for regulated entities in Arizona.

Incorporating equivalent or less stringent federal regulations also facilitates continued authorization of DEQ's hazardous waste program because there are fewer differing provisions for EPA to analyze and compare. Continued authorization is beneficial because it allows the hazardous waste program to be administered by DEQ at the state level rather than by EPA in San Francisco or Washington.

Incorporation of the rule covering the listed hazardous waste F019 in automobile manufacturing and the rule covering hazardous waste combustors will have little direct impact in Arizona because there are currently no facilities in Arizona that would be subject to them. DEQ believes that incorporating the academic laboratories rule will have a potentially positive economic impact because it creates an option for eligible academic entities to handle what would otherwise be hazardous waste as less regulated "unwanted materials." If an eligible academic entity decides there would be no net benefit in switching to this option, it can choose to stay in the current hazardous waste system. DEQ believes that there are about 30 academic entities currently generating hazardous waste that would be eligible for this option.

In this rulemaking, DEQ has not incorporated EPA's 2005 standardized permits rule, which EPA characterized in 2005 as a rule that "will relieve regulatory burden for all small entities eligible for the rule" "in the form of administrative paperwork burden reduction cost savings." (70 FR at 53447) EPA's hazardous waste standardized permit is not a general permit as defined by A.R.S. § 41-1001, since each standardized permit applies to just one facility. It is actually a simplified individual permit. Since 2005, no sources that DEQ permits have responded to DEQ inquiries indicating interest in switching to or initially using this potentially simpler permit. This lack of interest is, in part, recognition of the transition costs in changing permits, including terminating the current permit. DEQ believes that HW facilities know their costs and potential savings better than a government agency and further believes that if an economic incentive is not there for these facilities, adding the procedure into state rules would have unnecessarily made the rules more complex, and increased the cost of the rulemaking.

One federal regulation, the transboundary rule dealing with exports of spent lead-acid batteries, contained changes that were more stringent than the previous federal regulations. Under both A.R.S. § 49-922 and federal law, ADEQ must adopt federal changes that increase stringency to maintain its program as "equivalent to and consistent with"

the federal program. DEQ also recognized that it had to incorporate this more stringent federal change into Arizona rules to maintain DEQ's authorization for the federal hazardous waste program. Continued authorization is beneficial because it allows the hazardous waste program to be administered by DEQ at the local level rather than by the EPA in San Francisco or Washington.

Technical corrections. This rule also makes a number of state-initiated and EPA-suggested technical corrections. None of the technical corrections would have any economic impact.

The technical corrections to R18-8-260(E)(12)(i) and (F) are necessary for authorization according to communications from EPA during its recent authorization review of Arizona rules. These are sections where, during previous rulemakings, DEQ unintentionally assumed authority for actions that must remain with EPA because the authority is nondelegable. R18-8-260(E)(12) lists exceptions to the general incorporation rule that "EPA" means "DEQ". The corrections are additional exceptions added at R18-8-260(E)(12)(i). The corrections at R18-8-260(F)(2) and renumbered (F)(6) involve exceptions to the general rule that "Administrator" means "Director" and "United States" means "Arizona."

Reduction of Impact on Small Businesses. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if possible. As discussed above, DEQ has determined that most of the changes have either a potentially positive impact or no impact on small businesses because they are equivalent to or less stringent than the standards currently in existence. The more stringent changes could impact Arizona small businesses if they export spent lead-acid batteries but DEQ is not aware of any of these businesses.

In EPA's rulemaking, EPA "examined a subset of small entities expected to face the largest relative impacts as measured by cost to sales ratios. The average annual gross sales of the potentially impacted small companies within this subset with fewer than 20 employees were found to range from $0.4 million to $4.1 million, depending upon the NAICS sector. The annual compliance costs for these companies, as a percentage of average annual gross sales, were found to range from 0.01 percent to 0.08 percent."(75 FR at 1252)

In addition to the impact being relatively small, DEQ has no legal or feasible option other than to adopt the more stringent federal changes. Moreover, adopting more stringent federal changes helps ensure that DEQ remains the primary administrator of the Hazardous Waste Program, and not EPA. This is beneficial to small and large businesses alike.

Conduct Change Analysis. Under A.R.S. § 41-1055(A)(1), the agency must discuss the conduct the rule is designed to affect and how it will affect it. The state and federal hazardous waste rules together establish a 'cradle to grave' management system for hazardous waste that deters conduct that would endanger human health or the environment. As stated previously, a significant purpose of the state rules is to allow and encourage EPA to renew its authorization of Arizona's hazardous waste program and prevent EPA from being sole administrator of the program. If EPA became the sole administrator of the hazardous waste program in Arizona, entities previously regulated by DEQ would be harmed in ways that include more difficult communications, probable increased fees and penalties, and a more uncertain regulatory environment.

Rules More Stringent than Corresponding Federal Law and Imposing the Least Burden Necessary to Achieve the Regulatory Objective. [A.R.S. § 41-1052(C)(3) and (C)(9)] Since 1984, DEQ hazardous waste rules have contained several procedural requirements that are more stringent than EPA's. These more stringent procedural requirements are authorized by A.R.S. § 49-922, which in directing DEQ to adopt rules, prohibits only non-procedural standards that are more stringent than EPA:

1) Hazardous Waste Manifests. DEQ requires hazardous waste generators, transporters and TSD (treatment, storage or disposal) facilities to provide a copy of all hazardous waste manifests to DEQ monthly. [See R18-8-262(I) and (J); R18-8-263(C), R18-8-264(J) and R18-8-265(J).] Federal regulations do not require manifests to be provided to EPA.

2) Annual Reports. Hazardous waste large quantity generators and TSD facilities must submit reports [to DEQ] annually rather than every two years as the federal regulations require. [See R18-8-260(E)(3); R18-8-262(H), R18-8-264(I) and R18-8-265(I).]

3) Recyclers and Small Quantity generators are required to submit annual reports to DEQ rather than no reports at all. [R18-8-261(J) and R18-8-262(H)]

These more stringent procedural requirements have been in effect since 1984. The Arizona Department of Health Services in 1984, and DEQ since 1987, determined that these more stringent procedural features are necessary for

Arizona to achieve the underlying regulatory objective, which is to "establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations." [A.R.S. § 49-922(A)] In addition, A.R.S. § 49-922(B)(1) and (2) require rules for "records of hazardous waste" and "submission of reports." It is clear that DEQ, as the primary enforcement agency, needs to receive a copy of manifests, and that as the primary enforcement agency, it should determine the frequency of reports needed. DEQ's authority in A.R.S. § 49-922(A) allows procedural requirements to be more stringent than EPA and these are necessary to achieve the objective.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No changes were made at the time the final rule was submitted to the Governor's Regulatory Review Council (GRRC). As a result of GRRC staff review, some minor changes were made to make the rule more clear, concise and understandable.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

ADEQ received no public or stakeholder comments about the rulemaking.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

A.R.S. § 41-1037(A)(1) and (2). This rulemaking amends an existing rule that requires a regulatory permit. This rulemaking does not require a general permit because:

1) A specific alternative permit is authorized by state statute under A.R.S. § 49-922(B)(5) and;

2) General permits as defined as defined by A.R.S. § 41-1001 are not recognized under federal hazardous waste regulations with which ADEQ is required to be consistent.

However, it should be noted that ADEQ has already adopted a federal general permit rule that is similar to Arizona general permits. 40 CFR 270.60, "Permits by Rule", applies to 3 types of facilities: 1) ocean disposal barges or vessels; 2) injection wells; and 3) publicly owned treatment works. Under the federal rule, these three types of facilities are "deemed to have a RCRA permit if the conditions listed are met." Only the third category exists in Arizona, and DEQ has incorporated the federal general permit rule for publicly owned treatment works through R18-2-270(A). Note: The hazardous waste standardized permit not incorporated in this rule is not a general permit as defined by A.R.S. § 41-1001, since each standardized permit applies to just one facility.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

A.R.S. § 41-1052(D)(9): These rules are not more stringent than corresponding federal laws, except where there is statutory authority. Since EPA's first authorization of Arizona's hazardous waste program in 1985, Arizona rules have been more stringent than EPA's in the areas of reports and manifests. (See 50 FR at 47736, November 20, 1985) This is authorized under A.R.S. § 49-922(B) which states that DEQ may not adopt a non-procedural standard that is more stringent than EPA. A brief discussion of these more stringent procedural requirements and why they are necessary to achieve the regulatory objective is in item 9 of this preamble.

c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No person has submitted a competitiveness analysis under A.R.S. § 41-1055(I).

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

Federal Citation	State Citation
40 CFR 260	R18-8-260(C)
40 CFR 261	R18-8-261(A)
40 CFR 262	R18-8-262(A)
40 CFR 263	R18-8-263(A)
40 CFR 264	R18-8-264(A)
40 CFR 265	R18-8-265(A)
40 CFR 266	R18-8-266(A)
40 CFR 268	R18-8-268
40 CFR 270	R18-8-270(A)
40 CFR 124	R18-8-271(A)
40 CFR 273	R18-8-273

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE MANAGEMENT

ARTICLE 2. HAZARDOUS WASTES

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

ARTICLE 2. HAZARDOUS WASTES

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

A. Federal regulations cited in this Article are those revised as of ~~July 1, 2006~~ July 1, 2013 (and no future editions), unless otherwise noted. 40 CFR 124, 260 through 266, 268, 270 and 273 or portions of these regulations, are incorporated by reference, as noted in the text. Federal statutes and regulations that are cited within 40 CFR 124, 260 through 270, and 273 that are not incorporated by reference may be used as guidance in interpreting federal regulatory language.

B. No change

C. All of 40 CFR 260 and the accompanying appendix, revised as of ~~January 29, 2007~~ January 31, 2014 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the Department of Environmental Quality (DEQ) with the exception of the following:

1. 40 CFR 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33~~,~~; ~~and with the exception of the~~
2. The revisions for standardized permits as published at 70 FR 53419~~,~~;
3. The revisions to the solid waste definition as published at 73 FR 64668;
4. The revisions for the gasification rule as published at 73 FR 57. ~~is incorporated by reference, modified by the following subsections, and on file with the Department of Environmental Quality (DEQ).~~ Copies of 40 CFR 260 are available at www.gpoaccess.gov/cfr/index.html.

D. No change
1. No change
2. No change
   a. No change
      i. No change
      ii. No change
   b. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
   c. No change
      i. At the time the information is submitted to, or otherwise obtained by, the DEQ;
      ii. No change
      iii. No change
   d. No change
      i. No change
      ii. No change
      iii. No change
   e. No change
      i. No change

(1) No change
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iii. No change
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f. No change
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iv. No change
v. No change

E. No change
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6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. ["EPA," "Environmental Protection Agency," "United States Environmental Protection Agency," "U.S. EPA," "EPA HQ," "EPA Regions," and "Agency" mean the DEQ with the following exceptions:
a. Any references to EPA identification numbers;
b. Any references to EPA hazardous waste numbers;
c. Any reference to EPA test methods or documents;
d. Any reference to EPA forms;
e. Any reference to EPA publications;
f. Any reference to EPA manuals;
g. Any reference to EPA guidance;
h. Any reference to EPA Acknowledgment of Consent;
i. References in §§ 260.2(b) (as incorporated by R18-8-260(D)(2));
260.10 (definitions of "Administrator," "EPA region," "Federal agency," "Person," and "Regional Administrator" (as incorporated by R18-8-260(E));
260, Appendix I (as incorporated by R18-8-260(C));
260.11(a) (as incorporated by R18-8-260(C));
261, Appendix IX (as incorporated by R18-8-261(A));
261.39(a)(5) (as incorporated by R18-8-261(A));
262.21 (as incorporated by R18-8-262(A));
262.32(b) (as incorporated by R18-8-262(A));
262.50 through 262.57 (as incorporated by R18-8-262(A));
262.60(c) and (e) (as incorporated by R18-8-262(A));
262.80 through 262.89 (as incorporated by R18-8-262(A));
262, Appendix (as incorporated by R18-8-262(A));
263.10(a) Note (as incorporated by R18-8-263(A));
264.12(a)(2), 264.71(a)(3), 264.71(d), 265.12(a)(2), 265.71(a)(3), 265.71(d);
268.1(e)(3) (as incorporated by R18-8-268);
268.5, 268.6, 268.42(b), and 268.44, which are nondelegable to the state of Arizona (as incorporated by R18-8-268);

270.1(a)(1) (as incorporated by R18-8-270);

270.1(b) (as incorporated by R18-8-270(B));

270.2 (definitions of "Administrator," "Approved program or Approved state," "Director," "Environmental Protection Agency," "EPA," "Final authorization," "Permit," "Person," "Regional Administrator," and "State/EPA agreement") (as incorporated by R18-8-270(A));

270.3 (as incorporated by R18-8-270(A));

270.5 (as incorporated by R18-8-270(A));

270.10(e)(1) through (2) (as incorporated by R18-8-270(A) and R18-8-270(D));

270.11(a)(3) (as incorporated by R18-8-270(A));

270.32(a) and (c) (as incorporated by R18-8-270(M) and R18-8-270(O));

270.51 (as incorporated by R18-8-270~~(P)~~(Q));

270.72(a)(5) and (b)(5) (as incorporated by R18-8-270(A));

124.1(f) (as incorporated by R18-8-271(B));

124.5(d) (as incorporated by R18-8-271(D));

124.6(e) (as incorporated by R18-8-271(E));

124.10(c)(1)(ii) (as incorporated by R18-8-271(I)); and

124.13 (as incorporated by R18-8-271(L)).]

13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
    a. No change
    b. No change
23. No change
24. No change
25. No change
26. No change
27. No change
28. No change
29. No change
30. No change
31. No change
32. No change

F. § 260.10, titled "Definitions," as amended by subsection (E) also is amended as follows, with all definitions in ~~§~~§ 260.10 (as incorporated by R18-8-260), applicable throughout this Article unless specified otherwise.

1. No change
2. "Administrator," "Regional Administrator," "state Director," or "Assistant Administrator for Solid Waste and Emergency Response" mean the [Director or the Director's authorized representative, except in §§:

   260.10, in the definitions of "Administrator," "Regional Administrator," and "hazardous waste constituent" (as incorporated by R18-8-260(E));

   261.41 (as incorporated by R18-8-261);

   261, Appendix IX (as incorporated by R18-8-261(A));

   262, Subpart E;

   262, Subpart H;

   262, Appendix (as incorporated by R18-8-262);

   264.12(a) (as incorporated by R18-8-264(A));

   265.12(a) (as incorporated by R18-8-265(A));

268.5, 268.6, 268.42(b), and 268.44, which are nondelegable to the state of Arizona (as incorporated by R18-8-268);

270.2, in the definitions of "Administrator", "Director", "Major facility", "Regional Administrator", and "State/EPA agreement" (as incorporated by R18-8-270(A));

270.3 (as incorporated by R18-8-270(A));

270.5 (as incorporated by R18-8-270(A));

270.10(e)(1), (2), and (4) (as incorporated by R18-8-270(A) and R18-8-270(D));

270.10(f) and (g) (as incorporated by R18-8-270(A) and R18-8-270(E));

270.11(a)(3) (as incorporated by R18-8-270(A));

270.14(b)(20) (as incorporated by R18-8-270(A));

270.32(b)(2) (as incorporated by R18-8-270(N));

270.51 (as incorporated by R18-8-270(A));

124.5(d) (as incorporated by R18-8-271(D));

124.6(e) (as incorporated by R18-8-271 (E));

124.10(b) (as incorporated by R18-8-271(I)).

3. No change
   a. No change
   b. No change
   c. No change
4. ["Member of the Performance Track Program" or "Performance Track member facility" means a facility or generator that has been accepted by EPA for membership in the National Environmental Performance Track Program (as described at http://www.epa.gov/performancetrack/) and by DEQ for membership in is a current member of the Arizona Environmental Performance Track Program (as described at http://www.azdeq.gov/function/about/track.html) http://www.azdeq.gov/function/programs/azept) and is still a member of both programs. The Environmental Performance Track Programs are voluntary programs for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.]
5. No change
6. No change
7. "United States" means [Arizona except for the following:
   a. § 261.39(a)(5) (as incorporated by R18-8-261).
   ab. References in §§ 262.50, 262.51, 262.53(a), 262.54(c), 262.54(g)(2), 262.54(i), 262.55(a), 262.55(c), 262.56(a)(4), 262.60(a), and 262.60(b)(2) and 262.60(d) (as incorporated by R18-8-262).
   bc. All references in Part 263 (as incorporated by R18-8-263), except §§ 263.10(a) and 263.22(c).]
   d. § 266.80]

G. No change
H. No change
I. No change
J. No change
K. No change
L. No change
M. No change
1. No change
2. No change
3. No change

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

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

A. All of 40 CFR 261 and accompanying appendices, revised as of January 29, 2007 January 31, 2014 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:
1. The revisions for standardized permits as published at 70 FR 53419;
2. The revisions to the solid waste definition as published at 73 FR 64668;

3. The revisions for the gasification rule as published at 73 FR 57;
4. 40 CFR 261.4(a)(16) and 261.38. ~~is incorporated by reference, modified by the following subsections, and on file with the DEQ.~~ Copies of 40 CFR 261 are available at www.gpoaccess.gov/cfr/index.html.

B. No change
C. No change
D. No change
E. No change
F. § 261.5, titled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators," paragraph (f)(3) is amended as follows:

(3) A conditionally exempt small quantity generator may either treat or dispose of [the] acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this ~~Chapter~~ chapter [(as incorporated by R18-8-270)];

(ii) In interim status under parts 270 and 265 of this ~~Chapter~~ chapter [(as incorporated by R18-8-270 and R18-8-265)];

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under part 271 of this ~~Chapter~~ chapter;

(iv) Permitted, licensed, or registered by a state to manage municipal [or industrial solid waste and approved by the owner or operator of the solid waste facility to accept acute hazardous waste from conditionally exempt small quantity generators that have not been excluded from disposing of their waste at such a facility under applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791 and] is subject to Part 258 of this ~~Chapter~~ chapter;

(v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vii) For universal waste managed under ~~§~~ part 273 of this chapter [(as incorporated by R18-8-273)], a universal waste handler or destination facility subject to the requirements of ~~§~~ part 273 of this chapter.

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

(g) In order for hazardous waste [, other than acute hazardous waste,] generated by a conditionally exempt small quantity generator in quantities of ~~less than~~ 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this [subsection], the generator [shall] comply with the following requirements:

(1) § 262.11 of this chapter [(as incorporated by R18-8-262)];

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If [such generator] accumulates at any time ~~more than a total of~~ 1,000 kilograms or greater of [its] hazardous wastes, all of those accumulated [hazardous] wastes are subject to regulation under the special provisions of ~~§~~ part 262 applicable to generators of ~~between~~ greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of ~~§§~~ parts 263 through 266, 268, 270~~,~~ and 124 of this chapter [as incorporated by R18-8-262, R18-8-263 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) [(as incorporated by R18-8-262)] for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1,000 kilograms;

(3) A conditionally exempt small quantity generator may either treat or dispose of [its] hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this ~~Chapter~~ chapter [(as incorporated by R18-8-270)];

(ii) In interim status under parts 270 and 265 of this ~~Chapter~~ chapter [(as incorporated by R18-8-270 and R18-8-265)];

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this ~~Chapter~~ chapter;

(iv) Permitted, licensed, or registered by a ~~state~~ State to manage municipal [or industrial solid waste and approved by the owner or operator of the solid waste facility to accept hazardous waste from conditionally exempt small quantity generators who have not been excluded from disposing of their waste at such a facility pursuant to applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791 and] is subject to Part 258 of this ~~Chapter~~ chapter;

(v) Permitted, licensed, or registered by a ~~state~~ State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or

(vi) A facility which:
(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or
(vii) For universal waste managed under part 273 of this ~~Chapter~~ chapter [(as incorporated by R18-8-273)], a universal waste handler or destination facility subject to the requirements of part 273 of this ~~Chapter~~ chapter.

H. No change

I. § 261.6, titled "Requirements for recyclable materials," paragraphs (a)(1) through (a)(3) are amended as follows:

(a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled [shall] be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under [40 CFR 266, subparts C~~, F, G, and H~~ through N (as incorporated by R18-8-266)] and all applicable provisions in parts 268, 270 and 124 of this ~~Chapter~~ chapter [(as incorporated by R18-8- 268, R18-8-270 and R18-8-271)]:
(i) Recyclable materials used in a manner constituting disposal (40 CFR part 266, subpart C);
(ii) Hazardous wastes burned ~~for energy recovery~~ (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O (as incorporated by R18-8-264 and R18-8-265)] (40 CFR part 266, subpart H);
(iii) Recyclable materials from which precious metals are reclaimed (40 CFR part 266, subpart F);
(iv) Spent lead acid batteries that are being reclaimed (40 CFR part 266, subpart G).
~~(v) U.S. Filter Recovery Services XL waste (40 CFR 266, subpart O).~~

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

J. No change

K. No change

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

A. All of 40 CFR 262 and the accompanying appendix, revised as of ~~July 14, 2006~~ July 1, 2013 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 262 are available at www.gpoaccess.gov/cfr/index.html.

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

C. No change

D. No change

E. No change

F. No change

G. No change

H. § 262.41, titled "Biennial report," is amended as follows:
(a) A generator [shall] prepare and submit a single copy of [an annual] report to the [Director] by March 1 [for the preceding calendar] year. The [annual] report [shall] be submitted on [a form provided by the DEQ according to the instructions for the form, shall describe] generator activities during the previous [calendar] year, and shall include the following information:
(1) The EPA identification number, name, [location,] and [mailing] address of the generator.
(2) The calendar year covered by the report.
(3) The EPA identification number, name, and [mailing] address for each off-site [TSD] facility to which waste was shipped during the [reporting] year [, including the name and address of all applicable foreign facilities for exported shipments.]
(4) The name, [mailing address], and the EPA identification number of each transporter used [by the generator] during the reporting year.
(5) A [waste] description, EPA hazardous waste number (from 40 CFR 261, subpart C or D) [(as incorporated by R18-8-261), U.S. Department of Transportation] hazard class, [concentration, physical state,] and quantity of each hazardous waste [:
i. Generated];
ii. Shipped off-site. This information must be listed by EPA identification number of each off-site facility to which waste was shipped; and
iii. Accumulated at the end of the year].
(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
(7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.
(8) The certification signed by the generator or [the generator's] authorized representative [, and the date the report was prepared].
(9) [A waste description, EPA hazardous waste number, concentration, physical state, quantity, and handling method of each hazardous waste handled on-site in elementary neutralization or wastewater treatment units.]
(10) [Name and telephone number of facility contact responsible for information contained in the report.]
(b) Any generator who treats, stores, or disposes of hazardous waste on-site, [and is subject to the HWM facility requirements of R18-8-264, R18-8-265, or R18-8-270,] shall submit [an annual] report covering those wastes in accordance with the provisions of 40 CFR 264.75 [(as incorporated by R18-8-264~~(G)~~(I)], and § 265.75 [(as incorporated by R18-8-265~~(G)~~(I).]

I. Manifests required in 40 CFR 262, subpart B, titled "The Manifest," (as incorporated by R18-8-262) shall be submitted to the DEQ in the following manner:
1. A generator initiating a shipment of hazardous waste required to be manifested shall submit to the DEQ, no later than 45 days following the end of the month of shipment, one copy of each manifest with the signature of that generator and transporter, and the signature of the owner or operator of the designated facility, for any shipment of hazardous waste transported or delivered within that month. If a conforming manifest is not available, the generator shall submit an Exception Report in compliance with § 262.42 (as incorporated by R18-8-262).
2. A generator shall designate on the manifest in item ~~1~~13 "Waste ~~No.~~ Codes," the EPA hazardous waste number or numbers for each hazardous waste listed on the manifest.
3. A member of the Performance Track Program, as defined in R18-8-260(F), that initiates a shipment of hazardous waste required to be manifested shall submit the manifest to DEQ as specified in subsections (1) and (2), except a manifest may be submitted to DEQ within 45 days following the end of the calendar quarter of shipment rather than within 45 days following the end-of-the month of shipment.

J. No change

K. No change

L. No change

M. No change

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

A. All of 40 CFR 263, revised as of ~~July 1, 2006~~ July 1, 2013 (and no future editions), is incorporated by reference, modified by the following subsections ~~of R18-8-263~~, and on file with the DEQ. Copies of 40 CFR 263 are available at www.gpoaccess.gov/cfr/index.html.

B. No change

C. No change

D. No change

E. No change

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

A. All of 40 CFR 264 and accompanying appendices, revised as of ~~July 14, 2006~~ July 1, 2013 (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149, 264.150, and 264.301(l), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 264 are available at www.gpoaccess.gov/cfr/index.html.

B. No change

C. No change

D. No change

1. No change
2. No change

E. No change

F. No change

G. § 264.56, titled "Emergency procedures," paragraph (d)(2) is amended as follows:

(2) [The emergency coordinator, or designee, shall] immediately notify [the DEQ at (602) 771-2330 or (800) 234-5677, extension 771-2330, and notify] either the government official designated as the on-scene coordinator for that geographical area, ~~(in the applicable regional contingency plan under 40 CFR 1510)~~ or the National Response Center (using their 24-hour toll free number (800) 424-8802). The report [shall include the following]:

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident (for example, release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

H. § 264.71, titled "Use of manifest system," paragraph (a)~~(4)~~(2)(iv) is amended as follows:

Within 30 days ~~after the~~ of delivery, send a copy of the ~~signed and dated~~ manifest ~~or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery)~~ to the generator [and submit one copy of each manifest to DEQ, according to R18-8-264~~(I).~~(J);] and

I. No change

J. No change

1. No change
2. If a facility receiving hazardous waste from off-site is also a generator, the owner or operator shall also submit generator manifests as required by R18-8-262~~(H)~~(I).]

K. No change

L. No change

M. No change

N. No change

O. No change

P. No change

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

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

A. All of 40 CFR 265 and accompanying appendices, revised as of ~~July 14, 2006~~ July 1, 2013 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 265 are available at www.gpoaccess.gov/cfr/index.html.

B. No change

C. No change

D. No change
1. No change
2. No change

E. No change

F. No change

G. § 265.56, titled "Emergency procedures," paragraph (d)(2) is amended as follows:
(2) [The emergency coordinator, or designee, immediately shall] notify [the DEQ at (602) 771-2330 or 800/234-5677, and notify] either the government official designated as the on-scene coordinator for that geographical area, ~~(in the applicable regional contingency plan under 40 CFR 1510)~~ or the National Response Center (using their 24-hour toll-free number 800/424-8802). The report [shall include the following]:
(i) Name and telephone number of the reporter;
(ii) Name and address of the facility;
(iii) Time and type of incident (for example, release, fire);
(iv) Name and quantity of material(s) involved, to the extent known:
(v) The extent of injuries, if any; and
(vi) The possible hazards to human health, or the environment, outside the facility.

H. § 265.71, titled "Use of manifest system," paragraph (a)~~(4)~~(2)(iv) is amended as follows:
Within 30 days ~~after the~~ of delivery, send a copy of the ~~signed and dated~~ manifest ~~or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery)~~ to the generator [and submit one copy of each manifest to DEQ, according to R18-8-265~~(I).~~(J);] and

I. No change

J. No change

K. § 265.90, titled "Applicability," paragraphs (a) and (d)(1), and § 265.93, titled "Preparation, evaluation, and response," paragraph ~~(3)~~(a) (as incorporated by R18-8-265), are amended by deleting the following phrase: "within one year"; and § 265.90, titled "Applicability," paragraph (d)(2) (as incorporated by R18-8-265), is amended by deleting the following phrase: "Not later than one year."

L. No change

M. No change

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

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

A. All of 40 CFR 266 and accompanying appendices, revised as of ~~July 14, 2006~~ July 1, 2013 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 266 are available at www.gpoaccess.gov/cfr/index.html.

B. § 266.100, titled "Applicability" paragraph (c) is amended as follows:
(c) The following hazardous wastes and facilities are not subject to regulation under this subpart:
(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 [(as incorporated by R18-8-261)] of this ~~Chapter~~ chapter. Such used oil is subject to regulation under [A.R.S. §§ 49-801 through 49-818] rather than this subpart;
(2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;
(3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(iii)~~-~~ and (iv) [(as incorporated by R18-8-261)] of this ~~Chapter~~ chapter, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under § 261.5 [(as incorporated by R18-8-261)] of this ~~Chapter~~ chapter; and
(4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, revised as of ~~July 14, 2006~~ July 1, 2013 (and no future editions), with the exception of Part 268, Subpart B, is incorporated by reference and on file with the DEQ. Copies of 40 CFR 268 are available at www.gpoaccess.gov/cfr/index.html.

R18-8-270. Hazardous Waste Permit Program

A. All of 40 CFR 270 and the accompanying appendices, revised as of ~~July 14, 2006~~ July 1, 2013 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:
1. §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64~~,~~;
2. The revisions for standardized permits as published at 70 FR 53419~~,~~;
3. The revisions to the solid waste definition as published at 73 FR 64668. ~~is incorporated by reference, modified by the following subsections, and on file with the DEQ.~~ Copies of 40 CFR 270 are available at www.gpoaccess.gov/cfr/index.html.

B. No change
1. No change
   a. No change
   b. No change
   c. No change
2. No change
   a. Waters of the state as defined in A.R.S. § 49-201~~(31)~~, excluding surface impoundments as defined in § 260.10 (as incorporated by R18-8-260); and
   b. No change

C. No change
D. No change
E. No change
F. No change
G. No change
1. No change
2. No change
   a. No change
   b. No change
   c. No change
3. No change
4. No change
5. No change
   a. No change
   b. No change
      i. No change
      ii. No change
      iii. No change
   c. No change
   d. No change
6. No change
   a. No change
   b. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
      v. No change
      vi. No change
      vii. No change
      viii. No change
      ix. No change
   c. No change
7. No change
8. No change
9. No change

H. No change
I. No change
J. No change
K. No change
L. No change
M. No change
N. No change
O. No change
P. § 270.42, titled "Permit modification at the request of permittee", paragraph (f)(3), is amended as follows:
(3) An automatic authorization that goes into effect under paragraph (b)(6)(iii) or (v) of this section may be appealed under [Title 41, Chapter 6, Article 10, Arizona Revised Statutes.]

~~**P.**~~**Q.** No change
~~**Q.**~~**R.** No change
~~**R.**~~**S.** § 270.65, titled "Research, development, and demonstration permits," is amended as follows:
(a) The [Director] may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under ~~Part~~ part 264 or 266

[(as incorporated by R18-8-264 and R18-8-266).] [A research, development, and demonstration] permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (d) of this ~~subsection~~ section, and

(2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the [Director] deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(3) Shall include such requirements as the [Director] deems necessary to protect human health and the environment [, including requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and such requirements as the Director] deems necessary regarding testing and providing of information [relevant] to the [Director] with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of permits under this ~~Section~~ section, the [Director] may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements [, or add conditions to the permit in accordance with the permitting procedures set forth in R18-8-270 and R18-8-271,] except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

(c) The [Director] may order an immediate termination of all operations at the facility at any time [the Director] determines that termination is necessary to protect human health and the environment.

(d) Any permit issued under this ~~subsection~~ section may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

~~S.~~**T.** No change

U. § 270.155 titled "May the decision to approve or deny my RAP application be administratively appealed?", paragraph (a), is amended as follows:

(a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director's decision to approve or deny your RAP application [under Title 41, Chapter 6, Article 10, Arizona Revised Statutes.] Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under § 124.15 of this chapter [(as incorporated by R18-8-271)] (or a decision under § 270.29 [(as incorporated by R18-8-270)] to deny a permit for the active life of a RCRA hazardous waste management facility or unit.)

R18-8-271. Procedures for Permit Administration

A. All of 40 CFR 124 ~~and the accompanying appendix~~, revised as of ~~July 1, 2006~~ July 1, 2013 (and no future editions), ~~relating to HWM facilities,~~ with the exception of §§ 124.1 (b) through (e), 124.2, 124.4, 124.16, 124.20, ~~and~~ 124.21, and subparts C, D, and G, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 124 are available at www.gpoaccess.gov/cfr/index.html.

B. No change

C. No change

D. § 124.5, titled "Modification, revocation~~,~~ and reissuance, or termination of permits," is replaced by the following:

[(a) Permits may be modified, revoked~~,~~ and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked~~,~~ and reissued, or terminated for the reasons specified in §§ 270.41 or 270.43 (as incorporated by R18-8-270). All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Director decides the request is not justified, the Director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(c) Modification, revocation or reissuance of permits procedures.

(1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 270.41 or 270.42(c) (as incorporated by R18-8-270), the Director shall prepare a draft permit under § 124.6 (as incorporated by R18-8-271(E)), incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

(2) In a permit modification under this [subsection], only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. The permit modification shall have the same expiration date as the unmodified permit. When a permit is revoked and reissued under this subsection, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(3) "Classes 1 and 2 modifications" as defined in § 270.42 (as incorporated by R18-8-270) are not subject to the requirements of this subsection.

(d) If the Director tentatively decides to terminate a permit under § 270.43 (as incorporated by R18-8-270), the Director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6 (as incorporated by R18-8-271(E)). In the case of permits that are processed or issued jointly by both the DEQ and the EPA, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibilities from the EPA to the state.

(e) The Director shall base all draft permits, including notices of intent to terminate, prepared under this subsection on the administrative record as defined in § 124.9 (as incorporated by R18-8-271(H)).]

E. No change
F. No change
G. No change
H. No change
I. No change
J. No change
K. No change
L. No change
M. No change
N. No change
O. No change
P. No change
Q. § 124.19, titled "Appeal of RCRA, UIC, and PSD permits," is replaced by the following:

A final permit decision (or a decision under § 270.29 (as incorporated by R18-8-270(A)) to deny a permit for the active life of a RCRA hazardous waste management facility or unit issued under § 124.15 (as incorporated by R18-8-271(N)) is an appealable agency action as defined in A.R.S. § ~~49-1092~~ 41-1092 and is subject to appeal under A.R.S. Title 41, Ch. 6, Art. 10.

R. No change
S. No change
T. No change

R18-8-273. Standards for Universal Waste Management

All of 40 CFR 273, revised as of ~~July 14, 2006~~ July 1, 2013 (and no future editions), is incorporated by reference and on file with the DEQ. Copies of 40 CFR 273 are available at www.gpoaccess.gov/cfr/index.html.