NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5.1. STATE PERSONNEL BOARD

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R2-5.1-101	Renumber
R2-5.1-101	New Section
R2-5.1-102	Renumber
R2-5.1-102	Amend
R2-5.1-103	Renumber
R2-5.1-103	Amend

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

Authorizing statute: A.R.S. § 41-782(C)

Implementing statute: A.R.S. §§ 41-781, 782, and 785

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 6 A.A.R. 712, February 18, 2000

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

Name: Judy Henkel, Executive Director

Address: State Personnel Board
1400 West Washington, Suite 280
Phoenix, AZ 85007

Telephone: (602) 542-3888

Fax: (602) 542-3588

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

The Board is initiating rulemaking to eliminate redundant language, update rules for clarity and understanding, change language to conform with law and current rulewriting standards, create a separate definitions Section, and add language addressing exhibits and prehearing conferences.

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

None

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

Not applicable

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

An additional cost to the appellant (consumer) may occur as a result of a change in this rule as it would require a copy of an appeal be furnished by the appellant to the agency. Currently the original appeal is filed with the Board and a copy is not required to be provided to the agency by the appellant. The addition of a rule regarding pre-hearing conferences may result in savings to both the parties in the proceedings and to the Board as matters may be meted out prior to the hearing being held, therefore, a possibility of the hearing not being as lengthy. The addition of a rule regarding exhibits may result in an expense to the parties but a savings to the Board. Parties will have to come to a hearing prepared with enough copies of their proposed exhibits instead of using the Board's copier and the Board incurring the expense. The Board expects that this rulemaking will impose no economic burden other than the expense of the rulemaking process to the Board, the Office of the Secretary of State, and the Governor's Regulatory Review Council. The Board anticipates that interested individuals will benefit from the clarification of the rules because the rules will be less confusing to apply. It was determined that there would be no impact on small businesses. The rule changes will not impose any reporting, bookkeeping, or compliance requirements on small business.

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

Name: Judy Henkel, Executive Director

Address: State Personnel Board
1400 West Washington, Suite 280
Phoenix, AZ 85007

Telephone: (602) 542-3888

Fax: (602) 542-3588

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

No oral proceeding is scheduled. An oral proceeding will be scheduled if 5 or more persons file written requests with the Board contact person identified in item 4 within 30 days after publication of this notice. Written comments about the proposed rulemaking may be submitted to the person identified in item 4 until 5:00 p.m. on May 22, 2000.

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

None

12. Incorporation by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5.1. STATE PERSONNEL BOARD

ARTICLE 1. GENERAL PROVISIONS

Section
R2-5.1-101. Definitions
~~R2-5.1-101.~~ R2-5.1-102. Personnel ~~Personal~~ Board procedures
~~R2-5.1-102.~~ R2-5.1-103. Appeals

ARTICLE 1. GENERAL PROVISIONS

R2-5.1-101. Definitions

Unless the context requires otherwise, the following definitions govern:

1. "Agency" means the employing state entity that took an appealable personnel action against an employee.
2. "Appeal" means any written request filed with the Board by any permanent status employee seeking relief from dismissal, demotion, or suspension of more than 40 working hours.
3. "Appellant" means the permanent status employee filing any appeal with the Board.

4. "Day" means a calendar day, unless otherwise stated.
5. "Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.
6. "Hearing" means the opportunity to be heard in an administrative proceeding.
7. "Hearing officer" means a person employed or appointed by the Board or the Board's chair as the trier of facts, or any member of the Board designated by the Board or the Board's chair as the trier of facts.
8. "Respondent" means the state service agency or agencies whose interests are adverse to those of the appellant or who will be directly affected by the Board's decision.
9. "Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding.

~~R2-5.1-101.~~ R2-5.1-102. Personnel ~~Personal~~ Board procedures

A. Regular Meetings. The Board shall announce the ~~The~~ time and place of each regular monthly meeting of the Board ~~shall be announced~~ at the preceding public meeting and shall be in conformance with statutory requirements. Notice shall be given as required by law ~~in conformance with all open meeting laws~~.

B. Special Meetings. The chair of the Board shall call any special ~~Special~~ meetings ~~of the Board shall be called by the Chairman~~. Notice shall be given as required by law ~~in conformance with all open meeting laws~~.

C. Emergency Meetings. In the case of an emergency, the chair may call a meeting ~~a meeting may be called by the Chairman~~. The emergency meeting shall be held at a time and upon notice as is appropriate and as required by law ~~in conformance with all open meeting laws~~.

D. Agenda. The Board shall consider all matters placed on the agenda. ~~All matters to be presented for consideration by the Board at a meeting shall be placed on the Board's agenda.~~ The agenda shall be mailed to each member of the board at least 5 ~~five~~ days prior to the meeting. ~~Matters which have not been placed upon the agenda shall not be considered by the Board.~~

E. Notice to Agencies. The Board shall, as soon as practical after a meeting is set, mail a ~~A~~ copy of the agenda ~~for each meeting shall be mailed~~ to state agencies that indicate an interest in receiving the agenda ~~at least five working days prior to the Board meeting~~. The Board's failure ~~Failure~~ to mail the agenda, or failure of an agency to receive the agenda ~~it~~, shall not affect the validity of the meeting or of any action taken by the Board at the meeting.

F. Notice to parties. The Board shall notify all ~~All~~ parties in a contested matter scheduled for a Board meeting ~~shall be notified~~ of the Board meeting as required by law ~~pursuant to A.R.S. § 41-785~~.

G. Minutes. ~~The official actions of the Board shall be recorded in its minutes.~~ The Board shall record in its minutes the ~~The~~ time and place of each meeting of the Board, names of the Board members present, all official acts of the Board, the votes of each Board member except when the acts are unanimous, and, when requested, a member's dissent with the member's ~~his~~ reasons ~~shall be recorded in the minutes~~. Board staff shall write the minutes and shall present the minutes ~~The minutes shall be written by Board staff and presented~~ for approval by the Board members at the next regular meeting. The Board shall provide copies of the approved minutes to the appellant and respondent within 7 days of the regular meeting at which the minutes were approved. ~~The minutes or a true copy thereof certified by a majority of the Board shall be open to public inspection.~~

~~R2-5.1-102.~~ R2-5.1-103. Appeal ~~Appeals~~ Procedures

~~**A.** General provisions. Unless the context requires otherwise, the following definitions govern:~~

~~1. "Appeal" means any written request filed with the Board by any permanent status employee seeking relief from dismissal, demotion, or suspension of more than 80 working hours.~~

~~2. "Appellant" means the permanent status employee filing any appeal with the Board.~~

~~3. "Hearing officer" means a person employed or appointed by the Board or its chairman as a hearing officer, or any member of the Board designated by it or its chairman as a hearing officer.~~

~~4. "Respondent" means the state service agency or agencies whose interests are adverse to those of the appellant or who will be directly affected by the Board's decision.~~

~~**B.** Appeal Procedures~~

A. ~~1.~~ Appeal. An ~~The~~ appeal to the Board shall be filed in ~~writing~~ accordance with A.R.S. § 41-785 and shall include:

1. Appellant's name, address, and telephone number.
2. The name of the agency taking the action being appealed.
3. The name, address, and telephone number of the appellant's representative, if applicable.

B. The parties are responsible for notifying the Board of any change of address or telephone number. The appeal shall include the action requested of the Board and must state specific facts responding ~~relating~~ directly to the causes for disciplinary action ~~charges~~ on which the appeal is based, so that the Board may understand the nature of the appeal. ~~A copy of the appeal shall be provided to the respondent by the Board within twenty days in advance of the hearing.~~ Upon filing the appeal in writing, the appellant shall furnish the respondent with a copy of the appeal. In addition, the Board shall forward a copy of the appeal to the respondent agency within 5 days from the filing.

C. ~~2.~~ Time for appeal. The appellant shall file an appeal ~~An appeal must be filed by the appellant~~ not later than 10 ~~ten~~ working days from the effective date of the dismissal, suspension, or demotion, which is the subject of the appeal.

D. ~~3.~~ Reply. The respondent need not file a reply to the appeal. ~~No reply to the appeal need be filed by the respondent. If a reply is filed prior to the hearing, a copy thereof shall be sent by the respondent to the appellant.~~ If no reply is filed, every relevant and material allegation of the appeal is in issue, but in any case, irrelevant and immaterial issues may be excluded.

E. ~~4.~~ Hearing officer. The Board or the Board's chair may assign any appeal ~~Any appeal may be assigned by the Board or its chairman~~ to a hearing officer for hearing. When an appeal is assigned to a hearing officer, the hearing officer ~~he~~ shall be the authorized representative of the Board and is fully authorized and empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings which the Board ~~itself~~ is authorized to take by law or by these rules on behalf of the Board other than making the final findings of fact, conclusions of law, and order. The ~~No~~ assignment of an appeal to a hearing officer shall not preclude the Board or the Board's ~~its~~ chair ~~chairman~~ from withdrawing such assignment and conducting the hearing itself or from reassigning an appeal to another hearing officer. The hearing officer conducting the hearing shall write ~~and submit~~ a report embodying findings of facts, conclusions of law and recommendations, as well as a brief statement of reasons for the hearing officer's ~~his~~ findings and conclusions and shall submit the report within 30 ~~ten~~ days of the last date of the hearing. The Board ~~hearing~~ shall ~~be~~ consider~~ed~~ the hearing concluded when it receives a copy ~~upon receipt by the Board~~ of the hearing officer's findings of fact, conclusions of law and recommendation. The hearing officer may be present during the consideration of the appeal by the Board, and, if requested, shall assist and advise the Board.

F. ~~5.~~ Time for hearing. The Board shall hold a hearing on an appeal ~~Every hearing on an appeal shall be held~~ within 30 ~~thirty~~ days from receipt by the Board of an appeal unless the Board finds good cause to extend the time ~~is extended by mutual consent of the appellant and respondent~~.

G. ~~6.~~ Notice of hearing. The Board shall provide the appellant and respondent with written ~~Written~~ notice of the time, date, place of hearing of an appeal, and the name of the hearing officer~~, if any, shall be provided the appellant and the respondent by the Board~~ not less than 20 ~~twenty~~ days before the date of the ~~such~~ hearing.

H. ~~7.~~ Nature of hearing, rules of evidence. Every hearing shall be open to the public unless the appellant requests a confidential hearing. If the disciplinary hearing involves evidence the state is precluded by law from disclosing, ~~then~~ the Board or the Board's hearing officer may grant a confidential hearing requested by the state agency ~~may be granted by the Board or its hearing officer~~. The appellant, respondent or hearing officer may request that portions of the hearing be sealed or adequately protected if ~~If~~ testimony of certain witnesses is of a sensitive nature~~, either the appellant, respondent or hearing officer may request that those portions of the hearing be sealed or adequately protected~~. Any party may be represented by himself or a representative as provided by law. Every hearing shall be conducted in an impartial manner as a quasi-judicial proceeding ~~under the rules of administrative procedure~~. All witnesses shall testify under oath or by affirmation, and a record of the proceedings shall be made and kept for 3 ~~three~~ years. Hearings shall be conducted in a manner so as to ascertain the substantial rights of parties. The Board, a Board member or hearing officer shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure except the rule of privilege as recognized by law.

I. Prehearing conferences. The Board or the Board's hearing officer may require both parties to attend a prehearing conference. Any agreements reached at that conference shall be binding at the hearing.

J. Exhibits. When an exhibit is going to be offered at a Board hearing, the party introducing the exhibit shall furnish the Board or the Board's hearing officer and the opposing party with a copy of the exhibit prior to or at the commencement of the hearing.

K. ~~8.~~ Exclusion of witnesses. The hearing officer, in the hearing officer's discretion, and upon ~~Upon~~ the motion of any appellant or respondent, ~~the hearing officer, in his discretion,~~ may exclude from the hearing room any witnesses not at the time under examination~~., but a party to the proceeding, or his representative, or other person conducting the case, shall not be excluded.~~ The hearing officer shall not exclude a party to the proceedings, or his representative, or other person conducting the case.

L. ~~9.~~ Witness fees. Witnesses, other than state employees, when subpoenaed to attend a hearing ~~or investigation~~ are entitled to the same fee as is allowed witnesses in civil cases in courts of record. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, ~~If a witness is subpoenaed by the hearing officer on his own motion,~~ fees and mileage may be paid from funds of the Board upon presentation of a duly executed claim. If the appellant or respondent subpoenas a witness~~, is subpoenaed upon request of the appellant or respondent,~~ the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses shall be limited to payment of mileage by the party requesting the witness ~~him~~.

M. Enforcement of subpoenas. In the event that enforcement of appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court, and enforcement shall be determined pursuant to law by the Superior Court and not the Board. The Board shall be made a party to any proceedings and shall follow any orders entered by the court.

N. ~~10.~~ Depositions. Any party, at the party's expense, may cause a witness' deposition to be taken if ~~If~~ a witness does not reside within the county or within 100 ~~one hundred~~ miles of the place where the hearing ~~or investigation~~ is to be held, is out of the state, or is too infirm to attend the hearing ~~or investigation, any party thereto at his own expense may cause his deposition to be taken~~. A witness' deposition may be used in evidence by either party or the Board if ~~If~~ the presence of a witness

cannot be procured at the time of hearing ~~or investigation, his deposition may be used in evidence by either party or the Board~~.

O.~~11.~~Proposed findings of fact. Both appellant and respondent shall have the right to file with the Board proposed findings of fact and conclusions of law for the benefit of the hearing officer. The appellant and respondent shall submit proposed findings of fact and conclusions of law prior to the conclusion of the hearing as defined in R2-5.1-103(E).

P.~~12.~~Objections to findings. The Board shall transmit a copy of the hearing officer's ~~The~~ findings of fact, ~~and~~ conclusions of law and recommendation ~~the hearing officer shall be transmitted~~ to the interested parties. ~~Within ten days of their receipt, any~~ Any interested party may file written objections (not post-hearing evidence) to the hearing officer's report with the Board within 15 calendar days of receipt of the hearing officer's report and shall serve copies of the objections ~~them~~ upon the other interested parties. The Board will not consider objections not timely filed.

Q.~~13.~~Personnel Board decision. Within the timeframe required by law, the ~~The~~ Board shall notify the interested parties in advance of the time and place of the Board meeting at which the appeal will be decided. The board may affirm, reverse, adopt, modify, supplement, amend or reject the hearing officer's report in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other appropriate disposition of the appeal as allowed by law. Provided the meeting notice requirements may be met, the ~~The~~ Board shall ~~will~~ make a ~~its~~ decision on the appeal in an ~~its~~ open meeting within 45 ~~thirty~~ days after the conclusion of a hearing and shall send a copy of the ~~their~~ decision to the interested parties by certified ~~registered~~ mail, return receipt requested. In the event the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay for the period and in the amounts as the Board determines to be proper.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 14. ARIZONA POWER AUTHORITY

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R12-14-101	Amend
R12-14-201	Amend
R12-14-202	Amend
R12-14-203	Amend
R12-14-302	Amend
R12-14-401	Amend
R12-14-403	Amend
R12-14-405	Amend
R12-14-501	Amend
R12-14-601	Repeal
R12-14-601	Renumber
R12-14-602	Repeal
R12-14-603	Repeal
R12-14-604	Repeal
R12-14-605	Repeal
R12-14-606	Repeal
R12-14-607	Renumber

2. The specific statutory authority for the rulemaking:

A.R.S. § 30-103(A) and A.R.S. § 30-124(D) authorize the Authority to adopt rules, regulations, and forms.

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 6 A.A.R. 716, February 18, 2000

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

Name: James P. Bartlett, Legal Counsel

Address: 1810 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4263

Fax: (602) 253-7970

5. Explanation of the rule, including the agency's reasons for initiating the rule:

The Authority wishes to amend the Sections noted above to clarify and replace outdated language and delete language rendered unnecessary by statutory amendments.

Due to a change in its statutes, the Authority must repeal the Sections noted above.

The Authority wishes to retain the provisions of Section R12-14-607, but change its Section number to R12-14-601.

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

None

7. Showing of good cause why 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:

In 1997, the Legislature repealed A.R.S. § 30-171 through § 30-173 which, among other things, authorized the Authority to adopt rules pertaining to administrative hearings. The responsibility for conducting hearings is now vested in the Office of Administrative Hearings (OAH). The Authority's earlier rules covering this subject must therefore be repealed.

8. Preliminary summary of the economic, small business and consumer impact:

The Arizona Power Authority proposes to amend a number of its rules to clarify and replace outdated language and delete language rendered unnecessary by statutory amendments. Also, several rules regarding administrative proceedings must be repealed due to a change in the Authority's statutes. The Section number of one rule will be changed.

No economic, small business, or consumer impact will result from the proposed amendments or repeal of the Authority's rules under this proposed rulemaking.

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

Name: James P. Bartlett, Legal Counsel

Address: 1810 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4263

Fax: (602) 253-7970

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

No proceedings have been scheduled at this time. However, persons may request an oral proceeding on the proposed rule by contacting the Secretary of the Arizona Power Authority either in writing or in person, as follows:

Time: 8:00 a.m. - 5:00 p.m.
Monday through Friday, excluding legal holidays

Location: Arizona Power Authority
1810 West Adams
Phoenix, Arizona 85007

Public comments must be submitted to the Authority not later than 45 days after the date of publication of this Notice of Proposed Rulemaking in the *Arizona Administrative Register.*

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

None

12. Incorporation by reference and their location in the rules:

None

13. Was this rule previously adopted as an emergency rule:

No

14. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 14. ARIZONA POWER AUTHORITY

ARTICLE 1. GENERAL

Section
R12-14-101. Definitions

ARTICLE 2. AVAILABILITY OF LONG-TERM POWER; APPLICATION FOR ELECTRIC SERVICE; POWER PURCHASE CERTIFICATES

Section
R12-14-201. Availability of Long-term Power; Contract negotiations
R12-14-202. Application for Electric Service
R12-14-203. Power Purchase Certificates; Application

ARTICLE 3. SERVICE TO PURCHASERS

Section
R12-14-302. Systems and Operation Plans

ARTICLE 4. ADMINISTRATION OF POWER

Section
R12-14-401. Sale, Use, Transfer and Administration of Long-term Power
R12-14-403. Wheeling and Operating Agreements
R12-14-405. Cooperative Actions

ARTICLE 5. RECORDS

Section
R12-14-501. Purchaser's Records

ARTICLE 6. CONFERENCES ~~RULES OF PRACTICE AND PROCEDURE~~

Section
~~R12-14-601.~~ ~~General Procedure~~
~~R12-14-607.~~ R12-14-601. Conferences
~~R12-14-602.~~ ~~Pleadings, Motions and~~ ~~Other Documents~~ Repealed
~~R12-14-603.~~ ~~Proceedings~~ Repealed
~~R12-14-604.~~ ~~Multiple Claims~~ Repealed
~~R12-14-605.~~ ~~Rehearing and Appeals~~ Repealed
~~R12-14-606.~~ ~~Arguments on Rehearing~~ Repealed
R12-14-607. Renumbered

ARTICLE 1. GENERAL

R12-14-101. Definitions
In this Chapter, the definitions set forth in A.R.S. Title 30, Chapter 1 and in A.R.S. Title 45, Chapter 10 shall apply and, unless the context otherwise requires, the following definitions shall also apply:

1. No Change.
2. No Change.
3. No Change.
4. No Change.
5. "District" means any Power or water organization comprehended by A.R.S. Title 30, Chapter 1 or A.R.S. Title 45 (as renumbered and set forth in A.R.S. Title 48) and formed under ~~pursuant to~~ law.
6. ~~"Hearing Officer" means a person designated pursuant to Section R12-14-602(E) to act on behalf of the Commission in any proceeding before the Commission.~~
6.~~7.~~ "Long-term Power" means a supply of Power which is available to the Authority for a period more than ~~in excess of~~ 366 consecutive days and which is subject to the jurisdiction of, and disposition by, the Authority, including any capacity or energy recaptured by the Authority and any capacity or energy tendered or relinquished by any Purchaser.

7.~~8.~~ No Change.
~~9. "Pleading" means any application, petition, complaint, protest, objection, or motion required or permitted to be filed with the Authority.~~
8.~~10.~~No Change.
9.~~11.~~No Change.
10.~~12.~~No Change.
11.~~13.~~"Preference" means the priority of entitlement to Power according ~~pursuant~~ to A.R.S. § 30-125 or A.R.S. § 45-1708.
12.~~14.~~"Purchaser" means any Qualified Entity which holds a Power Purchase Certificate and has contracted ~~entered into a Power Sales Contract~~ to purchase Power from the Authority under A.R.S. Title 30, Chapter 1, or which has ~~entered into a Power Sales Contract~~ contracted to purchase Power from the Authority under A.R.S. Title 45, Chapter 10.
13.~~15.~~"Qualified Entity" means any District, Operating Unit, person or other entity which is eligible ~~privileged~~ to purchase Power from the Authority under ~~pursuant to~~ A.R.S. Title 30, Chapter 1 or A.R.S. Title 45, Chapter 10.
14.~~16.~~"Recapture" means the recovery or retaking of Long-term Power by the Authority from a Purchaser which exceeds ~~is excess to~~ the Purchaser's needs for reallocation among other Qualified Entities.
15.~~17.~~No Change.
16.~~18.~~"Service Territory" means the legal descriptions and boundaries described in a Power Purchase Certificate, or any amendment to that Power Purchase Certificate ~~thereto~~, in which the holder may use ~~utilize~~ Long-term Power purchased under a Power Sales Contract according ~~pursuant~~ to A.R.S. Title 30, Chapter 1.
17.~~19.~~No Change.
18.~~20.~~No Change.

ARTICLE 2. AVAILABILITY OF LONG-TERM POWER; APPLICATION FOR ELECTRIC SERVICE; POWER PURCHASE CERTIFICATES

R12-14-201. Availability of Long-term Power; Contract Negotiations

A. No Change.
B. No Change.
C. No Change.
D. If a Qualified Entity wants ~~desires~~ to enter into a Power Sales Contract, it shall file an application for electric service following ~~pursuant to~~ Section R12-14-202. The ~~Such~~ application shall be filed on or before the due date specified in the Authority's notice of intent to receive applications for electric service.
E. Within 60 days after the due date for the filing of an application for electric service, the Authority shall notify all interested parties of the names and addresses of the entities which are eligible to enter into a Power Sales Contract. The ~~such~~ notification shall also propose an ~~set forth a proposed~~ allocation of Long-term Power to the eligible entities.
F. Within 90 days after notification of eligibility and of the proposed allocation, the Authority shall present a draft form of contract to each eligible prospective Purchaser and begin contract negotiations. ~~shall commence.~~
G. No Change.
H. No Change.
I. No Change.
J. Within the classes of ~~or~~ preference priorities established by A.R.S. § 30-125(A), Long-term Power shall be allocated equitably among Qualified Entities in the same class based upon the needs of the ~~such~~ entities and the type of use of Long-term Power within the Service Territory.
K. In the allocation or reallocation of Long-term Power, the Authority shall consider ~~give due consideration to~~ a prospective Purchaser's access to other sources of Power available from the Federal Government.

R12-14-202. Application for Electric Service

A. No Change.
B. No Change.
C. If the Authority determines that an applicant is eligible to enter into a Power Sales Contract for Long-term Power offered under A.R.S. Title 30, Chapter 1, the applicant, within 30 days after receipt of notice of eligibility, shall file an application for a Power Purchase Certificate following ~~pursuant to~~ R12-14-203. The holder of an existing Power Purchase Certificate shall not be required to re-apply unless the Long-term Power applied for will be used in a Service Territory that differs from the Service Territory specified in the applicant's existing Power Purchase Certificate.
D. No Change.

R12-14-203. Power Purchase Certificates; Application

A. No Change.
B. No Change.
C. The application shall include the information required by A.R.S. § 30-152 and the following:

1. No Change.
2. No Change.
3. The name and mailing address of the principal executive officer or secretary of each District or Operating Unit and of any ~~natural~~ person or other entity engaged in the distribution of Power within the Service Territory or contiguous to the Service Territory.
4. No Change.
5. A description of applicant's electric system in sufficient detail for the Authority to judge the applicant's capability to use Long-term Power. If the applicant intends to use an electric system owned by another entity, a copy of any intended or existing agreement with the owner about the ~~pertaining to such~~ use shall accompany the application. If the applicant proposes to construct, purchase, lease, or otherwise obtain the use of a system for sale or distribution of Long-term Power, the details of the ~~such~~ proposal shall be provided.

D. The applicant shall explain any arrangements with other entities for the use of electrical equipment or facilities required for the applicant to use Long-term Power. If any other entity claims ownership of, or transmission rights on, any electric facilities to be used ~~utilized~~ or duplicated by the applicant, the applicant shall disclose that ~~such~~ information. Where the applicant's arrangements appear to conflict with the rights of another entity, the applicant may file an affidavit signed by an authorized officer of the entity affected, disclosing that satisfactory arrangements for applicant's use are in place. ~~have been consummated.~~

E. Upon the filing of the application, the Authority shall immediately set a date for a hearing following ~~pursuant to~~ A.R.S. § 30-152.

F. A Power Purchase Certificate shall remain in effect only during the ~~such~~ time ~~as~~ the holder of the Power Purchase Certificate ~~thereof~~ has an existing Power Sales Contract with the Authority.

G. The legal descriptions and boundaries set forth in a Power Purchase Certificate shall fix and establish the Service Territory in which the holder may use ~~utilize~~ Power under a Power Sales Contract.

H. No Change.

ARTICLE 3. SERVICE TO PURCHASERS

R12-14-301. Authority's Service to Purchasers

A. The Authority shall contract with a Purchaser to deliver Long-term Power, if ~~provided~~ transmission capability is available to ensure delivery of Long-term Power to the Purchaser at the point or points of delivery to be designated in the Power Sales Contract. The Authority may also contract with the Purchaser to provide opportunities for connection between the Purchaser's electric system and the electric system of other entities.

B. No Change.

C. By agreement with one or more Purchasers, the Authority may construct electric lines and related facilities of the voltage and capacity needed to serve a Purchaser or Purchasers or as needed ~~warranted~~ by available loads. The agreement must assure full payment by the users of operating costs, depreciation and interest, and any other costs or expenses associated with a ~~any such~~ project, during a 40-year amortization period or such other period established by law or contract. If the Authority constructs the ~~such~~ facilities, the incremental costs shall be added to the charges to any Purchaser or other user benefitting from the ~~such~~ facilities.

D. With the aid of Purchasers, the Authority shall work ~~endeavor~~ to maintain a system of load scheduling and records so that the Authority may reasonably predict:
1. A Purchaser's current and future Power needs,
2. Whether a Purchaser should be allowed or required to relinquish or surrender Long-term Power which is surplus to that Purchaser's needs, and
3. Whether a Purchaser will have Long-term Power which is temporarily or permanently surplus to the Purchaser's needs.

E. The Authority shall periodically perform surveys to identify sources of Power or transmission service which may be temporarily or permanently available to the Authority and identify possible markets for those ~~such~~ resources and for Recaptured, relinquished, tendered, or temporarily-available surplus Long-term Power.

R12-14-302. Systems and Operation Plans

For the Authority's information and assistance in the administration of its Power Sales Contracts, any Purchaser which does not manage and operate its own electric transmission and distribution system shall, at the Authority's request, submit a plan for the use and administration of Long-term Power. The Purchaser's plan shall be accompanied by any ~~such~~ maps, plans, specifications, and agreements as may be necessary to disclose the nature and extent of the ~~such~~ plan.

ARTICLE 4. ADMINISTRATION OF POWER

R12-14-401. Sale, Use, Transfer and Administration of Long-term Power

A. No Change.

B. No Change.

C. No tender or relinquishment of Long-term Power shall relieve the Purchaser of its obligations under its Power Sales Contract nor shall the ~~such~~ tender or relinquishment be deemed a Recapture by the Authority unless:
1. The ~~Such~~ tender or relinquishment is for the unexpired term of the Purchaser's Power Sales Contract; and
2. The Authority has contracted to sell the ~~such~~ tendered or relinquished Long-term Power for a term and at a price not less than the term and price contained in the Purchaser's Power Sales Contract.

D. Subject to the terms of the Purchaser's Power Sales Contract, if, for any reason, all or a portion of the Long-term Power purchased from the Authority exceeds the Purchaser's electric load for a period of three consecutive contract years, the Authority may Recapture all or a portion of the Purchaser's Long-term Power. The Authority shall give the Purchaser at least 30 days prior written notice of a hearing on the Authority's intention to Recapture Long-term Power. At the ~~such~~ hearing, the Authority shall determine if the Purchaser's Long-term Power can be reasonably expected to exceed, in whole or in part, the Purchaser's future needs. Any portion or all of the Purchaser's Long-term Power which the Authority determines to be excess to the Purchaser's needs may be Recaptured by the Authority. Any ~~such~~ Recapture shall be effective 60 days after the date upon which the Purchaser receives a "Notice of Recapture" from the Authority, or at a ~~such~~ later date ~~as is~~ specified in the "Notice of Recapture". Any Recapture of Long-term Power shall reduce the Purchaser's entitlement to Long-term Power by the amount of the Recapture. ~~Unless the context otherwise requires, the provisions of Article 6 shall apply to any hearing required by this paragraph.~~

E. Except as permitted by a Power Sales Contract, a Purchaser shall not transfer or assign a Power Sales Contract, or any interest in a Power Sales Contract ~~therein~~, unless first approved by the Authority. Unless otherwise provided by law or contract, an assignment or transfer of a Power Sales Contract, or any interest therein, shall not relieve the Purchaser from any obligation under the ~~such~~ contract without the prior written consent of the Authority.

F. An assignment of a Power Sales Contract, or any interest in a Power Sales Contract ~~therein~~ shall not be approved by the Authority unless the ~~such~~ assignment is made in good faith and for a justifiable cause or reason. The Authority shall not approve any assignment which:
1. No Change.
2. No Change.
3. No Change.
4. No Change.
5. No Change.
6. May confer a Preference upon an entity not entitled to Preference. ~~thereto.~~
7. Further, an assignment shall not be approved if the Authority determines that an assignment is discriminatory or that Long-term Power or rights to Long-term Power should be recaptured by the Authority for reallocation and sale or other disposition to other Qualified Entities.

G. No Change.

H. Long-term Power shall be used only for the purposes and uses for which allocated and sold. Long-term Power allocated and sold under ~~pursuant~~ to A.R.S. Title 30, Chapter 1 shall be used only within the Service Territory established in the Purchaser's Power Purchaser Certificate, unless otherwise authorized by the Authority. Banking of electric energy and exchange of Banked Energy between Purchasers in the same Control Area may be authorized under terms and conditions approved by the Authority.

R12-14-403. Wheeling and Operating Agreements

A Purchaser who desires to enter into an agreement with regard to power operations, transmission, or Wheeling involving Long-term Power shall first petition the Authority for permission to do so. The petition shall state all relevant facts and shall set forth the reasons for the proposed agreement. The petition shall also file copies of any proposed agreement and ~~such~~ other information, data, and documents as may be requested by the Authority. An agreement for the transmission or Wheeling of Long-term Power over the facilities of others shall not be made without the prior written approval of the Authority. An operating, transmission or Wheeling agreement shall not be approved if it conflicts with the provisions of any Power Sales Contract, may result in disruption of established electric service, operations, practices, systems, or facilities, or may endanger service to other Purchasers, to third parties, or to the general public.

R12-14-405. Cooperative Action

A. Under ~~Pursuant to~~ A.R.S. § 30-129 and A.R.S. Title 45, Chapter 10, any Party may petition the Authority for information, advice, aid, or assistance regarding any matter within the jurisdiction of the Authority. The ~~Such~~ petition shall be in writing and shall include the names of all interested or affected entities, the basis for the requested information, advice, aid, or assistance; the location of any project involved; the action requested of the Commission and any other information or relevant matter which may assist the Commission in acting upon a request.

B. If a Conference regarding a petition filed with the Authority is deemed appropriate, the Commission shall schedule a Conference following R12-14-601 ~~pursuant to R12-14-607~~. All interested entities shall be notified of the ~~such~~ Conference, and any interested entity may make an oral or written presentation and file documents, reports or other material relevant to the requested cooperative action.

C. The Authority staff or consultants to the Authority may make ~~such~~ preliminary studies, surveys, or investigations as the Commission directs with respect to any requested cooperative action. If the Commission determines that a hearing or other proceeding is appropriate, the Commission may take appropriate interim action and may enter into letters of understanding or preliminary agreements with the petitioner and all other interested entities.

ARTICLE 5. RECORDS

R12-14-501. Records

At the request of the Authority, a Purchaser shall file copies of contracts for the purchase, sale, exchange, transmission and Wheeling of Long-term Power between it and any entity other than the Authority, together with all current rate schedules and amendments ~~thereto~~.

ARTICLE 6. CONFERENCES ~~RULES OF PRACTICE AND PROCEDURE~~

~~**R12-14-601. General Procedure**~~

~~**A.** Unless otherwise required by law, all hearings shall be scheduled at the convenience of the Commission. Unless otherwise ordered by the Commission, hearings shall be held at the Authority's business office in Phoenix, Arizona.~~

~~**B.** Unless otherwise provided by law, the Commission may reschedule, recess, continue or adjourn a hearing. Unless otherwise provided by law, the Commission may extend or shorten a specified time period upon the motion of any Party.~~

~~**C.** Except as otherwise required by law, the Arizona Administrative Procedure Act (A.R.S. § 41-1001 et seq.) shall apply to all hearings or rehearings before the Commission.~~

~~**D.** All pleadings and any supporting documents, exhibits or other communications or correspondence pertaining to any matter before the Commission shall be filed with the Secretary at the Authority's business office in Phoenix, Arizona.~~

~~**E.** The Commission may designate a member of the Commission, a member of the Authority staff, or any other individual to act as a Hearing Officer in any Commission proceedings.~~

~~**F.** If necessary or appropriate, the staff of the Authority may participate in any proceeding as a Party.~~

~~**R12-14-607.** **R12-14-601. Conferences**~~

A. No change

B. No change

~~**R12-14-602. Pleadings, Motions and Other Documents**~~ **Repealed**

~~**A.** A proceeding under A.R.S. § 30-152 shall be initiated by filing an "application". A proceeding under A.R.S. § 30-171 shall be initiated by filing an initial pleading entitled "petition", "complaint", "protest", or "objection", whichever most clearly addresses the issue raised by the Party. Responsive pleadings shall designate in the caption or heading the identity and interest of the Party responding to an initial pleading.~~

~~**B.** The specific grounds of any application, petition, complaint, protest or objection filed with the Authority shall be set forth in the initial pleading; provided, however, that A.R.S. § 30-171(D) shall control the grounds upon which any initial pleading may be filed pursuant to A.R.S. § 30-171.~~

~~**C.** All motions shall be in writing, shall indicate the nature of the relief requested, and shall be accompanied by a memorandum indicating the legal points, statutes, and authorities relied upon. Motions shall be served on all other Parties to the proceeding. Any Party opposing a motion shall file and serve any answering memorandum within 20 days after service of such motion. Within ten days after service of an answering memorandum, the moving Party may file and serve a reply memorandum directed only to matters raised by the answering memorandum.~~

~~**D.** All pleadings shall be signed and verified by the Party or by its authorized representative.~~

~~**E.** An original and five copies of each pleading shall be filed with the Secretary. One copy of each pleading shall be served upon each other Party appearing in the matter.~~

~~**F.** Amendments to pleadings shall not be accepted for filing unless received by the Secretary at least 20 days prior to the date of any scheduled hearing.~~

~~**G.** Pleadings or other documents permitted or required to be filed with the Authority may be transmitted by mail, personal service, or other method which shall assure delivery, but all such pleadings and documents must be actually received for filing on or before 5:00 p.m. of the last day prescribed for such filing. Whenever a Party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice of paper is served upon him by mail, five days shall be added to the prescribed period.~~

~~**R12-14-603. Proceedings**~~ **Repealed**

~~**A.** Unless the Commission has selected a Hearing Officer to preside, the Chairman of the Commission shall preside at all proceedings and shall rule upon all questions concerning pre-hearing, hearing or post-hearing procedures and evidence. Any Commissioner may attend any proceeding and may ask relevant questions of any Party.~~

~~**B.** During a proceeding, the Secretary shall act as Clerk and shall administer oaths; mark, maintain, and preserve exhibits and other evidence; and perform such other duties as may be assigned by the Chairman, Hearing Officer, or members of the Commission.~~

~~C.~~ ~~The Authority's legal counsel shall attend all proceedings and advise the presiding officer on all legal matters arising out of or related to the proceeding. The Authority's legal counsel shall also prepare any pleadings, briefs, or other documents pertaining to the Authority's interests and shall prepare notices, proposed orders, and other procedural documents requested by the Commission. If the Commission determines that it, the Authority staff, or the presiding officer requires independent legal counsel, the Authority shall retain such legal counsel pursuant to applicable Arizona law.~~

~~R12-14-604.~~ ~~Multiple Claims~~ Repealed

~~When more than one claim for relief is presented in any matter pending before the Authority, the Commission or Hearing Officer may direct the entry of a final decision on one or more but fewer than all of the Parties' claims only upon an express determination that there is no just reason for delay. In the absence of such determination, any action or decision which addresses fewer than all the Parties' claims shall not terminate the matter as to any of the Parties' claims, and the action or decision is subject to revision before the entry of the final decision to all Parties' claims.~~

~~R12-14-605.~~ ~~Rehearing and Appeals~~ Repealed

~~A.~~ ~~Subject to A.R.S. § 30-172, any final decision may be vacated and a rehearing granted on motion of the aggrieved Party for any of the following causes materially affecting such Party's rights:~~

1. ~~Irregularity in a proceeding of the Commission, or of the Hearing Officer or of the prevailing Party, or any order or abuse of discretion whereby the moving Party was deprived of a fair proceeding;~~
2. ~~Misconduct of the prevailing Party;~~
3. ~~Accident or surprise which could not have been prevented by ordinary prudence;~~
4. ~~Newly discovered material evidence could not be discovered or produced at the time of the hearing or prehearing with the exercise of reasonable diligence;~~
5. ~~Error in the admission or rejection of evidence or other errors of law occurring during a proceeding;~~
6. ~~Any action or decision of the Commission which is the result of passion or prejudice; or~~
7. ~~Any action or decision of the Commission which is not justified by the evidence or is contrary to law.~~

~~B.~~ ~~A rehearing may be granted to all or any of the Parties and on all or part of the issues. On a motion for rehearing, the Commission may reopen the proceedings; take or admit additional testimony and other evidence; and modify, amend, rescind, or affirm any final decision.~~

~~C.~~ ~~A motion for rehearing shall be in writing, shall specify generally the grounds upon which the motion is based, and shall be filed not later than 20 days after a final decision. If the motion for rehearing is based upon the general ground that the Commission erred in admitting or rejecting evidence, the Commission shall review all rulings upon objections to evidence. If the motion for rehearing is based upon the general ground that the final decision of the Commission is not justified by the evidence, the Commission shall review the sufficiency of the evidence.~~

~~D.~~ ~~When a motion for rehearing is based upon affidavits, the affidavits shall be served with the motion. Any opposing Party shall have ten days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the Commission for good cause shown or by the Parties upon written stipulation. The Commission may permit reply affidavits.~~

~~E.~~ ~~Not later than 20 days after the effective date of any final decision, the Commission, on its own initiative, may order a rehearing for any reason for which a rehearing might have been granted upon motion of a Party. After giving the Parties notice and an opportunity to be heard, the Commission may grant a rehearing, upon a motion timely served, for a reason not stated in a motion for rehearing.~~

~~F.~~ ~~A rehearing, if granted, shall be only a rehearing of the question or questions with respect to which the decision is alleged to be erroneous.~~

~~G.~~ ~~An order granting a rehearing shall state specifically the issues or questions presented and the ground or grounds upon which the rehearing is granted.~~

~~H.~~ ~~Any final decision is subject to appeal to the Superior Court of Maricopa County, Arizona, as provided by A.R.S. § 30-173, or as otherwise provided by law.~~

~~R12-14-606.~~ ~~Arguments on Rehearing~~ Repealed

~~Applications for oral argument on rehearing shall be granted or denied in the discretion of the Commission and the Commission shall fix the time limits for oral argument.~~

R12-14-607. Renumbered

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY WASTE MANAGEMENT

PREAMBLE

1. Sections Affected — **Rulemaking Action**

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

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

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

Implementing statute: A.R.S. § 49-922

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 297, January 7, 2000

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

Primary Contact:

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

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

Telephone: (602) 207-2223 or (602) 207-2248 or (800) 234-5677, ext. 2223 (Arizona only)

TTD Number: (602) 207-4829

Fax: (602) 207-2251

Secondary Contact:

Name: John Bacs, Technical Programs Unit Manager

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

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

Fax: (602) 207-4138

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

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C. State-initiated changes.

A. Incorporations by reference

The Arizona Department of Environmental Quality (ADEQ) is amending the state's hazardous waste rules to incorporate the text of federal regulations for the purpose of obtaining re-authorization of the State's hazardous waste management program by the United States Environmental Protection Agency (EPA). The state's hazardous waste rules are generally comprised of the federal regulations authorized by Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, which are incorporated by reference. The hazardous waste rules are well established and have been effective since 1984. This year's amendments cover changes in the federal regulations promulgated between July 2, 1998 and July 1, 1999.[1]

Modifications to the text incorporated by reference are intended to make the language consistent with state terminology, and not make a substantive change to the content. For example, the federal regulations incorporated by reference refer to the "EPA," the implementing agency, but since Arizona is authorized to implement and enforce the program contained in the incorporated regulations, "EPA" is usually replaced with "ADEQ" when referring to the implementing agency. Because the changes to the federal regulations are generally to tailor the language to ADEQ, the changes to the incorporated text are not intended to have additional impact beyond the federal regulation.

A change made in the rules by the incorporations by references is to replace July 1, 1998 with July 1, 1999 in subsection (A) of most Sections. Subsection (A) of Sections R18-8-260, R18-8-261, R18-8-262, R18-8-264, R18-8-265, R18-8-266, R18-8-268, R18-8-270, and R18-8-273 incorporate by reference the federal regulations published in 40 CFR 260 through 262, 264 through 266, 268, 270, and 273 as of July 1, 1999.

Incorporating the federal regulations will keep Arizona's hazardous waste management program funded by EPA and in compliance with A.R.S. § 49-922. EPA requires that Arizona be re-authorized annually to manage the federal hazardous waste program instead of the EPA administering the program in Arizona. ADEQ received final RCRA authorization in 1985 and continues to apply for re-authorization to comply with changes to federal regulations. Adoption of federal regulations also promotes compliance uniformity among states. Most of the federal regulations incorporated by reference in this rulemaking are required for re-authorization.

B. Descriptions of the federal rules incorporated by reference.

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

1. Rule Title: Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substances Designation and Reportable Quantities. EPA is listing four petroleum refining process wastes as hazardous (K169-K172). The wastes will be subject to stringent management and treatments standards and emergency notification requirements. The rule excludes certain recycled secondary materials from the definition of solid waste. These materials include both oil-bearing residuals from petroleum refineries and oil from associated petrochemical facilities when they are inserted into the petroleum refining process; and spent caustic from liquid treating operations when used as a feedstock to make certain chemical products. The rule clarifies an existing exclusion for recovered oil from certain petroleum industry sources. Finally, this rule applies the universal treatment standards to the petroleum refining wastes. In addition, on October 9, 1998, EPA changed the effective date of certain portions of this rule to be consistent with sections 801 and 808 of the Congressional Review Act. This rule can be found at 63 FR 42110, August 6, 1998 and 63 FR 54356, October 9, 1998.
2. Rule Title: Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088). EPA is announcing interim replacement standards for spent potliners from primary aluminum reduction under its Land Disposal Restrictions program. Spent potliners will now be prohibited from land disposal unless the wastes have been treated in compliance with the numerical standards contained within this rule. The newly promulgated treatment standards will be in place until EPA has fully reviewed all information on all treatment processes which may serve as a basis for a more permanent revised standard. In addition, EPA extended the K088 national capacity variance until September 21, 1998. This rule can be found at 63 FR 51254, September 24, 1998.

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1. In the 1997-98 amendments to the rules made under this Article, ADEQ incorporated by reference 4 FR changes that were issued after July 1, 1998. Three of these FR changes made technical or editorial corrections to the final regulations. One of these FR changes delayed the effective date of new treatment standards. Since these changes were incorporated by reference in last year's rulemaking their content is not discussed in this proposed rulemaking.

3. Rule Title: Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process. This rule modifies the requirement for a post-closure permit, to allow EPA and the authorized States to use a variety of authorities to impose requirements on non-permitted land disposal units requiring post-closure care. As a result, regulators have the flexibility to use alternate mechanisms under a variety of authorities to address post-closure care requirements, based on the particular needs at the facility. This rule also amends the regulations governing closure of land-based units that have released hazardous constituents, to allow certain regulated units where releases may have mingled with releases from solid waste management units to be addressed through the corrective action program. This will provide regulators the discretion to use corrective action requirements, rather than closure requirements, to address the closure of these regulated units. Finally, this rule specifies the Part B information submission requirements for facilities that receive post-closure permits. This rule can be found at 63 FR 56710, October 22, 1998.
4. Rule Title: Hazardous Remediation Waste Management Requirements (HWIR-Media). This rule streamlines permitting for treatment, storage and disposal of remediation wastes managed at cleanup sites. The new requirements: 1) make permits faster and easier to obtain, 2) provide that obtaining these permits will not subject the owner/operator to facility-wide corrective action at remediation-only facilities, and 3) allow the use of Remediation Action Plans (RAPs) as an alternative to traditional RCRA permits. EPA is also finalizing regulations regarding use of staging piles during cleanup and providing an exclusion for dredged materials managed under appropriate Clean Water Act or Marine Protection, Research and Sanctuaries Act permits. Although not applicable to this rule, EPA has also finalized streamlined procedures for State authorization of certain rules. A table has been added to 40 CFR 271.21 which lists the rules which may be submitted for authorization using the streamlined procedures. This rule can be found at 63 FR 65874, November 30, 1998.

   Note: The time spent in reviewing, approving, or denying a RAP application falls under the Licensing Timeframe (LTF) rules. As such, ADEQ will include the review and permit issuance or denial timeframes applicable to the RAP application in its next amendment to the LTF rules.
5. Rule Title: Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program). This rule corrects errors that appeared in the May 11, 1995 Universal Waste Rule (60 FR 25492). No new regulatory requirements are created with this rule. This rule 1) makes three corrections to regulations governing the management of spent lead-acid batteries that are reclaimed, 2) corrects the definition of a small quantity universal waste handler, and 3) clarifies the export requirements which apply to destination facilities when the facilities act as universal waste handlers. This rule can be found at 63 FR 71225, December 24, 1998.
6. Rule Title: Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers. Previously, the EPA set standards to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment (59 FR 62896, December 6, 1994). The standards were amended by the December 8, 1997 rule (62 FR 64636) in response to public comments and inquiries. This rule's amendments further clarify certain regulatory text and reinstate certain regulatory provisions that were previously contained in the rules and later inadvertently removed. This rule can be found at 64 FR 3382, January 21, 1999.
7. Rule Title: Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Exemption for Leachate from Non-Hazardous Waste Landfills. This rule is temporarily deferring from the definition of hazardous waste landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes (K169, K170, K171, and K172). This exemption applies to landfill leachate and gas condensate subject to regulation under the Clean Water Act. The exempted leachate may not ordinarily be managed in surface impoundments or otherwise placed on the land after February 13, 2001, except for the purpose of providing storage under emergency conditions. This rule can be found at 64 FR 6806, February 11, 1999.
8. Rule Title: Land Disposal Restrictions -- Phase IV: Treatment Standards for Wood Preserving Wastes, Metal Wastes, and Zinc Micronutrient Fertilizers, and Carbamate Treatment Standards, and K088 Treatment Standards. This rule clarifies and makes technical corrections to the following five final rules published by EPA: 1) May 12, 1997, regulations promulgating LDR treatment standards for wood preserving wastes, as well as reducing the paperwork burden for complying with LDRs; 2) May 26, 1998, regulations promulgating LDR treatment standards for metal-bearing wastes, as well as amending the LDR standards for soil contaminated with hazardous wastes, and amending the definition of which secondary materials from mineral processing are considered to be wastes subject to the LDRs; 3) August 31, 1998, an administrative stay of the metal-bearing waste treatment standards as they apply to zinc micronutrient fertilizers; 4) September 4, 1998, an emergency revision of the LDR treatment standards for hazardous wastes from the production of carbamate wastes; and 5) September 24, 1998, revised treatment standards for spent aluminum potliners from primary aluminum production. This rule can be found at 64 FR 25408, May 11, 1999.

9. Rule Title: Guidelines for Establishing Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Under the Clean Water Act and Resource Conservation and Recovery Act. This rule approves use of EPA Method 1664, Revision A: N-Hexane Extractable Material (SGT-HEM; Non-Polar Material) by Extraction and Gravimetry (Method 1664) for use in EPA's Clean Water Act (CWA) programs, and incorporates Method 1664 by reference for use in EPA's Resource Conservation and Recovery Act (RCRA) programs. The rule also deletes Method 9070 and adds revised Method 9071B as Update IIIA to the Third Edition of the EPA-approved test methods manual SW-846. EPA has taken these actions as a part of its effort to reduce dependency on use of chlorofluorocarbons (CFCs) to protect the Earth's ozone layer and to meet the CFC phaseout agreed to in the Montreal Protocol and required by the Clean Air Act Amendments of 1990. This rule can be found at 64 FR 26315, May 14, 1999.
10. Rule Title: Land Disposal Restrictions Phase IV- Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Metals and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Elusion of Recycled Wood Preserving Wastewaters. Due to numerous unresolved issues (definition of reverts; reuse of used refractory bricks; uniquely associated concept, point of generation, and production; reclamation of alternate feedstocks as apposed to reuse of effective substitutes for commercial products) between the Arizona Mining Association and EPA concerning mineral processing secondary materials exclusion, ADEQ did not incorporate the mineral processing secondary materials exclusion portion of this rule in the rulemaking that became effective November 15, 1999. Further clarification and guidance from EPA has been and is still expected on these issues. All other portions of this rule were incorporated in the previous rulemaking process. Although the issues have not been resolved, ADEQ, with the support of the Arizona Mining Association, has decided to proceed with the incorporation of the mineral processing secondary materials exclusion in this rulemaking. This rule can be found in EPA's RCRA Checklist 167D and at 63 FR 28556, May 26, 1998.

C. State-initiated changes.

1. The State is amending R18-8-265 to correct a misspelling and make a technical correction by moving the content of R18-8-265(K), which amends 40 CFR 265.193, to the end of this rule in order to keep the numerical sequence of amended federal CFR sections in numerical order.
2. The State is amending R18-8-270(J) to correct clerical errors in paragraph (24)(i)(B) by removing "if" in the first sentence and adding "not" in the third sentence.
3. The State is amending R18-8-261(A) to delete the phrase, "with the exception of § 261.5(j)." Changes in the Federal regulations (40 CFR 261.5(j)) and the incorporation of 40 CFR 279 (to which § 261.5(j) refers) in 1997 by A.R.S. § 49-802 negates the need for the exception.

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

Not applicable

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

Not applicable

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

A. Rule Identification

This is a hazardous waste rulemaking, identified as the 1998-99 amendments to the hazardous waste management rules, codified in the Arizona Administrative Code as follows:

Title 18. Environmental Quality

Chapter 8. Department of Environmental Quality - Waste Management

Article 2. Hazardous Wastes

This EIS provides a preliminary assessment of 10 federal rules incorporated by reference (Table 1). An additional final rule, which was published in October 1998, merely corrected the effective date of the 1st rule so it was combined with this rule.

In addition to incorporating changes in federal law, published as final rules in the *Federal Register* (FR) between mid-1998 and mid-1999, ADEQ is making 3 state-initiated changes that have no impact.

B. Background Information

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

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

Because the state merely is adopting federal requirements to maintain RCRA authorization for a state program that is equivalent to EPA's, it could be argued that it is not necessary to assess the impacts. Technically, the EPA is the senior partner in the relationship of authorized state programs and may act as the enforcer even in states with authorized programs. Furthermore, the impacts may not be considered incremental to the entities located in Arizona because most federal requirements promulgated by these final rules already are effective.

C. Expected Impacts

ADEQ expects the adoption of these federal rules to impact some of the state's businesses. However, ADEQ expects the overall impacts of this rulemaking to be beneficial with probable benefits exceeding probable costs. This is because most of the impacts provide regulatory relief (less burdensome requirements) and increased flexibility for the affected entities. For example, EPA anticipates that the use of remedial action plans (RAPs) will reduce transportation costs for facilities that no longer will ship waste off-site for treatment (see rule #4). Additionally, owners/operators of some facilities may be able to reduce their costs by avoiding the traditional permit process for post-closure (rule #3). Thus, while some businesses could experience increased compliance costs, ADEQ expects the majority of affected entities to experience cost-saving benefits. ADEQ expects a minimal likelihood of any increased costs of doing business resulting in costs being passed-on to the general public or consumers of certain goods and services.

This rulemaking will provide regulatory relief for some entities, while still protecting human health and the environment. A general summary of the final federal rules is described below. For additional information see Table 1, which contains a description of the final federal rules incorporated by reference by this rulemaking.

Rule 1, under the LDR program, imposes stringent management and treatment standards, as well as emergency notification requirements for releases, on 4 hazardous wastes (K169-K172) which are generated during petroleum refining. This rule also provides for an exclusion (certain recycled secondary materials from the solid waste definition) and clarifies an existing exclusion (recovered oil). EPA's economic analysis indicates that industry economic impacts are likely to be very slight. Arizona has only 1 facility that is affected by this rule, but ADEQ expects the economic impact to be very minimal to this facility.

Rule 2, under the LDR program, establishes interim treatment standards for spent aluminum potliners (hazardous waste code K088). Because there are no reported businesses involved in primary aluminum reduction in Arizona, no incremental impacts are expected to occur.

Rules 3, 4, 7, and 9 provide regulatory relief by increasing flexibility and decreasing regulatory confusion. ADEQ expects these rules to generate cost-saving benefits and more efficient cleanups. These benefits are expected to accrue to hazardous waste facilities as a result of the following regulatory changes: more flexible standards regarding closure permit avoidance for post-closure care; use of "staging piles" for storing remediation waste during cleanups; option to obtain "remedial action plans" (RAPs) as an alternative to the traditional RCRA permits; temporary deferral for landfill (LF) leachate and LF condensate derived from previously disposed wastes (from the petroleum refining process); and optional method for analyzing oil and grease and non-polar material (using n-hexane instead of Freon-113)). However, by changing the regulatory status of leachate (derived from the 4 petroleum wastes identified in Rule #7) to be covered by RCRA Subtitle C, some LFs may bear some small increase in management cost.

Rules 5, 6, and 8 correct and clarify previously published final rules. Since these amendments and clarifications imposed no new requirements, no incremental impacts are expected to occur.

All but one portion of Rule 10 has been incorporated during the previous rulemaking. Due to numerous unresolved issues (definition of reverts; reuse of used refractory bricks; uniquely associated concept, point of generation, and production; reclamation of alternate feedstocks as apposed to reuse of effective substitutes for commercial products) between the Arizona Mining Association and EPA concerning mineral processing secondary materials exclusion, ADEQ did not incorporate the mineral processing secondary materials exclusion portion of this rule in the rulemak-

ing that became effective November 15, 1999. Further clarification and guidance from EPA has been and is still expected on these issues. Although the issues have not been resolved, ADEQ, with the support of the Arizona Mining Association, has decided to proceed with the incorporation of the mineral processing secondary materials exclusion in this rulemaking. mineral processing secondary materials exclusion portion of this rule was not incorporated because of numerous unresolved issues between the Arizona Mining Association (AMA) and EPA. Although, the issues have not been resolved, ADEQ, with the support of the AMA, has decided to proceed with the incorporation of the mineral processing secondary materials exclusion portion in this rulemaking and deal with the outstanding issues as they arise. ADEQ expects that this rule will result in some increased operating cost to the mining industry, but cannot quantify it at this time.

ADEQ does not expect this rulemaking to impact short or long-term employment, production, or industrial growth in Arizona. This includes both private and public facilities. There is no reason to believe that price, profitability, or capital availability will be affected. Furthermore, because facility closures, reductions in output, or increases or decreases in employment are not expected to occur, ADEQ does not anticipate any transitional employment problems, such as re-employment. Other economic changes in secondary employment, energy, international trade, regional impacts, or supply and demand are not anticipated to occur as a result of this rulemaking. Impacts to ADEQ's program should be effectively handled by its current personnel without any additional staffing requirements. Finally, ADEQ expects that this rulemaking will not have an impact on state revenues.

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

ADEQ receives approximately $1.5 million annually to administer the state's hazardous waste program. This represents a benefit because the regulated industries are mandated to comply with federal and state requirements. These requirements, which include design, performance, and operational standards, are established to prevent health hazards and environmental contamination. However, someone could argue that grant monies from the EPA, which were paid by tax payers, should not be included as social benefits because they represent a program subsidy or "transfer" from a government entity to another.

D. General Impact on Small Businesses and Reduction of Impacts

Although ADEQ data do not identify facilities classified as small businesses, hazardous waste program staff estimate 80% to 90% of the approximately 900 small quantity generators (SQGs) and 90% of the approximately 1,200 conditionally exempt small quantity generators (CESQGs) could be classified as small businesses. Unlike the other generators, only a small proportion of the approximately 200 large quantity generators (LQGs) and probably none of the 39 treatment, storage, and disposal (TSD) facilities would be considered small businesses. As a result of this apportionment, approximately 80% of the 2,340 generators would be classified as small businesses. However, ADEQ estimates that the majority, by far, will be unaffected by this rulemaking, including the 1,200 CESQGs. Approximately 60 SQGs, 70 CESQGs, 20 LQGs, and 10 TSD facilities represent government entities, including schools. Probably none of these government entities will be negatively impacted. Few, if any, small entities should be adversely affected by this rulemaking because most of the federal requirements that ADEQ is adopting by reference do not impose increased compliance costs on businesses either small or large.

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

ADEQ could not provide additional regulatory relief for small businesses beyond what was built-in by the federal requirements. ADEQ has no authority to exempt a small business, or even establish a less stringent standard or schedule for it, or any business as a matter of fact, from compliance or reporting requirements. Pursuant to A.R.S. § 49-922(A), the state's hazardous waste program must be "equivalent to and consistent with the federal hazardous waste

regulations promulgated pursuant to subtitle C of the federal act." In addition, the state's non-procedural program standards must not be more stringent than or conflict with federal regulations. Under these conditions, ADEQ cannot provide additional relief to small businesses because it would not be legal or feasible. If ADEQ deviates from these rulemaking provisions, it would jeopardize EPA authorization to administer the federal hazardous waste program in Arizona.

E. Alternative Rulemaking Provisions

This rulemaking adopts federal requirements. This is necessary for ADEQ to remain in compliance with state law and to be consistent with federal regulations. Thus, ADEQ could not find any less costly or less intrusive rule provisions of achieving the goals and objectives of this rulemaking (see prior part B).

F. Table 1

The following acronyms are used in Table 1:

CERCLA = Comprehensive Environmental Response, Compensation, and Liability Act ("Superfund")

CFCs = chlorofluorocarbons

CWA = Clean Water Act

EPCRA = Emergency Planning and Community Right to Know Act

FR = *Federal Register*

LDR = land disposal restrictions

LF = landfill

MPRSA = Marine Protection Research and Sanctuaries Act

NPDES = National Pollutant Discharge Elimination System

POTWs = publicly owned treatment works

pub. = published

RAP = remedial action plan

RCRA = Resource Conservation and Recovery Act

RQ = reportable quantity

TCLP = Toxicity Characteristic Leaching Procedure

TSD = treatment, storage, and disposal

UTS = universal treatment standards

Table 1. Description of Federal Regulations Proposed to be Incorporated by ADEQ and Probable Impacts

No.	Relevant 40 CFR Parts and FR publication	Effective Date of Rule	Rule Description (action) and National Impact	Entities Potentially Impacted and General Impacts
1	261, 266, 268, (63 FR 42110, pub. 8-06-98) NOTE: 63 FR 54356, pub. 10-09-98, corrects the effective date of this final rule	2-08-99 (deregulatory amendments), 12-08-98 (other amendments)	Lists 4 wastes as hazardous wastes generated during petroleum refining and subjects them to stringent management and treatment standards under RCRA and to emergency notification requirements for releases (K169-K172). Benzene and arsenic are the key constituents of concern for these wastes. This rule also excludes certain recycled secondary materials from the definition of solid waste and clarifies an existing exclusion for recovered oil from certain petroleum industry sources. Under the LDR program, EPA also is applying UTS to the listed petroleum refining wastes. These listed wastes must now meet treatment standards for specific constituents before land disposal. Nationally, this rule is expected to minimize threats to human health and the environment, and the exclusion potentially could encourage material recovery.	Businesses that handle the waste streams added to EPA's list of hazardous waste under RCRA and to the CERCLA list (K169 through K172) or entities that respond to releases of these listed hazardous wastes (state/local emergency response teams). These include SIC codes 2911 and 2869. EPA estimates the economic impact on the industry to be very slight. ADEQ expects that the impact on Arizona's only facility to be also very slight.
2	268 (63 FR 51254, pub. 9-24-98)	9-21-98	Establishes interim treatment standards for spent aluminum potliners generated from primary aluminum reduction (EPA hazardous waste code K088). EPA re-promulgated K088 treatment standards except for fluoride and arsenic. No interim standard was developed for fluoride and arsenic in non-wastewater forms of K088. Under the LDR program, authorized by RCRA, spent potliners will be prohibited from land disposal unless the wastes have been treated in compliance with the numerical standards. This is necessary because hazardous constituents potentially could leach from LFs to groundwater (prohibition of land disposal and establishing treatment standards are the heart of the RCRA hazardous waste management scheme). Nationally, this rule is expected to minimize threats to human health and the environment.	Generators producing spent aluminum potliners (aluminum manufacturing industry), TSD facilities that handle K088, or entities that transport K088. ADEQ predicts there will be no impact in Arizona because no industries involved in primary aluminum reduction (SIC code 3334) are reported to be operating in Arizona.

3	264, 265, 270, (63 FR 56710, pub. 10-22-98)	10-22-98	Makes 2 main changes to closure and post-closure care procedures. It allows, under certain circumstances, owners/operators of land-based facilities that have released hazardous constituents to be subject to state cleanup programs imposing site-specific requirements instead of 40 CFR Part 264 and 265 standards for performing corrective action; and it allows owners/operators of non-permitted land disposal facilities to be subject to alternate mechanisms for post closure instead of post-closure permits. The 1st change, which imposes no new requirements for corrective action, allows more flexible standards (for example, closure and groundwater monitoring). The 2nd change, which potentially represents a cost-savings benefit, can result in permit avoidance for post-closure care and eliminate duplicated efforts. Nationally, this rule is expected to allow flexibility while maintaining protection of human health and the environment. It also is expected to improve efficiency by reducing regulatory confusion.	Owners/operators of closed and closing hazardous waste management facilities (LFs, surface impoundments, waste piles, or land treatment units). Since this rule imposed no new requirements, ADEQ expects it to impact entities only in a positive manner which could provide cost-saving benefits to some facility owners/ operators.
4	260, 261, 264, 265, 268, 270, (63 FR 65874, pub. 11-30-98)	6-01-99	Streamlines permitting for treatment, storage and disposal of remediation wastes managed at cleanup sites. These new requirements: (1) make permits faster and easier to obtain; (2) provide that obtaining these permits will not subject the owner/operator to facility-wide corrective action at remediation-only facilities; (3) allow the use of Remediation Action Plans (RAPs) as an alternative to traditional RCRA permits; and (4) exclude dredged materials from RCRA Subtitle C if they are managed under CWA and MPRSA (removes the potential for duplicative effort). Nationally, this rule is expected to provide cost-saving benefits to some entities ($5-35 million or more).	Owners/operators of TSD facilities. Because this rule provides cost-saving benefits to regulated entities, ADEQ does not expect any negative impacts to occur. It potentially makes permits for treating, storing, and disposing of remediation wastes faster and easier to obtain. Therefore, this rule provides regulatory relief and potentially could promote additional cleanups more efficiently.

5	266, 273 (63 FR 71225, pub. 12-24-98)	12-24-98	Corrects technical errors to a previously published final rule (Universal Waste Rule, published 5-11-95 in 60 FR 25492). It creates no new regulatory requirements, but merely reinstates regulatory language that was mistakenly changed and provides clarification. In summary, this rule does the following: (1) makes 3 corrections to regulations governing the management of spent lead-acid batteries that are reclaimed, (2) corrects the definition of a small quantity universal waste handler, and (3) clarifies the export requirements that apply to destination facilities acting as universal waste handlers. Nationally, this rule is not expected to have an impact.	Permitted and interim status facilities that handle spent lead-acid batteries, including destination facilities acting as universal waste handlers, and other waste handlers (small quantity). Since this rule imposed no new requirements, ADEQ does not expect it to impact any facility or handler in Arizona.
6	262, 264, 265 (64 FR 3382, pub. 1-21-99)	1-21-99	Makes clarifying amendments and re-establishes requirements that previously were inadvertently removed. This rule makes technical corrections to the final Subpart AA and Subpart CC rules. This was done to clarify the regulatory text of the final standards, to interpret the standards, and to correct typographical, printing, and grammatical errors. The rule does not add new control requirements. Nationally, this rule is not expected to have an impact. However, because overall information-keeping requirements are being reduced (from previously published requirements), cost-saving benefits potentially could accrue to some entities.	TSD facilities subject to RCRA Subtitle C permitting requirements or that accumulate hazardous waste onsite in RCRA permit-exempt tanks or containers under 40 CFR 262.34(a). Since none of the changes resulted in additional requirements, ADEQ does not expect an impact to any of Arizona's industries.
7	261 (64 FR 6806, pub. 2-11-99)	2-05-99	Temporarily defers LF leachate and LF condensate, which are subject to regulation under the CWA, derived from previously disposed wastes (before the effective date of the listing) that meet the listing descriptions of the recently added petroleum refinery wastes (the leachate otherwise would be considered a listed hazardous waste). This is because the 4 hazardous waste listings for petroleum wastes (K169 through K172, promulgated 8-06-98, 63 FR 42110) may have potentially significant impacts on the management of leachate collection from certain nonhazardous waste LFs. However, as a condition for this deferral, the leachate cannot be managed in surface impoundments or otherwise placed on land after 2-13-01, except for the purpose of providing storage under temporary or emergency conditions.	ADEQ does not expect an impact to LFs that historically received any of the newly listed petroleum refinery wastes (K169-K172) and that generate LF leachate or LF gas condensate because of the temporary deferral. Likewise, ADEQ does not anticipate an impact to POTWs or waste haulers in Arizona.

8	261, 262, 268 (64 FR 25408, pub. 5-11-99)	5-11-99	Corrects and clarifies 5 previous final rules published in 1997 and 1998 relating to LDR, Phase IV. Nationally, this rule is not expected to have an impact.	Since this rule corrected and clarified previously published rules, ADEQ expects no impact to any Arizona entity.
9	260 (64 FR 26315, pub. 5-14-99)	6-14-99	Approves new test procedures for analyzing oil and grease and non-polar material for CWA and RCRA programs (EPA Method 1664 that uses n-hexane instead of CFCs); deletes EPA Method 9070; adds revised EPA Method 9071B. EPA has taken these actions to reduce the dependency on the use of CFCs to protect the earth's ozone layer and to meet the CFC phaseout. This rule has no information collection requirements. Essentially, this rule is not expected to have a national impact.	Generators, TSD facilities and handlers submitting delisting petitions, as well as laboratories. Because expected cost increases will be minimal and EPA Method 1664 will reduce the use of ozone-depleting CFCs, benefits are expected to outweigh costs. Hence, ADEQ expects minimal to no impact on permittees, laboratories, or regulatory agencies in Arizona.
10	261, 266, 268, (63 FR 28556, pub. 5-26-98)	8-24-98	Includes only the mineral processing secondary materials exclusion portion of the LDR Phase IV rule. This portion of the rule amends the provisions defining when secondary materials from mineral processing, which are recycled within the industry sector, are solid wastes.	While there may be some increased operation costs to the mining industry, ADEQ cannot quantify it at this time.

Source: EPA promulgated final rules published in the *Federal Register.*

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

Name: David Lillie

Address: Arizona Department of Environmental Quality
3033 N. Central M0836A, 844
Phoenix, AZ 85012-2809

Telephone: (602) 207-4436 or (800) 234-5677, ext. 4436 (Arizona only)

TTD Number: (602) 207-4829

Fax: (602) 207-2251

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

Date: May 24, 2000

Time: 9:00 a.m.

Location: Arizona Department of Environmental Quality
Room 1706
3033 N. Central, Phoenix, AZ 85012

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

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

The close of the written comment period is at 5:00 p.m., May 24, 2000.

Submit comments to: Arizona Department of Environmental Quality, Rules Development Section, Deborah K. Blacik, M0836A-829, 3033 North Central Avenue, Phoenix, AZ 85012-2809

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

Not applicable

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

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

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY WASTE MANAGEMENT

ARTICLE 2. HAZARDOUS WASTES

Section

ARTICLE 2. HAZARDOUS WASTES

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

A. Federal and state statutes and regulations cited in these rules are those adopted as of July 1, ~~1998~~1999, unless otherwise noted. 40 CFR 124, 260 through 266, 268, 270 and 273 or parts thereof, are adopted by reference when so noted. Federal statutes and regulations that are cited within 40 CFR 124, 260 through 270, and 273 that are not adopted by reference may be used as guidance in interpreting federal regulatory language.

B. No Change.

C. All of 40 CFR 260 and the accompanying appendix, as amended as of July 1, ~~1998~~1999, (and no future editions), with the exception of §§ 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33, are incorporated by reference and modified by the following subsections of R18-8-260 and are on file with the Department of Environmental Quality (DEQ) and the Office of the Secretary of State.

D. No Change.

1. No Change.

2. No Change.
   a. No Change.
      i. No Change.
      ii. No Change.
   b. No Change.
      i. No Change.
      ii. No Change.
      iii. No Change.
      iv. No Change.
   c. No Change.
      i. No Change.
      ii. No Change.
      iii. No Change.
   d. No Change.
      i. No Change.
      ii. No Change.
      iii. No Change.
   e. No Change.
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      ii. No Change.
         (1) No Change.
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      iii. No Change.
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         (3) No Change.
         (4) No Change.
   f. No Change.
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      iii. No Change.
      iv. No Change.
      v. No Change.

E. No Change.
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6. No Change.
    a. No Change.
    b. No Change.
7. No Change.

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

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

A. All of 40 CFR 261 and accompanying appendices, as amended as of July 1, ~~1998~~1999 (and no future editions), ~~with the exception of §§ 261.5(j), 261.4(a)(16) intro through 261.4(a)(16)(vi), and 261.4(b)(7)(iii),~~ are incorporated by reference and modified by the following subsections of R18-8-261 and are on file with the DEQ and the Office of the Secretary of State. ~~In addition, all amendments to Part 261 at 63 FR 37780, July 14, 1998, are incorporated by reference and on file with the DEQ and the Office of the Secretary of State.~~

B. No Change.

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

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

~~E.~~**D.** No Change.
~~F.~~**E.** No Change.
~~G.~~**F.** No Change.
~~H.~~**G.** No Change.
~~I.~~**H.** No Change.

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

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

J. § 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 (as incorporated by R18-8-266)] and all applicable provisions in parts 270 and 124 of this Chapter [(as incorporated by R18-8-270 and R18-8-271)]:

(i) Recyclable materials used in a manner constituting disposal (subpart C);

(ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O (as incorporated by R18-8-264 and R18-8-265)] (subpart H);

(iii) Recyclable materials from which precious metals are reclaimed (subpart F);

(iv) Spent lead-acid batteries that are being reclaimed (subpart G).

(3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124 (as incorporated by R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and are not subject to the notification requirements of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in § 262.58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, [shall] comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56 (a)(1)-(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in subpart E of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.

(ii) Scrap metal that is not excluded under § 261.4(a)(13);

(iii) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12) (as incorporated by R18-8-261);

(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801] 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]~~; and~~.

~~(v) Petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in part 261, subpart C [(as incorporated by R18-8-261)].~~

K. No Change.
L. No Change.
M. No Change.

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

A. All of 40 CFR 262 and the accompanying appendix, as amended as of July 1, ~~1998~~1999, (and no future editions), are incorporated by reference and modified by the following subsections of R18-8-262, and are on file with the DEQ and the Office of the Secretary of State.
B. No Change.
1. No Change.
2. No Change.
3. No Change.
C. No Change.
D. No Change.
E. No Change.
F. No Change.
G. No Change.
H. No Change.
I. No Change.
1. No Change.
2. No Change.
J. No Change.
K. No Change.
L. No Change.
M. No Change.

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

A. All of 40 CFR 263, as amended as of July 1, ~~1998~~1999, (and no future editions), is incorporated by reference and modified by the following subsections of R18-8-263, and on file with the DEQ and the Office of the Secretary of State.
B. No Change.
C. No Change.
D. No Change.
E. No Change.

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

A. All of 40 CFR 264 and accompanying appendices, as amended as of July 1, ~~1998~~1999, (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149 - 264.150, and 264.301(l), are incorporated by reference, and modified by the following subsections of R18-8-264, and are on file with the DEQ and the Office of the Secretary of State.
B. No Change.
C. No Change.
D. No Change.
1. No Change.
2. No Change.
E. No Change.
F. No Change.
G. No Change.
H. No Change.
I. No Change.
1. No Change.
2. No Change.
J. No Change.
K. No Change.
L. No Change.
M. No Change.
N. No Change.
O. No Change.
1. No Change.
2. No Change.
3. No Change.
4. No Change.

5. No Change.
6. No Change.

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

A. All of 40 CFR 265 and accompanying appendices, as amended as of July 1, ~~1998~~1999 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, are incorporated by reference and modified by the following subsections of R18-8-265, and are on file with the DEQ and the Office of the Secretary of State.

B. No Change.

C. No Change.

D. No Change.

1. No Change.
2. No Change.

E. No Change.

F. No Change.

G. No Change.

H. No Change.

I. No Change.

J. No Change.

~~**K.** § 265.193, titled "Containment and detection of releases" (as incorporated by R18-8-265), is amended by adding the following: For existing underground tanks and associated piping systems not yet retrofitted in accordance with § 265.193, the owner or operator shall insure that:~~

~~1. A level must be measured daily;~~

~~2. A material balance must be calculated and recorded daily; and~~

~~3. A yearly test for leaks in the tank and piping system, using a method approved by DEQ must be performed.~~

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

1. No Change.

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

M. § 265.193, titled "Containment and detection of releases" (as incorporated by R18-8-265), is amended by adding the following: For existing underground tanks and associated piping systems not yet retrofitted in accordance with § 265.193, the owner or operator shall ensure that:

1. A level must be measured daily;
2. A material balance must be calculated and recorded daily; and
3. A yearly test for leaks in the tank and piping system, using a method approved by DEQ must be performed.

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

A. All of 40 CFR 266 and accompanying appendices as amended as of July 1, ~~1998~~1999 (and no future editions), are incorporated by reference and are on file with the DEQ and the Office of the Secretary of State.

B. § 266.100, titled "Applicability" paragraph (b) is amended as follows:

(b) The following hazardous wastes and facilities are not subject to regulation under this subpart:

(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 [(as incorporated by R18-8-261)] of this Chapter. Such used oil is subject to regulations under [A.R.S. §§ 49-801 through 49-818] rather than this subpart;

(2) No Change.

(3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)~~(iv)-(v)~~(iii)-(iv) [as incorporated by R18-8-261] of this Chapter, and hazardous wastes that are subject to special requirements for conditionally exempt small quantity generators under 261.5 [as incorporated by R18-8-261] of this Chapter; and

(4) No Change.

R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, as amended as of July 1, ~~1998~~1999 (and no future editions), with the exception of Part 268, Subpart B, are incorporated by reference and are on file with the DEQ and the Office of the Secretary of State. ~~In addition, all amendments to Part 268 as amended at 63 FR 46332, August 31, 1998; 63 FR 47410, September 4, 1998; and 63 FR 48124, September 9, 1998, are incorporated by reference and on file with the DEQ and the Office of the Secretary of State.~~

R18-8-270. The Hazardous Waste Permit Program

A. All of 40 CFR 270, as amended as of July 1, ~~1998~~1999 (and no future editions), with the exception of §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64, is incorporated by reference and modified by the following subsections of R18-8-270 and is on file with the DEQ and the Office of the Secretary of State.

B. No Change.
1. No Change.
   a. No Change.
   b. No Change.
   c. No Change.
2. No Change.
   a. No Change.
   b. No Change.

C. No Change.

D. No Change.

E. No Change.

F. No Change.

G. No Change.
1. No Change.
   a. No Change.
   b. No Change.
   c. No Change.
   d. No Change.
2. No Change.
3. No Change.
   a. No Change.
   b. No Change.
   c. No Change.
   d. An application for a remedial action plan (RAP) submitted pursuant to 40 CFR 270, Subpart H (as incorporated by R18-8-270).
4. No Change.
5. No Change.
6. No Change.
   a. No Change.
   b. No Change.
7. No Change.
   a. No Change.
   b. No Change.
   c. No Change.
   d. No Change.
   e. No Change.
   f. No Change.
   g. No Change.
   h. No Change.
   i. No Change.
   j. No Change.
8. No Change.
9. No Change.

H. No Change.

I. No Change.

J. § 270.14, entitled "Contents of Part B: General requirements", paragraph (b) is amended by adding the following:

[(23) Any additional information required by the DEQ to evaluate compliance with facility standards and informational requirements of R18-8-264, R18-8-269 and R18-8-270.

(24)(i) A signed statement, submitted on a from supplied by the DEQ that demonstrates:

(A) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the 5 years before the date of the permit application; or

(B) In the case of a corporation or business entity, ~~if~~ any officer, director, partner, key employee, other person or business entity who holds 10% or more of the equity or debt liability has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the 5 years before the date of the permit application.

(ii) Failure to comply with paragraph (i) above, the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8- 271), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8-271).]

K. No Change.
L. No Change.
M. No Change.
N. No Change.
O. No Change.
P. No Change.
Q. No Change.
R. § 270.110, titled "What must I include in my application for a RAP?", is amended by adding paragraphs (j) and (k) as follows:

[(j) A signed statement, submitted on a form supplied by DEQ that demonstrates:

(1) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the 5 years before the date of the RAP application.

(2) In the case of a corporation or business entity, any officer, director, partner, key employee, other person or business entity who holds 10% or more of the equity or debt liability has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the 5 years before the date of the RAP application.

(k) Failure to comply with paragraph (j) above, the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8- 271), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8-271).]

R18-8-271. Procedures for Permit Administration

A. All of 40 CFR 124 and the accompanying appendix as amended as of July 1, ~~1998~~1999, (and no future editions), relating to HWM facilities, with the exception of §§ 124.1(b) through (e), 124.2, 124.4, 124.16, 124.20 and 124.21, are incorporated by reference and modified by the following subsections of R18-8-271 and are on file with the DEQ and the Office of the Secretary of State.
B. No Change.
C. No Change.
D. No Change.
E. No Change.
F. No Change.
G. No Change.
H. No Change.
I. No Change.
J. No Change.
K. No Change.
L. No Change.
M. No Change.
N. No Change.
O. No Change.
P. No Change.
Q. No Change.
R. No Change.
S. No Change.
T. No Change.

R18-8-273. Standards for Universal Waste Management

A. All of 40 CFR 273, as amended as of July 1, ~~1998~~1999 (and no future editions), is incorporated by reference and modified by the following subsections of R18-8-273 and are on file with the DEQ and the Office of the Secretary of State.
B. No Change.
C. No Change.

1. No Change.
   a. No Change.
   b. No Change.
2. No Change.
   a. No Change.
   b. No Change.

D. No Change.
E. No Change.
F. No Change.
G. No Change.
H. No Change.
I. No Change.
J. No Change.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R20-4-205	Repeal
R20-4-208	Repeal
R20-4-210	Repeal
R20-4-211	Amend

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

Authorizing statute: A.R.S. § 6-123

Implementing statutes: A.R.S. § 6-123, 6-190, and 6-203

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 2267, July 16, 1999

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

Name: John P. Hudock, Esq.

Address: 2910 North 44th Street, Suite 310
Phoenix, AZ 85018

Telephone: (602) 255-4421, ext. 167

Fax: (602) 381-1225

E-mail: jhudock@azbanking.com

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

The Banking Department has only one broad reason to repeal these Sections, and that is to simplify and minimize the administrative rules. To achieve that goal, this rulemaking will repeal R20-4-205 because it is duplicative and unnecessary. This same package will repeal part, or all, of three other Sections that do not add anything to the Department's statutory authority. These revisions do not, however, diminish the Department's authority to regulate banks.

R20-4-205

The Department proposes to repeal R20-4-205. A.R.S. Chapter 1, Article 4 (§§ 6-141 to 6-153) controls the process of acquiring a financial institution. That process, inherently, involves a change in control of management of the acquired institution. A.R.S. § 6-144 requires the Superintendent's approval of the acquisition. A.R.S. § 6-145 requires an application for approval, and R20-4-1602 supplies the details of the application content. The requirements of R20-

4-1602 cover the same ground and are more comprehensive and detailed than are those of R20-4-205. For that reason, the Department regards R20-4-205 as superfluous and redundant.

R20-4-208

The Department proposes to repeal Section R20-4-208, and to rely on the requirements of A.R.S. § 6-190 in the future. The Superintendent will, after this repeal, specify the particulars of the form of application outside the rulemaking process.

R20-4-210

The Department proposes to repeal Section R20-4-210, and to rely on the requirements of A.R.S. § 6-190. The Superintendent will, after this repeal, specify the particulars of the form of application outside the rulemaking process.

R20-4-211

The Department proposes to retain subsection R20-4-211(A), repeal subsection R20-4-211(C), and amend subsection R20-4-211(B). Subsection R20-4-211(A)'s requirement that applicant's have an initial meeting with the Superintendent is fundamental and will be retained by this rulemaking.

The Department proposes to amend subsection R20-4-211(B) to simplify the writing style, and remove some unnecessary prepositional phrases.

The proposed repeal of R20-4-211(C) will allow the Superintendent, after this modification, to specify the form of submissions outside the rulemaking process.

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

The Department does not propose to rely on any study as an evaluator or justification for the proposed rule.

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

Not applicable

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

A. The Banking Department

Over time, the Banking Department expects material savings because of the streamlined process of amending the form of submissions without a rulemaking.

B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Applicants will benefit from the use of more current and streamlined application forms. Costs of services rendered to their customers will decrease marginally.

D. Consumers

Consumers will benefit from more readily available banking services. The increased access will come at a lower cost because of the amendment's effect of streamlining the process and minimizing the administrative burden of applying.

E. Private and Public Employment

There is no measurable effect on private and public employment.

F. State Revenues

This rulemaking will not change state revenues.

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

Name: John P. Hudock, Esq.

Address: 2910 North 44th Street, Suite 310
Phoenix, Arizona 85018

Telephone: (602) 255-4421, ext. 167

Fax: (602) 381-1225

E-mail: jhudock@azbanking.com

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

No oral proceedings are scheduled. The Department will schedule an oral proceeding on the proposed rule if it receives a written request for a proceeding within 30 days after the publication date of this notice, pursuant to the provisions of A.R.S. § 41-1023(C). Send requests to the Department personnel listed in questions 4 and 9 of this preamble. The Department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in question 9 of this preamble, until the close of the record for this proposed rulemaking. The record will close on the 31st day following publication of this notice, unless the Department schedules an oral proceeding.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 1. GENERAL

Section

ARTICLE 1. GENERAL

R20-4-205. ~~Notice of Change in Control of Management – A.R.S. § 6-123~~ Repealed

~~A.~~ ~~Whenever a change occurs in the outstanding voting stock of a bank which will result in control or in a change in the control of the bank, the president or other chief executive officer of such bank shall promptly report such facts to the Superintendent upon obtaining knowledge of such change. As used in this rule, the term "control" means the power to directly or indirectly direct or cause the direction of the management or policies of the bank. A change in ownership of voting stock which would result in direct or indirect ownership by a stockholder or an affiliated group of stockholders of less than ten percent of the outstanding voting stock shall not be considered a change of control. If there is any doubt as to whether a change in the outstanding voting stock is sufficient to result in control thereof or to affect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the Superintendent.~~

~~B.~~ ~~Whenever a bank makes a loan or loans, secured, or to be secured, by 25% or more of the outstanding voting stock of a bank chartered by the state of Arizona, the president or other chief executive officer of the lending bank shall promptly report such fact to the Superintendent upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more, or the stock is that of a newly organized bank prior to its opening.~~

~~C.~~ ~~The reports required by subsections (A) and (B) of this rule shall contain the following information to the extent that it is known by the person making the report:~~

1. ~~The number of shares involved;~~
2. ~~The names of the sellers (or transferors);~~
3. ~~The names of the purchasers (or transferees);~~
4. ~~The names of the beneficial owners if the shares are registered in another name;~~
5. ~~The purchase price;~~
6. ~~The total number of shares owned by the sellers (or transferors), the purchasers (or transferees) and the beneficial owners both immediately before and after the transaction, and in the case of a loan;~~

7. The name of the borrower;
8. The amount of the loan; and
9. The name of the bank issuing the stock securing the loan and the number of shares securing the loan.

In addition to the foregoing, such reports shall contain such other information as may be available to inform the Superintendent of the effect of the transaction upon control of the bank whose stock is involved.

D. Whenever such a change as described in subsection (A) of this rule occurs, each bank shall report promptly to the Superintendent any changes or replacement of its chief executive officer or of any director occurring in the next 12 month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

R20-4-208. Application for Approval to Establish a Banking Office – A.R.S. § 6-190 Repealed

A. Applicant shall submit, upon the original filing, sufficient information in support of the application to enable the superintendent to make a determination.

B. Approval of the application requires a showing that the need for the banking office in the community or area where it will be located is such as to demonstrate the favorable prospect for a sound banking operation, that the current earnings of the bank are sufficient to support the operation of the banking office, and that the bank will have qualified personnel available to staff the banking office when it is opened.

C. The application shall be in the following form on legal-size paper:

---------- , 19--

Superintendent of Banks
101 Commerce Building
1601 West Jefferson
Phoenix, Arizona 85007

Sir:

The ----------
(Applicant) (Street Address) (City)
hereby makes application for approval to establish and maintain a banking office at
---------- to be known as ---------- office.
(Street Address) (City) (County)
The general character or type of business to be exercised by the proposed banking office is as follows:

In support of this application, we submit the following information:

1. Attached as Exhibit A is a certified copy of the resolution of the Board of Directors authorizing the filing of this application.
2. The Certificate of Incorporation was issued on ----------, 19--.
3. The bank was opened for business on ----------, 19--.
4. The following information is furnished on the ---------- existing banking offices as of ----------, 19--.

Street Address	City	Opened	Deposits (In thousands)	Loans

5. The following ---------- banking offices have been approved but not opened:

Street Address	City	Opened	Date Approved	Anticipated Opening Date

6. The following banking office locations are pending approval:

Street Address	City	Application Date

7. Attached as Exhibit B is a Statement of Condition of the bank as of ----------, 19--.
8. The capital structure of the bank as of the application date ----------, 19-- is:

a.	Capital stock (---- shares at $---- par value)	$--------
b.	Capital obligations	--------
c.	Capital surplus	--------
d.	Earned surplus (including undivided profits)	--------
e.	Other (identify)	--------
	Total Capital	--------

9. The ratio of total capital to total assets is --------%.
10. The ratio of total capital to total deposits is --------%.

11. The capital structure will be increased as follows prior to the establishment of the proposed banking office:

12. Attached as Exhibit C is a statement of the earnings and expenses of the bank for each of the last three calendar years.
13. The estimated cost and description of the premises to be occupied by the proposed banking office is as follows:

    (Attach a copy of any contract, lease, option or letter of intent covering the purchase or lease of the property. If no copy is attached state the reason.)
14. The estimated cost of furniture, fixtures and equipment is $ ---------.
15. Attached as Exhibit D is a statement reflecting the estimated demand and time deposits, gross income, operating expenses (detailed), and net income, or loss for each of the first three years of operation of the proposed banking office.
16. It is estimated that $ --------- of deposits will be transferred to the proposed banking office from other offices of the bank.
17. The name, duties, salary and brief resume of each of the officers to be assigned to the proposed banking office is as follows:

18. Officers of the proposed banking office will have the following authority in connection with extension of credit:

19. The following is a summary of the supervision and control which will be exercised by the officials of the bank over the activities of the proposed banking office:

20. The applicant bank maintains surety bond coverage on its active officers and employees as follows:
    Banker Blanket Bond $---------
    Excess Fidelity Bond ---------
    Other ---------
21. The approximate population of the city in which the proposed banking office is to be located is ---------- as of ---------, 19--. Source:
22. The approximate population of the trade area to be served by the proposed banking office is ---------- as of ----------, 19--. Source:
23. Existing and approved banks and banking offices located within a three-mile radius of the proposed banking office are as follows:
    Name Location Deposits Distance

24. Attached as Exhibit E is a map delineating the trade area and indicating the location of each of the above banks and banking offices in the trade area and the proposed banking office.
25. The economic and demographic characteristics of the trade area is as follows:

26. Information relative to the needs for the proposed banking office in the trade area is as follows:

Enclosed herewith is a copy of the application to the ---------- (insert name of appropriate federal agency).

Attached is our check is the amount of $375.00 representing payment of the filing fee for this application.

The undersigned does hereby certify and state that he has read this application and all statements, representations, and information contained therein are true and correct to the best of his knowledge and belief.

---------- (President or Vice-President)

Attest:

---------- (Cashier or Secretary)

Effective 8-8-73.

R20-4-210. ~~Application for Approval to Move Banking Office—A.R.S. § 6-123~~ Repealed

~~A.~~ ~~Applicant shall submit, upon the original filing, sufficient information in support of the application to enable the Superintendent to make a determination without further amendments or additions thereto.~~
~~B.~~ ~~The application shall be in the following form on legal size paper:~~

----------,19--

~~Superintendent of Banks~~
~~101 Commerce Building~~
~~1601 West Jefferson~~
~~Phoenix, Arizona 85007~~

~~Sir:~~

The _____
(Applicant) (Street Address) (City)
hereby makes application for approval to move the banking office located at
_____
(Street Address) City
known as _____ office.

The proposed location is _____ miles from the present banking office site.

In support of this application, we submit the following information:

1. Attached as Exhibit A is a certified copy of the resolution of the Board of Directors authorizing the filing of this application.
2. The present office opened for business on _____, 19__.
3. The following information is furnished on the _____ existing banking offices as of _____, 19__.

Street Address	City	Opened	Deposits (In thousands)	Loans

4. The following _____ banking offices have been approved but not opened:

Street Address	City	Date Approved	Anticipated Opening Date

5. The following banking office applications are pending approval:

Street Address	City	Application Date

6. Attached as Exhibit B is a Statement of Condition of the bank as of _____, 19__.
7. The capital structure of the bank as of the application date _____, 19__ is:
   a. Capital stock (____ shares at $____ par value) $_____
   b. Capital obligations _____
   c. Capital surplus _____
   d. Earned surplus (including undivided profits) _____
   e. Other (identify) _____
   Total Capital _____
8. The ratio of total capital to total assets is _____%.
9. The capital structure will be increased as follows prior to the establishment of the proposed banking office:

10. The cost and detailed description of the premises to be occupied by the proposed banking office is as follows:

    (Attach a copy of any contract, lease, option or letter of intent covering the purchase or lease of the property. If no copy is attached state the reason.)
11. The estimated cost of additional furniture, fixtures and equipment not included in cost of premises is $_____.
12. The estimated demand and time deposits for each of the first three years of operation of the proposed banking office is as follows:

13. The applicant bank maintains surety bond coverage on its active officers and employees as follows:

Banker Blanket Bond	$_____
Excess Fidelity Bond	_____
Other	_____

14. The approximate population of the trade area to be served by the proposed banking office is _____ as of _____, 19__. Source:
15. Existing and approved banks and banking offices located within a three-mile radius of the proposed banking office are as follows:

Name	Location	Deposits	Distance

16. Attached as Exhibit C is a map delineating the trade area and indicating the location of each of the above banks and banking offices in the trade area and the proposed banking office.
17. The economic and demographic characteristics of the trade area is as follows:

Enclosed herewith is a copy of the application to the _____ (insert name of appropriate federal agency).

Attached is our check is the amount of $375.00 representing payment of the filing fee for this application.

The undersigned does hereby certify and state that he has read this application and all statements, representations, and information contained therein are true and correct to the best of his knowledge and belief.

_____
(President or Vice President)

~~Attest:~~

~~_____~~
~~(Cashier or Secretary)~~
~~Effective 8-8-73.~~

R20-4-211. Application for a Banking Permit -- A.R.S. § 6-203

A. Before an application is filed the representatives of the proposed applicant shall meet with the superintendent of banks to discuss capitalization, location and management of the proposed bank.

B. Applicant shall then submit an application in the form the Superintendent prescribes. ~~, upon the original filing,~~ The applicant shall support the application with sufficient information ~~in support of the application~~ to enable the superintendent to make a determination.

~~**C.** The application shall be in the following form on legal-size paper securely fastened at the top:~~

~~_____,19~~

~~Superintendent of Banks~~
~~101 Commerce Building~~
~~1601 West Jefferson~~
~~Phoenix, Arizona 85007~~

~~Sir:~~

~~The undersigned does hereby make application to the superintendent of banks for a permit to engage in the banking business at _____, _____, Arizona.~~
~~(Street Address) (City)~~

~~The name of the bank is _____.~~

~~In support of the application, we submit the following information:~~

~~1. The bank was incorporated on _____, 19__. Attached as Exhibit A is a copy of the certificate of incorporation.~~
~~2. Attached as Exhibit B is a copy of the articles of incorporation certified by the Corporation Commission.~~
~~3. Attached as Exhibit C is a certified copy of the by-laws.~~
~~4. The minimum capital structure, as of the beginning of business, will be as follows:~~

~~Capital Stock (____ shares, at $____ par value)~~	~~$_____~~
~~Paid-in Surplus~~	~~_____~~
~~Undivided Profits~~	~~_____~~
~~Total~~	~~_____~~

~~5. The total capital amount will be placed in an escrow account with _____ Bank. Attached as Exhibit D is a copy of the escrow agreement.~~
~~6. The names and address of directors:~~

~~Name~~	~~Address~~

~~7. Attached as Exhibit E is a brief resume, current financial statement, and credit report for each director.~~
~~8. None of the directors, officers of employees of the bank has been convicted of any criminal offense involving dishonesty or a breach of trust.~~
~~9. Statement of the estimated assets, liabilities and net worth of the bank, as of the beginning of business is as follows:~~

~~10. The following is a detailed description of the premises proposed to be occupied by the bank. It includes name of owner and annual rental, if by lease; date of construction, original cost, price to be paid, and from whom to be acquired, if by purchase; or the estimated cost, if new construction.~~
~~11. Statement of estimated operating earnings and expenses of the bank for the first year of operation is as follows:~~

~~12. Statement of estimated deposits at the close of the first, second, and third year of operations is as follows:~~

~~13. Itemized statement of estimated expenses in connection with the organization of the bank is as follows:~~

~~14. The organization expenses will be paid out of funds from the following sources:~~

~~15. Population of town or city in which the bank is to be located is _____ as of _____, 19__. Source:~~

~~16. Population of the trade area to be served by the bank is _____ as of _____, 19__. Source:~~

~~17. Banks and banking offices located within the trade area and distance from proposed bank site:~~

~~Name Address Distance~~

~~18. Economic and other information regarding the trade area to be served by the bank:~~

~~19. Attached as Exhibit F is a map delineating the trade area to be served by the bank:~~

~~20. Statement on the need for the bank in the community and trade area to be served by the bank:~~

~~21. Other information deemed pertinent to this application is as follows:~~

~~Enclosed herewith is our check is the amount of $1,000.00 representing payment of the filing fee for this application for a banking permit.~~

~~---------- Bank~~
~~By (Signature of all Directors)~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

~~State of Arizona)~~
~~) ss~~
~~County of _____)~~

~~Before me, a Notary Public in and for the County and State above named, personally appeared _____ and each of them stated under oath that all the matters herein contained are true and correct to their best knowledge and belief.~~

~~Subscribed and sworn to before me this _____ day of _____, 19____.~~

~~_____~~
~~(Notary Public)~~

~~(Seal)~~

~~My commission expires: _____, 19____.~~