NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY

[R08-14]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R4-24-204	Amend
R4-24-207	Amend
R4-24-208	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. § 32-2003(5)

Implementing statutes: A.R.S. §§ 32-2022, 32-2025, 32-2027, 41-1072(2)

3. The effective date for the rules:

March 8, 2008

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

Notice of Rulemaking Docket Opening: 4 A.A.R. 2795, August 10, 2007

Notice of Proposed Rulemaking: 4 A.A.R. 3320, October 5, 2007

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

Name: Heidi Herbst Paakkonen, Executive Director

Address: Board of Physical Therapy
4205 N. 7th Ave., Suite 208
Phoenix, AZ 85013

Telephone: (602) 274-0236

Fax: (602) 274-1378

E-mail: Heidi.herbst-paakkonen@ptboard.state.az.us

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

A rulemaking by the Board in August of 2006 made significant changes to *Arizona Administrative Code* Title 4, Chapter 24, Article 2, the licensing provisions for physical therapists and physical therapist assistants. Additional changes are now being proposed that were inadvertently omitted from that rulemaking such as a minimum number of hours required for a supervised clinical practice period, an affirmation on the licensure renewal application that the required number of continuing competence requirements were met and a question on the application for initial certification for physical therapist assistants that addresses work history. Additionally the Board is incorporating a question on the licensure renewal application to comply with the new statute A.R.S. § 32-3211 which requires all licensed health care professionals, including physical therapists, to affirm compliance on the renewal application with the Arizona medical records law. This rulemaking corrects these omissions.

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

None

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

Not applicable

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

This rulemaking has minimal to no economic, small business or consumer impact. There is no financial impact to the applicant for physical therapist assistant certification when listing the applicant's work history for the previous five years. There is no financial impact to the physical therapist filing an application for licensure renewal to affirm compliance with the medical records statutes and with continuing competence requirements. There is possible minimal impact to a physical therapist or the physical therapist's employer when a physical therapist elects to provide a supervised clinical practice period to an Interim Permit Holder.

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

No changes were made between the proposed and final rule.

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

An oral proceeding was held on November 9, 2007. No one attended. No written comments were submitted.

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

None

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

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY

ARTICLE 2. LICENSING PROVISIONS

Sections
R4-24-204. Supervised Clinical Practice
R4-24-207. Application for a Physical Therapist Assistant Certificate
R4-24-208. License or Certificate Renewal; Address Change

ARTICLE 2. LICENSING PROVISIONS

R4-24-204. Supervised Clinical Practice

A. An interim permit holder shall complete a supervised clinical practice under onsite supervision. The supervised clinical practice shall consist of at least 500 hours.

B. Before an individual is issued an interim permit, the individual shall submit to the Board:
1. A written request for Board approval of the facility where supervised clinical practice will take place that includes:
   a. The name, address, and telephone number of the facility; and
   b. A description of the physical therapy services provided at the facility; and
2. The name of the individual who holds an unrestricted license to practice physical therapy in this state and agrees to provide onsite supervision of the individual.

C. The Board shall approve or deny a request made under subsection (B)(1):
1. After assessing whether the facility provides the opportunity for an interim permit holder to attain the knowledge, skills, and attitudes to be evaluated according to the Physical Therapist Assistant Clinical Performance Instrument or Physical Therapist Clinical Performance Instrument; and
2. According to the time-frames in Table 1.

D. An onsite supervisor shall hold an unrestricted license to practice physical therapy in Arizona. The supervisor shall:
1. Observe the interim permit holder during the supervised clinical practice and:
   a. Rate the interim permit holder's performance in each of the clinical performance criteria in the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument, including the dates and hours the onsite supervisor provided onsite supervision; and

b. Recommend that the interim permit holder be licensed or complete further supervised clinical practice; and

2. Submit the completed Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument to the Board no later than 30 days after the completion date of the supervised clinical practice.

E. After the Board receives the completed Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument, the Board:

1. May require the interim permit holder to complete additional onsite supervision under the interim permit if the additional onsite supervision does not cause the interim permit holder to exceed six months from the date the interim permit was issued and:
   a. The onsite supervisor does not approve one or more of the skills listed on the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument;
   b. The onsite supervisor recommends that the interim permit holder complete further supervised clinical practice; or
   c. The Board determines that the interim permit holder has not met the requirements in A.R.S. Title 32, Chapter 19 and this Chapter.
2. If the interim permit holder meets all of the requirements in A.R.S. Title 32, Chapter 19 and this Chapter, shall issue:
   a. A license to an applicant for a license, or
   b. A certificate to an applicant for a certificate.
3. If the applicant, licensee, or certificate-holder does not meet all of the requirements in A.R.S. Title 32, Chapter 19 and this Chapter, shall deny:
   a. A license to an applicant for a license, or
   b. A certificate to an applicant for a certificate.

F. An applicant who has been denied a license or certificate may request a hearing under A.R.S. Title 41, Chapter 6, Article 10.

R4-24-207. Application for a Physical Therapist Assistant Certificate

A. An applicant for an original physical therapist assistant certificate shall submit to the Board an application packet that includes:

1. An application form provided by the Board, signed, dated, and verified by the applicant that contains:
   a. The applicant's name, business and residential addresses, telephone number, birth date, and Social Security number;
   b. The name and address of the college or university where the applicant completed an accredited educational program for physical therapist assistants, dates of attendance, and date of completion;
   c. A statement of whether the applicant has ever been licensed or certified as a physical therapist assistant in any other jurisdiction of the United States or foreign country;
   d. Professional employment history for the five years before the date of application including the name, address, and telephone number for each place of employment, job title, description of the work completed, and explanation of any breaks in employment, if applicable;
   ~~d.~~e. A statement of whether the applicant has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, an explanation;
   ~~e.~~f. A statement of whether the applicant has ever had an application for a professional or occupational license, certificate, or registration, other than a driver's license, denied, rejected, suspended, or revoked by any jurisdiction of the United States or foreign country and if so, an explanation;
   ~~f.~~g. A statement of whether the applicant is currently or ever has been under investigation, suspension, or restriction by a professional licensing board in any jurisdiction of the United States or foreign country for any act that occurred in that jurisdiction that would be the subject of discipline under this Chapter and if so, an explanation;
   ~~g.~~h. A statement of whether the applicant has ever been the subject of disciplinary action by a professional association or postsecondary educational institution;
   ~~h.~~i. A statement of whether the applicant has committed any of the actions referenced in the definition of good moral character in R4-24-101;
   ~~i.~~j. A statement of whether the applicant has ever had a malpractice judgment or has a lawsuit currently pending for malpractice and if so, an explanation;
   ~~j.~~k. A statement of whether the applicant is currently more than 30 days in arrears for payment required by a judgment and order for child support in Arizona or any other jurisdiction;
   ~~k.~~l. A statement of whether the applicant has any impairment to the applicant's cognitive, communicative, or physical ability to participate in therapeutic interventions with skill and safety and if so, an explanation;
   ~~l.~~m. A statement of whether the applicant has, within the past 10 years, used alcohol, any illegal chemical substance, or prescription medications, that in any way has impaired or limited the applicant's ability to participate in therapeutic interventions with skill and safety and if so, an explanation;

~~m.~~n. A statement of whether the applicant has, within the past 10 years, been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited the applicant's ability to participate in therapeutic interventions with skill and safety and if so, an explanation;
~~n.~~o. A statement of whether the applicant has ever violated A.R.S. § 32-2044(10); and
~~o.~~p. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;

2. A passport photograph of the applicant no larger than 1 1/2 x 2 inches that was taken not more than six months before the date of the application; and
3. The fee required in R4-24-107.

B. In addition to the requirements in subsection (A), an applicant shall arrange to have directly submitted to the Board:
1. An official transcript or letter showing that the applicant completed all requirements of an accredited educational program that includes the official seal of the school or college where the applicant completed the accredited educational program and signature of the registrar of the school or college;
2. Verification of passing a national examination for physical therapist assistants as evidenced by an original notice of examination results; and
3. Verification of passing a jurisprudence examination as evidenced by an original notice of examination results~~; and~~.

C. In addition to the requirements in subsections (A) and (B), an applicant for a physical therapist assistant certificate by endorsement shall submit to the Board:
1. The name of the licensing or certifying agency of any jurisdiction in which the applicant is currently or has been previously licensed or certified; and
2. A verification of license or certificate, signed and dated by an official of the agency licensing or certifying the applicant, that includes the official seal of the licensing or certifying agency and all of the following:
   a. The name of the applicant;
   b. The license or certificate number and date of issuance;
   c. The current status of the license or certificate;
   d. The expiration date of the license or certificate;
   e. A statement of whether the applicant was ever denied a license or certificate by the agency and if so, an explanation; and
   f. A statement of whether any disciplinary action is pending or has ever been taken against the applicant and if so, an explanation.

D. The Board shall deny a certificate to an applicant who fails to meet the requirements of this Section or A.R.S. Title 32, Chapter 19. A person denied a certificate may request a hearing under A.R.S. Title 41, Chapter 6, Article 10.

R4-24-208. License or Certificate Renewal; Address Change

A. A licensee or certificate-holder shall submit a renewal application packet to the Board on or before August 31 of an even-numbered year that includes:
1. The following information for the license or certificate period immediately preceding the renewal application:
   a. The licensee's or certificate-holder's:
      i. Name;
      ii. Home, business, and e-mail addresses; and
      iii. Home and business telephone numbers;
   b. A statement of whether the licensee or certificate-holder has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, an explanation;
   c. A statement of whether the licensee or certificate-holder has had an application for a professional or occupational license, certificate, or registration, other than a driver's license, denied, rejected, suspended, or revoked by any jurisdiction of the United States or foreign country and if so, an explanation;
   d. A statement of whether the licensee or certificate-holder is currently or ever has been under investigation, suspension, or restriction by a professional licensing board in any jurisdiction of the United States or foreign country for any act that occurred in that jurisdiction that would be the subject of discipline under this Chapter and if so, an explanation;
   e. A statement of whether the licensee or certificate-holder has been the subject of disciplinary action by a professional association or postsecondary educational institution;
   f. A statement of whether the licensee or certificate-holder has had a malpractice judgment against the licensee or certificate-holder or has a lawsuit currently pending for malpractice and if so, an explanation;
   g. A statement of whether the licensee or certificate-holder is currently more than 30 days in arrears for payment required by a judgment and order for child support in Arizona or any other jurisdiction;
   h. A statement of whether the licensee or certificate-holder has adhered to the recognized standards of ethics;
   i. A statement of whether the licensee or certificate-holder has or has not committed any of the actions referenced in the definition of good moral character in R4-24-101;
   j. A statement of whether the licensee or certificate-holder has been the subject of any criminal investigation by a

federal, state, or local agency or had criminal charges filed against the licensee or certificate-holder;

k. If a licensee, a statement of whether the licensee has:
   i. Any impairment to the licensee's cognitive, communicative, or physical ability to engage in the practice of physical therapy with skill and safety and if so, an explanation;
   ii. Used alcohol, any illegal chemical substance, or prescription medicine, that in any way has impaired or limited the licensee's ability to practice physical therapy with skill and safety and if so, an explanation;
   iii. Been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited the licensee's ability to practice physical therapy with skill and safety and if so, an explanation;

l. If a certificate holder, a statement of whether the certificate-holder has:
   i. Any impairment to the certificate-holder's cognitive, communicative, or physical ability to work as a physical therapist assistant with skill and safety and if so, an explanation;
   ii. Used alcohol, any illegal chemical substance or prescription medicine, that in any way has impaired or limited the certificate-holder's ability to work as a physical therapist assistant with skill and safety and if so, an explanation;
   iii. Been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited certificate-holder's ability to work as a physical therapist assistant with skill and safety and if so, an explanation; ~~and~~

m. A statement of whether the licensee or certificate-holder ever violated A.R.S. § 32-2044(10);

n. If a licensee, a statement of whether the licensee has completed the 20 contact hours of continuing competence for the previous compliance period as required in R4-24-401(A) and (E); and

o. If a licensee, a statement of whether the licensee has complied with the medical records protocol as required in A.R.S. § 32-3211.

2. The signature of the applicant attesting to the truthfulness of the information provided by the licensee or certificate-holder; and
3. The fee required by the Board in R4-24-107.

B. Failure of the Board to inform a licensee or certificate-holder of license or certificate expiration does not excuse the licensee's or certificate-holder's non-renewal or untimely renewal.

C. The Board shall:
1. Approve or deny the application within the time-frames in R4-24-209 and Table 1, and
2. Deny the application of an applicant who does not meet the requirements in A.R.S. § 32-2001 et seq. or this Chapter.

D. A licensee or certificate-holder denied renewal of a license or certificate may request a hearing under A.R.S. Title 41, Chapter 6, Article 10.

E. A licensee or certificate-holder shall send to the Board written notification of a change of address or telephone number no later than 30 days after the date of the change of address or telephone number.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

[R08-16]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R4-16-101	Amend
R4-16-603	Amend
Article 7	New Article
R4-16-701	New Section
R4-16-702	New Section
R4-16-703	New Section
R4-16-704	New Section
R4-16-705	New Section
R4-16-706	New Section
R4-16-707	New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the

rules are implementing (specific):

Authorizing statute: A.R.S. §§ 32-1403(A)(8), 32-1404(D)

Implementing statute: A.R.S. §§ 32-1401(20), 32-1401(27)(tt)

3. The effective date of the rules:

January 8, 2008

Pursuant to A.R.S. § 41-1032, the Board is requesting an immediate effective date for the rules to preserve the public health or safety. The Board currently does not have rules for office-based surgery. The rules provide standards that must be followed by physicians to ensure the health and safety of patients who chose to have surgery performed in physicians' offices. Some of these office-based surgeries are complicated and pose significant risks to the patients. Further, some of these office-based surgeries require the administration of very strong sedatives to achieve a deep sedative effect, which may pose a greater risk to the patient's safety than the actual procedures. Until recently, many of these office-based surgeries were primarily performed in facilities licensed and regulated by the Arizona Department of Health Services, but now many of these procedures are also being performed in physicians' private offices. As more cases involving bad outcomes during office-based surgeries using sedation occur, the Board receives more requests from the public, physicians, and health care professionals to get the rules implemented. The Board is asking for an immediate effective date so that the public's health and safety will be quickly protected.

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2267, June 29, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2830, August 17, 2007

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

Name:	Timothy Miller, Executive Director
Address:	9545 E. Doubletree Ranch Road Scottsdale, AZ 85258
Telephone:	(480) 551-2791
Fax:	(480) 551-2828
E-mail:	tmiller@azmd.gov

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

The Board is making rules to provide standards for office-based surgery conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed outpatient surgical center.

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

The Board did not review or rely on any study.

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

Not applicable

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

As used in this summary, minimal means less than $1,000, moderate means between $1,000 and $10,000, and substantial means greater than $10,000.

The rules affect the Board, a licensed physician who performs office-based surgery, a health care professional, staff member, and a patient. The Board should experience moderate to substantial costs to write and implement the rules. The Board believes that most licensed physicians who are currently performing office-based surgery using sedation follow the provisions stated in the rules. These physicians should experience minimal increases in costs because of the rules. Those physicians that are not currently following the rules' provisions could experience minimal to substantial increases in costs, depending on the rule(s) not being followed. By providing clear and understandable rules, the rules protect physicians, staff members, health care professionals, and patients. The rules offer administrative recourse to a patient who believes a physician who performed office-based surgery using sedation has committed an act of unprofessional conduct because the physician violated the statutes or rules governing office-based surgery using sedation.

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

The Board made minor technical and grammatical changes to the rules as a result of G.R.R.C. comments and the following changes:

In R4-16-701(24), added the following definition of "rescue" to provide clarity in the rules:

"Rescue" means to correct adverse physiologic consequences of deeper than intended level of sedation and return the patient to the intended level of sedation.

Changed R4-16-702(A)(3)(d) to: d. For the physician and health care professional administering the sedation to rescue a patient after the sedation is administered to the patient and the patient enters into a deeper state of sedation than what was intended by the physician. The Board made this change to be consistent with subsection (A)(3)(b), which allows a health care professional to safely administer the sedation.

In R4-16-703(A)(3), added the words "and licensure" to be consistent with R4-16-702(A)(2)(b).

In R4-16-703(A)(4), added the words "and licensure" to be consistent with R4-16-702(A)(2)(b).

In R4-16-704(2)(c)(iii), deleted "oximetry."

In R4-16-706(A)(2), deleted "sedation" before "equipment."

The Board does not believe that any of the changes made by the Board make the rules substantially different from the published proposed rules. The changes are technical in nature and were made for consistency purposes. All persons affected by the rules should have understood that the published proposed rules affected their interests, the subject matter of the rules remains the same, and when viewed in their totality, the effects of the rules do not differ from the published proposed rules.

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

The following chart contains the written and oral comments made regarding the rules and the Board's responses to the comments.

Comment	Agency analysis	Agency action
The Board received one written comment that contained the following questions about the administration of anesthesia:		
Can anesthesia be administered by the physician who owns/practices in the office?	Anesthesia may be administered by a physician performing office-based surgery using sedation according to the rules and authorizing statutes.	The Board did not make changes to the rules as a result of this question.
Can any type of physician administer sedation in the office?	As long as the physician has the education and experience to administer anesthesia, the physician may do so according to the rules and authorizing statutes.	The Board did not make changes to the rules as a result of this question.
Do licensure requirements change for an outside anesthesiologist who administers anesthesia?	All physicians performing office-based surgery using sedation, including contracted physicians, are governed by the rules and authorizing statutes.	The Board did not make changes to the rules as a result of this question.
Can an outside CNRA administer anesthesia?	All health care professionals in a physician's office where office-based surgery using sedation is performed, including those who contracted for services, are required to follow the rules.	The Board did not make changes to the rules as a result of this question.
Is the owner of a practice who subleases space to a physician or the physician subleases from an owner required to have a license?	The authorizing statutes and rules apply to a physician performing office-based surgery using sedation regardless of the setting.	

What are the next steps in the rulemaking process? Will there be a "phase in" period? Will the rules go to the legislature and become law? Who will have the authority to enforce the law?	The rules will be submitted to the Governor's Regulatory Review Council (G.R.R.C.), not the legislature, for approval. Because there are no rules currently governing office-based surgery using sedation, the Board believes that it is important to ask for an immediate effective date to protect the health and safety of patients. If approved, the rules become effective when submitted to the Secretary of State's Office. The Board has the authority to enforce its statutes and rules.	The Board did not make changes to the rules as a result of this question.
Who can physicians contact to get an official opinion of what is required for their specific situation?	The Board cannot advise those it regulates. A physician can consult with an attorney for specific legal advice about the rules and authorizing statute.	The Board did not make changes to the rules as a result of this question.
The Board received one written comment requesting that the Board consider including provisions set forth in the American Medical Associations' Amended Core Principles for Office-based Surgery and Guidelines for Office-Based Surgery.	The Board appreciates receiving the provisions. The Board reviewed the provisions while drafting the rules and will review them for making any changes to the rules in the future.	The Board did not make changes to the rules as a result of this comment.
The Board received one written comment requesting that the term "standards" in the Preamble, item 5 in the proposed rulemaking (item 6 in the final rulemaking), be changed to "guidelines."	According to A.R.S. § 32-1403(A)(8), the Board is required to make rules, not guidelines, for the regulation and qualifications of physicians. A.R.S. § 32-1401(27)(tt) states it is unprofessional conduct to perform office-based surgery in violation of Board rules. A physician who does not follow the statutes and rules is subject to regulation set out in A.R.S. § Title 32, Chapter 13, Article 3.	The Board did not make this change.
The Board received one written comment requesting that the term "non-judicial" be added before the word "recourse" in the Preamble, item 8 in the proposed rulemaking (item 9 in the final rulemaking).	The Board believes it would be more accurate to state that the rules offer administrative recourse to the Board when a physician violates its statutes or rules.	The Board inserted "administrative" before the word "recourse."
R4-16-101 The Board received one written comment requesting that a definition of "arterial blood pressure" be provided in the rules.	The Board believes the common medical dictionary definition of the term is sufficient and the term does not need further definition.	The Board did not make this change.

R4-16-101(7) The Board received one written comment that stated that the definition of "deep sedation" is incomplete and inadequate because patients may completely lose the ability to maintain ventilatory function. It was requested that the Board adopt the following language contained in a March 5, 2007 letter. "A drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained."	The Board believes R4-16-101(7) already contains the elements identified in the comment and no changes are required. If a patient completely loses ventilatory function, the patient is under general anesthesia, the use of which is not permitted in an office based surgery using sedation setting.	The Board did not make changes to this definition as a result of this comment.
R4-16-101 The Board received one written comment requesting that the Board provide a definition for "conscious sedation" in the rules. The definitions for minimum, moderate, and deep sedation do not provide enough information for a physician to know whether the rules would apply to the physician. The same person asked the following questions: What is the difference between conscious sedation and general anesthesia? If conscious sedation is considered general anesthesia then R4-16-702 would apply and the physician's office would need to obtain a health care institution license. Is conscious sedation the same as light sedation and IV sedation? Are there clinical guidelines, such as length of procedure/surgery or recovery time, which should be used to help define conscious sedation vs. general anesthesia?	The Board does not use the term "conscious sedation" in the rules. Only terms used in the rules are defined in the rules. The Board believes the definitions of minimum, moderate, and deep sedation provide the necessary detail for the purposes of defining the types of sedation that a physician may use in an office-based surgery setting. The definitions in R4-16-101(7) and (12) provide for the distinction between the two terms. General anesthesia is not conscious sedation. Minimal, moderate, and deep sedation are considered different levels of conscious sedation. If a patient performs office-based surgery using any of these forms of sedation and does not use general anesthesia, the physician is exempt from obtaining a health care institution license. Any sedative provided through any means for the purposes of obtaining a sedative effect is sedation. To determine the type of sedation, one must look at the definitions of minimal, moderate, and deep sedation. To determine the type of sedation, one must look at the definitions of minimal, moderate, and deep sedation. The length or type of procedure does not determine the level of consciousness.	The Board did not make changes to this definition as a result of this comment. The Board did not make changes to this definition as a result of this question. The Board did not make changes to this definition as a result of this question. The Board did not make changes to this definition as a result of this question. The Board did not make changes to this definition as a result of this question.

R4-16-101 The Board received one written comment and one oral comment at the oral proceeding from the same person requesting examples of office-based surgery be provided in the rules to further the definition. The individual also asked the following questions:	The rules regulate an office-based surgery using sedation. If there is no surgery involved during a medical procedure, the rules do not apply. If the patient is not sedated during surgery, the rules do not apply. Generally, the Board may provide examples in rules to the extent that they assist in making the rules more understandable. The Board would find it impossible to include an exhaustive list of all types of surgeries that are considered office-based surgery using sedation. Failure to be included on the list may mislead a physician to believe that a procedure considered an office-based surgery by the Board is not an office-based surgery. Thus, the list might be more misleading than informative.	The Board did not make changes to this definition as a result of this comment.
Is a lesion removal considered office-based surgery?	If the procedure affects the subcutaneous cells, tissues, membranes, or organs and requires the use of sedation, it is considered office-based surgery using sedation.	The Board did not make changes to this definition as a result of this question.
Is an egg retrieval considered office-based surgery?	The answer to this question depends on the type of procedure used. Some forms of egg retrieval involve the use of surgery while other forms such as Transvaginal Oocyte Retrieval do not require surgery. If surgery and sedation are involved in the egg retrieval, it is considered office-based surgery using sedation.	The Board did not make changes to this definition as a result of this question.
Is liposuction considered office-based surgery?	Yes, liposuction affects subcutaneous tissues and cells and requires sedation.	The Board did not make changes to this definition as a result of this question.
R4-16-101(13) The Board received one written comment requesting that all or none of the advanced practice nurses governed by A.R.S. § 32-1601 be defined in the rules.	Only terms used in the rules are defined. Because definition 13 uses such terms as "registered nurse" and "registered nurse practitioner," the terms must be referenced back to the statutory definitions so that a reader knows what is meant by the terms.	The Board did not make changes to this definition as a result of this comment.
The Board received one written comment that the definition of health care professions" allows for inadequately trained individuals to administer deep sedation	The definition sets forth who is considered a health care professional. R4-16-702 and R4-16-703 set out the qualifications of a health care professional and require that a health care professional have sufficient education, training, experience, skills, and licensure if applicable. The Board believes these standards protect the health and safety of a patient receiving an office-based surgery from a health care professional.	The Board did not make changes to this definition as a result of this comment.

R4-16-101(20) The Board received two written comments requesting that the definition of "office-based surgery" be revised in the rules. One written comment suggested replacing the word "medical" with "surgical."	"Office-based surgery" is defined in A.R.S. § 32-1401(20). The Board cannot change a statutory definition by rule. Only the legislature can make this change.	The Board did not make changes to this definition as a result of this comment.
R4-16-101(20) The Board received one written comment suggesting the Board differentiate between "minor surgery" and "surgery."	The statutes do not differentiate between surgery and minor surgery but base regulation on whether a physician is performing office-based surgery using sedation. The Board is providing definitions in the rules for the types of sedation that may be provided in a physician's office. If the physician performs office-based surgery using the types of sedation defined in the rules, the physician is subject to Board regulation.	The Board did not make changes to this definition as a result of this comment.
One oral comment was made at the administrative proceeding asking for clarification about minimal sedation, specifically whether it included the use of benzodiazepines.	If a benzodiazepine is used to sedate a patient for minor surgery in a physician's office, the procedure is governed by the Board's rules and authorizing statutes for office-based surgery using sedation.	The Board did not make changes to the rules as a result of this comment
R4-16-702(A) The Board received one written comment requesting that the Board clarify in the rules that the rules do not apply to any facility licensed by ADHS.	A physician who performs office-based surgery without using general anesthesia is exempt from the ADHS requirements according to A.R.S. § 36-402(A)(3). These rules do not apply to any health care institution licensed by the ADHS.	The Board did not make any changes to the rule as a result of this comment.
R4-16-702(A)(2) The Board received one written comment requesting the rules include a statement that only those professionals with education and training in general anesthesia be able to perform deep sedation.	R4-16-702 requires that a health care professional have sufficient education, training, and experience to perform duties assigned. The intent of the rule is to ensure that a health care professional who administers and monitors sedation has the education, training, experience, and license if necessary to administer and perform office-based surgeries.	The Board did not make any changes to the rule as a result of this comment.
The Board received two written comments requesting that specific language for rescuing a patient from deeper than expected sedation be added to the rules.	The rules require the physician and assisting health care professionals to have the skills, training, and ability to perform the office-based surgery using sedation, including the ability to rescue a patient from deeper than expected sedation and R4-16-702(A)(3)(d) requires that there must be equipment necessary for a physician to rescue a patient from deeper than intended sedation.	The Board did not make any changes to the rule as a result of this comment.
R4-16-702(A) The Board received one written comment that non-anesthesia professionals should not be performing deep sedation. The Board received another comment that stated the administration of deep sedation should be restricted only to licensed anesthesia providers.	The rules allow only a physician or other licensed anesthesia provider, such as a certified nurse anesthetist to administer sedation.	The Board did not make any changes to the rule as a result of this comment.

R4-16-702(A)(3)(d) The Board received one written comment requesting that the language in R4-16-702(A)(3)(d) be changed to not require a physician who works with a certified registered nurse anesthetist (CNRA) to have the ability to rescue a patient from deeper than intended sedation when the nurse anesthetist is administering the sedation. Such a requirement is unnecessary and inappropriate and may undermine the use of CNRAs in office-based settings. Suggested language be changed to "for the patient to be rescued after sedation is administered to the patient and the patient enters into a deeper state of sedation than what was intended."	The Board recognizes that a physician who administers sedation and a qualified health care professional who administers sedation are equally responsible for rescuing a patient when deeper than intended sedation is administered. However, the rules are being written to regulate physicians who own office-based surgeries using sedation. These physicians remain ultimately responsible for all actions taken by the health care professionals employed or contracted by the physicians at their office-based surgeries.	The Board changed R4-16-702(A)(3)(d) to: d. For the physician and health care professional administering the sedation to rescue a patient after the sedation is administered to the patient and the patient enters into a deeper state of sedation than what was intended by the physician.
R4-16-703 The Board received three written comments requesting that surgeons only perform surgeries that they have privileges to perform in a hospital.	By granting hospital privileges, hospitals determine who can practice in their hospitals. To protect the health and safety of patients, doctors who do not have privileges must ensure that patients who require hospital services in an emergency are seen in the emergency room of a hospital. The rules have a broad application and the Board does not believe it is reasonable to require hospital privileges for physicians who perform out-patient surgeries using sedation.	The Board did not make any changes to the rule as a result of this comment.
The Board received one written comment that stated that privileges to administer deep sedation should be granted only to those practitioners who are qualified to administer general anesthesia or to appropriately supervised anesthesia professionals.	R4-16-702 and R9-16-703 require that only qualified health care professionals perform an office-based surgery using sedation. It is not necessary to add privileges to the requirements.	The Board did not make any changes to the rule as a result of this comment.
The Board received one written comment and one oral comment stating that the rules should require facility accreditation.	The rules regulate physicians, not facilities. A physician is always required to ensure that the office is safe for performing office-based surgeries using sedation. R4-16-703 requires a physician to ensure that each office-based surgery using sedation performed can be safely performed with the equipment, staff members, and health care professionals at the physician's office.	The Board did not make any changes to the rule as a result of this comment.
The Board received one written comment suggesting that the Board may want to use the enclosed Guidelines for the Development of Model Legislation for Mandatory Accreditation of Office-based Surgery Facilities.	The Board appreciates receiving the guidelines. The Board reviewed the guidelines while drafting the rules and will review them for making any changes to the rules in the future.	The Board did not make any changes to the rule as a result of this comment.

R4-703(A)(3) and R4-11-703(4) The Board received one written comment requesting that "licensure" be added to the rule in addition to education, training, experience, and skills.	The Board believes the change should be made for clarity and consistency with R4-11-702(A)(2)(b).	The Board will make this change.
R4-16-703(A)(2) The Board received one written comment stating that the rule limits office based surgery using sedation to procedures that allow a patient to be discharged from the physician's office within 24 hours, implying that procedures that normally require an overnight stay in a hospital are appropriate as office-based surgery using sedation procedures. The Board received one written comment suggesting that the Board require Board certification for a physician.	The rules do not apply to any facility licensed by ADHS. If a procedure normally requires an overnight stay, the procedure may not be performed in a private office exempt from ADHS licensure. Any procedure that requires more than 24-hour recovery is an in-patient procedure, which can occur only in facilities licensed by ADHS. R4-16-702(A) and R4-16-703(A)(2) make it clear that a physician may only perform surgeries using sedation that do not require either overnight recovery or in-patient recovery. Board certification is not a condition of licensure and there is no statutory requirement that physicians receive Board certification. The Board believes the rules protect the health and safety of a patient and do not need to require Board certification.	The Board did not make any changes to the rule as a result of this comment. The Board did not make any changes to the rule as a result of this comment.
R4-16-704 The Board received one comment stating that the rule should be clarified so it does not appear that the physician who is performing the surgery is also administering the sedation.	The rule requires that a physician ensure that sedation is administered and monitored appropriately. The rules do not prohibit a physician who performs surgery from administering sedation, but the complexity of the surgery, the level of sedation, and stability of the patient are factors to be considered when determining who should administer and monitor the sedation.	The Board did not make any changes to the rule as a result of this comment.
R4-16-704(2) The Board received one comment stating that oxygenation is different than ventilation and the rules should require both. The rules should include a requirement that the physician be required to monitor ventilation by observation, auscultation, capnography or other reliable forms of apnea monitoring.	R4-16-704(2) contains requirements for monitoring ventilation and states the methods by which this may be performed.	The Board will make no changes to the rule as a result of this comment.
R4-16-704(2)(c)(iii) The Board received one comment stating that pulse oximetry is a monitor used primarily to assess tissue oxygenation, not circulatory function.	The Board agrees with this comment.	The Board deleted "or oximetry" in R4-16-704(2)(c)(iii) as a result of this comment.
R4-16-704(2)(d) The Board received one comment stating that the Board change the rule to read "monitor temperature when clinically significant changes in body temperature are intended, anticipated, or suspected."	The rule provides a physician with the discretion to monitor the temperature of the patient as he or she determines. This discretion includes only if the physician expects temperature fluctuation.	The Board will make no changes to the rule as a result of this comment.

R4-16-705 A question was asked at the oral proceeding regarding whether a non-licensed person could monitor a patient during the perioperative period if there was an ACLS or PALS certified professional onsite.	If a physician or other ACLS or PALS certified personnel are onsite and involved in the overall care of the patient, a non-licensed person may monitor the patient.	The Board did not make changes to the rule as a result of this question.
R4-16-705(2) One oral comment was made at the oral proceeding questioning whether the Board considered differentiating between "medical discharge" and "discharge."	The Board determined that "discharge" means physical discharge from the office based surgery using sedation office. The discontinuation of monitoring is a physician decision and is determined by the standard of care.	The Board did not make changes to the rule as a result of this comment.
R4-16-706(A)(1)(a) The Board received one comment stating that a SaO_2 monitor is not appropriate for monitor for ensuring a "reliable oxygen source. The only reliable monitor is a FiO_2 monitor.	A SaO_2 monitor is appropriate as a minimum requirement, but depending on the nature of the surgery, a FiO_2 monitor may also be necessary to protect the health and safety of the patient. According to R4-16-702(A)(3)(a) a physician is required to have all equipment necessary for the physician to safely perform the office-based surgery using sedation.	The Board did not make changes to the rule as a result of this comment.
R4-16-706(A)(2) The Board received one comment stating the word "sedation" before "equipment" be deleted because it is the provider, not the equipment that delivers the sedation.	The Board agrees with this comment.	The Board will make this change to R4-16-706(A)(2).
R4-16-706(A) The Board received one written comment stating that the rules should require the equipment needed to carry out ACLS and PALS.	R4-16-703(A)(1) requires a physician to ensure that the office-based surgery can be safely performed with the equipment at the physician's office. The key word is "safely." The physician must determine the equipment needed to safely perform the office-based surgery and have the equipment on hand during the office-based surgery.	The Board did not make any changes to the rule as a result of this comment.
R4-16-707(B) The Board received two comments stating that the language regarding malignant hyperthermia be deleted because malignant hyperthermia can only occur during the use of a general anesthetic.	The Board believes the language in the rule is important because it puts physicians on notice that they are not to use any drug or agent that triggers malignant hyperthermia.	The Board did not make any changes to the rule as a result of this comment.

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

Not applicable

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

None

14. Were the rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 1. GENERAL PROVISIONS

R4-16-101. Definitions

Unless the context otherwise requires, definitions prescribed under A.R.S. § 32-1401 and the following apply to this Chapter:

1. "ACLS" means advanced cardiac life support performed according to certification standards of the American Heart Association.
2. "Agent" means an item or element that causes an effect.
3. "Approved medical assistant training program" means a program accredited by any of the following:
   a. ~~the~~ The Commission on Accreditation of Allied Health Education Programs ~~(CAAHEP)~~;
   b. ~~the~~ The Accrediting Bureau of Health Education Schools ~~(ABHES)~~; ~~or~~
   c. ~~a~~ A medical assisting program accredited by any accrediting agency recognized by the United States Department of Education; or
   d. ~~a~~ A training program:
      i. ~~designed~~ Designed and offered by a licensed allopathic physician~~,~~;
      ii. ~~that~~ That meets or exceeds any of the prescribed ~~accrediting~~ programs in subsection (a), (b), or (c); and
      iii. That verifies the entry-level competencies of a medical assistant prescribed under R4-16-402(A).
4. "Ausculation" means the act of listening to sounds within the human body either directly or through use of a stethoscope or other means.
5. "BLS" means basic life support performed according to certification standards of the American Heart Association.
6. "Capnography" means monitoring the concentration of exhaled carbon dioxide of a sedated patient to determine the adequacy of the patient's ventilatory function.
7. "Deep sedation" means a drug-induced depression of consciousness during which a patient:
   a. Cannot be easily aroused, but
   b. Responds purposefully following repeated or painful stimulation, and
   c. May partially lose the ability to maintain ventilatory function.
8. "Discharge" means a written or electronic documented termination of office-based surgery to a patient.
9. "Drug" means the same as in A.R.S. § 32-1901.
10. "Emergency" means an immediate threat to the life or health of a patient.
11. "Emergency drug" means a drug that is administered to a patient in an emergency.
12. "General Anesthesia" means a drug-induced loss of consciousness during which a patient:
    a. Is unarousable even with painful stimulus; and
    b. May partially or completely lose the ability to maintain ventilatory, neuromuscular, or cardiovascular function or airway.
13. "Health care professional" means a registered nurse defined in A.R.S. § 32-1601, registered nurse practitioner defined in A.R.S. § 32-1601, physician assistant defined in A.R.S. § 32-2501, and any individual authorized to perform surgery according to A.R.S. Title 32 who participates in office-based surgery using sedation at a physician's office.
14. "Informed consent" means advising a patient of the:
    a. Purpose for and alternatives to the office-based surgery using sedation,
    b. Associated risks of office-based surgery using sedation, and
    c. Possible benefits and complications from the office-based surgery using sedation.
15. "Inpatient" has the same meaning as in A.A.C. R9-10-201.
16. "Malignant hyperthermia" means a life-threatening condition in an individual who has a genetic sensitivity to inhal-

ant anesthetics and depolarizing neuromuscular blocking drugs that occurs during or after the administration of an inhalant anesthetic or depolarizing neuromuscular blocking drug.

17. "Minimal Sedation" means a drug-induced state during which:
    a. A patient responds to verbal commands,
    b. Cognitive function and coordination may be impaired, and
    c. A patient's ventilatory and cardiovascular functions are unaffected.
18. "Moderate Sedation" means a drug-induced depression of consciousness during which:
    a. A patient responds to verbal commands or light tactile stimulation, and
    b. No interventions are required to maintain ventilatory or cardiovascular function.
19. "Monitor" means to assess the condition of a patient.
20. *"Office-based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center.* (A.R.S. § 32-1401(20)).
21. "PALS" means pediatric life support performed according to certification standards of the American Academy of Pediatrics or the American Heart Association.
22. "Patient" means an individual receiving office-based surgery using sedation.
23. "Physician" has the same meaning as doctor of medicine as defined in A.R.S. § 32-1401.
24. "Rescue" means to correct adverse physiologic consequences of deeper than intended level of sedation and return the patient to the intended level of sedation.
25. "Sedation" means minimum sedation, moderate sedation, or deep sedation.
26. "Staff member" means an individual who:
    a. Is not a health care professional, and
    b. Assists with office-based surgery using sedation under the supervision of the physician performing the office-based surgery using sedation.
27. "Transfer" means a physical relocation of a patient from a physician's office to a licensed health care institution.

ARTICLE 6. DISCIPLINARY ACTIONS

R4-16-603. Acts of Unprofessional Conduct

A physician commits an act of unprofessional conduct when the physician violates one or more subparagraphs of A.R.S. § 32-1401(27). These statutory violations are referenced under the categories that follow.

1. No change
    a. No change
    b. No change
2. No change
    a. No change
    b. No change
3. No change
    a. No change
    b. No change
4. No change
    a. No change
    b. No change
5. No change
    a. No change
    b. No change
6. No change
    a. No change
    b. No change
7. No change
    a. No change
    b. No change
8. No change
    a. No change
    b. No change
9. No change
    a. No change
    b. No change
10. No change
    a. No change
    b. No change

11. No change
    a. No change
    b. No change
12. No change
    a. No change
    b. No change
13. No change
    a. No change
    b. No change
14. No change
    a. No change
    b. No change
15. No change
    a. No change
    b. No change
16. No change
    a. No change
    b. No change
17. No change
    a. No change
    b. No change
18. No change
    a. No change
        i. No change
            (1) No change
            (2) No change
            (3) No change
            (4) No change
            (5) No change
        ii. No change
        iii. No change
        iv. No change
    b. No change
        i. No change
        ii. No change
    c. No change
        i. No change
        ii. No change
    d. No change
        i. No change
        ii. No change
19. No change
    a. No change
    b. No change
20. "Performing office-based surgery using sedation in violation of Board rules" includes those actions or omissions that violate A.R.S. § 32-1401(27)(tt) and Article 7 of this Chapter.
    a. The Board may resolve a one-time violation with probation, but may issue a letter of reprimand and probation for a departure from the standard of care; and
    b. The Board may resolve repeated or egregious violations by issuing a decree of censure and probation, suspension, or revocation.

ARTICLE 7. OFFICE-BASED SURGERY USING SEDATION

R4-16-701. Health Care Institution License

A physician who uses general anesthesia in the physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center when performing office-based surgery using sedation shall obtain a health care institution license as required by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4 and 9 A.A.C. 10.

R4-16-702. Administrative Provisions

A. A physician who performs office-based surgery using sedation in the physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center shall:

1. Establish, document, and implement written policies and procedures that cover:
   a. Patient's rights,
   b. Informed consent,
   c. Care of patients in an emergency, and
   d. The transfer of patients;
2. Ensure that a staff member who assists with or a healthcare professional who participates in office-based surgery using sedation:
   a. Has sufficient education, training, and experience to perform duties assigned;
   b. If applicable, has a current license or certification to perform duties assigned; and
   c. Performs only those acts that are within the scope of practice established in the staff member's or health care professional's governing statutes;
3. Ensure that the office where the office-based surgery using sedation is performed has all equipment necessary:
   a. For the physician to safely perform the office-based surgery using sedation,
   b. For the physician or health care professional to safely administer the sedation,
   c. For the physician or health care professional to monitor the use of sedation, and
   d. For the physician and health care professional administering the sedation to rescue a patient after the sedation is administered to the patient and the patient enters into a deeper state of sedation than what was intended by the physician.
4. Ensure that a copy of the patient's rights policy is provided to each patient before performing office-based surgery using sedation;
5. Obtain informed consent from the patient before performing an office-based surgery using sedation that:
   a. Authorizes the office-based surgery, and
   b. Authorizes the office-based surgery to be performed in the physician's office; and
6. Review all policies and procedures every 12 months and update as needed.

B. A physician who performs office-based surgery using sedation shall comply with:
1. The local jurisdiction's fire code;
2. The local jurisdiction's building codes for construction and occupancy;
3. The biohazardous waste and hazardous waste standards in 18 A.A.C. 13, Article 14; and
4. The controlled drug administration, supply, and storage standards in 4 A.A.C. 23.

R4-16-703. Procedure and Patient Selection

A. A physician shall ensure that each office-based surgery using sedation performed:
1. Can be safely performed with the equipment, staff members, and health care professionals at the physician's office;
2. Is of duration and degree of complexity that allows a patient to be discharged from the physician's office within 24 hours;
3. Is within the education, training, experience skills, and licensure of the physician; and
4. Is within the education, training, experience, skills, and licensure of the staff members and health care professionals at the physician's office.

B. A physician shall not perform office-based surgery using sedation if the patient:
1. Has a medical condition or other condition that indicates the procedure should not be performed in the physician's office, or
2. Will require inpatient services at a hospital.

R4-16-704. Sedation Monitoring Standards

A physician who performs office-based surgery using sedation shall ensure from the time sedation is administered until post-sedation monitoring begins:
1. A quantitative method of assessing a patient's oxygenation, such as pulse oximetry, is used when minimal sedation is administered to the patient, and
2. When moderate or deep sedation is administered to a patient:
   a. A quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used;
   b. The patient's ventilatory function is monitored by any of the following:
      i. Direct observation,
      ii. Auscultation, or
      iii. Capnography;
   c. The patient's circulatory function is monitored during the surgery by:
      i. Having a continuously displayed electrocardiogram,
      ii. Documenting arterial blood pressure and heart rate at least every five minutes, and
      iii. Evaluating the patient's cardiovascular function by pulse plethysmography,
   d. The patient's temperature is monitored if the physician expects the patient's temperature to fluctuate; and
   e. That a licensed and qualified healthcare professional, other than the physician performing the office-based sur-

gery, whose sole responsibility is attending to the patient, is present throughout the office-based surgery.

R4-16-705. Perioperative Period; Patient Discharge

A physician performing office-based surgery using sedation shall ensure all of the following:

1. During office-based surgery using sedation, the physician is physically present in the room where office-based surgery is performed;
2. After the office-based surgery using sedation is performed, a physician is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient's post-sedation monitoring is discontinued;
3. If using minimal sedation, the physician or a health care professional certified in ACLS, PALS, or BLS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
4. If using deep or moderate sedation, the physician or a health care professional certified in ACLS or PALS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
5. A discharge is documented in the patient's medical record including:
   a. The time and date of the patient's discharge, and
   b. A description of the patient's medical condition at the time of discharge; and
6. A patient receives discharge instructions and documents in the patient's medical record that the patient received the discharge instructions.

R4-16-706. Emergency Drugs; Equipment and Space Used for Office-Based Surgery Using Sedation

A. In addition to the requirements in R4-16-702(A)(3) and R4-16-703(A)(1), a physician who performs office-based surgery using sedation shall ensure that the physician's office has at a minimum:

1. The following:
   a. A reliable oxygen source with a SaO_2 monitor;
   b. Suction;
   c. Resuscitation equipment, including a defibrillator;
   d. Emergency drugs; and
   e. A cardiac monitor;
2. The equipment for patient monitoring according to the standards in R4-16-704;
3. Space large enough to:
   a. Allow for access to the patient during office-based surgery using sedation, recovery, and any emergency;
   b. Accommodate all equipment necessary to perform the office-based surgery using sedation; and
   c. Accommodate all equipment necessary for sedation monitoring;
4. A source of auxiliary electrical power available in the event of a power failure; and
5. Equipment, emergency drugs, and resuscitative capabilities required under this Section for patients less than 18 years of age, if office-based surgery using sedation is performed on these patients; and
6. Procedures to minimize the spread of infection.

B. A physician who performs office-based surgery using sedation shall:

1. Ensure that all equipment used for office-based surgery using sedation is maintained, tested, and inspected according to manufacturer specifications, and
2. Maintain documentation of manufacturer-recommended maintenance of all equipment used in office-based surgery using sedation.

R4-16-707. Emergency and Transfer Provisions

A. A physician who performs office-based surgery using sedation shall ensure that before a health care professional participates in or staff member assists with office-based surgery using sedation, the health care professional and staff member receive instruction in the following:

1. Policy and procedure in cases of emergency,
2. Policy and procedure for office evacuation, and
3. Safe and timely patient transfer.

B. When performing office-based surgery using sedation, a physician shall not use any drug or agent that trigger malignant hyperthermia.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION TITLE, REGISTRATION, AND DRIVER LICENSES

[R08-06]

PREAMBLE

1. Sections Affected | **Rulemaking Action**
R17-4-508 | Amend

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

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. § 28-3223

3. The effective date of the rule:

March 8, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 3203, September 21, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 3264, September 28, 2007

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

Name: Celeste M. Cook, Administrative Rules Analyst

Address: Administrative Rule Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007

Telephone: (602) 712-7624

Fax: (602) 712-3081

E-mail: ccook@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/MVDRules/rules.asp.

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

While 49 CFR 391.43(b) authorizes an optometrist to perform the vision examination, at the request of the Arizona Optometric Association, the Arizona Department of Transportation, Motor Vehicle Division, proposes to amend this rule to further clarify that a licensed optometrist is authorized to perform the vision examination required for a commercial driver license applicant.

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

None

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

Not applicable

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

There are no costs imposed by this rulemaking other than the minimal costs of rulemaking activity. The benefit is increased clarity and reduction of possibility of confusion for an agency, business, entity, or person performing a vision examination or a commercial driver license applicant seeking a vision examination.

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

Minor grammatical and style corrections were made at the request of Governor's Regulatory Review Council staff.

11. A summary of the comments made regarding the rule and the agency response to them:
Not applicable

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

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

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

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 5. SAFETY

Section
R17-4-508. Commercial Driver License Physical Qualifications

ARTICLE 5. SAFETY

R17-4-508. Commercial Driver License Physical Qualifications

A. Requirements.
1. A Commercial Driver License applicant shall submit to the Division a U.S. Department of Transportation medical examination form completed as prescribed under 49 CFR 391.43:
   a. Except as provided in subsection (A)(1)(c) of this Section, ~~By~~ by a professional licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:
      i. Medical Doctor,
      ii. Doctor of Osteopathy,
      iii. Doctor of Chiropractic,
      iv. Nurse Practitioner, or
      v. Physician Assistant, and
   b. Upon the applicant's initial application and at the time of each 24-month renewal.
   c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.43(b)(10).
2. As prescribed under 49 CFR 391.41(a), a licensee who possesses a Commercial Driver License shall keep an original or photographic copy of the licensee's current medical examination form required under subsection (A)(1) available for law enforcement inspection upon request.
3. A licensee who possesses a Commercial Driver License shall notify the Division of a physical condition that develops or worsens causing noncompliance with the Commercial Driver License physical qualifications as soon as the licensee's medical condition allows.

B. Commercial Driver License suspension and revocation notification procedure. To notify a licensee of any Commercial Driver License suspension and revocation under subsection (C), the Division shall simultaneously mail two notices within 15 days after a medical examination form's due or actual submission date to the licensee's address of record that:
1. Suspends the licensee's Commercial Driver License beginning on the notice's date; and
2. Revokes the licensee's Commercial Driver License 15 days after the date of the suspension notice issued under subsection (B)(1).

C. Noncompliance actions.
1. Initial application denial. If an applicant's initial medical examination form required under subsection (A)(1) shows that the applicant does not comply with the Commercial Driver License physical qualifications, the Division shall immediately mail the Commercial Driver License denial notification to the applicant's address of record.
2. Twenty-four month renewal suspension and revocation. If a renewing Commercial Driver licensee submits:
   a. No medical examination form required under subsection (A)(1) or a form indicating noncompliance with Commercial Driver License physical qualifications, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).

b. An incomplete medical examination form required under subsection (A)(1), the Division shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Division within 45 days after the date of the Division's letter. The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information in the time-frame prescribed in this subsection.

c. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 140 systolic or 90 diastolic, the Division shall mail notice to the licensee requiring three additional blood pressure evaluations:
   i. Made on three different days,
   ii. Performed by a qualified professional as prescribed under subsection (A)(1)(a), and
   iii. Returned to the Division within 90 days after the Division's written notification. The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information prescribed under this subsection.

d. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 180 systolic or 110 diastolic, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).

D. A Commercial Driver License that remains revoked for longer than 12 months expires. The holder of an expired Commercial Driver License may obtain a new Commercial Driver License by successfully completing all Commercial Driver License original-application written, vision, and demonstration-skill testing and submitting the medical examination form prescribed under subsection (A)(1).

E. Administrative hearing. A person who is denied a Commercial Driver License or whose Commercial Driver License is suspended or revoked under this Section may request a hearing according to the procedure prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.A.C. R17-1-501 through R17-1-511 and R17-1-513.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION TITLE, REGISTRATION, AND DRIVER LICENSES

[R08-07]

PREAMBLE

1. Sections Affected | **Rulemaking Action**
R17-4-512 | Amend

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

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. § 28-907

3. The effective date of the rule:

March 8, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2530, July 13, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2523, July 13, 2007

Notice of Supplemental Proposed Rulemaking: 13 A.A.R. 3270, September 28, 2007

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

Name: Celeste M. Cook, Administrative Rules Analyst

Address: Administrative Rule Unit

Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007

Telephone: (602) 712-7624

Fax: (602) 712-3081

E-mail: ccook@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/MVDRules/rules.asp.

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

This rulemaking action arises from a Five-Year Review Report approved by the Governor's Regulatory Review Council on June 7, 2005. The Division proposes to amend the existing child restraint systems rule to ensure conformity to Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.

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

None

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

Not applicable

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

The Arizona Department of Transportation, the Governor's Regulatory Review Council, and the Secretary of State's office will bear the costs related to this rulemaking, which should be minimal.

ADOT and Department of Public Safety will have a rule that is clear and easy to understand.

Both ADOT and the Department of Economic Security benefits because of the Child Passenger Restraint Fund (CPRF). A.R.S. § 28-907 allows for fines for non-compliance to be collected after the state adopts federal standards. These fines are placed in the CPRF, which is used by the Department of Economic Security to purchase child safety seats that may be loaned to people who cannot afford to buy them.

Businesses that sell child seats will benefit from purchases by DES using CPRF funds.

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

Minor grammatical and style corrections were made at the request of Governor's Regulatory Review Council staff.

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

Not applicable

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

Not applicable

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

R17-5-512: 49 CFR 571.213, published October 1, 2003, and no later amendments or editions.

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

No

15. The full text of the rule follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 5. SAFETY

Section
R17-4-512. Child-restraint Systems in Motor Vehicles

ARTICLE 5. SAFETY

R17-4-512. Child-restraint Systems in Motor Vehicles

~~Child-restraint systems shall comply with~~ The Motor Vehicle Division incorporates 49 CFR 571.213, Federal Motor Vehicle Safety Standard number 213~~. 49 CFR 571.213, revised~~ of the October 1, ~~2000~~ 2003, ~~is incorporated by reference and on file~~

~~with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~ edition and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-0001, and is on file with the Division.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 8. DEPARTMENT OF TRANSPORTATION MOTOR CARRIER AND TAX SERVICES PROGRAM

[R08-09]

PREAMBLE

1. Sections Affected: **Rulemaking Action:**

Chapter 8	New Chapter
Article 6	New Article
R17-8-601	New Section
R17-8-602	New Section
R17-8-603	New Section
R17-8-604	New Section
R17-8-605	New Section
R17-8-606	New Section
R17-8-607	New Section
R17-8-608	New Section
R17-8-609	New Section
R17-8-610	New Section
R17-8-611	New Section

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

Authorizing statute: A.R.S. §§ 28-366, 28-5602

Implementing statute: A.R.S. §§ 28-373, 28-401(E), 28-5432(B), 28-28-5602, 28-5605, 28-5606, 28 5610, 28-5611, 28-5612, 28-5613, 28-5614, 28-5615, 28-5616, 28-5617, 28-5619, 28-5620, 28-5623, 28-5626, and 28-5924

3. The effective date of the rules:

March 8, 2008

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 3077, August 25, 2006

Notice of Rulemaking Docket Opening: 13 A.A.R. 2531, July 13, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2572, July 20, 2007

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

Name: Janette M. Quiroz

Address: Administrative Rules Unit
Department of Transportation
1801 W. Jefferson St., MD 530M
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Telephone: (602) 712-8996

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Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at http://www.azdot.gov/mvd/mvdrules/index.asp

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

This rulemaking is being initiated as a result of a five-year-rule review approved by the Governor's Regulatory Review Council on July 13, 2004. The current rules under 17 A.A.C. 1, Article 3, Taxes regulating Motor Fuel Tax

Refunds are antiquated and no longer reflect current statute, making it difficult for the Motor Vehicle Division (Division) to enforce. Therefore, the Division proposes to repeal current rules under A.A.C. 1, Article 3, Taxes, and create new rules under this new Chapter. Additional rules were created to clarify supporting documentation requirements for refund of motor fuel taxes paid.

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

The Division did not review nor rely upon any study relevant to this rulemaking.

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

Not applicable

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

The Division has created new rules regulating requests for refund of motor fuel taxes paid, specifically rules were created which clearly state the supporting documentation required to be submitted to substantiate a request for refund.

The costs of these rules to the Division is anticipated to be minimal, as there are existing systems, staff, resources, and procedures in place for processing requests for refund of motor fuel taxes paid by persons exempt under A.R.S. § 28-5610 and exempted activities. The Division may experience an increase in the number of requests for refunds submitted to the Division in response to a more clearly defined process. The benefit to the Division is anticipated to be minimal to moderate, as the potential for overpayment is decreased and there is an expected potential for the opportunity for fraudulent activities to decrease, as the rules provide for clear requirements as to the documentation that shall be provided to the Division in support of a request for refund.

These proposed rules are anticipated to have a minimal impact to industry regulated under these rules. Associated costs include training of staff for new requirements, studies, and other related services. However, the benefit to industry under these rules is a more clearly identified process regulating requests for refunds, which should allow for a reduction in filing errors resulting in a more expedited and efficient review and approval process.

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

In addition to minor technical and grammatical changes were made by the Division and at the suggestion of Council staff to improve clarity the following changes were made:

- R17-6-601: Removed definition of "Department"
  - » Added definition of "Mexican Pedimento"
  - » Changed term "Department" to "Division" throughout
- R17-6-601(B)(8)(b): Removed exception to administrative hearings
- R17-6-601(B)(8)(c)(ii): Removed reference to A.R.S. § 28-5612(K)
- R17-6-604(C): Removed phrase "at a minimum" and added "fuel type"
- R17-6-610(C)(3): Removed subsection (3) as redundant of subsection (1)

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

No public comments were received.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 8. DEPARTMENT OF TRANSPORTATION MOTOR CARRIER AND TAX SERVICES PROGRAM

ARTICLE 6. MOTOR FUEL REFUNDS

Section

ARTICLE 6. MOTOR FUEL REFUNDS

R17-8-601. Definitions and General Provisions

A. Definitions. The following definitions apply to this Article unless otherwise specified:

"Application" means a request for refund of motor fuel taxes, made on a form provided by the Division.

"Authorized representative" means a person who has authority to file an application on behalf of the Claimant, as authorized by a notarized power of attorney.

"Card lock use fuel facility" has the same meaning as a vendor as prescribed under A.R.S. § 28-5601(40), and satisfies requirements under A.R.S. § 28-5605.

"Claimant" means the taxpayer or an authorized representative of the taxpayer, also referred to as applicant.

"Complete application" means an application that includes supporting documentation and schedules, Claimant signature, and provides all information required on the application.

"Contaminated Fuel" means motor fuel under A.R.S. § 28-5601(18), which is accidentally tainted, and which is unsalable for highway use.

"Declaration of Status" means a statement on a form provided by the Division that a light class or exempt use class vehicle qualifies for use fuel tax differential under A.R.S. § 28-5606(B)(2).

"Daily log" means notations made by a driver of a commercial motor vehicle which records a daily record of duty status as specified under 49 CFR 395.5.

"Destination state" means a state in the United States, other than the state of Arizona.

"Diversion" means delivery of motor fuel to a destination state other than the intended destination as signified on a carrier bill of lading.

"Exempt use class motor vehicle" means a vehicle exempt from gross weight fees under A.R.S. § 28-5432.

"GPS" means a Global Positioning System of satellites and receiving devices used to compute vehicle position and time information.

"Highway" has the meaning prescribed under A.R.S. § 28-5601(11), and also includes a:

Port of entry;

Weigh station, or

Public rest area.

"Idle status" means a vehicle that is stationary, its engine continues to operate, and it is located in Arizona, but off-highway.

"Light class motor vehicle" has the same meaning as prescribed under A.R.S. § 28-5601(17).

"Licensee" has the same meaning as prescribed under A.R.S. § 28-5613.

"Mexican Pedimento" means an authorizing permit document issued by Mexico's state-owned, nationalized petroleum company.

"Motor fuel" has the meaning prescribed under A.R.S. 28-5601(18).

"Motor fuel tax" means any tax on motor fuel imposed under A.R.S. Title 28, Chapter 16, Article 1.

"Notification date" means the date on a notice sent by the Division.

"Off-highway" means any location that is not on a highway in this state.

"Person" has the same meaning prescribed under A.R.S. § 28-5601(21).

"Power-take-off" means the operation of vehicle-mounted, auxiliary equipment that is powered by energy supplied by the same engine that propels the motor vehicle, but does not include equipment related to the operation of a vehicle and powered by the vehicle's engine, including air conditioning, alternator, automatic transmission, and power steering.

"Tribal agreement" means an agreement between the Division and a Native American tribe for the administration of motor fuel taxes.

"Trip" means travel within or through Arizona's state borders with a designated beginning and ending location.

"Use class motor vehicle" has the meaning prescribed under A.R.S. § 28-5601(37).

"Use fuel" has the same meaning as prescribed under A.R.S. § 28-5601(38).

"Use fuel tax differential" means the difference between the use fuel tax rate applicable to light class motor vehicles or exempt use class motor vehicles, and the use fuel tax rate applicable to use class motor vehicles.

"Vendor" has the same meaning as prescribed under A.R.S. § 28-5601(40).

"VIN" means Vehicle Identification Number.

B. General Provisions.

1. Scope. For purposes of administering A.R.S. § 28-5612 this Article applies to a person or licensee under A.R.S. §§ 28-5612 and 28-5613.
2. Application.
   a. A complete application for refund of motor fuel tax shall be submitted to the Division.
   b. An application for refund for an amount of $10 or less:
      i. Shall be accepted only once within a consecutive six-month period, and
      ii. If the aggregate monthly total of a request for refund is less than $10 the applicant may combine several month's totals on one request for refund.
   c. A Claimant shall submit to the Division a separate application for refund for each calendar month.
   d. When the Division determines that an application is incomplete under these rules and A.R.S. Title 28, Chapter 16, Article 1, the Division shall suspend processing of the application for refund and
      i. Notify the Claimant of the deficiencies, and
      ii. Return the application to the Claimant.
   e. A Claimant whose application is returned as incomplete under A.R.S. Title 28, Chapter 16, Article 1 and these rules shall have 60 days from the notification date to remedy the deficiencies.
   f. If the Claimant fails to remedy the deficiencies under subsection (B)(2)(d) within 60 days of the notification date and return a complete application, the Division shall deny the application for refund.
   g. If the Division denies an application because the Claimant failed to remedy a deficiency, the deadline to submit a new application shall be governed by the time-frames established in subsection (B)(3).
3. Application filing. A complete application for refund shall be submitted to the Division as provided within the following table:

Refund Type	**Claimant Status**	
Sections	Licensee	Non-Licensee
R17-8-602. Exports	3 years from date of export	3 months from date of export
R17-8-603. Use Fuel Vendor	3 years from date of sale	6 months from date of sale
R17-8-604. Off-Highway	3 years from date of purchase	6 months from date of purchase
R17-8-606. Indian Tribal Government	If no Tribal Agreement with the Division, 6 months from date of purchase	
R17-8-607. Indian Tribal Member		
R17-8-608. Transport of Forest Products; Healthy Forest Initiative	March 1st of the year following calendar year consumed	
R17-8-609. Motor Vehicle Fuel Used in Aircraft	6 months from date of purchase	
R17-8-610. Motor Vehicle Fuel Losses Caused by Fire, Theft, Accident, or Contamination	3 years from date of event	6 months from date of event
R17-8-611. Bulk Purchase of Motor Fuel	3 years	6 months

4. Filing location and timely filing. A Claimant shall submit an application under this Article to the Division as provided under A.R.S. § 1-218, and this subsection:

a. Hand delivered, certified or registered mail:
   i. Arizona Department of Transportation, Motor Vehicle Division
   Fuel, Licensing, & Refund Compliance Unit
   1801 W. Jefferson St., Rm. 201
   Phoenix, AZ 85007;
   ii. Hand delivered: the Division time and date stamp will be used to determine whether a complete application was received within the required time-frames established under subsection (B)(3).
   iii. Certified or registered mail: the date of receipt by the designated delivery service shall be used to determine whether an application was received by the Division within the required time-frame established under subsection (B)(3).
b. United States Postal Service:
   i. Arizona Department of Transportation, Motor Vehicle Division
   Fuel, Licensing, & Refund Compliance Unit, Mail Drop 521M
   P.O. Box 2100
   Phoenix, AZ 85001
   ii. The postmark date will be used to determine whether an application was received by the Division within the required time-frames established under subsection (3).

5. Supporting documentation.
   a. The Division shall accept any of the following forms of documentation to support a claim for refund, which may be admissible to the same extent as an original:
      i. Photocopies,
      ii. Duplicates, or
      iii. Document image.
   b. The Division shall not return documentation submitted to support an application for refund once an application for refund has been accepted as complete.
   c. If the Division determines that the supporting documentation required under these rules does not provide sufficient evidence of motor fuel tax paid, the Division may require the Claimant to produce additional information.
   d. Failure to produce additional documentation as requested by the Division, within the time prescribed under R17-8-601(B)(2)(e), shall result in a denial of refund request being issued by the Division.
6. Record retention and review.
   a. A licensee shall maintain the records relied upon to support the application for refund as specified under A.R.S. Title 28, Chapter 16, Article 1 and these rules, and produce those records to the Division when requested.
   b. Unless required by A.R.S. Title 28, Chapter 16 to maintain records relied upon to substantiate an application for refund for a shorter or longer period of time, a licensee shall retain the records required to support an application for refund for three years from the issuance date of refund by the Division.
   c. The Division reserves the right to review a Claimant's records used to substantiate an application for refund under these rules.
7. If at any time, the Division discovers an overpayment of motor fuel tax refunded to a Claimant under these rules, the Division shall recover payment under A.R.S. § 28-5612.
8. Notification; violation; suspension; administrative hearing.
   a. Denial of request for refund. If the Division denies an applicant's request for refund the Division shall send notification of denial to the Claimant.
   b. Administrative Hearings. Hearings, rehearings, and appeals shall be noticed and conducted in accordance with A.R.S. § 28-5924 and A.A.C Title 17, Chapter 1, Article 5.
   c. Suspension due to violation of A.R.S. § 28-5612.
      i. If the Division finds that a Claimant is in violation of A.R.S. § 28-5612, the Division shall send notification to the Claimant identifying the violation.
      ii. A Claimant determined by the Division to be in violation of state laws and regulations under A.R.S. § 28-5612 and these rules, may be suspended from filing motor tax fuel refunds for six consecutive months from the notification date of the Division for motor fuel tax paid during the suspension period.
      iii. If a suspension is set aside under A.R.S. § 28-5612, a Claimant may again apply to the Division for refund.
      iv. The time-frame requirements under subsection (B)(3) shall not toll while pursuit of remedy by the Claimant or the Division under this subsection.

R17-8-602. Exports

A. To qualify for a refund of Arizona use fuel tax paid on motor fuel exported, a Claimant shall provide the following documents to support a request for refund:
1. Export to another state within the United States:
   a. Terminal, carrier, or bulk plant bill of lading showing the point of origin and destination of the motor fuel;
   b. Invoice or monthly supplier report schedule indicating that the Arizona tax was paid;

c. Motor fuel invoice or shipping document reflecting final destination and gallons exported;
d. Tax report establishing that the destination state's tax was reported;
e. Name and license number issued by the destination state of the licensee responsible for payment of motor fuel tax and tax reporting to the destination state; and
f. If the export of motor fuel is a diversion, the Claimant shall provide the following documents to the Division:
i. A carrier bill of lading; and
ii. Other documentation which supports the delivery of motor fuel to a specific location, other than its intended destination, and

2. Exports to Mexico:
a. Documentation under (A)(1),
b. Documentation that Petróleos Mexicanos authorized the motor fuel import,
c. U.S. Department of Commerce export documentation, and
d. Copy of Mexican Pedimento.

3. Exports to Navajo Nation:
a. Documentation under (A)(1),
b. Name and license number of the Navajo Nation distributor,
c. Copy of Navajo Nation manifest or copy of the Navajo Nation monthly motor fuel distribution tax return, and
d. Invoice showing the Navajo Nation tax was included in total amount due.

B. The description of the motor fuel exported shall be identical on all documentation submitted in support of a request for refund of motor fuel tax paid on export.

R17-8-603. Use Fuel Vendors

A. To qualify for refund of the use fuel tax differential, a use fuel vendor shall submit to the Division:
1. A complete application;
2. Supplier or distributor invoice, documenting the use fuel taxes that the vendor paid for the fuel; and
3. Supporting documentation:
a. For sales of use fuel dispensed from a pump which is labeled for use class and light class vehicles, a fuel log of use fuel tax differential sales, submitted on a format approved by the Division that includes the following vendor information:
i. Vendor name;
ii. Vendor address;
iii. Retail branch location;
iv. Division issued vendor license number;
v. Date of sale to consumer;
vi License plate number and name of jurisdiction that issued the license plate of the motor vehicle into which the fuel was dispensed;
vii. Number of gallons of use fuel that were purchased and dispensed into the fuel tank of a qualifying vehicle under subsection (D)(2);
viii. Amount of fuel tax refunded to purchaser; and
ix. Purchaser's signature indicating receipt of the refund made by a vendor of use fuel, submitted on a vendor use fuel refund log, provided by the Division.
b. For sales of use fuel dispensed from a pump that is labeled for light class or exempt use class only, items under subsection (A)(1) and (2).

B. The Division shall not accept an application for a period that a vendor of use fuel was not licensed under A.R.S. § 28-5605, except as provided under this subsection.
1. An application for a period that a vendor was not licensed under A.R.S. § 28-5605 will be accepted by the Division if the Claimant submits an application to the Division for a vendor license at the time initial application for refund is submitted.
2. The unlicensed use fuel vendor shall demonstrate compliance with A.R.S. § 28-5605(B), at the time of the applicable use fuel sale to the satisfaction of the Division by the following means:
a. Photographs,
b. Diagrams,
c. Statements, and
d. Any other documentation approved by the Division which demonstrates compliance.

C. A licensed use fuel vendor shall maintain the following records under R17-8-601(B)(6):
1. Records of daily sales to light class or exempt use class motor vehicles which provides details for each use fuel sale to include the following:
a. Gallonage,
b. Transaction date,
c. Price per gallon, and

d. Product description.
2. Acquisition invoices of use fuel,
3. Inventory records of use fuel, and
4. Vendor use fuel refund log under subsection (A)(3)(a).

D. Card lock use fuel facility.
1. Applicability. For purposes of receiving a refund from the Division for use fuel sold to a light class or exempt use class vehicle at a card lock use fuel facility, the vendor shall:
   a. Submit documentation to the Division under subsection (A)(3), except subsection (A)(3)(a)(ix);
   b. Have controlled access to the card lock use fuel facility in compliance with A.R.S. § 28-5605;
   c. Restrict use of a card lock use fuel facility to those approved purchasers that have completed a Declaration of Status; and
   d. Shall maintain records under subsection (C).
2. Declaration of Status.
   a. A vendor shall require that a purchaser of use fuel for use in light class or exempt use class vehicles complete and submit to the vendor a Declaration of Status for each vehicle that will have the ability to obtain fuel at a card lock use fuel facility labeled for light class or exempt use class vehicles.
   b. A Declaration of Status must be completed for each additional vehicle prior to purchase of motor fuel at a card lock use fuel facility.
   c. A Declaration of Status shall be made on a form provided by the Division and may be obtained at www.azdot.gov.
   d. The original signature of the purchaser shall be included on the Declaration of Status.
   e. A vendor who operates a card lock use fuel facility must retain all original Declarations of Status received from a purchaser in the vendor's files under R17-8-601(B)(6), and shall make the Declarations of Status available for review by the Division.
3. Labeling. A card lock vendor shall comply with state law by placing a label with verbiage and specifications as required under A.R.S. § 28-5605.
   a. Card lock use fuel facilities shall post a use fuel tax rate label provided by Division.
   b. Vendors found in violation of labeling regulations shall be subject to penalties under A.R.S. § 28-5605.

R17-8-604. Off-Highway

A. The Division shall refund the Arizona motor fuel tax paid on the motor fuel consumed in Arizona while the vehicle is off-highway.

B. An application for refund shall include the following supporting documentation:
1. System or manual motor fuel log summary by VIN which includes the following:
   a. Items under subsection (C)(1)(a), and
   b. Mileage consumed off-highway.
2. Equipment and vehicle listing which includes year, make, model, gallon capacity, and
3. Proof of fuel purchase which may include:
   a. Motor fuel invoices,
   b. Motor fuel purchase receipts,
   c. Computerized fuel purchase statement, and
   d. International Fuel Tax Agreement reports.

C. A Claimant shall provide the following documentation to the Division for the identified refund types:
1. Refrigeration unit:
   a. Fuel log summary consisting of, at a minimum, the following information:
      i. Fuel type,
      ii. Date fuel dispensed,
      iii. Number of gallons dispensed, and
      iv. Identification number of equipment or vehicle into which the fuel was dispensed.
   b. Equipment or vehicle identification number.
2. Power take-off: A motor fuel consumption study under this Section shall be conducted at the Claimant's expense, and shall be approved by the Division prior to the initial application for refund, and shall include the following information:
   a. A description of the methodology used to determine the percentage of exempt motor fuel consumed by the power-take-off;
   b. A list of all equipment using motor fuel;
   c. All operations where motor fuel is consumed;
   d. Testing and study components shall be a true representation of the operation of business as follows:
      i. Vehicles shall be grouped into similar categories based on similar power-take-off units and similar gross vehicle weight.

ii. Vehicles selected shall be representative of the category as to age, make, model, and engine size.
iii. Each vehicle category shall be tested individually to determine the amount of motor fuel consumed by the power-take-off unit.
iv. If a vehicle category contains:
(1) Less than four vehicles, all vehicles must be included in the test study.
(2) Thirty or fewer vehicles, then at least three vehicles must be included in the test sample.
(3) More than 30 and fewer than 151 vehicles, then at least 10 percent of the vehicles must be included in the test sample.
(4) More than 151 vehicles, then at least 15 vehicles must be included in the test sample.
e. Explanation of the measuring method used to determine fuel consumption by vehicles, equipment, and machinery, which shall include manufacturer specifications;
f. Results of a period of a study which shall include a period covering cyclical or seasonal impacts which includes low and high points of fuel usage for exempt or non-exempt purposes;
g. Results from a test or study shall be a duration of at least two weeks; and
h. The approved power-take-off percentage may then be used for three years or shall be updated as requested by the Division.
3. Idle time under R17-8-605.

R17-8-605. Idle Time

A. Under the provisions of this Article, the Division shall refund the Arizona motor fuel tax imposed on the motor fuel consumed by a Claimant's vehicle while in idle status.

B. In addition to the application under R17-8-601, a Claimant shall provide the following documentation to the Division to verify the quantity of motor fuel consumed by a vehicle while in idle status:
1. Documentation that proves the total quantity of motor fuel purchased by the Claimant in Arizona during refund period;
a. An invoice that contains the following information:
i. Date of purchase,
ii. Seller's name,
iii. Physical address where motor fuel was purchased,
iv. Number of gallons of motor fuel purchased,
v. Type of motor fuel purchased,
vi. Price per gallon of motor fuel.
b. A fuel log shall be maintained that contains the following information:
i. The date that the motor fuel was placed in the fuel tank of a motor vehicle;
ii. The vehicle make, model, year, and VIN in which the motor fuel was placed; and
iii. The number of gallons of motor fuel placed in a fuel tank.
c. In lieu of subsections (B)(1)(a) and (b), a licensee may submit a summary of the fuel purchases made by the Claimant for the vehicle during the refund period. The summary shall contain the same information required to be on a fuel invoice under subsection (B)(1)(a).
2. Documentation that proves that the Claimant's vehicle was located in Arizona, off-highway, at the time it was in idle status, and the length of time the vehicle was in idle status, using one or more of the following methods:
a. Non scheduled route:
i. A logbook, approved by the Division, maintained for each vehicle that identifies the date and time when the idle status started, the date and time when the idle status ended, and a physical description of the location of the vehicle during the idle status that establishes that the vehicle was in Arizona, but located off-highway.
ii. The driver shall make an affirmative statement in the driver's daily log that the engine was operating during the idle status and shall prepare the logbook entries simultaneously with the idle status.
iii. The Claimant shall retain trip schedules or bills of lading to support the logbook entries.
b. Scheduled route:
i. Published schedule which includes arrival at and departure from fixed locations at prescribed times, or
ii. A record of average wait times recorded in a daily log consisting of arrival at and departure from fixed locations at prescribed times, approved by the Division.
iii. The Claimant shall document that the engine remained running during the scheduled stops.
c. Global Positioning System:
i. A report from a GPS, approved pursuant to subsection (C).
ii. The Claimant shall maintain trip schedules or bills of lading to support GPS reports.
3. Documentation that proves the quantity of motor fuel consumed by the Claimant's vehicle while in idle status;
a. The Claimant shall document the number of the gallons of motor fuel consumed per hour to maintain idle status by one or more of the following methods:
i. Engine manufacturer's standard specifications that establish the quantity of motor fuel consumed per hour

while the vehicle is in idle status.
ii. Computerized system that computes the quantity of motor fuel consumed per hour while in idle status.
iii. A study or test that determines motor fuel consumption per hour while in idle status, prior to the period covered by the refund claim.
b. A study under this Section shall meet the following specifications:
i. The study shall be conducted at the Claimant's expense,
ii. The methodology shall be approved by the Division prior to conducting the study under subsection (C),
iii. The fuel consumption characteristics of the vehicles and their operation during the period of the refund shall not vary significantly from the conditions that existed during the study, and
iv. The results of the study shall be approved by the Division prior to the time period covered under the refund claim.

C. The Division shall review and approve the method used and the data captured by a GPS or manual report prior to the initial claim for refund and the report shall include the following components:
1. A description of the methodology used to determine the percentage of exempt use fuel consumption;
2. A list of all equipment consuming use fuel;
3. A description of all of the vehicle operations where use fuel is consumed;
4. Whether vehicles are traveling scheduled routes, and whether seasonal or cyclical events affect use fuel;
5. Testing and study components shall be a true representation of operation of business as follows:
a. Vehicles shall be grouped into similar categories based on similar units and similar gross vehicle weight.
b. Each vehicle category must be tested individually to determine the idle time fuel consumption.
c. Vehicles selected for testing shall be representative of the category as to age, make, model, and engine size.
6. Study components under R17-8-604(C)(2)(d)(iv).
7. Explanation of the measuring method used to determine fuel consumption by vehicles, equipment, and machinery, which shall include manufacturer specifications.
8. Study results under this subsection shall include a period covering cyclical or seasonal impacts which includes low and high points of fuel usage for exempt or non-exempt purposes.
9. Results from a test or study shall be of duration of at least two weeks.
10. The approved idle time study may then be used for three years or shall be updated as requested by the Division.

D. A Claimant shall submit technical documentation that details the operating system of any system or manual study used including, but not limited to, the following:
1. Identification of the computer system, including the name of the manufacturer, name of the software, and software version number;
2. Identification of vehicle engines on which the software will be used by the Claimant, including makes, models, years, and fuel types;
3. Description of the methodology used by computer system to determine idle status;
4. Description of the methodology used to determine fuel consumption while in idle status;
5. Description of the methodology used to determine the location of the vehicle during idle status; and
6. Operating policies and procedures for the systems that are used in the Claimant's business operations.

E. The Claimant shall provide additional supporting documentation if there is any update to the system study for which documentation was initially submitted and approved.
1. A Claimant shall submit to the Division an updated study under this Section three years from the date of Division approval or at the Division's request.
2. A study under this Section shall be conducted at the Claimant's expense.
3. The methodology used in support of a study under these rules shall be approved by the Division prior to conducting the study under subsection (C).
4. If the Division rejects the results of a study, a Claimant may request a hearing under A.R.S. § 28-5924.

R17-8-606. Tribal Government

A. The Division shall refund the Arizona motor fuel tax imposed on the motor fuel consumed by a vehicle owned or leased to a tribal government under this Article.

B. An application for refund shall include all of the following supporting documentation for each vehicle:
1. Detailed fuel receipt statement which includes the following purchase information:
a. Date of fuel purchase,
b. Gallonage,
c. Location,
d. Fuel type, and
e. Purchasers name and address.
2. Fuel purchase summary by vehicle which includes documentation under (B)(1); or
3. Bulk motor fuel purchase invoice; which includes:
a. Gallonage,

b. Delivery location,
c. Fuel type, and
d. Tax rate paid.

4. If vehicle is leased, a copy of the lease agreement.

C. A vehicle and equipment listing shall be maintained by the tribal government to include year, make, model, gallon capacity, and VIN.

R17-8-607. Tribal Member

A. Enrolled members of a tribe may make application to the Division for a refund of the Arizona motor fuel taxes on fuel purchased on the reservation of the tribe in which the member is enrolled, provided the motor fuel was not used off the reservation for a commercial purpose.

B. An application for refund shall include the following supporting documentation:

1. Copy of the vehicle registration,
2. Copy of the Tribal member identification card,
3. Receipt of motor fuel purchased on the reservation, and
4. Signed statement certifying motor fuel was used for non-commercial purposes under A.R.S. § 28-5610(A).

R17-8-608. Transport of Forest Products; Healthy Forest Initiative

A. A claim for refund, pursuant to A.R.S. § 28-5614(B), of the tax on motor fuel used to transport forest products on Arizona highways shall comply with the requirements of R17-8-601.

B. An application shall include the following supporting documentation obtained from the Arizona Department of Commerce:

1. A completed Healthy Forest Enterprise Use Fuel Vehicle Schedule;
2. Certification issued by the Arizona Department of Commerce pursuant to A.R.S. § 41-1516 for the same period of time as the refund claim,
3. Memorandum of Understanding between the Arizona Department of Commerce and the Claimant pursuant to A.R.S. § 41-1516,
4. Individual Vehicle Mileage and Fuel Report Summaries for each vehicle, and
5. Changes to the Arizona Department of Commerce Certification.

R17-8-609. Motor Vehicle Fuel Used in Aircraft

A. A claim for the refund of the tax, pursuant to A.R.S. § 28-5611(A)(2) or non-agricultural purposes under A.R.S. § 28-5611(B), on motor vehicle fuel used to power aircraft shall comply with the requirements of R17-8-601 and subsection (B) and (C) of this Section.

B. An application shall include the following supporting documentation:

1. Motor fuel log summary by aircraft which includes:
   a. Purchase date,
   b. Name and location of vendor of fuel to show that Arizona motor fuel tax was included in the purchase price,
   c. Gallons dispensed,
   d. Fuel type, and
   e. Manner consumed.
2. List of aircraft to include, year, make model, and N-number assigned by the Federal Aviation Administration, and
3. Purchase invoice indicating items under (B)(1) and amount of tax paid amount.

C. Motor vehicle fuel used to power aircraft for agricultural purposes shall, in addition to subsection (B), include a flight log detailing the purpose of use.

R17-8-610. Motor Fuel Losses Caused by Fire, Theft, Accident, or Contamination

A. A Claimant may apply to the Division for a refund of the tax on motor fuel lost due to fire, theft, accident, or contamination.

B. A request for refund pursuant to A.R.S. §§ 28-5610 or 28-5611 of the tax on motor fuel that is lost due to fire, theft, accident, or contamination shall comply with the requirements of R17-8-601.

C. An application shall include the following supporting documentation:

1. Signed statements from persons with personal knowledge regarding the facts and circumstances of the loss, including:
   a. Date of loss or contamination,
   b. Location where the loss or contamination occurred,
   c. Detailed explanation regarding the nature of the loss or contamination,
   d. Name and contact information of persons who witnessed loss or contamination,
   e. Quantity of fuel lost or contaminated, and
   f. Disposition of the contaminated motor fuel.

2. Copies of records that substantiate the date of acquisition and quantity acquired of the fuel lost as well as the fact the Arizona motor fuel tax was paid by the Claimant when the fuel was acquired.

R17-8-611. Bulk Purchase of Motor Fuel

A. A request for refund of taxes paid on the bulk purchase of motor fuel dispensed into a light class, or exempt use class vehicle, shall be submitted to the Division under R17-8-601(B), on an application provided by the Division.

B. Bulk motor fuel shall be purchased and consumed in Arizona to qualify for refund.

C. An application for refund shall include the following supporting documentation:

1. Invoice that contains the following information:
   a. Name and address of vendor,
   b. Tax rate,
   c. Product type,
   d. Delivery date,
   e. Quantity of fuel,
   f. Invoiced amount, and
   g. A statement from the seller of the motor fuel that the motor fuel is non-dyed use fuel.
2. Fuel usage log which includes the following information:
   a. Date fuel dispensed,
   b. VIN of vehicle into which fuel was dispensed,
   c. Gallons dispensed, and
   d. Fuel type.
3. Annual vehicle listing to include make, model, year, and VIN.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY HAZARDOUS WASTE MANAGEMENT

[R08-17]

PREAMBLE

1.

Sections Affected	Rulemaking Action
R18-8-260	Amend
R18-8-261	Amend
R18-8-262	Amend
R18-8-263	Amend
R18-8-264	Amend
R18-8-265	Amend
R18-8-266	Amend
R18-8-268	Amend
R18-8-270	Amend
R18-8-271	Amend
R18-8-273	Amend

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

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

Implementing Statute: A.R.S. § 49-922

3. The effective date of the rules:

March 8, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 1054, March 23, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 3080, September 7, 2007

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

Name: Mark Lewandowski

Address:	Department of Environmental Quality Waste Programs Division 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771-2230, or (800) 234-5677, enter 771-2230 (Arizona only)
Fax:	(602) 771-4138
TTD:	(602) 771-4829
E-mail:	lewandowski.mark@azdeq.gov

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

Summary: The Arizona Department of Environmental Quality (DEQ) has finalized amendments to the state's hazardous waste rules to incorporate changes in federal regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The amendments in this final rule adopt most changes to the federal regulations that became effective from July 1, 2005 through June 30, 2006, and in addition, two groups of amendments to the regulations that became effective after June 30, 2006. DEQ has also modified the Performance Track provisions, so that they apply to members of Arizona's Performance Track Program. The federal regulations related to standardized permits are not adopted at this time.

Background: The United States Environmental Protection Agency's (EPA's) authorization requirements in 40 CFR 271 provide that states implementing the federal hazardous waste management program must incorporate certain amendments promulgated in the federal regulations through adoption of those changes into the state's rules to become and remain authorized states. Arizona is an authorized state. Unlike previous DEQ hazardous waste rulemakings, none of the amendments to federal regulations incorporated in this rulemaking are required for authorization because in general they are equivalent to or less stringent than the current regulations. However, DEQ has determined that the amendments to federal regulations incorporated in these rules will help streamline and simplify Arizona's hazardous waste program without sacrificing environmental protection, as explained further below. In addition, A.R.S. § 49-922 directs DEQ to establish a hazardous waste management program that is "equivalent to and consistent with" federal hazardous waste regulations. This rulemaking simplifies EPA's evaluation of Arizona's program meeting that standard.

Arizona's hazardous waste rules, currently found in 18 A.A.C. 8, Article 2, have been effective since before 1984. In 1985, EPA granted Arizona final authorization to operate the state hazardous waste program in Arizona in lieu of the federal hazardous waste program, subject to the limitations imposed by the Hazardous and Solid Waste Amendments of 1984 (50 FR 47736, November 20, 1985). EPA last approved revisions to Arizona's hazardous waste authorization on March 17, 2004 (69 FR 12544). Due, in part, to the statutory requirement for equivalency, Arizona's rules incorporate the federal regulations by reference, with the result that Arizona's hazardous waste rules are largely identical to the federal hazardous waste management regulations. Arizona rules are reviewed and amended regularly to incorporate new text from applicable federal regulations in order to comply with A.R.S. § 49-922 and facilitate continued authorization. Without continued authorization, the EPA, rather than DEQ, would administer parts of the hazardous waste program in Arizona. DEQ seeks to continue administering Arizona's hazardous waste program, and although the specific amendments to regulations in these final rules are not required for authorization, DEQ believes that their incorporation will simplify and facilitate continued authorization.

All Chapter 8 Sections incorporated to at least July 1, 2006:

DEQ has amended all incorporation dates in Article 2, even in Sections where EPA did not amend any of its regulations during the previous one year period. DEQ believes this will allow CFR (Code of Federal Regulations) editions labeled "revised as of July 1, 2006" to be used as the starting reference point for all Sections, and result in the fewest number of CFR volumes that have to be used by DEQ and regulated entities. For 2006, 40 CFR Parts 260-265 and 266-299 continue to be in separate July 1, 2006 volumes, while 40 CFR Parts 100-135 are in a third July 1, 2006 volume. (40 CFR 124 is incorporated in R18-8-271.)

In DEQ's last hazardous waste rulemaking (12 A.A.R. 3061), incorporation dates other than July 1, 2005 were used in some Sections, in order to incorporate four important EPA regulations that became effective after June 30, 2005: Methods Innovation; Mercury Containing Equipment; Dye and Pigment Production Wastes Listing, and Hazardous Waste Manifests.

These final rules automatically adopt all changes to the federal regulations that became effective from July 1, 2005 to June 30, 2006, other than standardized permits. In addition, there are two important groups of EPA amendments to the regulations that DEQ has incorporated beyond the June 30, 2006 cutoff:

1) A large "Corrections to Errors..." package that was published and became effective on July 14, 2006, and
2) Amendments to the hazardous waste regulations related to CRTs (cathode ray tubes) that became effective January 29, 2007 streamlining management requirements for recycling of used CRTs and glass removed from CRTs.

With regard to the sections of state rule affected by these two EPA amendments, these final rules automatically adopt any other changes to the federal regulations that became effective from June 30, 2006 to the relevant effective date:

either July 14, 2006 or January 29, 2006. DEQ is aware of only two of these other changes, and they have no effect in Arizona, since they are related to specific wastes excluded from hazardous waste regulation at specific out-of-state facilities in 40 CFR 261, Appendix IX.

What EPA regulations has DEQ incorporated?

In this final rule, DEQ has incorporated two groups of amendments to federal regulations that became effective between June 30, 2005 and July 1, 2006, and two that became effective after July 1, 2006:

1. Hazardous Waste Combustors (70 FR 59401, October 12, 2005, effective December 12, 2005)
2. RCRA Burden Reduction Initiative (71 FR 16861, April 4, 2006, effective May 4, 2006)
3. Corrections (71 FR 40253, July 14, 2006, effective July 14, 2006)
4. Cathode Ray Tubes (71 FR 42927, July 28, 2006, effective January 29, 2007)

Hazardous Waste Combustors (70 FR 59401, October 12, 2005, effective December 12, 2005): This EPA rulemaking established emission standards and codified risk assessment policy for the following hazardous waste combustors (HWCs): hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, industrial/commercial/institutional boilers and process heaters, and hydrochloric acid production furnaces. DEQ has determined that none of these types of HWCs exist in Arizona at the present time. DEQ has adopted the amendments to these regulations under the authority of A.R.S. § 49-922, which directs DEQ to adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of RCRA.

In its *Federal Register* notice for the final rule, EPA determined that all of the provisions of its HWC rulemaking were either less stringent or equivalent to the existing federal program, so that states are not required to adopt and seek authorization for them. Nevertheless, EPA strongly encouraged states to adopt them. The amended regulations contain both provisions that became effective when EPA promulgated them and those that must be adopted by states before they can be effective.

The EPA rulemaking amended 40 CFR 9, 63, 260, 264, 265, 266, 270, and 271. In this rulemaking, DEQ has incorporated into state rule all of the amendments, without modification, to Parts 260, 264, 265, 266, and 270.

RCRA Burden Reduction Initiative (71 FR 16861, April 4, 2006, effective May 4, 2006): In this federal rulemaking, EPA modified a number of recordkeeping, reporting and related requirements designed to reduce the paperwork requirements RCRA regulations impose on states, EPA, and the regulated community. In addition, EPA's new regulations expanded the National Performance Track Program, allowing facilities in the National Program to reduce their inspection frequencies, under certain conditions, up to monthly, on a case-by-case basis, for tank systems, containers, containment buildings, and areas subject to spills.

According to EPA, "States are not required to adopt and seek authorization for this rulemaking. EPA will implement this rulemaking only in those states which are not authorized for the RCRA program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that is amended today. Nevertheless, this rule will provide significant benefits to EPA, states, and the regulated community, without compromising human health or environmental protection. Because this rulemaking will not become effective in authorized states until they have adopted and are authorized for it, [EPA] strongly encourage[s] states to amend their programs and seek authorization for today's rule."

Arizona is an authorized state. DEQ is adopting the RCRA Burden Reduction amendments to federal regulations under the authority of A.R.S. § 49-922, which directs DEQ to adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of RCRA. In addition, DEQ has modified the Performance Track provisions, so that they apply to members of Arizona's Performance Track Program. Finally, DEQ is also making nonsubstantive changes to the definition of "Performance Track member facility" it adopted last year to more closely match EPA's new definition in the hazardous waste regulations. The previous definition, adopted by DEQ last year, was based on EPA's definition in 40 CFR 63.2 since EPA did not yet have a definition in its hazardous waste regulations. The EPA RCRA Burden Reduction rulemaking amended 40 CFR 260, 261, 264, 265, 266, 268, 270, and 271. In these final rules, DEQ has incorporated into state rule all of the amendments to Parts 260, 261, 264, 265, 266, 268, and 270, as modified in R18-8-260(F)(4) and R18-8-264(E).

Corrections (71 FR 40253, July 14, 2006, effective July 14, 2006): In this rulemaking, EPA corrected "errors in the hazardous waste and used oil regulations, as a result of printing omissions, typographical errors, misspellings, ... and similar mistakes." EPA stated that the final rulemaking did not create new regulatory requirements.

DEQ has incorporated these changes, in spite of the fact that they became effective after July 1, 2006 because of the large number of corrections, and because, although they may not create new requirements, DEQ believes earlier inclusion will reduce confusion, and could be instructive. For example, in one of the corrections, EPA has added four explanatory notes to 40 CFR 261.21 "Characteristic of Ignitability."

The EPA rulemaking amended 40 CFR 260, 261, 262, 264, 265, 266, 267, 268, 270, 271, 273 and 279. In this rulemaking, DEQ has incorporated into state rule all of the EPA amendments, without modification, except those in Parts 267, 271, and 279.

Cathode Ray Tubes (71 FR 42927, July 28, 2006, effective January 29, 2007): In this rulemaking, EPA amended its regulations under RCRA to streamline management requirements for recycling of used CRTs and glass removed from CRTs. A CRT is the glass video display component of an electronic device (usually a computer or television monitor). The amendments exclude used CRTs and glass removed from CRTs from the RCRA definition of solid waste if certain conditions are met, and are intended to encourage recycling and reuse of used CRTs and CRT glass by allowing the materials to be handled as commodities instead of hazardous waste.

EPA determined that in states currently regulating CRTs as hazardous waste, adoption of the new CRT regulations was optional since state programs applying EPA's previous regulations to CRTs would be more stringent than the new federal regulations. DEQ is adopting EPA's CRT rules under the authority of A.R.S. § 49-922, which directs DEQ to adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of RCRA. Although DEQ has been treating properly handled CRTs as nonhazardous waste by policy since EPA proposed the CRT rulemaking, DEQ is now incorporating EPA's new CRT regulations to encourage environmentally sound recycling of this rapidly growing waste stream, to conserve resources and raw materials, and to remain equivalent to EPA. According to EPA, the limitations on speculative accumulation for intact CRTs were issued under RCRA authority, and therefore would not go into effect in Arizona until adopted.

The EPA rulemaking amended 40 CFR 260, 261, and 271. In this rule, DEQ has incorporated into state rule all of the amendments, without modification, except for those from Part 271.

What EPA regulations did DEQ not incorporate?

DEQ has not incorporated EPA's standardized permit regulations at this time. (70 FR 53419, September 8, 2005, effective October 11, 2005) As mentioned in DEQ's last hazardous waste rule, (12 A.A.R. 3061; August 25, 2006) many facilities in Arizona would not be eligible for the standardized permit. For the second year in a row, none have indicated an interest in the new permit. To be eligible, a facility must:

a. Generate hazardous waste and then store or non-thermally treat the hazardous waste "on-site" in containers, tanks, or containment buildings, or

b. Receive hazardous waste generated from off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

There are costs associated with changing a permit at a site that handles hazardous wastes. DEQ believes that the educational and other administrative costs to implement the new standardized permit at a facility currently under an individual permit will be a significant factor for facilities making this choice.

In addition to costs for regulated facilities, there are also costs for the implementing agency. Unless a minimum number of facilities indicate an interest in this permit, the short-term costs to implement the new permit will not be offset by advantages for the agency or regulated facilities.

EPA characterized its standardized permit rule to be neither more nor less stringent than the current standards. Therefore, authorized states such as Arizona are not required under federal law to modify their programs to adopt regulations consistent with and equivalent to the new rule. DEQ has not adopted EPA's standardized permit rules at this time. Under A.R.S. § 49-922, DEQ is directed to adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of RCRA. Because states aren't required to adopt the standardized permit, DEQ's hazardous waste program will remain equivalent to and consistent with the federal program without a standardized permit.

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

None

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

Not applicable

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

Identification of the final rulemaking

This rulemaking incorporates into Arizona hazardous waste rules most changes in the federal hazardous waste regulations promulgated as of July 1, 2006, and for two other federal rulemakings, changes promulgated later in 2006 and in early 2007. It accomplishes this primarily by amending rules codified in *Arizona Administrative Code* Title 18, Chapter 8, Article 2, with updated incorporation dates. In addition, DEQ has modified the Performance Track provisions, so that they apply to members of Arizona's Performance Track Program. EPA's standardized permit rule is not incorporated at this time.

Background

Unlike previous hazardous waste rulemakings, DEQ is not required to incorporate the amendments to the federal regulations that it has in this rulemaking to continue, or to update, Arizona's authorization to implement federal hazardous waste regulations in lieu of EPA. The amendments to the federal regulations are not required by EPA in authorized states because they have been characterized by EPA as either equivalent to or less stringent than the existing federal program.

In this rulemaking DEQ has incorporated by reference the amendments contained in the following EPA rulemakings:

1. Hazardous Waste Combustors (70 FR 59401, October 12, 2005, effective December 12, 2005)
2. RCRA Burden Reduction Initiative (71 FR 16861, April 4, 2006, effective May 4, 2006)
3. Corrections (71 FR 40253, July 14, 2006, effective July 14, 2006)
4. Cathode Ray Tubes (71 FR 42927, July 28, 2006, effective January 29, 2007)

The amendments to all of the federal regulations except RCRA Burden Reduction Initiative are incorporated without modification. EPA's RCRA Burden Reduction Initiative rulemaking was modified in two places to make reduced inspection privileges apply to Arizona Performance Track members. Like EPA, DEQ has determined that the benefits to adopting these rules exceed any costs.

DEQ has determined that incorporating the Corrections rulemaking has no direct economic effects since there are no substantive changes. Indirectly; however, incorporation of 22 *Federal Register* pages of EPA corrections reduces confusion and allows Arizona's Hazardous Waste Program to be implemented in a more efficient and cost effective manner. DEQ's costs for incorporating the EPA rulemaking are negligible; DEQ believes that the net result is an economic benefit.

Because the amendments to the other three federal regulations being incorporated are equivalent to or less stringent than the current federal regulations effective in Arizona, DEQ has determined that incorporating these regulations will reduce regulatory impacts on those covered under the regulations without adverse environmental impacts. The DEQ costs to incorporate these rules are small, so that there will be a net economic benefit to adopting the rules in this rulemaking. Further information on these three groups of amendments is provided as follows:

Hazardous Waste Combustors (HWC). DEQ has determined that there will be no direct impact of incorporating these amendments by reference, since there are currently no facilities of this type in the state. Moreover, EPA stated that all of the provisions of the HWC rulemaking are either less stringent than or equivalent to the existing federal program, while protecting human health and the environment. Should a facility of this type be located in Arizona in the future, incorporating these amendments results in equivalent or less stringent rules effective in Arizona than those previously effective. The result would be a neutral or positive economic impact to the facility with negligible cost to Arizona.

RCRA Burden Reduction Initiative. DEQ agrees with EPA's conclusions that this rulemaking directly reduces administrative requirements in a large number of hazardous waste program areas while retaining the goals of protection of human health and the environment. EPA estimated significant annual time and money savings nationally for its final rule ("22,000 hours to 37,500 hours per year. The total annual cost savings under the final rule ranges from approximately $2 million to $3 million.") The cost of incorporating and implementing the EPA rule are estimated to be small to negligible, and DEQ believes that the benefits of incorporating the regulation will exceed the costs.

The Performance Track provisions that are incorporated simultaneously with this set of regulations have virtually the same economic impacts as the full RCRA Burden Reduction group of regulations. Under the Performance Track features incorporated in this rulemaking, administrative burdens related to certain inspections are reduced, environmental protection is retained, and a net economic benefit results for the facilities in the Performance Track program.

Cathode Ray Tubes. Cathode ray tubes are a rapidly growing waste stream both in Arizona and outside the state. In Arizona, used CRTs and the glass from CRTs were already being regulated as nonhazardous waste by policy shortly after the EPA proposed its CRT regulation on June 12, 2002. DEQ is making this policy formal by incorporating the final EPA regulation and ending any potential uncertainty about the exact requirements for handling CRTs and CRT glass in Arizona. More importantly, the handling requirements in the incorporated rule assure that used CRTs and CRT glass are handled safely and as commodities instead of hazardous waste. This reduces the reporting and record-keeping burden on those handling the waste and on DEQ. DEQ believes that there will be some education and enforcement costs involved with implementing this set of amendments, but has not allocated any specific increased personnel costs to it. The result is a net economic benefit.

Standardized Permits. DEQ has not incorporated EPA's standardized permit regulations at this time. (70 FR 53419, September 8, 2005, effective October 11, 2005) As mentioned in DEQ's last hazardous waste rule, (12 A.A.R. 3061, August 25, 2006) many facilities in Arizona would not be eligible for the standardized permit. For the second year in a row, no facilities have indicated an interest in the new permit. DEQ believes this is due both to eligibility factors and to potential costs. To be eligible, a facility must:

a. Generate hazardous waste and then store or non-thermally treat the hazardous waste "on-site" in containers, tanks, or containment buildings, or

b. Receive hazardous waste generated from off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

There are also costs associated with changing a permit at a site that handles hazardous wastes. DEQ believes that the educational and other administrative costs to implement the new standardized permit at a facility currently under an individual permit are significant factors for facilities making this choice.

In addition to costs for regulated facilities, there are also costs for DEQ as the implementing agency. Unless a minimum number of facilities indicate an interest in this permit, the short-term costs to implement the new permit may not be offset by advantages for the agency or regulated facilities.

Reduction of Impact on Small Businesses

A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on the class of small businesses, if possible. As discussed above, the amendments in this final rulemaking already reduce or have no effect on the environmental obligations of small businesses, including their monitoring, recordkeeping, and reporting burdens. In addition, DEQ's obligation to remain equivalent to and as stringent as EPA prevents DEQ from inserting additional reductions to a regulation's impact beyond what EPA has already included.

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

Minor grammatical and typographical errors were corrected to make the rules clear, concise, and understandable. There were no substantive changes between the proposed rules and the final rules.

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

Comment 1: (Arizona Chamber of Commerce and Industry/Greater Phoenix Chamber of Commerce) The commenter suggested a change to the definition of "Performance Track member facility" at R18-8-260(F)(4) to allow the benefits of membership in Arizona's Performance Track program to apply to a broader class of facilities. The commenter stated that "Facilities that qualify for the National Program should receive the benefits of membership even if they do not qualify under the Arizona Program." The commenter based the suggestion on language in A.R.S. § 49-922 that directs DEQ to "establish a hazardous waste management program equivalent to and consistent with federal hazardous waste regulations" and to "not adopt a nonprocedural standard that is more stringent than or conflicts with [federal regulations.]"

Response 1: The present rule in R18-8-260(F)(4) currently requires membership in both the Federal and State Performance Track Program in order to obtain any incentive or benefit that DEQ may provide. The proposed rule does not change that substantive requirement which DEQ adopted in a rule effective October 1, 2006, and which rule also provided the benefits of longer hazardous waste storage times under R18-8-262(A) and less frequent submission of manifests under R18-8-261(I)(3) to members of the Performance Track programs. The proposed rule merely adds language from the federal definition.

As was correctly pointed out in the comment, under A.R.S. § 49-922(A), DEQ may not adopt a "nonprocedural standard that is more stringent or conflicts with [federal hazardous waste regulations]." The comment suggests that requiring membership in both the National and Arizona Environmental Performance Track program is in conflict with this provision because "requiring membership in both programs *may* be more stringent than the federal hazardous waste regulations" (emphasis added). To be in conflict with this provision, a proposed rule must be both "nonprocedural" and a "standard" that is more stringent than the federal requirements. The provision at issue is neither "non-procedural," nor a "standard." It is merely a procedure that must be followed before reducing a regulatory burden.

Both the National and Arizona Environmental Performance Track programs are voluntary. There is no requirement in the rule that a person participate in either program. As a result, there is no standard at issue. The provision at issue merely states the prerequisites a person must achieve prior to receiving a benefit from a voluntary program. In this rule, the benefits being incorporated by reference are the ability of a permitted or interim status facility to apply to the Director for a reduced self-inspection frequency for tank systems, containers, containment buildings, and areas subject to spills. [See proposed R18-8-264(A) and (E); R18-8-265(A) and (E)] The standards that apply to persons choosing not to participate in the voluntary programs are unchanged by the rule. In any event, the commenter raises an issue with a feature of the rule not being amended in this rule package.

No change to the rules.

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

Not applicable

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

Federal Citation	State Citation
40 CFR 260	R18-8-260(C)
40 CFR 261	R18-8-261(A)
40 CFR 262	R18-8-262(A)
40 CFR 263	R18-8-263(A)
40 CFR 264	R18-8-264(A)

40 CFR 265	R18-8-265(A)
40 CFR 266	R18-8-266(A)
40 CFR 268	R18-8-268
40 CFR 270	R18-8-270(A)
40 CFR 124	R18-8-271(A)
40 CFR 273	R18-8-273

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE MANAGEMENT

ARTICLE 2. HAZARDOUS WASTES

Section

ARTICLE 2. HAZARDOUS WASTES

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

A. Federal regulations cited in this Article are those revised as of ~~September 6, 2005~~ July 1, 2006 (and no future editions), unless otherwise noted. 40 CFR 124, 260 through 266, 268, 270 and 273 or portions of these regulations, are incorporated by reference, as noted in the text. Federal statutes and regulations that are cited within 40 CFR 124, 260 through 270, and 273 that are not incorporated by reference may be used as guidance in interpreting federal regulatory language.

B. No change

C. All of 40 CFR 260 and the accompanying appendix, revised as of ~~September 6, 2005~~ January 29, 2007 (and no future editions), with the exception of 40 CFR 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the Department of Environmental Quality (DEQ). Copies of 40 CFR 260 are available at www.gpoaccess.gov/cfr/index.html.

D. No change

1. No change
2. No change
   a. No change
      i. No change
      ii. No change
   b. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
   c. No change
      i. No change
      ii. No change

iii. No change
d. No change
i. No change
ii. No change
iii. No change
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f. No change
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ii. No change
iii. No change
iv. No change
v. No change

E. No change
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28. No change
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F. No change
1. No change
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   b. No change
   c. No change
4. ["Member of the Performance Track Program" or "Performance Track member facility" means a facility or generator that has been accepted by EPA for membership in ~~its~~ the National Environmental Performance Track Program (as described at http://www.epa.gov/performancetrack/) and by DEQ for membership in the Arizona Environmental Performance Track Program (as described at http://www.azdeq.gov/function/about/track.html) and is still a member of both programs. The Environmental Performance Track Programs are voluntary programs for top environmental performers. ~~that encourage continuous environmental improvement through the use of~~ Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.]
5. No change
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   b. No change

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3. No change

N. No change

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

A. All of 40 CFR 261 and accompanying appendices, revised as of ~~September 6, 2005~~ January 29, 2007 (and no future editions), with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 261 are available at www.gpoaccess.gov/cfr/index.html.

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

I. § 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 (40 CFR 266, 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)] (40 CFR 266, subpart H);
(iii) Recyclable materials from which precious metals are reclaimed (40 CFR 266, subpart F);
(iv) Spent ~~leadacid~~ lead acid batteries that are being reclaimed (40 CFR 266, subpart G).
(v) U.S. Filter Recovery Services XL waste (40 CFR 266, subpart O).

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

J. No change
K. No change

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

A. All of 40 CFR 262 and the accompanying appendix, revised as of ~~September 6, 2005~~ July 14, 2006 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 262 are available at www.gpoaccess.gov/cfr/index.html.
B. No change
1. No change
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3. No change

C. No change
D. No change
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F. No change
G. No change
H. No change
I. No change
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J. No change
K. No change
L. No change
M. No change

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

A. All of 40 CFR 263, revised as of ~~September 6, 2005~~ July 1, 2006 (and no future editions), is incorporated by reference, modified by the following subsections of R18-8-263, and on file with the DEQ. Copies of 40 CFR 263 are available at www.gpoaccess.gov/cfr/index.html.
B. No change
C. No change
D. No change
E. No change

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

A. All of 40 CFR 264 and accompanying appendices, revised as of ~~September 6, 2005~~ July 14, 2006 (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149, 264.150, and 264.301(l), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 264 are available at www.gpoaccess.gov/cfr/index.html.
B. No change
C. No change
D. No change
1. No change
2. No change

E. § 264.15 titled "General inspection requirements," paragraph (b)(5)(i) is amended by replacing "National Environmental Performance Track Program" with "Performance Track Program."
~~**E.**~~**F.** No change
~~**F.**~~**G.** No change
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6. No change

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

A. All of 40 CFR 265 and accompanying appendices, revised as of ~~September 6, 2005~~ July 14, 2006 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 265 are available at www.gpoaccess.gov/cfr/index.html.
B. No change
C. No change
D. No change
1. No change
2. No change

E. § 265.15 titled "General inspection requirements," paragraph (b)(5)(i) is amended by replacing "National Environmental Performance Track Program" with "Performance Track Program."
~~**E.**~~**F.** No change
~~**F.**~~**G.** No change

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

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

A. All of 40 CFR 266 and accompanying appendices, revised as of ~~July 14, 2005~~ July 14, 2006 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 266 are available at www.gpoaccess.gov/cfr/index.html.

B. No change

R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, revised as of ~~August 23, 2005~~ July 14, 2006 (and no future editions), with the exception of Part 268, Subpart B, is incorporated by reference and on file with the DEQ. Copies of 40 CFR 268 are available at www.gpoaccess.gov/cfr/index.html.

R18-8-270. Hazardous Waste Permit Program

A. All of 40 CFR 270, revised as of ~~August 5, 2005~~ July 14, 2006 (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, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 270 are available at www.gpoaccess.gov/cfr/index.html.

B. No change
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S. No change

R18-8-271. Procedures for Permit Administration

A. All of 40 CFR 124 and the accompanying appendix, revised as of ~~July 1, 2005~~ July 1, 2006 (and no future editions), relating to HWM facilities, with the exception of §§ 124.1 (b) through (e), 124.2, 124.4, 124.16, 124.20 and 124.21, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 124 are available at www.gpoaccess.gov/cfr/index.html.
B. No change
C. No change
D. 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

All of 40 CFR 273, revised as of ~~August 5, 2005~~ July 14, 2006 (and no future editions), is incorporated by reference and on file with the DEQ. Copies of 40 CFR 273 are available at www.gpoaccess.gov/cfr/index.html.