

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. 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 15. REVENUE

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

PREAMBLE

- 1. Sections Affected**

Article 15	Amend
R15-5-1502	Amend
R15-5-1506	Amend
R15-5-1507	Amend
R15-5-1512	Amend
R15-5-1513	Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 42-1005 and 42-5003
Implementing statute: A.R.S. § 42-5071
- 3. The effective date of the rules:**

July 18, 2000
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 5 A.A.R. 3235, September 17, 1999
Notice of Proposed Rulemaking: 6 A.A.R. 949, March 10, 2000
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

These rules provide guidance regarding the application of transaction privilege tax to persons engaged in the business of leasing tangible personal property. As a result of legislative changes and the 5-year review of *Arizona Administrative Code* ("A.A.C.") Title 15, Chapter 5, the Department is proposing to amend or repeal these rules because the rules are obsolete, repetitive, or contrary to current statute. The Department also proposes to amend these rules to conform with current rulemaking guidelines.
- 7. Reference to any study that the agency relied on and its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable

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

Not applicable

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

It is expected that the benefits of the rules will be greater than the costs. The repeal of R15-5-1513 will benefit the public by eliminating an obsolete rule that no longer serves its intended purpose. The amendment of R15-5-1502, R15-5-1506, R15-5-1507, and R15-5-1512 will benefit the public by providing additional guidance regarding the application of transaction privilege tax under the personal property rental classification. In addition, these proposed amendments will benefit the public by providing clearer and more concise information regarding the taxability of certain lease activities under the personal property rental classification. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

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

Based on the review performed by the staff of the Governor's Regulatory Review Council, the Department made various nonsubstantive grammatical changes.

11. A summary of the principal comments and the agency response to them:

The Department did not receive any written or verbal comments on the rule action after the publication of the rule-making in the Notice of Proposed Rulemaking.

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 the rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 15. REVENUE

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

ARTICLE 15. ~~SALES TAX~~ ~~RENTAL OF PERSONAL PROPERTY~~
RENTAL CLASSIFICATION

Sections

R15-5-1502. General

R15-5-1506. Rental of ~~Tangible Personal Property~~ property to ~~Government~~ government Agencies agencies

R15-5-1507. Rental of ~~Tangible Personal Property~~ property to ~~Schools~~ schools, ~~Churches~~ churches, and ~~Other~~ other ~~Nonprofit~~ nonprofit ~~Organizations~~ organizations

R15-5-1512. Lease – ~~Purchase~~ purchase ~~Agreements~~ agreements

R15-5-1513. ~~Data processing equipment~~ Repealed

ARTICLE 15. ~~SALES TAX~~ ~~RENTAL OF PERSONAL PROPERTY~~ RENTAL CLASSIFICATION

R15-5-1502. General

- A. Gross income derived from the rental of tangible personal property is included in subject to the tax base under the personal property rental this classification unless a specific statutory exemption, exclusion, or deduction applies. Examples of tangible personal property include: televisions, cars, ~~and~~ trucks, lawnmowers, floor polishers, tuxedos, uniforms, furniture, towels, and linens.
- B. In this Article For purposes of this rule, the terms "lease," "rental," "renting", and ~~or~~ "leasing" are used synonymously.
- C. Gross income from the lease of tangible personal property to a lessee who subleases the property is not taxable under the personal property rental classification if the lessee is engaged in the business of leasing the property under the personal property rental classification. Income from the subleasing of personal property, or any portion thereof, is taxable under this classification. No deduction is allowed for rental payments made to another lessor.
- D. Gross ~~The~~ gross income from the rental of tangible personal property includes charges ~~made~~ for installation, labor, insurance, maintenance, and repairs, pick-up, delivery, assembly, set-up, title and license fees, personal property taxes, and penalty fees ~~lieu taxes~~ even if though these such charges are may be billed as separate items, unless a specific statutory exemption, exclusion, or deduction applies.

E. When an automobile, truck or other vehicle, required to be registered and licensed by the laws of this state, is rented or leased for a period exceeding 1 year and the lessee pays the cost of license renewal, the amount so paid shall be included in the gross rental income of the lessor.

R15-5-1506. Rental of Tangible Personal Property ~~property~~ to Government ~~government~~ Agencies ~~agencies~~

~~A lessor's gross income~~ Income from the rental of tangible personal property to the United States Government, the State of Arizona, or and all other governmental subdivisions; is taxable subject to the tax under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies.

R15-5-1507. Rental of Tangible Personal Property ~~property~~ to Schools ~~schools~~, Churches ~~churches~~, and Other ~~other~~ Nonprofit ~~nonprofit~~ Organizations ~~organizations~~

~~A lessor's gross income~~ Income from the rental of tangible personal property to a school, church, or schools, churches, and other nonprofit organization organizations is taxable under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies.

R15-5-1512. Lease – Purchase ~~purchase~~ Agreements ~~agreements~~

- A. ~~A lessor's gross income~~ Income from the leasing of tangible personal property that includes with an option to purchase the tangible personal property article is taxable under the personal property rental this classification until the lessee exercises such time as the purchase option to purchase is exercised.
- B. Gross income ~~Payments~~ received after the lessee exercises the purchase option ~~has been exercised~~ is ~~are~~ taxable under the retail classification (see Article 18).

R15-5-1513. Data processing equipment ~~Repealed~~

- A. ~~Income from the leasing or renting of data processing equipment (hardware) and any other item of tangible personal property located within this state is taxable under this classification.~~
- B. ~~Income from services rendered in whole or in part in connection with the use of such hardware is exempt, including income from the multiple use of hardware wherein no single customer has exclusive use of the equipment for a fixed period of time, or where the customer does not exclusively control all manual operations necessary to operate the equipment, or both.~~
- C. ~~Income from professional and technological services such as classroom education, systems support engineering services and computer programs (software), is tax exempt.~~
- D. ~~When rental income is received together with income from exempt services, the charges for each shall be separately stated on billings and invoices or otherwise clearly reflected in the books and records of the taxpayer. If not so separately stated, the gross income from such transaction is taxable.~~
- E. ~~Income from transactions involving services rendered and including tangible property as inconsequential elements thereof is exempt.~~

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY

WASTE MANAGEMENT

PREAMBLE

1. Sections Affected

Rulemaking Action

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

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

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

Implementing statute: A.R.S. § 49-922

3. The effective date of the rules:

July 24, 2000

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

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

Notice of Proposed Rulemaking: 6 A.A.R. 1480, April 21, 2000

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

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

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- A. Incorporations by Reference.
- B. Descriptions of the federal rules incorporated by reference.
- C. State-initiated changes.

EXPLANATION OF THE RULE

A. Incorporations by Reference.

The Arizona Department of Environmental Quality (ADEQ) is amending the state's hazardous waste rules to incorporate the text of federal regulations for the purpose of obtaining re-authorization of the State's hazardous waste management program by the United States Environmental Protection Agency (EPA). The state's hazardous waste rules are generally comprised of the federal regulations authorized by Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, which are incorporated by reference. The hazardous waste rules are well established and have been effective since 1984. This year's amendments cover changes in the federal regulations promulgated between July 2, 1998 and July 1, 1999.¹

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

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

A change made in the rules by the incorporations by reference is to replace July 1, 1998 with July 1, 1999 in subsection (A) of most Sections. Subsection (A) of Sections R18-8-260, R18-8-261, R18-8-262, R18-8-263, R18-8-264, R18-8-265, R18-8-266, R18-8-268, R18-8-270, R18-8-271, and R18-8-273 incorporate by reference the federal regulations published in 40 CFR 260 through 266, 268, 270, 124, and 273 as of July 1, 1999.

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

B. Descriptions of the federal rules incorporated by reference.

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

1. Rule Title: Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities. EPA is listing 4 petroleum refining process wastes as hazardous (K169-K172). The wastes will be subject to stringent management and treatments standards and emergency notification requirements. The rule excludes certain recycled secondary materials from the definition of solid waste. These materials include both oil-bearing residuals from petroleum refineries and oil from associated petrochemical facilities when they are inserted into the petroleum refining process; and spent caustic from liquid treating operations when used as a feedstock to make certain chemical products. The rule clarifies an existing exclusion for recovered oil from certain petroleum industry sources. Finally, this rule applies the universal treatment standards to the petroleum refining wastes. In addition, on October 9, 1998, EPA changed the effective date of certain portions of this rule to be consistent with sections 801 and 808 of the Congressional Review Act. This rule can be found at 63 FR 42110, August 6, 1998 and 63 FR 54356, October 9, 1998.
2. Rule Title: Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088). EPA is announcing interim replacement standards for spent potliners from primary aluminum reduction under its Land Disposal Restrictions program. Spent potliners will now be prohibited from land disposal unless the wastes have been treated in compliance with the numerical standards contained within this rule. The newly promulgated treatment standards will be in place until EPA has fully reviewed all information on all treatment processes which may serve as a basis for a more permanent revised standard. In addition, EPA extended the K088 national capacity variance until September 21, 1998. This rule can be found at 63 FR 51254, September 24, 1998.
3. Rule Title: Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process. This rule modifies the requirement for a post-closure permit, to allow EPA and the authorized states to use a variety of authorities to impose requirements on non-permitted land disposal units requiring post-closure care. As a result, regulators have the flexibility to use alternate mechanisms under a variety of authorities to address post-closure care requirements, based on the particular needs at the facility. This rule also amends the regulations governing closure of land-based units that have released hazardous constituents, to allow certain regulated units where releases may have mingled with releases from solid waste management units to be addressed through the corrective action program. This will provide regulators the discretion to use corrective action requirements, rather than closure requirements, to address the closure of these regulated units. Finally, this rule specifies the Part B information submission requirements for facilities that receive post-closure permits. This rule can be found at 63 FR 56710, October 22, 1998.
4. Rule Title: Hazardous Remediation Waste Management Requirements (HWIR-Media). This rule streamlines permitting for treatment, storage and disposal of remediation wastes managed at cleanup sites. The new requirements: 1) make permits faster and easier to obtain, 2) provide that obtaining these permits will not subject the owner/operator to facility-wide corrective action at remediation-only facilities, and 3) allow the use of Remediation Action Plans (RAPs) as an alternative to traditional RCRA permits.

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EPA is also finalizing regulations regarding use of staging piles during cleanup and providing an exclusion for dredged materials managed under appropriate Clean Water Act or Marine Protection, Research and Sanctuaries Act permits. Although not applicable to this rule, EPA has also finalized streamlined procedures for state authorization of certain rules. A table has been added to 40 CFR 271.21 which lists the rules which may be submitted for authorization using the streamlined procedures. This rule can be found at 63 FR 65874, November 30, 1998.

Note: The time spent in reviewing, approving, or denying a RAP application falls under the Licensing Time Frame (LTF) rules. As such, ADEQ will include the review and permit issuance or denial time frames applicable to the RAP application in its next amendment to the LTF rules.

5. Rule Title: Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program). This rule corrects errors that appeared in the May 11, 1995 Universal Waste Rule (60 FR 25492). No new regulatory requirements are created with this rule. This rule 1) makes 3 corrections to regulations governing the management of spent lead-acid batteries that are reclaimed, 2) corrects the definition of a small quantity universal waste handler, and 3) clarifies the export requirements which apply to destination facilities when the facilities act as universal waste handlers. This rule can be found at 63 FR 71225, December 24, 1998.
6. Rule Title: Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers. Previously, the EPA set standards to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment (59 FR 62896, December 6, 1994). The standards were amended by the December 8, 1997 rule (62 FR 64636) in response to public comments and inquiries. This rule's amendments further clarify certain regulatory text and reinstate certain regulatory provisions that were previously contained in the rules and later inadvertently removed. This rule can be found at 64 FR 3382, January 21, 1999.
7. Rule Title: Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Exemption for Leachate from Non-Hazardous Waste Landfills. This rule is temporarily deferring from the definition of hazardous waste landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes (K169, K170, K171, and K172). This exemption applies to landfill leachate and gas condensate subject to regulation under the Clean Water Act. The exempted leachate may not ordinarily be managed in surface impoundments or otherwise placed on the land after February 13, 2001, except for the purpose of providing storage under emergency conditions. This rule can be found at 64 FR 6806, February 11, 1999.
8. Rule Title: Land Disposal Restrictions -- Phase IV: Treatment Standards for Wood Preserving Wastes, Metal Wastes, and Zinc Micronutrient Fertilizers, and Carbamate Treatment Standards, and K088 Treatment Standards. This rule clarifies and makes technical corrections to the following 5 final rules published by EPA: 1) May 12, 1997, regulations promulgating LDR treatment standards for wood preserving wastes, as well as reducing the paperwork burden for complying with LDRs; 2) May 26, 1998, regulations promulgating LDR treatment standards for metal-bearing wastes, as well as amending the LDR standards for soil contaminated with hazardous wastes, and amending the definition of which secondary materials from mineral processing are considered to be wastes subject to the LDRs; 3) August 31, 1998, an administrative stay of the metal-bearing waste treatment standards as they apply to zinc micronutrient fertilizers; 4) September 4, 1998, an emergency revision of the LDR treatment standards for hazardous wastes from the production of carbamate wastes; and 5) September 24, 1998, revised treatment standards for spent aluminum potliners from primary aluminum production. This rule can be found at 64 FR 25408, May 11, 1999.
9. Rule Title: Guidelines for Establishing Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Under the Clean Water Act and Resource Conservation and Recovery Act. This rule approves use of EPA Method 1664, Revision A: N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated N-Herane Extractable Material (SGT-HEM; Non-Polar Material) by Extraction and Gravimetry (Method 1664) for use in EPA's Clean Water Act (CWA) programs, and incorporates Method 1664 by reference for use in EPA's Resource Conservation and Recovery Act (RCRA) programs. The rule also deletes Method 9070 and adds revised Method 9071B as Update IIIA to the Third Edition of the EPA-approved test methods manual SW-846. EPA has taken these actions as a part of its effort to reduce dependency on use of chorofluorocarbons (CFCs) to protect the Earth's ozone layer and to meet the CFC phaseout agreed to in the Montreal Protocol and required by the Clean Air Act Amendments of 1990. This rule can be found at 64 FR 26315, May 14, 1999.

10. Rule Title: Land Disposal Restrictions Phase IV- Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Metals and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters. Due to numerous unresolved issues (definition of reverts; reuse of used refractory bricks; uniquely associated concept, point of generation, and production; reclamation of alternate feedstocks as apposed to reuse of effective substitutes for commercial products) between the Arizona Mining Association and EPA concerning mineral processing secondary materials exclusion, last year ADEQ did not incorporate the mineral processing secondary materials exclusion portion of this rule in the rulemaking that became effective November 15, 1999. Further clarification and guidance from EPA has been and is still expected on these issues. All other portions of this rule were incorporated in the previous rulemaking process. Although the issues have not been resolved, ADEQ, with the support of the Arizona Mining Association, has decided to proceed with the incorporation of the mineral processing secondary materials exclusion in this current rulemaking. This rule can be found in EPA's RCRA Checklist 167D and at 63 FR 28556, May 26, 1998.

[Note: On April 21, 2000, the Circuit Court of Appeals for the District of Columbia has set aside part of this rule. In essence, the Court ruled that mineral processing secondary materials intended for reuse are not solid wastes, and that EPA's contention that these materials are not solid wastes only if certain conditions are met, represents an inappropriate expansion of EPA's regulations. The Court directed EPA to eliminate this provision from its regulation. In the absence of any knowledge of how EPA intends to react to this decision (e.g., appeal), ADEQ is incorporating this rule with the intention of enforcing the rule in accordance with the Court's decision].

C. State-initiated changes.

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

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

Not Applicable

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:

A. Rule Identification

This hazardous waste rulemaking, identified as the 1998-99 amendments to the hazardous waste management rules, is codified in the *Arizona Administrative Code* as follows: Title 18, Chapter 8, Article 2.

This EIS provides a general assessment of 10 federal rules incorporated by reference (see Table 1). An additional final rule that was published in October of 1998, merely corrected the effective date of the 1st rule so it was combined in the table. In addition to incorporating changes in federal law, published as final rules in the *Federal Register* (FR) between mid-1998 and mid-1999, ADEQ is making 3 state-initiated changes that have no impact.

B. Background Information

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

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

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

C. Expected Impacts

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

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

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

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

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

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

All but 1 portion of Rule 10 was incorporated during the previous rulemaking. Due to numerous unresolved issues between the Arizona Mining Association and EPA concerning mineral processing secondary materials exclusion, ADEQ did not incorporate the mineral processing secondary materials exclusion portion of this rule in the rulemaking that became effective November 15, 1999.

These issues include: definition of reverts; reuse of used refractory bricks; uniquely associated concept, point of generation, and production; and reclamation of alternate feedstocks as opposed to reuse of effective substitutes for commercial products. ADEQ is expecting further clarification and guidance on these issues. Although the issues have not been resolved, ADEQ, with the support of the Arizona Mining Association, has decided to proceed with the incorporation of the mineral processing secondary materials exclusion in this rulemaking. ADEQ expects that this rule will result in some increased operating cost to the mining industry.

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

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

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

D. General Impact on Small Businesses and Reduction of Impacts

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

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

ADEQ could not provide additional regulatory relief for small businesses beyond what was built-in by the federal requirements. ADEQ has no authority to exempt a small business, or even establish a less stringent standard or schedule for it, or any business as a matter of fact, from compliance or reporting requirements. Pursuant to A.R.S. § 49-922(A), the state's hazardous waste program must be "equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of the federal act." In addition, the state's non-procedural program standards must not be more stringent than or conflict with federal regulations. Under these conditions, ADEQ cannot provide additional relief to small businesses because it would not be legal or feasible. If ADEQ deviates from these rulemaking provisions, it would jeopardize EPA authorization to administer the federal hazardous waste program in Arizona.

E. Alternative Rulemaking Provisions

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

Table 1 describes the 10 final federal regulations incorporated by reference and their potential impacts. The following acronyms are used in this table:

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

CFCs=chlorofluorocarbons

CWA=Clean Water Act

EPCRA=Emergency Planning and Community Right to Know Act

FR=Federal Register

LDR=land disposal restrictions

LF=landfill

MPRSA=Marine Protection Research and Sanctuaries Act

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NPDES=National Pollutant Discharge Elimination System

POTWs=publicly owned treatment works

RAP=remedial action plan

RCRA=Resource Conservation and Recovery Act

RQ=reportable quantity

TCLP=Toxicity Characteristic Leaching Procedure

TSD=treatment, storage, and disposal

UTS=universal treatment standards

Table 1. Description of Federal Regulations Incorporated by Reference and Potential Impacts

No.	Relevant 40 CFR Parts and FR publication	Effective Date of Rule	Rule Description (action) and National Impact	Entities Potentially Impacted and General Impacts
1	261, 266, 268, (63 FR 42110, pub. 8-06-98) NOTE: 63 FR 54356, pub. 10-09-98, corrects the effective date of this final rule	2-08-99 (deregulatory amendments), 12-08-98 (other amendments)	Lists 4 wastes as hazardous wastes generated during petroleum refining and subjects them to stringent management and treatment standards under RCRA and to emergency notification requirements for releases (K169-K172). Benzene and arsenic are the key constituents of concern for these wastes. This rule also excludes certain recycled secondary materials from the definition of solid waste and clarifies an existing exclusion for recovered oil from certain petroleum industry sources. Under the LDR program, EPA also is applying UTS to the listed petroleum refining wastes. These listed wastes must now meet treatment standards for specific constituents before land disposal. Nationally, this rule is expected to minimize threats to human health and the environment, and the exclusion potentially could encourage material recovery.	Businesses that handle the waste streams added to EPA's list of hazardous waste under RCRA and to the CERCLA list (K169 through K172) or entities that respond to releases of these listed hazardous wastes (state/local emergency response teams). These include SIC codes 2911 and 2869. EPA estimates the economic impact on the industry to be very slight. ADEQ expects that the impact on Arizona's only facility to be also very slight.

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2	268 (63 FR 51254, pub. 9-24-98)	9-21-98	<p>Establishes interim treatment standards for spent aluminum potliners generated from primary aluminum reduction (EPA hazardous waste code K088). EPA re-promulgated K088 treatment standards except for fluoride and arsenic. No interim standard was developed for fluoride and arsenic in non-wastewater forms of K088.</p> <p>Under the LDR program, authorized by RCRA, spent potliners will be prohibited from land disposal unless the wastes have been treated in compliance with the numerical standards. This is necessary because hazardous constituents potentially could leach from LFs to groundwater (prohibition of land disposal and establishing treatment standards are the heart of the RCRA hazardous waste management scheme).</p> <p>Nationally, this rule is expected to minimize threats to human health and the environment.</p>	<p>Generators producing spent aluminum potliners (aluminum manufacturing industry), TSD facilities that handle K088, or entities that transport K088. ADEQ predicts there will be no impact in Arizona because no industries involved in primary aluminum reduction (SIC code 3334) are reported to be operating in Arizona.</p>
3	264, 265, 270, (63 FR 56710, pub. 10-22-98)	10-22-98	<p>Makes 2 main changes to closure and post-closure care procedures. It allows, under certain circumstances, owners/operators of land-based facilities that have released hazardous constituents to be subject to state cleanup programs imposing site-specific requirements instead of 40 CFR Part 264 and 265 standards for performing corrective action; and it allows owners/operators of non-permitted land disposal facilities to be subject to alternate mechanisms for post closure instead of post-closure permits.</p> <p>The 1st change, which imposes no new requirements for corrective action, allows more flexible standards (for example, closure and groundwater monitoring). The 2nd change, which potentially represents a cost-savings benefit, can result in permit avoidance for post-closure care and eliminate duplicated efforts.</p> <p>Nationally, this rule is expected to allow flexibility while maintaining protection of human health and the environment. It also is expected to improve efficiency by reducing regulatory confusion.</p>	<p>Owners/operators of closed and closing hazardous waste management facilities (LFs, surface impoundments, waste piles, or land treatment units). Since this rule imposed no new requirements, ADEQ expects it to impact entities only in a positive manner which could provide cost-saving benefits to some facility owners/ operators.</p>

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4	260, 261, 264, 265, 268, 270, (63 FR 65874, pub. 11-30-98)	6-01-99	Streamlines permitting for treatment, storage and disposal of remediation wastes managed at cleanup sites. These new requirements: (1) make permits faster and easier to obtain; (2) provide that obtaining these permits will not subject the owner/operator to facility-wide corrective action at remediation-only facilities; (3) allow the use of Remediation Action Plans (RAPs) as an alternative to traditional RCRA permits; and (4) exclude dredged materials from RCRA Subtitle C if they are managed under CWA and MPRSA (removes the potential for duplicative effort). Nationally, this rule is expected to provide cost-saving benefits to some entities (\$ 5-35 million or more).	Owners/operators of TSD facilities. Because this rule provides cost-saving benefits to regulated entities, ADEQ does not expect any negative impacts to occur. It potentially makes permits for treating, storing, and disposing of remediation wastes faster and easier to obtain. Therefore, this rule provides regulatory relief and potentially could promote additional cleanups more efficiently.
5	266, 273 (63 FR 71225, pub. 12-24-98)	12-24-98	Corrects technical errors to a previously published final rule (Universal Waste Rule, published 5-11-95 in 60 FR 25492). It creates no new regulatory requirements, but merely reinstates regulatory language that was mistakenly changed and provides clarification. In summary, this rule does the following: (1) makes 3 corrections to regulations governing the management of spent lead-acid batteries that are reclaimed, (2) corrects the definition of a small quantity universal waste handler, and (3) clarifies the export requirements that apply to destination facilities acting as universal waste handlers. Nationally, this rule is not expected to have an impact.	Permitted and interim status facilities that handle spent lead-acid batteries, including destination facilities acting as universal waste handlers, and other waste handlers (small quantity). Since this rule imposed no new requirements, ADEQ does not expect it to impact any facility or handler in Arizona.

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6	262, 264, 265 (64 FR 3382, pub. 1-21-99)	1-21-99	Makes clarifying amendments and re-establishes requirements that were inadvertently removed. This rule makes technical corrections to the final Subpart AA and Subpart CC rules. This was done to clarify the regulatory text of the final standards, to interpret the standards, and to correct typographical, printing, and grammatical errors. The rule does not add new control requirements. Nationally, this rule is not expected to have an impact. However, because overall information-keeping requirements are being reduced (from previously published requirements), cost-saving benefits potentially could accrue to some entities.	TSD facilities subject to RCRA Subtitle C permitting requirements or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers under 40 CFR 262.34(a). Since none of the changes resulted in additional requirements, ADEQ does not expect an impact to any of Arizona's industries.
7	261 (64 FR 6806, pub. 2-11-99)	2-05-99	Temporarily defers LF leachate and LF condensate, which are subject to regulation under the CWA, derived from previously disposed wastes (before the effective date of the listing) that meet the listing descriptions of the recently added petroleum refinery wastes (the leachate otherwise would be considered a listed hazardous waste). This is because the 4 hazardous waste listings for petroleum wastes (K169 through K172, promulgated 8-06-98, 63 FR 42110) may have potentially significant impacts on the management of leachate collection from certain nonhazardous waste LFs. However, as a condition for this deferral, the leachate cannot be managed in surface impoundments or otherwise placed on land after 2-13-01, except for the purpose of providing storage under temporary or emergency conditions.	ADEQ does not expect an impact to LFs that historically received any of the newly listed petroleum refinery wastes (K169-K172) and that generate LF leachate or LF gas condensate because of the temporary deferral. Like-wise, ADEQ does not anticipate an impact to POTWs or waste haulers in Arizona.
8	261, 262, 268 (64 FR 25408, pub. 5-11-99)	5-11-99	Corrects and clarifies 5 previous final rules published in 1997 and 1998 relating to LDR, Phase IV. Nationally, this rule is not expected to have an impact.	Since this rule corrected and clarified previously published rules, ADEQ expects no impact to any Arizona entity.

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

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

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

Changes between the proposed rules and the final rules were minimal. ADEQ made technical changes suggested by the Governor's Regulatory Review Council.

11. A summary of the principal comments and the agency response to them:

The agency received one comment on the proposed rules.

Comment: The Arizona Mining Association (AMA) submitted written comments in a letter dated May 23, 2000, that supports ADEQ's incorporation of the part of the LDR Phase IV rule dealing with mineral processing secondary materials exclusion even though on April 21, 2000, the Circuit Court of Appeals for the District of Columbia set aside part of this rule. In essence, the Court ruled that mineral processing secondary materials intended for reuse are not solid wastes, and that EPA's contention that these materials are not solid wastes only if certain conditions are met, represents an inappropriate expansion of EPA's regulations. The Court directed EPA to eliminate this provision from its regulation. The AMA requested that, "ADEQ specifically acknowledge its intent to implement this rule in accordance with the Court's decision."

ADEQ's Response: In the absence of any knowledge of the actions EPA may take in response to the Court's decision, ADEQ is continuing to proceed with the incorporation of this rule, and intends to enforce this rule in accordance with the Court's decision pending any further resolution of this issue

Phase IV LDR was final for EPA on May 28, 1998. We have already adopted all portions of this rule except for the mineral processing secondary materials exclusion provision. The recent court ruling sets aside the § 261.2(c)(3) exception for solid wastes being reclaimed, but does not affect the conditional exclusions for secondary materials that are solid wastes. Therefore, incorporating the rule now allows ADEQ to stay current with Phase IV LDR rules and makes the conditional exclusions for secondary materials that are solid wastes available for facilities to use in Arizona, while awaiting further action by EPA in response to the Court's ruling.

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

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

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

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

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE MANAGEMENT**

ARTICLE 2. HAZARDOUS WASTES

Sections

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

ARTICLE 2. HAZARDOUS WASTES

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

- A.** Federal and state statutes and regulations cited in these rules are those adopted as of July 1, ~~1998~~ 1999, unless otherwise noted. 40 CFR 124, 260 through 266, 268, 270 and 273 or parts thereof, are adopted by reference when so noted. Federal statutes and regulations that are cited within 40 CFR 124, 260 through 270, and 273 that are not adopted by reference may be used as guidance in interpreting federal regulatory language.
- B.** No change.
- C.** All of 40 CFR 260 and the accompanying appendix, as amended as of July 1, ~~1998~~ 1999, (and no future editions), with the exception of §§ 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33, are incorporated by reference and modified by the following subsections of R18-8-260 and are on file with the Department of Environmental Quality (DEQ) and the Office of the Secretary of State.
- D.** No change.
 - 1. No change.
 - 2. No change.
 - a. No change.
 - i. No change.
 - ii. No change.
 - b. No change.
 - i. No change.
 - ii. No change.
 - iii. No change.

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- iv. No change.
- c. No change.
 - i. No change.
 - ii. No change.
 - iii. No change.
- d. No change.
 - i. No change.
 - ii. No change.
 - iii. No change.
- e. No change.
 - i. No change.
 - (1) No change.
 - (2) No change.
 - ii. No change.
 - (1) No change.
 - (2) No change.
 - iii. No change.
 - (1) No change.
 - (2) No change.
 - (3) No change.
 - (4) No change.
- f. No change.
 - i. No change.
 - ii. No change.
 - iii. No change.
 - iv. No change.
 - v. No change.
- E.** No change.
 - 1. No change.
 - 2. No change.
 - 3. No change.
 - 4. No change.
 - 5. No change.
 - 6. No change.
 - 7. No change.
 - 8. No change.
 - 9. No change.
 - 10. No change.
 - 11. No change.
 - 12. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.
 - e. No change.
 - f. No change.
 - g. No change.
 - h. No change.
 - i. No change.
 - 13. No change.
 - 14. No change.
 - 15. No change.
 - 16. No change.
 - 17. No change.
 - 18. No change.
 - 19. No change.
 - 20. No change.
 - 21. No change.
 - 22. No change.

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- a. No change.
- b. No change.
- 23. No change.
- 24. No change.
- 25. No change.
- 26. No change.
- 27. No change.
- 28. No change.
- 29. No change.
- 30. No change.
- 31. No change.
- 32. No change.
- F.** No change.
 - 1. No change.
 - 2. No change.
 - 3. No change.
 - a. No change.
 - b. No change.
 - 4. No change.
 - 5. No change.
 - 6. No change.
 - a. No change.
 - b. No change.
 - 7. No change.
- G.** No change.
- H.** No change.
- I.** No change.
- J.** No change.
- K.** No change.
- L.** No change.

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- M.** No change.
1. No change.
 2. No change.
 3. No change.

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

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

B. No change.

C. § 261.2, titled “Definition of solid waste”, paragraphs (e)(3), (e)(4)/Table, and (e)(1)(iii) are amended as follows:

- (e)(3) Delete the following phrase at the end of the sentence: “(except as provided under 40 CFR 261.4(a)(15)). Materials noted with a “” in column 3 of Table 1 are not solid waste when reclaimed (except as provided under 40 CFR 261.4(a)(15))”.
- (e)(4)/Table Delete the following phrase in the third column heading: “(except as provided in 261.4(a)(15) for mineral processing secondary materials)”.
- (e)(1)(iii) Delete the following sentence at the end of the paragraph: “Where materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion at 261.4(a)(15) apply.”

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

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

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

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

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

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

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

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

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

- (a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this Section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this Section. Hazardous wastes that are recycled [shall] be known as “recyclable materials.”
- (2) The following recyclable materials are not subject to the requirements of this section but are regulated under [40 CFR 266, subparts C, F, G, and H (as incorporated by R18-8-266)] and all applicable provisions in parts 270 and 124 of this Chapter [(as incorporated by R18-8-270 and R18-8-271)]:
- (i) Recyclable materials used in a manner constituting disposal (subpart C);
 - (ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O (as incorporated by R18-8-264 and R18-8-265)] (subpart H);
 - (iii) Recyclable materials from which precious metals are reclaimed (subpart F);
 - (iv) Spent lead-acid batteries that are being reclaimed (subpart G).
- (3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124 (as incorporated by R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and are not subject to the notification requirements of section 3010 of RCRA:
- (i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in § 262.58:
 - (A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, [shall] comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56 (a)(1)-(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in subpart E of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

- (B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.
 - (ii) Scrap metal that is not excluded under § 261.4(a)(13);
 - (iii) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12) (as incorporated by R18-8-261);
 - (iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;
 - (B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining[,] production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under [A.R.S. § 49-801]; and
 - (C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under [A.R.S. § 49-801]; and
 - (~~v~~) ~~Petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in part 261, subpart C [(as incorporated by R18-8-261)].~~

- K. No change.
- L. No change.
- M. No change.
- N. No change.

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

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

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

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

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

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

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

- A. All of 40 CFR 265 and accompanying appendices, as amended as of July 1, ~~1998~~ 1999 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, are incorporated by reference and modified by the following subsections of R18-8-265, and are on file with the DEQ and the Office of the Secretary of State.
- B. No change.
- C. No change.
- D. No change.
 - 1. No change.
 - 2. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.
- ~~K.~~ § 265.193, titled "Containment and detection of releases" (as incorporated by R18-8-265), is amended by adding the following: For existing underground tanks and associated piping systems not yet retrofitted in accordance with § 265.193, the owner or operator shall insure that:
 - ~~1. A level must be measured daily;~~
 - ~~2. A material balance must be calculated and recorded daily; and~~
 - ~~3. A yearly test for leaks in the tank and piping system, using a method approved by DEQ must be performed.~~
- ~~L.~~ K. No change.
- ~~M.~~ L. No change.
- M. § 265.193, titled "Containment and detection of releases" (as incorporated by R18-8-265), is amended by adding the following: For existing underground tanks and associated piping systems not yet retrofitted in accordance with § 265.193, the owner or operator shall ensure that:
 - 1. A level must be measured daily;
 - 2. A material balance must be calculated and recorded daily; and
 - 3. A yearly test for leaks in the tank and piping system, using a method approved by DEQ must be performed.

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

- A. All of 40 CFR 266 and accompanying appendices as amended as of July 1, ~~1998~~ 1999 (and no future editions), are incorporated by reference and are on file with the DEQ and the Office of the Secretary of State.
- B. § 266.100, titled "Applicability" paragraph (b) is amended as follows:
- (b) The following hazardous wastes and facilities are not subject to regulation under this subpart:
- (1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 [(as incorporated by R18-8-261)] of this Chapter. Such used oil is subject to regulations under [A.R.S. §§ 49-801 through 49-818] rather than this subpart;
 - (2) No change.
 - (3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(~~iv~~-(~~v~~)(iii)-(iv) [as incorporated by R18-8-261] of this Chapter, and hazardous wastes that are subject to special requirements for conditionally exempt small quantity generators under 261.5 [as incorporated by R18-8-261] of this Chapter; and
 - (4) No change.

R18-8-268. Land Disposal Restrictions

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

R18-8-270. The Hazardous Waste Permit Program

- A. All of 40 CFR 270, as amended as of July 1, ~~1998~~ 1999 (and no future editions), with the exception of §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64, is incorporated by reference and modified by the following subsections of R18-8-270 and is on file with the DEQ and the Office of the Secretary of State.
- B. No change.
1. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 2. No change.
 - a. No change.
 - b. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
1. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.
 2. No change.
 3. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - d. An application for a remedial action plan (RAP) submitted pursuant to 40 CFR 270, Subpart H (as incorporated by R18-8-270).
 4. No change.
 5. No change.
 6. No change.
 - a. No change.
 - b. No change.
 7. No change.
 - a. No change.
 - b. No change.
 - c. No change.

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- d. No change.
- e. No change.
- f. No change.
- g. No change.
- h. No change.
- i. No change.
- j. No change.

- 8. No change.
- 9. No change.

H. No change.

I. No change.

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

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

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

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

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

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

K. No change.

L. No change.

M. No change.

N. No change.

O. No change.

P. No change.

Q. No change.

R. § 270.110, titled “What must I include in my application for a RAP?”, is amended by adding paragraphs (j) and (k) as follows:

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

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

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

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

R18-8-271. Procedures for Permit Administration

A. All of 40 CFR 124 and the accompanying appendix as amended as of July 1, ~~1998~~ 1999, (and no future editions), relating to HWM facilities, with the exception of §§ 124.1(b) through (e), 124.2, 124.4, 124.16, 124.20 and 124.21, are incorporated by reference and modified by the following subsections of R18-8-271 and are on file with the DEQ and the Office of the Secretary of State.

B. No change.

C. No change.

D. No change.

E. No change.

F. No change.

G. No change.

H. No change.

I. No change.

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- J. No change.
- K. No change.
- L. No change.
- M. No change.
- N. No change.
- O. No change.
- P. No change.
- Q. No change.
- R. No change.
- S. No change.
- T. No change.

R18-8-273. Standards for Universal Waste Management

- A. All of 40 CFR 273, as amended as of July 1, ~~1998~~ 1999, (and no future editions), is incorporated by reference and modified by the following subsections of R18-8-273 and are on file with the DEQ and the Office of the Secretary of State.
- B. No change.
- C. No change.
 - 1. No change.
 - a. No change.
 - b. No change.
 - 2. No change.
 - a. No change.
 - b. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.