



# Arizona Administrative REGISTER

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# From the Publisher

## ABOUT THIS PUBLICATION

The paper copy of the *Administrative Register* (A.A.R.) is the official publication for rules and rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The Office of the Secretary of State does not interpret or enforce rules published in the *Arizona Administrative Register* or *Code*. Questions should be directed to the state agency responsible for the promulgation of the rule as provided in its published filing.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains the full text of the Governor's Executive Orders and Proclamations of general applicability, summaries of Attorney General opinions, notices of rules terminated by the agency, and the Governor's appointments of state officials and members of state boards and commissions.

## ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rules activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA.

Rulemakings initiated under the APA as effective on and after January 1, 1995, include the full text of the rule in the *Register*. New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

## WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE REGISTER?

The *Arizona Administrative Code* (A.A.C.) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The printed *Code* is the official publication of a rule in the A.A.C., and is prima facie evidence of the making, amendment, or repeal of that rule as provided by A.R.S. § 41-1012. Paper copies of rules are available by full Chapter or by subscription. The *Code* is posted online for free.

## LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking

Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

# Arizona Administrative REGISTER

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This publication is available online for  
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**ADMINISTRATIVE CODE**  
A price list for the *Arizona  
Administrative Code* is available  
online. You may also request a paper  
price list by mail. To purchase a paper  
Chapter, contact us at  
(602) 364-3223.

**PUBLICATION DEADLINES**  
Publication dates are published in the  
back of the *Register*. These dates  
include file submittal dates with a  
three-week turnaround from filing to  
published document.

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# Participate in the Process

## Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

## Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

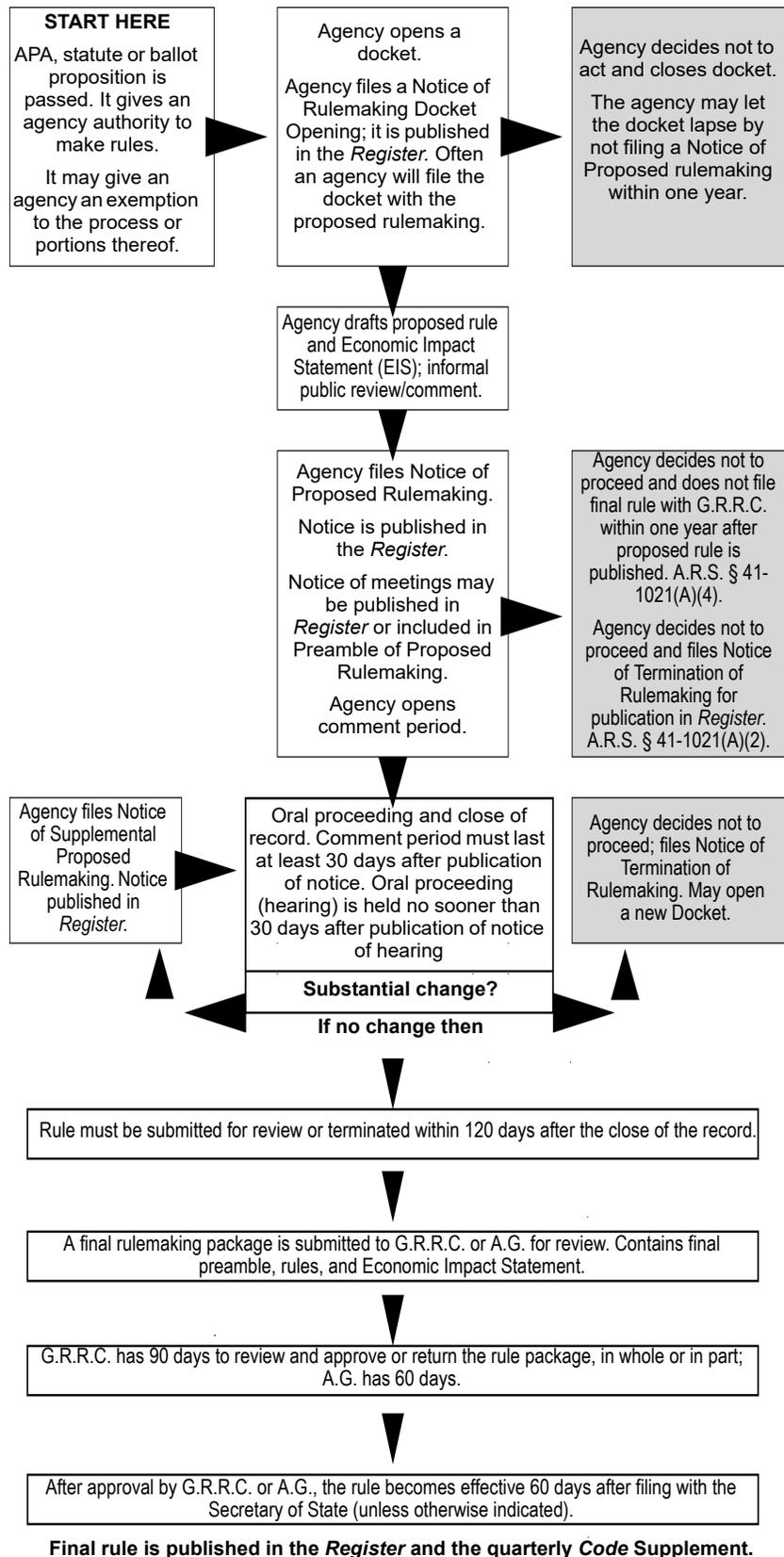
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

## Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

# Arizona Regular Rulemaking Process



## Definitions

**Arizona Administrative Code (A.A.C.):** Official rules codified and published by the Secretary of State's Office. Available online at [www.azsos.gov](http://www.azsos.gov).

**Arizona Administrative Register (A.A.R.):** The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at [www.azsos.gov](http://www.azsos.gov).

**Administrative Procedure Act (APA):** A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at [www.azleg.gov](http://www.azleg.gov).

**Arizona Revised Statutes (A.R.S.):** The statutes are made by the Arizona State Legislature during a legislative session. They are compiled by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at [www.azleg.gov](http://www.azleg.gov).

**Chapter:** A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

**Close of Record:** The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

**Code of Federal Regulations (CFR):** The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

**Docket:** A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

**Economic, Small Business, and Consumer Impact Statement (EIS):** The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

**Governor's Regulatory Review (G.R.R.C.):** Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

**Incorporated by Reference:** An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

**Federal Register (FR):** The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

**Session Laws or "Laws":** When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.," and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at [www.azleg.gov](http://www.azleg.gov).

**United States Code (U.S.C.):** The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

## Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – *Administrative Procedure Act*

A.R.S. – *Arizona Revised Statutes*

CFR – *Code of Federal Regulations*

EIS – *Economic, Small Business, and Consumer Impact Statement*

FR – *Federal Register*

G.R.R.C. – *Governor's Regulatory Review Council*

U.S.C. – *United States Code*

## About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.



**NOTICES OF FINAL RULEMAKING**

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

The final published notice includes a preamble and

text of the rules as filed by the agency. Economic Impact Statements are not published.

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

**NOTICE OF FINAL RULEMAKING  
TITLE 17. TRANSPORTATION  
CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
TITLE, REGISTRATION, AND DRIVER LICENSES**

[R18-85]

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R17-4-501	Amend
R17-4-507	Repeal
R17-4-508	Amend
R17-4-701	Amend
R17-4-702	Amend
R17-4-705	Amend
R17-4-706	Amend
R17-4-707	Amend
R17-4-709	Amend
R17-4-710	Amend
R17-4-712	Amend

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

Authorizing statute: A.R.S. §§ 28-366 and 28-5204  
 Implementing statute: A.R.S. §§ 28-3103, 28-3159(A)(3), and 28-3223

**3. The effective date of the rule:**

May 1, 2018

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

The Arizona Department of Transportation (ADOT) requests that this rulemaking be effective immediately on filing with the Office of the Secretary of State, May 1, 2018, as permitted under A.R.S. § 41-1032, in order to:

**Preserve the public peace, health, and safety.** These rules are made in connection with the required incorporation by reference of the federal motor carrier safety and hazardous materials regulations in 17 A.A.C. 5, Article 2, thus ensuring there is a consistency between ADOT’s regulations, state statute, and the federal regulations. These changes allow for a greater understanding by commercial driver licensees and permittees of what is required of them as it pertains to their physical qualifications and, when applicable, eligibility for a hazardous materials endorsement (HME). These regulations safeguard the public by making sure there are healthy and safe commercial driver licensees and permittees; and

**Avoid a violation of federal law or regulation or state law.** ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28, Chapter 8, and these rules. ADOT is required under A.R.S. § 28-5204(A)(2) to consider, as evidence of generally accepted safety standards, the publications of the United States Department of Transportation and the Environmental Protection Agency when adopting rules necessary to administer and enforce A.R.S. Title 28, Chapter 14. 49 CFR 384 requires that each state comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)), and adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards contained in 49 CFR 383.

The updated incorporation by reference of the federal motor carrier safety and hazardous materials regulations in 17 A.A.C. 5, Article 2, allows the Arizona Department of Public Safety (DPS) to be eligible to apply for an estimated \$10 million in total federal funding from FMCSA.



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

Not applicable

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

Notice of Rulemaking Docket Opening: 23 A.A.R. 2864, October 13, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 2804, October 13, 2017

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

Name: Candace Olson, Rules Analyst  
Address: Government Relations and Policy Development Office  
Department of Transportation  
206 S. 17th Ave., Mail Drop 140A  
Phoenix, AZ 85007  
Telephone: (602) 712-4534  
E-mail: COlson2@azdot.gov  
Web site: <http://www.azdot.gov/about/GovernmentRelations>

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

ADOT, in partnership with DPS, is engaged in rulemaking to incorporate parts of the 2016 edition of the *Code of Federal Regulations* and sections of 82 FR 5292, January 17, 2017, in 17 A.A.C. 5, Article 2. Both ADOT and DPS rely on federal monies that require the adoption of federal motor carrier safety and hazardous materials regulations. The incorporation of these parts and sections of the *Code of Federal Regulations* impacts ADOT's rules concerning commercial driver license (CDL) physical qualifications and HMEs. ADOT engages in this rulemaking to ensure its rules are consistent and current with federal regulations, including the requirement that a CDL medical exam be performed by only medical examiners listed on the National Registry of Certified Medical Examiners, requiring a medical examiner's certificate be carried for only 15 days after issuance, and incorporating the 2016 version of 49 CFR 1572 for the HMEs.

In addition to updating the federal regulation reference in 17 A.A.C. 4, Article 7, ADOT is removing unnecessary requirements in R17-4-712 since verification of the U.S. Transportation Security Administration (TSA) approval occurs at time of credential issuance and all transfer applicants will have existing TSA approval and ADOT is reformatting subsection (B) to accurately depict the current process of verifying the TSA approval before issuing the CDL with an HME.

ADOT is also repealing R17-4-507; this rule is unnecessary since it is duplicative of language found under A.R.S. §§ 28-3158, 28-3165, and 28-3166.

Additional changes include removing definitions that are not used, updating terminology, ensuring verbiage concerning administrative hearings is consistent, and making minor technical changes to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

**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:**

ADOT not review or rely on any study relevant to the rules.

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

Not applicable

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

ADOT anticipates that the economic impact of these rules is minimal and does not expect this rulemaking to create a significant increase in costs or benefits to the agency or to applicants for a CDL or HME since the rulemaking is generally to update information to be consistent with current federal regulations and current program practices. There are no new fees associated with this rulemaking and costs imposed for the HME have decreased from the substantial costs originally needed to get the program implemented. The fee for the TSA HME Security Threat Assessment has decreased from \$94 to \$86.50.

The benefits of this rulemaking include increased public safety, clarity, concise, understandability, and reduction of possibility of confusion for an agency, business, or person. In addition, this rulemaking will keep the state consistent with federal regulations which allows the state to be eligible for federal funds. DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona. For FY 2017, DPS is able to apply for an estimated \$10,000,000 in total federal funding from FMCSA.

As of July 1, 2017, there are 106,413 CDL holders, 2,010 CDL holders with a HME, and 14,547 CDL holders with dual endorsement of tank and hazardous materials. As of September 7, 2017, there are 19,632 valid (excluded were any credentials that were cancelled, suspended, revoked, expired, marked for deletion, disqualified, and those that indicate the credential holder is deceased) CDL holders who have successfully completed the required TSA HME Security Threat Assessment. There are 189 applicants who did not successfully complete the required TSA HME Security Threat Assessment.

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

In R17-4-501, removed the definition "director" since it is already defined under A.R.S. § 28-101 and replaced "Division" with



“Department” in the definitions of “applicant,” “application,” and “licensing action” to ensure the language is consistent and in keeping with the Department’s organizational structure.

In R17-4-501, removed “as defined below” from the definition of “evaluation” since the language is unnecessary.

In R17-4-508(C)(2), added “medical examiner’s certificate” before “renewal” in order to clarify the type of renewal.

In addition, minor grammatical and non-substantive technical changes were made upon review and at the request of the Governor’s Regulatory Review Council staff.

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

ADOT did not receive any public or stakeholder comments regarding this rulemaking.

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

There are no other matters prescribed by statute applicable to ADOT or to any specific rule or class of rules.

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

These rules concern certain requirements for applicants of a CDL or HME. A CDL and HME are general permits since the activities and practices authorized by them are substantially similar in nature for all holders. These rules though do not require the issuance of the CDL or HME; that requirement is under 17 A.A.C. 5, Article 2.

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

Federal regulations in 49 CFR 383, 390, 391, and 1572 are applicable to the rules. These rules are in accordance with those federal regulations and are not more stringent.

**c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitive-ness of business in this state to the impact on business in other states:**

No analysis was submitted to ADOT

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

In R17-4-702: 49 CFR 1572, revised as of October 1, 2016

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

Not applicable

**15. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION  
CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
TITLE, REGISTRATION, AND DRIVER LICENSES**

**ARTICLE 5. SAFETY**

Section	
R17-4-501.	Definitions
R17-4-507.	<del>Driver License Identification Number</del> Repealed
R17-4-508.	Commercial Driver License Physical Qualifications

**ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT**

Section	
R17-4-701.	Definitions
R17-4-702.	Scope
R17-4-705.	Required Testing
R17-4-706.	Fees
R17-4-707.	60-Day Notice to Apply
R17-4-709.	Determination of Security Threat
R17-4-710.	Requests for Administrative Hearing
R17-4-712.	Transfer Applicant

**ARTICLE 5. SAFETY**

**R17-4-501. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, 28-3005, and 32-1601, in this Article, unless otherwise specified:

“Adaptation” means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

“Applicant” or “licensee” means a person:

Applying for an Arizona driver license or driver license renewal, or



Required by the ~~Division~~ Department to complete an examination successfully or to obtain an evaluation.

“Application” means the ~~Division~~ Department form required to be completed by or for an applicant for a driver license or driver license renewal.

~~“Arizona Driver License Manual” or “manual” means the reference booklet for applicants, issued by the Division, containing non-technical explanations of the Arizona motor vehicle laws.~~

“Aura” means a sensation experienced before the onset of a neurological disorder.

“Commercial ~~Driver License~~ driver license physical qualifications” means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under R17-5-202 and R17-5-204.

~~“Director” means the Division Director or the Division Director’s designee.~~

“Disqualifying medical condition” means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

“Division” means the Arizona Department of Transportation, Motor Vehicle Division.

“Evaluation” means a medical assessment of an applicant or licensee by a specialist ~~as defined below~~ to determine whether a disqualifying medical condition exists.

“Examination” means testing or evaluating an applicant’s or licensee’s:

- Ability to read and understand official traffic control devices,
- Knowledge of safe driving practices and the traffic laws of this state, and
- Functional ability.

“Functional ability” means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

~~“Identification number” means a distinguishing number assigned by the Division to a person for a license or instruction permit.~~

“Licensee” means a person issued a driver license by this state.

“Licensing action” means an action by the ~~Division~~ Department to:

- Issue, deny, suspend, revoke, cancel, or restrict a driver license; or
- Require an examination or evaluation of an applicant or licensee.

“Medical code” means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.

“Medical screening questions and certification” means the questions and certification on the application.

“Neurological disorder” means a malfunction or disease of the nervous system.

“Seizure” means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.

“Specialist” means:

- A physician who is a surgeon or a psychiatrist;
- A physician whose practice is limited to a particular anatomical or physiological area or function of the human body, patients with a specific age range; or
- A psychologist.

“Substance abuse” means:

- Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or
- Use of a controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.

“Substance abuse counselor” is defined in A.R.S. § 28-3005.

“Substance abuse evaluation” means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.

“Successful completion of an examination” means an applicant or licensee:

- Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or
- Achieves a score of at least 80% on any required tests.

**R17-4-507. Driver License Identification Number Repealed**

- ~~A. The Division shall assign an identification number to each person who receives a driver license, nonoperating identification license, or instruction permit. The Division shall place a person’s identification number on the person’s license, nonoperating identification, or instruction permit.~~
- ~~B. The Division shall not use a person’s Social Security Number as the person’s identification number unless:
 
  - ~~1. The person’s current driver license or nonoperating identification license has a Social Security Number as the identification number, or~~
  - ~~2. The person requests that the person’s Social Security Number be used as the identification number.~~~~



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

#### A. Requirements.

1. A ~~Commercial Driver License~~ commercial driver license applicant shall submit to the ~~Division~~ a U.S. Department of Transportation medical ~~examination form~~ examiner's certificate, available online from the Federal Motor Carrier Safety Administration at <https://www.fmcsa.dot.gov>, completed as prescribed under 49 CFR 391.43; ~~to the Department.~~
  - a. Except as provided in subsection (A)(1)(c) of this Section, ~~the medical examiner's certificate must be completed by a professional licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials: medical examiner who is listed on the current National Registry of Certified Medical Examiners. A list of certified medical examiners is available on the National Registry website at https://nationalregistry.fmcsa.dot.gov.~~
    - i. ~~Medical Doctor;~~
    - ii. ~~Doctor of Osteopathy;~~
    - iii. ~~Doctor of Chiropractic;~~
    - iv. ~~Nurse Practitioner; or~~
    - v. ~~Physician Assistant; and~~
  - b. ~~Upon~~ The medical examiner's certificate must be completed upon the applicant's initial application and ~~at the time of each 24 month renewal~~ upon or prior to expiration of the applicant's current medical examiner's certificate.
  - 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)~~ 391.41(b)(10).
2. As prescribed under 49 CFR ~~391.41(a)~~ 391.41(a)(2), a licensee who possesses a ~~Commercial Driver License~~ commercial driver license shall keep an original or photographic copy of the licensee's current medical ~~examination form~~ examiner's certificate required under subsection (A)(1) available for law enforcement inspection upon request for no more than 15 days after the date it was issued as valid proof of medical certification.
3. A licensee who possesses a ~~Commercial Driver License~~ commercial driver license shall notify the ~~Division~~ Department of a physical condition that develops or worsens causing noncompliance with the ~~Commercial Driver License~~ commercial driver license physical qualifications as soon as the licensee's medical condition allows.

#### B. Commercial Driver License driver license suspension and revocation notification procedure. To notify a licensee of any ~~Commercial Driver License~~ commercial driver license suspension and revocation under subsection (C), the ~~Division~~ Department shall simultaneously mail two notices within 15 days after a medical ~~examination form's~~ examiner's certificate's due date or actual submission date to the licensee's address of record that:

1. Suspends the licensee's ~~Commercial Driver License~~ commercial driver license beginning on the notice's date; and
2. Revokes the licensee's ~~Commercial Driver License~~ 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~~ examiner's certificate required under subsection (A)(1) shows that the applicant does not comply with the ~~Commercial Driver License~~ commercial driver license physical qualifications, the ~~Division~~ Department shall immediately mail the ~~Commercial Driver License~~ commercial driver license denial notification to the applicant's address of record.
2. ~~Twenty-four month renewal~~ Medical examiner's certificate renewal suspension and revocation. If a renewing ~~Commercial Driver License~~ commercial driver license licensee submits:
  - a. No medical ~~examination form~~ examiner's certificate required under subsection (A)(1) or a form indicating noncompliance with ~~Commercial Driver License~~ commercial driver license physical qualifications, the ~~Division~~ Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).
  - b. An incomplete medical ~~examination form~~ examiner's certificate required under subsection (A)(1), the ~~Division~~ Department shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the ~~Division~~ Department within 45 days after the date of the ~~Division's~~ Department's letter. The ~~Division~~ Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return the requested information in the time-frame prescribed in this subsection.
  - e. 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~~ Department 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 Department within 90 days after the Division's Department's written notification. The Division Department 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~~ Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).

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

#### E. Administrative hearing. A person who is denied a ~~Commercial Driver License~~ commercial driver license or whose ~~Commercial Driver License~~ commercial driver license is suspended or revoked under this Section may request a hearing ~~according to the procedure~~



from the Department as 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 A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

R17-4-701. Definitions

In addition to the definitions contained in 49 CFR ~~1572.3~~ 1572, the following words and phrases apply to this Article:

- 1. "Applicant" means an individual who applies to obtain an original or renewal HME.
2. "CDL" means ~~Commercial Driver License~~ commercial driver license.
"Department" has the same meaning as defined under A.R.S. § 28-101.
3. "HME" means Hazardous Materials Endorsement.
"Security Threat Assessment" means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and a final disposition.
4. "Transfer applicant" means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.
5. "TSA" means the U.S. Transportation Security Administration.
6. "Security Threat Assessment" means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and final disposition.

R17-4-702. Scope

This Article applies to commercial drivers who are applying for an original, HME or to renew renewal, or transfer of an existing HME, in accordance with 49 CFR Part 1572 (November 24, 2004) incorporated by reference, on file with the Arizona Department of Transportation and available from the U.S. Government Printing Office's web page at www.gpo.gov. This incorporation by reference contains no future additions or amendments. The Department incorporates by reference 49 CFR 1572, revised as of October 1, 2016, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at http://www.ofr.gov or https://www.gpo.gov/fdsys and ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov. The International Standard Book Number is 9780160935534.

R17-4-705. Required Testing

- A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
B. A transfer applicant with an existing HME shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay any applicable fee under R17-4-706.

R17-4-706. Fees

All applicants and transfer applicants shall pay all applicable fees shall be paid as prescribed by:

- 1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

R17-4-707. 60-Day Notice to Apply

- A. The ~~Division~~ Department shall notify an existing HME holder 60 days prior to expiration of a Security Threat Assessment that a new Security Threat Assessment shall be successfully passed in order to retain the HME 60 days prior to the expiration of the Security Threat Assessment and the corresponding HME.
B. Upon expiration of the ~~Division's~~ Department's 60 Day Notice to Apply, the ~~Division~~ Department shall cancel the Arizona ~~Driver License~~ driver license privileges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

R17-4-709. Determination of Security Threat

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

- 1. For an original applicant:
a. The ~~Division~~ Department will deny the request for an HME; and
b. If otherwise qualified, the applicant may apply for a CDL without an HME.
2. For a renewal applicant:
a. The ~~Division~~ Department shall immediately cancel the HME.
b. The ~~Division~~ Department will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
c. The applicant shall visit a designated CDL office for removal of the HME.
d. If the applicant fails to comply with the ~~Division's~~ Department's Notice of Action, the ~~Division~~ Department shall cancel the applicant's Arizona ~~Driver License~~ driver license privilege.
e. Upon removal of an HME by the ~~Division~~ Department under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

R17-4-710. Requests for Administrative Hearing

- A. ~~The Division shall not accept a request for hearing for failure to qualify for an HME failing to pass.~~ In the event an applicant has failed to successfully complete the Security Threat Assessment or failed to receive a Determination of No Security Threat, the applicant shall may make an appeal directly through TSA, but cannot request an administrative hearing from the Department.



- B. An applicant whose Arizona ~~driving driver license~~ privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing ~~from the Department as prescribed~~ under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

**R17-4-712. Transfer Applicant**

- A. Applicability. A transfer applicant shall comply with the provisions of this Article except as otherwise required by this Section.
- B. Existing TSA approval. Upon application by a transfer applicant who has successfully passed a Security Threat Assessment prior to application in Arizona, the Department shall:
  - 1. ~~Upon application by a transfer applicant who has an existing HME and who has successfully passed a STA prior to application in Arizona, the Division shall: Verify the TSA approval of a Determination of No Security Threat;~~
  - ~~a.2. Issue a five-year an Arizona CDL with an HME; and~~
  - ~~b. Validate the CDL with an HME upon verification of TSA approval, and the transfer applicant shall not be required to return to a designated CDL office unless otherwise required; and~~
  - ~~e.3. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require the applicant to undergo a new STA Security Threat Assessment and testing requirements under R17-4-705.~~
  - 2. ~~The Division shall not require that a transfer applicant who has received STA approval undergo an additional STA prior to expiration of existing TSA approval, unless required under federal or state law or these rules;~~
  - 3. ~~If the Division is unsuccessful in verifying successful completion of STA, the Division shall immediately cancel the HME, and require that the applicant return to designated CDL office to have HME removed from license.~~
  - 4. ~~The Division shall mail to the transfer applicant a Notice of Action that the applicant has 15 days from the notice date to visit a designated CDL office to have the HME removed.~~
- ~~C. No existing TSA approval.~~
  - 1. ~~Upon application by a transfer applicant with an existing HME, who has not undergone a STA prior to application in Arizona, the Division shall:~~
    - ~~a. Require that the transfer applicant successfully undergo a STA; and~~
    - ~~b. Upon verification of successful completion of STA, issue an Arizona CDL with an HME.~~
  - 2. ~~If a transfer applicant fails to successfully complete a STA or the Division is unsuccessful in verifying successful completion of STA, the Division shall deny the application for HME.~~
  - 3. ~~If the applicant fails to comply with the Division's Notice of Action, the Division shall cancel the applicant's Arizona Driver License privilege.~~
- ~~D. CDL eligibility. The Division may grant an application for a CDL, if an applicant is otherwise qualified to hold CDL.~~

**NOTICE OF FINAL RULEMAKING  
TITLE 17. TRANSPORTATION  
CHAPTER 5. DEPARTMENT OF TRANSPORTATION  
COMMERCIAL PROGRAMS**

[R18-86]

**PREAMBLE**

- 1. **Article, Part, or Section Affected (as applicable)**

R17-5-202	Amend
R17-5-203	Amend
R17-5-205	Amend
R17-5-206	Amend
R17-5-208	Amend
R17-5-209	Amend
R17-5-212	Amend
- 2. **Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
  - Authorizing statute: A.R.S. §§ 28-366, 28-962, 28-2169, and 28-5204
  - Implementing statute: A.R.S. §§ 28-3223, 28-5201, 28-5235, 28-5237, and 28-5238
- 3. **The effective date of the rule:**
  - May 1, 2018
  - a. **If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

The Arizona Department of Transportation (ADOT) requests that this rulemaking be effective immediately on filing with the Office of the Secretary of State, Month X, 2018 (To be completed by the *Register* Editor), as permitted under A.R.S. § 41-1032, in order to:

**Preserve the public peace, health, and safety.** These rules incorporate by reference the generally accepted federal standards used by industry and law enforcement personnel to promote safe operation of both interstate and intrastate commercial motor vehicles. ADOT's Enforcement and Compliance Division and Arizona Department of Public Safety (DPS) officers rely on the rules for guidance when finding issues severe enough to warrant concern for public safety and placing commercial motor vehicles out-of-service;



**Avoid a violation of federal law or regulation or state law.** ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28, Chapter 8, and these rules. ADOT is required under A.R.S. § 28-5204(A)(2) to consider, as evidence of generally accepted safety standards, the publications of the United States Department of Transportation (USDOT) and the Environmental Protection Agency when adopting rules necessary to administer and enforce A.R.S. Title 28, Chapter 14. 49 CFR 384 requires that each state comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)), and adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards contained in 49 CFR 383; and

**Comply with deadlines in amendments to an agency's governing statutes or federal programs.** DPS administers and enforces the federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona under these rules. To remain in compliance with federal mandates, the Federal Motor Carrier Safety Administration (FMCSA) requires that each state adopt federal motor carrier safety and hazardous materials regulations that are current to within three years. The last update was to incorporate the 2012 edition of the *Code of Federal Regulations* and was effective August 5, 2014. The possibility exists of either the withholding of, or reduction in, federal funding for the state if these rules are not codified as quickly as possible and places ADOT at risk for the withholding of up to five percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. Notwithstanding the withholding of funds as described above, FMCSA could prohibit ADOT's Commercial Driver License (CDL) Program from issuing, renewing, transferring, or upgrading CDLs in this state if they determine that Arizona is not substantially in compliance with 49 U.S.C. 31311(a).

As a condition of grant approval under the authority of 49 U.S.C. 31102, as amended, if this rulemaking is approved by the Governor's Regulatory Review Council on May 1, 2018, with an immediate effective date, DPS will be eligible to apply for an estimated \$10 million in total federal funding from FMCSA.

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

Not applicable

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

Notice of Rulemaking Docket Opening: 23 A.A.R. 2865, October 13, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 2810, October 13, 2017

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

Name: Candace Olson, Rules Analyst  
Address: Government Relations and Policy Development Office  
Department of Transportation  
206 S. 17th Ave., Mail Drop 140A  
Phoenix, AZ 85007  
Telephone: (602) 712-4534  
E-mail: COlson2@azdot.gov  
Web site: <http://www.azdot.gov/about/GovernmentRelations>

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

ADOT, in partnership with DPS, engages in this rulemaking to incorporate parts of the 2016 edition of the *Code of Federal Regulations* and sections of 82 FR 5292, January 17, 2017. USDOT requires that states adopt federal motor carrier safety and hazardous materials regulations to ensure eligibility for federal enforcement grants. Both ADOT and DPS rely on these federal monies to fund numerous enforcement positions.

FMCSA is creating a new electronic on-line Unified Registration System which will streamline the registration process and serve as a clearinghouse and depository of information on, and identification of those who register with FMCSA. The 2016 edition of the *Code of Federal Regulations* included language requiring the use of this system, but in 82 FR 5292, January 17, 2017, FMCSA suspended certain sections in parts 385 and 390 that required the use of this new system and created new sections that required the previous procedures and forms that were in place before the on-line system. The resulting regulatory changes require amendments to part 390, so the Department needs to amend R17-5-203 to be consistent with the regulations and ensure the inclusion of motor carriers conducting intrastate commerce in a commercial motor vehicle, except intrastate farm vehicles.

Subsections to R17-5-205 need to be removed since they were early adoption of amendments from 78 FR 17875, March 25, 2013, and these regulations have now been codified into part 383. ADOT is also making a change to R17-5-205(C) to include "limited-term" as an applicable word that may be added to the face of a commercial learner's permit (CLP) or CDL due to the implementation of the Arizona Voluntary Travel ID in accordance with 6 CFR 37. Additionally, ADOT is adding a clarifying statement to R17-5-205(D) to indicate that while some third party testers may be exempt from the bond requirement under A.R.S. Title 28, Chapter 13, the providers are still responsible for all associated costs for re-testing due to examination fraud.

Timely updates are critical to FMCSA's compliance and enforcement program, so FMCSA implemented an enforcement provision that states the penalties for applicable entities operating without safety registration and an active USDOT Number in part 392, so an amendment is necessary to R17-5-206 to ensure the inclusion of motor carriers conducting intrastate commerce in a commercial



motor vehicle, except intrastate farm vehicles. In addition, FMCSA made a conforming change to the terminology by amending the usage of “USDOT Registration” to “safety registration” after the 2016 edition of the *Code of Federal Regulations*, so that amended language is used to ensure consistency and clarity.

R17-5-208(B) is being amended to clarify that there is not just one type of application for the Intrastate Medical Waiver but instead will be an applicable application based upon the type of medical condition the intrastate driver has.

R17-5-212 is being amended to remove information that is already contained in state statutes and adding and reordering information to clarify the current process with the complaint and the order to show cause.

In addition, clarifying and technical changes have been made to ensure consistent and correct language is used. Changes are also made to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

**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:**

ADOT did not review or rely on any study relevant to the rules.

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

Not applicable

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

DPS administers and enforces MCSAP throughout the State of Arizona under these rules. The primary cost bearers in relation to these rules are DPS, ADOT, counties, municipal law enforcement agencies electing to enforce the provisions locally, and privately contracted consultant trainers of law enforcement personnel.

DPS incurs moderate to substantial costs (more than \$10,000) annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. Business entities bear minimal to moderate costs (under \$100,000) in possible federal registration fees, inspection fees, insurance, and equipment to remain in compliance with the rules. However, these costs arise from the federal law rather than from this rulemaking. Minimal administrative costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance.

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules. ADOT does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the federal motor carrier safety and hazardous materials regulations that the agency currently has in place. Administrative costs for ADOT should be minimal to moderate.

FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs.

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to motor carrier and hazardous materials provision enforcement or incorporate motor carrier/hazardous materials enforcement together with other duties. Accordingly, local law enforcement electing to engage in motor carrier and hazardous materials provision enforcement could stand to benefit substantially in cost defrayal through receipt of MCSAP fund allocation by application to DPS, the primary recipient of the MCSAP federal grant monies. For FY 2017, DPS is able to apply for an estimated \$10,000,000 in total federal funding from FMCSA.

To maintain compliance with the provisions of these rules, motor carriers will likely incur moderate to substantial costs in the form of equipment, maintenance, insurance, and inspection fees. 49 CFR 395 is increasing who is required to utilize electronic logging and the specifications for the electronic logging devices (ELDs). FMCSA estimated an annualized cost of \$419 for an ELD with telematics or \$166 for a local transfer method type ELD and less than a \$1000 for the purchase price of a device. The Commercial Carrier Journal's ELD Buyer's Guide indicates a variety of options for the cost including no cost for the device but only a monthly fee or a higher cost for the device but no monthly fees, and leasing options based on contracts with the company. Depending on the fleet size of the motor carrier and the device selected this requirement could have a potential substantial cost, but the motor carriers should see a benefit in less time and money costs for paperwork, reduced truck downtime, decreased fuel costs, and increased safety. Overall, costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking. If a motor carrier is found to be noncompliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from \$1,000 to \$25,000 per citation and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, reduction in paperwork, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement. These updated federal regulations also include exemptions for exempted covered farm vehicles due to Moving Ahead for Progress in the 21st Century Act (MAP-21) and Fixing America's Surface Transportation (FAST) Act exemptions for pipeline welding trucks.

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

In R17-5-206(B)(1), replaced “USDOT Registration” with “safety registration” in order to maintain consistency and clarity by early adoption of the conforming change made by FMCSA in 81 FR 68336, October 4, 2016.

Minor grammatical and non-substantive technical changes were made upon review and at the request of the Governor's Regulatory Review Council staff.



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

ADOT received written comments from the Cullen Law Firm on behalf of Owner-Operator Independent Drivers Association, Inc. (OOIDA) and Gordon W. Tullett and Gordon Tullett Logistics LLC regarding this rulemaking, “OOIDA and Tullett file these comments because of their serious concern that Arizona’s adoption and implementation of 49 C.F.R. Part 395—including the ELD Mandate contained therein—violates Tullett’s and OOIDA’s members’ constitutional rights and would have wide-ranging and negative implications for the health, privacy, safety and economic interests of all U.S.-domiciled truck drivers and motor carriers including Tullett and other members of OOIDA.” There comments centered on three main issues. The following are the issues as summarized in the letter and the Department’s response:

Company/Individual	Comment	Department’s Response
<p>The Cullen Law Firm on behalf of Owner-Operator Independent Drivers Association, Inc. (OOIDA) and Gordon W. Tullett and Gordon Tullett Logistics LLC</p>	<p>“Arizona’s adoption of the ELD Mandate would violate Tullett’s and OOIDA’s members’ constitutional rights. First, the ELD Mandate authorizes the warrantless inspection of drivers and their personal effects. These warrantless searches violate the Fourth Amendment’s and the Arizona Constitution’s warrant requirement unless they fall within the exception for searches in pervasively regulated industries. Arizona’s adoption of the ELD Mandate fails to come within this exception for four reasons: (1) this exception applies only to business premises, not persons as provided in the ELD Mandate; (2) this exception applies only to administrative searches, not searches to support the ordinary needs of law enforcement, and Arizona law imposes criminal sanctions for some FMCSR violations; (3) this exception applies only if the search is necessary to further the regulatory scheme, and neither ADOT nor FMCSA has shown the ELD Mandate does so; and (4) this exception requires an administrative structure that provides a constitutionally adequate substitute for a warrant in the form of procedures to limit officer discretion and establish limits of the search’s scope, which the ELD Mandate fails to do.”</p>	<p>In FMCSA’s final rule notice in the Federal Register, 80 FR 78292, they responded to similar comments, including from OOIDA. FMCSA disagreed that the required use of ELDs violates the Fourth Amendment and believed that the commenters’ Fourth Amendment objections are not supported by the relevant case law as applied to the final rule. They reiterated that this rule in essence is changing the methodology (going from the paper logbooks that have been required for more than 75 years to the ELD) and that the fundamental data and the purpose of data collection remains unchanged. FMCSA stipulates that an ELD records data only during operation of a commercial motor vehicle and drivers have no reasonable expectation of privacy in the data captured during that period. FMCSA also determined that ELDs are employed by motor carriers pursuant to a Federal regulatory requirement and drivers are aware of their use, there is no trespass or infringement of a reasonable expectation of privacy. Thus, there is no search for purposes of the Fourth Amendment, and even if it were considered a search, it is justified under the exception for administrative searches in a closely regulated industry. FMCSA also stated that the Supreme Court has long recognized that an individual’s expectation to privacy in a private vehicle is less than that in a home.</p> <p>The Department agrees with the response provided by FMCSA.</p>



<p>The Cullen Law Firm on behalf of Owner-Operator Independent Drivers Association, Inc. (OOIDA) and Gordon W. Tullett and Gordon Tullett Logistics LLC</p>	<p>“Moreover, the statute authorizing promulgation of an ELD rule directed the United States Secretary of Transportation to ensure the copious data collected from ELDs would be maintained privately and used only for enforcement of hours-of-service compliance. Neither the Secretary nor FMCSA has adopted regulations to ensure such privacy and limited use, but has instead relied on the incorporating States, like Arizona, to enact such protections. This Arizona has not done.”</p>	<p>In FMCSA’s final rule notice, 80 FR 78292, they responded to similar comments. FMCSA stated that other statutory provisions and protections are in place (MAP-21 had limitations on use of the data and U.S. Department of Transportation governs the release of private information in 49 CFR parts 7 and 9.) In addition, FMCSA included industry standards for protecting electronic data; it also regulates access to such data and requires motor carriers to protect drivers’ personal data in a manner consistent with sound business practices.</p> <p>Arizona enforcement in the course of their job, handles confidential and private information and the safeguarding of that information. The Department does not agree with the assessment made by the Cullen Law Firm.</p>
<p>The Cullen Law Firm on behalf of Owner-Operator Independent Drivers Association, Inc. (OOIDA) and Gordon W. Tullett and Gordon Tullett Logistics LLC</p>	<p>“Finally, the Notice makes no mention of the serious changes to ADOT regulations and Arizona commercial motor vehicle law brought about through incorporation of a significantly updated version of the FMCSRs, not least of which is incorporation of the ELD Mandate. The Notice also gives short shrift to the financial and logistical impact on small business operators, providing instead a generic conclusion that the costs will be offset by unnamed safety gains.</p> <p>Indeed, the Notice demonstrates that ADOT has done little more than delegate its legislative rulemaking authority to the federal government and rubber stamp a significant change that will affect numerous persons in Arizona without considering the constitutional and other legal deficiencies therewith. For these reasons, the Notice is deficient.”</p>	<p>When the Department updates the incorporation by reference of the motor carrier regulations, it makes a careful examination of all the changes and looks for any issues with Arizona law, public safety, and enforcement. In addition, for 49 CFR 395, the Department reviewed the final rule and the comments and looked at information being provided on various trucking websites. The Department also took notice that there is a divide in the trucking community with mainly OOIDA in opposition but others like the American Trucking Associations in support, that legal actions brought by OOIDA have been unsuccessful (the U.S. Court of Appeals for the 7<sup>th</sup> Circuit ruled against OOIDA’s claims of unconstitutionality and that the U.S. Supreme Court did not review OOIDA’s appeal), and the bill in Congress, H.R. 3282, failed to extend the December 2018 compliance date.</p> <p>The Department believes it adequately provided the reason and justification of this rulemaking in the Preamble of the Notice of Proposed Rulemaking. The Department does not agree that this required a detailed listing of all the changes being enacted by incorporating the 2016 edition from the current 2012 edition. The reason certain provisions are mentioned are because they caused specific changes and additions to rule text and the Department does not believe there is a need to make any changes to 49 CFR 395.</p> <p>In reference to your statements regarding the economic impact of these regulations, the Department provided a more specific statement in the full Economic, Small Business and Consumer Impact Statement.</p>



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

There are no other matters prescribed by statute applicable to ADOT or to any specific rule or class of rules.

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

These rules incorporate by reference federal regulations, which are consistent with state statutes, the requirements of a CLP, CDL, and endorsements. In addition, R17-5-208 provides for the issuance of an Intrastate Medical Waiver, and in keeping with state statute, requires applicable drivers to have a CLP or CDL and endorsements. These are general permits since the activities and practices authorized by them are substantially similar in nature for all holders.

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

Federal regulations in 49 CFR 40, 107, 171, 172, 173, 177, 178, 180, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399 are applicable to the rules. The amendment to the introductory sentence to 49 CFR 383.153(e) in R17-5-205(E) essentially removes the exception for providing the holder's social security number (SSN) on the application by a nondomiciled CLP or CDL holder who is domiciled in a foreign jurisdiction. Pursuant to Laws 2013, Chapter 128, the exemption for the SSN of nonresident CDL applicants was removed from A.R.S. § 28-3158, which also reclassified nonresident CDL as nondomiciled CDL. This change authorizes ADOT to require all CLP and CDL holders to provide their SSNs. This amendment is consistent with other federal laws (42 U.S.C. 405 and 42 U.S.C. 666) that require states to obtain SSNs and the statutory requirement of A.R.S. § 28-3158.

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

No analysis was submitted to ADOT

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

In R17-5-202:

1. 49 CFR 40, 379, 382, 383, 385 (except 385.301, 385.303, 385.305, 385.329, 385.405, 385.409, 385.419, 385.421, 385.603, 385.607, 385.609, and 385.713), 390 (except 390.3, 390.5, 390.19, 390.21, 390.40, and subpart E), 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2016; and
2. 49 CFR 385.301T, 385.303T, 385.305T, 385.329T, 385.405T, 385.409T, 385.419T, 385.421T, 385.603T, 385.607T, 385.609T, 385.713T, 390.3T, 390.5T, 390.19T, 390.21T, 390.40T, and 390.200T, as published in 82 FR 5292, January 17, 2017

In R17-5-209: 49 CFR 107, 171, 172, 173, 177, 178, and 180, revised as of October 1, 2016

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

Not applicable

**15. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION  
COMMERCIAL PROGRAMS**

**ARTICLE 2. MOTOR CARRIERS**

Section

- R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability
- R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General
- R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties
- R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles
- R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision
- R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability
- R17-5-212. Motor Carrier Safety: Hearing Procedure

**ARTICLE 2. MOTOR CARRIERS**

**R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability**

A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 385 (except 385.301, 385.303, 385.305, 385.329, 385.405, 385.409, 385.419, 385.421, 385.603, 385.607, 385.609, and 385.713), 390 (except 390.3, 390.5, 390.19, 390.21, 390.40, and subpart E), 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2016, and no later amendments or editions, as amended under this Article. The Department incorporates by reference 49 CFR 385.301T, 385.303T, 385.305T, 385.329T, 385.405T, 385.409T, 385.419T, 385.421T, 385.603T, 385.607T, 385.609T, 385.713T, 390.3T, 390.5T, 390.19T, 390.21T, 390.40T, and 390.200T, as published in 82 FR 5292, January 17, 2017, and no later amendments or editions, as amended under this Article. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is



available from printed and distributed by the U.S. Government Printing Publishing Office, P.O. Box 979050, St. Louis, Missouri MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Numbers are 9780160935459 for 49 CFR 40 and 9780160935497 for 49 CFR 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399.

- B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona and persons operating a commercial motor vehicle, except as provided under subsection (C).
- C. The intrastate operator of a tow truck with a gross vehicle weight rating of 26,000 pounds or less is exempt from the requirements of 49 CFR 390 through 399, except that the driver is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.

**R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General**

- A. 49 CFR ~~390.3~~ 390.3T, General applicability. Paragraph (a) is amended to read:  
Regulations incorporated in this ~~section~~ subchapter are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be placarded as prescribed under R17-5-209.
- B. 49 CFR ~~390.5~~ 390.5T, Definitions. The definitions listed under 49 CFR ~~390.5~~ 390.5T are amended as follows:  
“Commercial Motor Vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-5201.  
“Shipper” has the same meaning as prescribed under A.R.S. § 28-5201.  
“Special agent” means an officer or agent of the Department, the Department of Public Safety, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona’s Motor Carrier Safety requirements.  
“State” means a state of the United States or the District of Columbia.  
“Tow truck,” as used in the definition of emergency under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. R13-3-701.
- C. 49 CFR ~~390.19~~ 390.19T, Motor carrier, ~~hazardous material shipper, and intermodal equipment provider~~ identification reports for certain Mexico-domiciled motor carriers. Paragraph (a)(1) is amended to read:  
A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must file a Motor Carrier Identification Report, Form MCS-150.
- D. 49 CFR 390.23, Relief from regulations.
  1. Paragraph (a)(2), Local emergencies, is amended by adding:  
When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona AZ 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.
  2. Paragraph (a)(2)(i)(A) is amended to read:  
An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or
- E. 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:  
A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona AZ 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

**R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver’s License Standards; Requirements and Penalties**

- A. 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:  
“Commercial motor vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-3001.  
“Conviction” has the same meaning as prescribed under A.R.S. § 28-3001.  
“Disqualification” has the same meaning as prescribed under A.R.S. § 28-3001.  
“Motor vehicle” has the same meaning as prescribed under A.R.S. § 28-101.  
“Out-of-service order” has the same meaning as prescribed under A.R.S. § 28-5241.  
“School bus” has the same meaning as prescribed under A.R.S. § 28-101.  
“Tank vehicle” has the same meaning as prescribed under A.R.S. § 28-3103.
- B. 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.
- C. 49 CFR 383.73, State procedures.
  1. ~~Paragraph (a)(2)(vi) is amended to read:  
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(a)(2)(v) and proof of state of domicile specified in § 383.71(a)(2)(vi). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;~~
  2. Paragraph (b)(6) is amended to read:  
~~Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citi-~~



zanship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

3-1. Paragraph (c)(4) is amended to read:

If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.

4-2. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.

5. Paragraph (e)(7) is amended to read:

Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

6. Paragraph (d)(7) is amended to read:

Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done; and

7. Paragraph (e)(5) is amended to read:

Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non domiciled CLP and for initial issuance, renewal, upgrade, or transfer of a CDL or non domiciled CDL, for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

8-3. Paragraph (f)(2)(ii) is amended to read:

The state must add the word "non-domiciled" to the face of the CLP or CDL, in accordance with § 383.153(c) or "limited-term" to the face of the CLP or CDL, in accordance with 6 CFR 37.21; and

9. Paragraph (m), Document verification, is amended to read:

The state must require at least two persons within the driver licensing agency to participate substantively in the processing and verification of the documents involved in the licensing process for initial issuance, renewal or upgrade of a CLP or non domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non domiciled CDL. The documents being processed and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. This section does not require two people to process or verify each document involved in the licensing process. Exception: For offices with only one staff member, at least some of the documents must be processed or verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of some of the documents involved in the licensing process and a supervisor must verify them within one business day of issuance of the CLP, non domiciled CLP, CDL or non domiciled CDL.

D. 49 CFR 383.75, Third party testing. 1-Paragraph (a)(7) is amended to read: A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner; and 2-Paragraph (a)(8)(v) is amended to read:

Require the third party tester to initiate and maintain a bond in an amount pursuant to A.R.S. Title 28, Chapter 13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond. A provider exempted under A.R.S. Title 28, Chapter 13, is responsible for all costs associated with all re-testing of applicants due to examination fraud as determined by the Department.

E. 49 CFR 383.153, Information on the CLP and CDL documents and applications. 1-Paragraph (b)(1) is amended to read: A CLP may, but is not required to, contain a digital color image or photograph or black and white laser engraved photograph. 2. Paragraph The introductory sentence in paragraph (e) is amended to read:

Before a CLP or CDL may be issued:

- a. A driver applicant must provide the driver applicant's Social Security Number on the application of a CLP or CDL.
- b. The state must provide the Social Security Number to the CDLIS.
- e. The state must not display the Social Security Number on the CLP or CDL.

3. Paragraph (h) is amended to read:

On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs with the standardized codes upon initial issuance, renewal or upgrade and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.

**R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles**

- A.** 49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended by adding:  
Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.
- B.** 49 CFR 392.9b, Prohibited transportation.
1. Paragraph (a) is amended to read:  
Safety registration required. A commercial motor vehicle providing transportation in interstate commerce or in intrastate commerce, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must not be operated without a safety registration and an active USDOT Number.
  2. Paragraph (b), Penalties, is amended to read:  
Penalties. If it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section, it may be subject to penalties in accordance with 49 U.S.C. 521 for interstate commerce and A.R.S. § 28-5245 for intrastate commerce.

**R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision**

- A.** A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, an insulin-dependent diabetic condition, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).
- B.** A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, ~~may~~ shall complete and submit ~~an~~ the applicable intrastate medical waiver application to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, ~~which shall~~ with the following information as applicable:
1. Identify the applicant:
    - a. Name and complete address of the driver applicant;
    - b. Name and complete address of the motor carrier co-applicant;
    - c. U.S. Department of Transportation motor carrier identification number, if known; and
    - d. A description of the driver applicant's limb or visual impairment or insulin-dependent diabetic condition as applicable to the type of waiver being requested;
  2. Describe the type of operation the driver applicant will be employed to perform, including the following information (if known):
    - a. Average period of time the driver will be driving or on duty, per day;
    - b. Type of commodities or cargo to be transported;
    - c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
    - d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;
  3. Describe the commercial motor vehicles the driver applicant intends to drive:
    - a. Truck, truck tractor, or bus make, model, and year (if known);
    - b. Drive train:
      - i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
      - ii. Auxiliary transmission (if any) and number of forward speeds; and
      - iii. Rear axle (designate single speed, two-speed, or three-speed);
    - c. Type of brake system;
    - d. Steering, manual or power assisted;
    - e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
    - f. Number of semitrailers or full trailers to be towed at one time;
    - g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
    - h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;
  4. Include a certification statement:
    - a. The driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
    - b. In case of a co-applicant, the co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
  5. Contain signature of each applicant and date signed:
    - a. The driver applicant's signature; and
    - b. The motor carrier official's signature and title if the application has a co-applicant. Depending on the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.
- C.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (b)(2) shall be accompanied by:
1. A copy of the medical examination report and medical ~~examination~~ examiner's certificate completed pursuant to 49 CFR 391.43;
  2. The Department's medical waiver evaluation summary completed by either a board-qualified or board-certified psychiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the psychiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform:



- a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:
    - i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
    - ii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
  - b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
    - i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
    - ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
    - iii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
  - 3. A description of the driver applicant’s prosthetic or orthotic device worn, if any; and
  - 4. A copy of the driver applicant’s state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- D.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(3) shall be accompanied by:
- 1. A copy of the medical examination report and medical ~~examination~~ examiner’s certificate completed pursuant to 49 CFR 391.43;
  - 2. An evaluation by a board-certified or board-eligible endocrinologist. A complete endocrinologist evaluation shall consist of:
    - a. A comprehensive evaluation of the applicant’s five-year medical history and current status. The applicant shall provide the examining endocrinologist with a complete medical history as it pertains to the applicant’s diabetes or its complications or both, including, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow-up reports, reports of any hypoglycemic insulin reactions within the 12 months prior to the date of application, and other reports as requested by the endocrinologist. The evaluation shall also include a review of:
      - i. Daily glucose monitoring logs, glycosylated hemoglobin (A1c) indicating a result in the range of 7% to 10%, including lab reference page performed during the last six months unless recently diagnosed;
      - ii. Insulin dosages and types, diet utilized for control, and all medications taken; and
      - iii. Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;
    - b. A statement that the applicant is free from insulin reactions. Insulin reactions include any severe hypoglycemic reaction, which can be a reaction that results in seizure, loss of consciousness, requiring the assistance of another person, or a period of impaired cognitive function that occurs without warning. To be eligible the applicant must not have hypoglycemia unawareness and must have had no more than one documented severe hypoglycemic reaction in the previous 12 months and must have had:
      - i. No recurrent (two or more) severe hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years;
      - ii. No recurrent severe hypoglycemic reactions requiring the assistance of another person within the past five years;
      - iii. No recurrent severe hypoglycemic reactions resulting in impaired cognitive functions that occurred without warning symptoms within the past five years; and
      - iv. A period of one year of demonstrated stability following the first period of severe hypoglycemia;
    - c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
      - i. The endocrinologist is familiar with the applicant’s medical history for the past five years through a records review, treating the patient, or consultation with the treating physician;
      - ii. The applicant is able to safely operate a commercial motor vehicle while using insulin; and
      - iii. The applicant has been educated in diabetes, including the last education date, and its management and is informed of and understands how to individually manage and monitor the applicant’s diabetes mellitus and has demonstrated the ability and willingness to properly monitor and manage the applicant’s diabetes and procedures to follow if complications arise;
  - 3. A separate signed vision evaluation report from an ophthalmologist or optometrist indicating that the applicant has been examined and does not have diabetic retinopathy and meets the vision standard of 49 CFR 391.41(b)(10), or has been issued a valid intrastate medical waiver for monocular vision. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable proliferative diabetic retinopathy (i.e. unstable advancing disease of blood vessels in the retina); and
  - 4. A copy of the driver applicant’s state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- E.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:
- 1. A copy of the medical examination report and medical ~~examination~~ examiner’s certificate completed pursuant to 49 CFR 391.43;
  - 2. A current vision examination report issued within the last 90 days from the date the report is received by the Department, completed by an ophthalmologist or optometrist. The report shall indicate that the applicant has distant visual acuity of at least 20/40



- (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;
3. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and
  4. A statement from the employer that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.
- F.** Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:
1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver's driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;
  2. Provide to the Department's Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;
  3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;
  4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and
  5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.
- G.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.
- H.** The Department may require the driver applicant to demonstrate the driver applicant's ability to safely operate the commercial motor vehicle the driver intends to drive.
- I.** If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.
- J.** If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.
- K.** The intrastate medical waiver granted by the Director under subsection (A) shall identify:
1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
  2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.
- L.** A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:
1. A trailer road test administered by the motor carrier under subsection (F)(3) for each type of trailer, and
  2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection (F)(4).
- M.** The intrastate medical waiver granted by the Director under subsection (A) is:
1. Valid for a period of not more than two years from the date of issuance;
  2. Renewable 30 days prior to the expiration date; and
  3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, stating the new employer's name and the type of equipment to be driven.
- N.** An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (E), shall prohibit the subject driver from transporting:
1. Passengers for hire; and
  2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.
- O.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver's possession while on duty.
- P.** The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier's file for a period of three years after the driver's employment is terminated.
- Q.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for insulin-dependent diabetes under subsection (D), must comply with the following conditions:
1. Maintain appropriate medical supplies for glucose management while preparing for the operation of a commercial motor vehicle and during its operation. The supplies shall include the following:
    - a. A digital glucose monitor with computerized memory,
    - b. Supplies needed to obtain adequate blood samples and to measure blood glucose,
    - c. Insulin to be used as necessary, and
    - d. An amount of rapidly absorbable glucose to be used as necessary;
  2. Maintain a daily record of actual driving time to correlate with the daily glucose measurements;
  3. Monitor and maintain blood glucose levels in the range of 100 to 400 milligrams per deciliter (mg/dl) prior to and while driving.
    - a. Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 mg/dl, take glucose or food and recheck in 30 minutes. Repeat the process until glucose is greater than 100 mg/dl. Do not drive if glucose is less than 100 mg/dl;



- b. While driving, stop the vehicle in a safe location and check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;
- c. Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and
- d. If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours have passed since last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl;
- 4. Participate in a diabetes education program annually;
- 5. Undergo the following evaluations and examinations and submit to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, ~~Arizona~~ AZ 85001-2100, within 10 days of the date of the evaluation or exam:
  - a. A quarterly evaluation completed by a board-certified or board-eligible endocrinologist. A quarterly endocrinologist evaluation shall include a review of the driver’s daily glucose logs and glucose levels (from the subject driver’s required monitoring device), a comparison of monitoring dates to the driving log to ensure that the subject driver is checking glucose levels prior to operating a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a glucose level in the range of 100 to 400 mg/dl while driving a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a stable insulin regimen and that the subject driver’s quarterly A1c result continues to reflect stable control, reports of any severe hypoglycemic episodes, any hypoglycemic-related hospitalization, and any treatment regimen changes since the last hypoglycemic episode;
  - b. An annual evaluation completed by a board-certified or board-eligible endocrinologist. In addition to the requirements of a quarterly endocrinologist evaluation under subsection (Q)(5)(a), an annual endocrinologist evaluation shall also include a general physical examination, an indication that the driver has continued to participate in a diabetes education program with the last education date provided, a certifying statement indicating that the driver understands how to individually manage and monitor the driver’s diabetes mellitus, an indication of the development of, or progression, or both, in diabetes complications (i.e. renal disease, cardiovascular disease, and neurological disease), a list of all medications taken and whether any of the medications may compromise the driver’s ability to operate a commercial motor vehicle, the endocrinologist’s belief that the driver has demonstrated the ability and willingness to properly manage the driver’s diabetes, and a certifying statement indicating that the driver is able to safely operate a commercial motor vehicle while using insulin;
  - c. An annual vision evaluation report, as prescribed under subsection (D)(3). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the driver does not have unstable proliferative diabetic retinopathy; and
  - d. An annual medical examination report and medical ~~examination~~ examiner’s certificate completed pursuant to 49 CFR 391.43. Provide copies of the endocrinologist evaluation and the vision evaluation report to the medical examiner for review; and
- 6. Report the following information to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, ~~Arizona~~ AZ 85001-2100, within two days of occurrence:
  - a. All episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and
  - b. Any involvement in an accident or any other adverse event in a commercial motor vehicle or personal vehicle, related to an episode of hypoglycemia or hyperglycemia.
- R. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection (E), must be physically examined every year and shall submit the following to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, ~~Arizona~~ AZ 85001-2100:
  - 1. A vision examination report issued within the last 90 days from the date the report is received by the Department, as prescribed under subsection (E)(2); and
  - 2. A current medical examination report and medical ~~examination~~ examiner’s certificate completed pursuant to 49 CFR 391.43 within the past year.
- S. A driver subject to an intrastate medical waiver, or a driver subject to an intrastate medical waiver jointly with a motor carrier co-applicant, may renew an intrastate medical waiver by submitting to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, ~~Arizona~~ AZ 85001-2100, a new intrastate medical waiver application. The intrastate medical waiver application shall contain the following:
  - 1. Name and complete address of the motor carrier currently employing the applicant;
  - 2. Name and complete address of the subject driver;
  - 3. Total miles driven under the current intrastate medical waiver;
  - 4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
  - 5. A current medical examination report and medical ~~examination~~ examiner’s certificate completed pursuant to 49 CFR 391.43;
  - 6. A current medical examination or evaluation as applicable to the medical condition:
    - a. A current medical waiver evaluation summary, as prescribed under subsection (C)(2), for a driver with a loss of limb or limb impairment;
    - b. A current endocrinologist evaluation, as prescribed under subsection (D)(2), and a current vision evaluation report, as prescribed under subsection (D)(3), for a driver who is an insulin-dependent diabetic; or
    - c. A current vision examination report, as prescribed under subsection (E)(2), for a driver with monocular vision;
  - 7. A copy of the subject driver’s current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
  - 8. Notification of any change in the type of tractor the driver will operate;
  - 9. Subject driver’s signature and date signed; and
  - 10. Motor carrier co-applicant’s signature and date signed (if applicable).



- T. The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.
- U. The Director may revoke an intrastate medical waiver after providing the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5. The Director may revoke an intrastate medical waiver if the:
  - 1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application,
  - 2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, or
  - 3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.
- V. If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

**R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability**

- A. Incorporation of federal regulations.
  - 1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, ~~2012~~ 2016, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
    - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
    - b. Subchapter C - Hazardous Materials Regulations; Parts:
      - i. 171 - General information, regulations, and definitions;
      - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
      - iii. 173 - Shippers - general requirements for shipments and packagings;
      - iv. 177 - Carriage by public highway;
      - v. 178 - Specifications for packagings; and
      - vi. 180 - Continuing qualification and maintenance of packagings.
  - 2. The material incorporated by reference under this subsection is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is available from printed and distributed by the U.S. Government Printing Publishing Office, P.O. Box 979050, St. Louis, Missouri MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Numbers are 9780160935466 for 49 CFR 107, 171, 172, 173, and 177 and 9780160935473 for 49 CFR 178 and 180.
- B. Application and exceptions.
  - 1. Application.
    - a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined under A.R.S. § 28-5201.
    - b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
  - 2. Exceptions. An authorized emergency vehicle, as defined under A.R.S. § 28-101, is excepted from the provisions of this Section.
- C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:
  - 1. Part 171, General information, regulations, and definitions. Section 171.8, Definitions and abbreviations. Section 171.8 is amended by revising the definitions for “Carrier,” “Hazmat employer,” and “Person,” and adding a definition for “Highway” as follows:
    - “‘Carrier’ means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material.”
    - “‘Hazmat employer’ means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined under A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities.”
    - “‘Highway’ means a public highway defined under A.R.S. § 28-5201.”
    - “‘Person’ has the same meaning as defined under A.R.S. § 28-5201.”
  - 2. Part 172, Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3, Applicability. Paragraph (a)(2) is amended to read: “Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway.”
  - 3. Part 177, Carriage by public highway.
    - a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase “by private, common, or contract carriers by motor vehicle” is amended to read, “by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway.”



- b. Section 177.802, Inspection. Section 177.802 is amended to read: “Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231.”

**R17-5-212. Motor Carrier Safety: Hearing Procedure**

**A. Scope.**

- 1. This Section applies only to a motor carrier enforcement action under:
  - a. R17-5-201 through R17-5-209; and
  - b. A.R.S. Title 28, Chapter 14.
- 2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) ~~through (I)~~ and (C).

**B. Initiation of proceedings, pleadings, service.**

- 1. The Director shall initiate a hearing under this Section by:
  - a. Signing and serving a complaint in the form prescribed under subsection ~~(G)~~(C) that cites a manufacturer, motor carrier, shipper, or driver for an alleged infraction; and
  - b. Serving the cited manufacturer, motor carrier, shipper, or driver with a hearing notice within 15 days after the date the complaint is signed. Submitting to the Department’s Executive Hearing Office a copy of the complaint and notification of the date the complaint was served.
- 2. ~~After the Director signs a complaint, the Executive Hearing Office shall act on the Director’s behalf through completion of an administrative proceeding under this Section. The date of service is the date of mailing.~~

**C. Order Complaint; order to show cause.**

- 1. The complaint shall contain the following:
  - a. The Department as the designated petitioner;
  - b. The respondent’s name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
  - c. The relief sought by the Department; and
  - d. A copy of the written violation notice issued by a law enforcement agency to the respondent, if applicable.
- ~~2. When a complaint is served Upon receipt of a copy of the complaint, the Executive Hearing Office shall immediately issue a summons an order to show cause for a respondent to appear at an administrative hearing to explain why the Executive Hearing Office requested relief should not grant the requested relief be granted.~~
- ~~2.3. The Executive Hearing Office shall hold a hearing under this Section within 60 days after the date the complaint is served the time-frame required by statute.~~
- ~~3.4. The parties may resolve a complaint before the hearing date.~~
  - a. ~~The respondent parties shall file any notice of settlement condition with the Executive Hearing Office.~~
  - b. ~~Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.~~

**~~D. Service.~~**

- ~~1. The Executive Hearing Office shall:~~
  - a. ~~Send an order to show cause by certified mail as prescribed under A.R.S. § 28-5232(B), and~~
  - b. ~~Maintain a proof of service file.~~
- ~~2. The date of service is the date of mailing.~~

**~~E. Answer.~~**

- ~~1. Within 15 days after service of a complaint, a respondent shall respond to the complaint by:~~
  - a. ~~Filing a written answer with the Executive Hearing Office; and~~
  - b. ~~Serving the Assistant Attorney General, Transportation Division, representing the Department with a copy of the answer.~~
- ~~2. A respondent’s written answer shall contain:~~
  - a. ~~An admission or denial of each complaint allegation, and~~
  - b. ~~A list of all defenses that the respondent intends to raise during the hearing.~~
- ~~3. In a hearing, the Executive Hearing Office shall consider any allegation not denied in the answer as an admission to the allegation.~~

**~~F. Default.~~**

- ~~1. The Executive Hearing Office shall find in default a respondent that fails to file an answer within 15 days after the service date of a complaint.~~
- ~~2. If the Executive Hearing Office finds a respondent in default, the Executive Hearing Office shall:~~
  - a. ~~Consider the respondent’s default as an admission of all complaint allegations unless the default is cured under subsection (F)(3), and~~
  - b. ~~Enter an order granting the relief requested in the Department’s complaint.~~
- ~~3. A respondent may cure a default by following Rule 60(c) of the Arizona Rules of Civil Procedure.~~

**G. Emergency motor carrier hearings; scope.**

- 1. The Director shall initiate an emergency motor carrier hearing process according to R17-5-211(E) by:
  - a. Issuing a complaint and order to show cause according to the hearing scope under A.R.S. § 28-5232(C); and
  - b. Ordering immediate suspension of the registration of the motor vehicle owned or leased by the manufacturer, shipper, or motor carrier, or the driver license or driver’s nonresident operating privilege, as prescribed under A.R.S. § 28-5232(A).
- 2. The Executive Hearing Office shall set an emergency hearing date to occur within 30 days after the date on the complaint.
- 3. The complaint and order to show cause shall contain the following:
  - a. The Department as the designated petitioner on the state’s behalf;



- b. ~~The respondent's name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;~~
- e. ~~The relief sought by the Department; and~~
- d. ~~An original copy of the written violation notice issued by a law enforcement agency that was served upon the respondent.~~
- 4. ~~At an emergency motor carrier hearing, an Executive Hearing Office administrative law judge shall determine whether the respondent:~~
  - a. ~~Was operating on a public highway and the operation created a danger to the public safety;~~
  - b. ~~Was responsible for the danger, and~~
  - e. ~~Is responsible for preventing or remedying further danger to public safety.~~
- 5. ~~Upon a finding that the factors in subsection (G)(4) are present, the administrative law judge shall order that the motor carrier's registration and operator's driver license or driver's nonresident operating privilege suspension continue.~~
- 6. ~~If a respondent fails to appear at an emergency motor carrier hearing, any suspension previously ordered remains in effect until the respondent appears and meets all requirements under A.R.S. § 28-5232(F).~~
- ~~H. Upon a finding that the factors in subsection (G)(4) are present, the Director shall impose a civil penalty as prescribed under A.R.S. §§ 28-5232, 28-5237 and 28-5238.~~
- ~~I. A respondent may request judicial review of a motor carrier safety hearing as prescribed under A.R.S. § 28-5239.~~



NOTICES OF FINAL EXPEDITED RULEMAKING

This section of the Arizona Administrative Register contains Notices of Final Expedited Rulemaking. The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of expedited rules should be addressed to the agency promulgating the rules. Refer to item #5 to contact the person charged with the rulemaking.

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

[R18-87]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action
2. Citations to the agency's statutory authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):
3. Citations to all related notices published in the Register that pertain to the record of the final expedited rulemaking:
4. The effective date of the rule:
5. The agency's contact person who can answer questions about the rulemaking:
6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking.

Summary. The Arizona Department of Environmental Quality (ADEQ) is proposing to adopt new and updated incorporations by reference of the following federal regulations in State rules through an expedited rulemaking: New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). ADEQ is proposing to update all of the incorporations by reference in order to continue its delegated authority from the U.S. Environmental Protection Agency (EPA) to implement and enforce NSPS and NESHAP in Arizona, except for those specific authorities retained by the EPA.

NSPS and NESHAP Regulations. Federal Regulations already incorporated by reference from Title 40 CFR Parts 60, 61, and 63, are being updated from June 29, 2013 to June 30, 2017 at R18-2-901, R18-2-1101(A), and R18-2-1101(B) and Appendix 2. As explained further below, this includes new subparts and significantly revised subparts in Title 40 CFR Parts 60, 61, and 63. A summary of the original federal register notice is provided, along with any subsequent updates.

Miscellaneous Incorporations by Reference in Appendix 2. The provisions in Appendix 2 have been updated from June 29, 2013 to June 30, 2017. These provisions are cited throughout 18 A.A.C. 2, but are incorporated by reference in a single location in Appen-



dix 2 for convenience.

#### Negative Declarations

ADEQ must submit a Negative Declaration letter to the EPA if ADEQ does not have a source within its jurisdiction that would be subject to specified emissions guidelines, NSPS, or NESHAPS.

ADEQ has submitted Negative Declaration Letters for:

- 1) 40 CFR 60, Subpart Cb – Emissions Guidelines and Compliance times for Large Municipal Waste Combustors that are Constructed on or Before September 20, 1994. ADEQ submitted the letter on June 7, 1996 (EPA approval at 65 FR 33466, May 24, 2000).
- 2) 40 CFR 60, Subpart BBBB - Emissions Guidelines and Compliance times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999. ADEQ submitted the letter on March 15, 2001 (EPA approval at 66 FR 67098, December 28, 2001).
- 3) 40 CFR 60, Subpart DDDD - Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999. ADEQ submitted the letter on April 25, 2003 (EPA approval at 68 FR 48364, August 18, 2003).
- 4) 40 CFR 60, Subpart FFFF, Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced On or Before December 9, 2004, from R18-2-901 because that Subpart does not apply to Arizona. ADEQ submitted the letter on March 19, 2008.
- 5) 40 CFR 60, Subpart Ce – Existing Hospital/Medical/Infectious Waste Incinerators that commenced modification after March 16, 1998. ADEQ submitted the letter on September 28, 2009. ADEQ originally submitted a plan for this Subpart on November 16, 1999. EPA approved the plan on August 21, 2000 (65 FR 38744, June 22, 2000). Updated plans would have been due to the EPA on October 6, 2010, however ADEQ submitted its negative declaration before that date.
- 6) 40 CFR 60, Subpart MMMM - Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units. ADEQ submitted the letter on November 26, 2013.
- 7) 40 CFR 63, Subpart X – National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting, from R18-2-1101 as that Subpart does not apply to Arizona. ADEQ submitted the letter on January 24, 2012.

#### Federal Regulations Proposed to be Incorporated

##### **NSPS - 40 CFR PART 60**

##### **NEW SUBPARTS ADDED:**

**40 CFR 60 Subpart BBa—Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013**, (amended at 79 FR 18951, April 4, 2014) EPA finalized revisions to the new source performance standards for kraft pulp mills. These revised standards include particulate matter emission limits for recovery furnaces, smelt dissolving tanks and lime kilns, and opacity limits for recovery furnaces and lime kilns equipped with electrostatic precipitators. These revised standards apply to emission units commencing construction, reconstruction or modification after May 23, 2013. This final rule removed the General Provisions exemption for periods of startup, shutdown and malfunction resulting in a standard that applies at all times. This final rule also included additional testing requirements and updated monitoring, recordkeeping and reporting requirements for affected sources, including electronic reporting of performance test data. These revisions to the testing, monitoring, recordkeeping and reporting requirements are expected to ensure that control systems are properly maintained over time, ensure continuous compliance with standards and improve data accessibility for the Environmental Protection Agency (EPA), states, tribal governments and communities.

**40 CFR 60 Subpart OOOOa—Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015** (81 FR 35823, June 3, 2016). EPA finalized amendments to the current new source performance standards (NSPS) and establishes new standards. Amendments to the current standards improved implementation of the current NSPS. The new standards for the oil and natural gas source category set standards for both greenhouse gases (GHGs) and volatile organic compounds (VOC). Except for the implementation improvements, and the new standards for GHGs, these requirements do not change the requirements for operations covered by the current standards.

##### **40 CFR 60 Subpart PPPP [Reserved],**

**40 CFR, 60 Subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces** (80 FR 13671, March 16, 2015). EPA took final action to revise the Standards of Performance for New Residential Wood Heaters. This final rule achieved several objectives for new residential wood heaters, including applying updated emission limits that reflect the current best systems of emission reduction; eliminating exemptions over a broad suite of residential wood combustion devices; strengthening test methods as appropriate; and streamlining the certification process. Residential wood smoke emissions are a significant national air pollution problem and human health issue. These emissions occur in many neighborhoods across the country, including minority and low income neighborhoods, and impact people in their homes. To the extent that children and other sensitive populations are particularly susceptible to asthma, and that minority populations and low-income populations are more vulnerable, this rule will significantly reduce the pollutants that adversely affect their health.

**40 CFR 60 Subpart TTTT—Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units** (80 FR 64509, October 23, 2015). In this action, EPA issued final standards of performance to limit emissions of GHG pollution manifested as CO<sub>2</sub> from newly constructed, modified, and reconstructed fossil fuel fired electric utility steam generating units (*i.e.*, utility boilers and integrated gasification combined cycle (IGCC) units) and from newly constructed and reconstructed stationary combustion turbines. Consistent with the requirements of CAA section 111(b), these standards reflect the degree of emission lim-



itation achievable through the application of the best system of emission reduction (BSER) that EPA has determined has been adequately demonstrated for each type of unit. These final standards are codified in 40 CFR part 60, subpart TTTT, a new subpart specifically created for CAA 111(b) standards of performance for GHG emissions from fossil fuel-fired EGUs.

**Appendix F to Part 60 Quality Assurance Procedure 3 – Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources** (Amended at 79 FR 28439, May 16, 2014). EPA promulgated quality assurance and quality control (QA/QC) procedures (referred to as Procedure 3) for continuous opacity monitoring systems (COMS) used to demonstrate continuous compliance with opacity standards specified in new source performance standards (NSPS) issued by the EPA pursuant to section 111(b) of the Clean Air Act (CAA), Standards of Performance for New Stationary Sources.

SUBPARTS SIGNIFICANTLY REVISED:

**40 CFR 60, Subpart A—General Provisions** (amended at 79 FR 18951, April 4, 2014) EPA finalized revisions to the new source performance standards for kraft pulp mills. These revised standards include particulate matter emission limits for recovery furnaces, smelt dissolving tanks and lime kilns, and opacity limits for recovery furnaces and lime kilns equipped with electrostatic precipitators. These revised standards apply to emission units commencing construction, reconstruction or modification after May 23, 2013. This final rule removed the General Provisions exemption for periods of startup, shutdown and malfunction resulting in a standard that applies at all times. This final rule also included additional testing requirements and updated monitoring, recordkeeping and reporting requirements for affected sources, including electronic reporting of performance test data. These revisions to the testing, monitoring, recordkeeping and reporting requirements are expected to ensure that control systems are properly maintained over time, ensure continuous compliance with standards and improve data accessibility for the Environmental Protection Agency (EPA), states, tribal governments and communities.

**40 CFR 60 Subpart A – General Provisions** (80 FR 64509, October 23, 2015). In this action, EPA issued final standards of performance to limit emissions of GHG pollution manifested as CO<sub>2</sub> from newly constructed, modified, and reconstructed fossil fuel fired electric utility steam generating units (*i.e.*, utility boilers and integrated gasification combined cycle (IGCC) units) and from newly constructed and reconstructed stationary combustion turbines. Consistent with the requirements of CAA section 111(b), these standards reflect the degree of emission limitation achievable through the application of the best system of emission reduction (BSER) that EPA has determined has been adequately demonstrated for each type of unit. These final standards are codified in 40 CFR part 60, subpart TTTT, a new subpart specifically created for CAA 111(b) standards of performance for GHG emissions from fossil fuel-fired EGUs.

**40 CFR 60 Subpart A – General Provisions** (82 FR 28561, June 23, 2017). EPA took action to correct paragraph numbering in the Incorporations by Reference (IBR) section of our regulations that specifically lists material that can be purchased from the American Society for Testing and Materials (ASTM). This action assigned the appropriate IBR paragraph numbers by correcting paragraph ordering errors. This action corrected paragraph ordering errors in 40 CFR 60.17(h) as highlighted in the editorial note at the end of § 60.17. The editorial note mentions that amendments could not be incorporated into § 60.17(h) as requested in a final rule published August 30, 2016 (Revisions to Test Methods, Performance Specifications, and Testing Regulations for Air Emission Sources (81 FR 59799)), because paragraph (h)(207) already existed as of the effective date. This issue occurred when two rules that both added incorporation by reference paragraphs in § 60.17(h) published out of order.

**40 CFR 60 Subpart A—General Provisions** (82 FR 21927, May 11, 2017). EPA took direct final action to update the Code of Federal Regulations delegation tables to reflect the current delegation status of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in Arizona and Nevada.

**40 CFR 60 Subpart A—General Provisions,**

**40 CFR 60 Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units,**

**40 CFR 60 Subpart Ec—Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators,**

**40 CFR 60 Subpart H—Standards of Performance for Sulfuric Acid Plants,**

**40 CFR 60 Subpart O—Standards of Performance for Sewage Treatment Plants,**

**40 CFR 60 Subpart BB—Standards of Performance for Kraft Pulp Mills,**

**40 CFR 60 Subpart GG—Standards of Performance for Stationary Gas Turbines,**

**40 CFR 60 Subpart KK—Standards of Performance for Lead-Acid Battery Manufacturing Plants,**

**40 CFR 60 Subpart LL—Standards of Performance for Metallic Mineral Processing Plants,**

**40 CFR 60 Subpart UU—Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture,**

**40 CFR 60 Subpart NNN—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations,**

**40 CFR 60 Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines,**

**40 CFR 60 Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines,**

**Appendix A–1 to Part 60 Test Method 1—Sample and velocity traverses for stationary sources,**

**Appendix A–1 to Part 60 Test Method 2—Determination of stack gas velocity and volumetric flow rate (Type S pitot tube),**

**Appendix A–1 to Part 60 Test Method 2A—Direct measurement of gas volume through pipes and small ducts,**

**Appendix A–1 to Part 60 Test Method 2B—Determination of exhaust gas volume flow rate from gasoline vapor incinerators,**

**Appendix A–1 to Part 60 Test Method 2D—Measurement of gas volume flow rates in small pipes and ducts,**



- Appendix A–2 to Part 60 Test Method 3A—Determination of Oxygen and Carbon Dioxide, Concentrations in Emissions From Stationary Sources (Instrumental Analyzer Procedure),
- Appendix A–2 to Part 60 Test Method 3C—Determination of carbon dioxide, methane, nitrogen, and oxygen from stationary sources,
- Appendix A–3 to Part 60 Test Method 4—Determination of moisture content in stack gases,
- Appendix A–3 to Part 60 Test Method 5—Determination of particulate matter emissions from stationary sources,
- Appendix A–3 to Part 60 Test Method 5A—Determination of particulate matter emissions from the asphalt processing and asphalt roofing industry,
- Appendix A–3 to Part 60 Test Method 5E—Determination of particulate matter emissions from the wool fiberglass insulation manufacturing industry,
- Appendix A–3 to Part 60 Test Method 5H—Determination of particulate emissions from wood heaters from a stack location,
- Appendix A–4 to Part 60 Test Method 6—Determination of sulfur dioxide emissions from stationary sources,
- Appendix A–4 to Part 60 Test Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure),
- Appendix A–4 to Part 60 Test Method 7—Determination of nitrogen oxide emissions from stationary sources,
- Appendix A–4 to Part 60 Test Method 7A—Determination of nitrogen oxide emissions from stationary sources—Ion chromatographic method,
- Appendix A–4 to Part 60 Test Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure),
- Appendix A–4 to Part 60 Test Method 8—Determination of sulfuric acid mist and sulfur dioxide emissions from stationary sources,
- Appendix A–4 to Part 60 Test Method 10—Determination of carbon monoxide emissions from stationary sources,
- Appendix A–4 to Part 60 Test Method 10A—Determination of carbon monoxide emissions in certifying continuous emission monitoring systems at petroleum refineries,
- Appendix A–4 to Part 60 Test Method 10B—Determination of carbon monoxide emissions from stationary sources,
- Appendix A–5 to Part 60 Test Method 11—Determination of hydrogen sulfide content of fuel gas streams in petroleum refineries,
- Appendix A–5 to Part 60 Test Method 12—Determination of inorganic lead emissions from stationary sources,
- Appendix A–5 to Part 60 Test Method 14A—Determination of Total Fluoride Emissions from Selected Sources at Primary Aluminum Production Facilities,
- Appendix A–6 to Part 60 Test Method 16A—Determination of total reduced sulfur emissions from stationary sources (impinger technique),
- Appendix A–6 to Part 60 Test Method 16C—Determination of Total Reduced Sulfur Emissions From Stationary Sources,
- Appendix A–6 to Part 60 Test Method 18—Measurement of gaseous organic compound emissions by gas chromatography,
- Appendix A–7 to Part 60 Test Method 23—Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans From Stationary Sources,
- Appendix A–7 to Part 60 Test Method 24—Determination of volatile matter content, water content, density, volume solids, and weight solids of surface coatings,
- Appendix A–7 to Part 60 Test Method 25—Determination of total gaseous nonmethane organic emissions as carbon,
- Appendix A–7 to Part 60 Test Method 25C—Determination of nonmethane organic compounds (NMOC) in MSW landfill gases,
- Appendix A–7 to Part 60 Test Method 25D—Determination of the Volatile Organic Concentration of Waste Samples,
- Appendix A–8 to Part 60 Test Method 26—Determination of Hydrogen Chloride Emissions From Stationary Sources,
- Appendix A–8 to Part 60 Test Method 26A—Determination of hydrogen halide and halogen emissions from stationary sources—isokinetic method,
- Appendix A–8 to Part 60 Test Method 29—Determination of metals emissions from stationary sources,
- Appendix A–8 to Part 60 Test Method 30B—Determination of Total Vapor Phase Mercury Emissions From Coal-Fired Combustion Sources Using Carbon Sorbent Traps,
- Appendix B to Part 60 Performance Specification 3—Specifications and Test Procedures for O<sub>2</sub> and CO<sub>2</sub> Continuous Emission Monitoring Systems in Stationary Sources,
- Appendix B to Part 60 Performance Specification 4—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources,
- Appendix B to Part 60 Performance Specification 4B—Specifications and Test Procedures for Carbon Monoxide and Oxygen Continuous Monitoring Systems in Stationary Sources,
- Appendix B to Part 60 Performance Specification 7—Specifications and Test Procedures for Hydrogen Sulfide Continuous

**Emission Monitoring Systems in Stationary Sources,****Appendix B to Part 60 Performance Specification 11—Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources,****Appendix B to Part 60 Performance Specification 12B— Specifications and Test Procedures for Monitoring Total Vapor Phase Mercury Emissions from Stationary Sources Using a Sorbent Trap Monitoring System,****Appendix B to Part 60 Performance Specification 15—Performance Specification for Extractive FTIR Continuous Emissions Monitor Systems in Stationary Sources,****Appendix B to Part 60 Performance Specification 16—Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources,****Appendix F to Part 60 Procedure 1— Quality Assurance Requirements for Gas Continuous Emission monitoring Systems used for Compliance Determination,****Appendix F to Part 60—Procedure 2— Quality Assurance Requirements for Particulate matter Continuous Emission Monitoring Systems at Stationary Sources,****Appendix F to Part 60—Procedure 5—Quality Assurance Requirements for Vapor Phase Mercury Continuous Emissions Monitoring Systems and Sorbent Trap Monitoring Systems Used for Compliance Determination at Stationary Sources** (79 FR 11227, February 27, 2014). EPA promulgated technical and editorial corrections for source testing of emissions and operations. Some current testing provisions contained inaccuracies and outdated procedures, and new alternatives that have been approved are being added. These revisions will improve the quality of data and will give testers additional flexibility to use the newly approved alternative procedures.**40 CFR 60 Subpart A—General Provisions,****40 CFR 60 Subpart GG—Standards of Performance for Stationary Gas Turbines,****Subpart DDD—Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry,****Subpart III—Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes,****Subpart LLL—Standards of Performance for SO<sub>2</sub> Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011,****Subpart NNN—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations,****Subpart KKKK—Standards of Performance for Stationary Combustion Turbines,****Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or before September 18, 2015** (81 FR 42542, June 30, 2016). In Title 40 of the Code of Federal Regulations, Part 60 (§60.1 to end of part 60 sections), revised as of July 1, 2015, EPA made the following corrections: 1. Reinstates the symbol < in the following places: a. On page 85, in § 60.13, paragraph (h)(2)(viii), before the term “30 minutes”; b. On page 667, in § 60.562–1, paragraph (a)(1)(ii) table 3, in row 1., in the second column, after “0.10” and before “5.5”; c. On page 667, in § 60.562–1, paragraph (a)(1)(ii) table 3, in row 3., in the second column, after “5.5” and before “20”; d. On page 706, in § 60.614, (f)(2) table 2, in the first column, in the first two entries, after “HT”; e. On page 719, in § 60.643, paragraph (a)(1)(ii), after “R”; f. On page 734, in § 60.664, paragraph (f)(2) table 2, in the first column, in the first two entries, after “HT”; g. On page 1208, in § 60.5410, paragraph (g)(1)(ii), after “R”; h. On page 1222, in § 60.5415, paragraph (g)(1)(ii), after “R”. 2. Reinstates the symbol ≤, in the following places: a. On page 501, in § 60.332, paragraph (a)(4), in the first row of the table, after “N” and before “.015”; b. On pages 1111–1112, in table 1 to subpart KKKK, in the second column, before the number “50” in the first, second, fifth, sixth, and ninth entries; c. On pages 1111–1112, in table 1 to subpart KKKK, in the second column, before the number “850” in the third, seventh, tenth and eleventh entries; d. On pages 1111–1112, in table 1 to subpart KKKK, in the second column, before the number “30” in the twelfth entry. a. On page 649, in § 60.543, paragraph (f)(2)(iv)(I), after “n” and before “3”; b. On page 706, in § 60.614, (f)(2) table 2, in the third and fourth entries, after “HT”; c. On page 719, in § 60.643, paragraph (a)(1)(i), after “R”; d. On page 734, in § 60.664, paragraph (f)(2) table 2, in the first column, in the third and fourth entries, after “HT”; e. On page 1208, in § 60.5410, paragraph (g)(1)(i), after “R”; f. On page 1222, in § 60.5415, paragraph (g)(1)(i), after “R”. 4. Reinstates the symbol > in the following places: a. On pages 1111–1112, in table 1 to subpart KKKK, in the second column, before the number “50” in the third, seventh, tenth, and eleventh entries; b. On pages 1111–1112, in table 1 to subpart KKKK, in the second column, before the number “850” in the fourth and eighth entries; c. On pages 1112, in table 1 to subpart KKKK, in the second column, before the number “30” in the thirteenth entry.**40 CFR 60 Subpart A—General Provisions,****40 CFR 60 Subpart AAA—Standards of Performance for New Residential Wood Heaters****Appendix I to Part 60—Owner’s Manuals and Temporary Labels for Wood Heaters Subject to Subparts AAA and QQQQ of Part 60** (80 FR 13671, March 16, 2015). EPA took final action to revise the Standards of Performance for New Residential Wood Heaters. This final rule achieved several objectives for new residential wood heaters, including applying updated emission limits that reflect the current best systems of emission reduction; eliminating exemptions over a broad suite of residential wood combustion devices; strengthening test methods as appropriate; and streamlining the certification process. Residential wood smoke emissions are a significant national air pollution problem and human health issue. These emissions occur in many neighborhoods across the country, including minority and low income neighborhoods, and impact people in their homes. To the extent that children and other sensitive populations are particularly susceptible to asthma, and that minority populations and low-income popula-



tions are more vulnerable, this rule will significantly reduce the pollutants that adversely affect their health.

**40 CFR 60 Subpart A—General Provisions,**

**40 CFR 60 Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines,**

**Appendix A–1 to Part 60, Test Method 1—Sample and velocity traverses for stationary sources, Appendix A–1 to Part 60, Test Method 2—Determination of stack gas velocity and volumetric flow rate (Type S pitot tube),**

**Appendix A–2 to Part 60, Test Method 2G—Determination of Stack Gas Velocity and Volumetric Flow Rate With Two-Dimensional Probes,**

**Appendix A–2 to Part 60, Test Method 3C—Determination of carbon dioxide, methane, nitrogen, and oxygen from stationary sources,**

**Appendix A–3 to Part 60, Test Method 4—Determination of moisture content in stack gases,**

**Appendix A–3 to Part 60, Test Method 5—Determination of particulate matter emissions from stationary sources,**

**Appendix A–3 to Part 60, Test Method 5H—Determination of particulate emissions from wood heaters from a stack location,**

**Appendix A–3 to Part 60, Test Method 5I—Determination of Low Level Particulate Matter Emissions From Stationary Sources,**

**Appendix A–4 to Part 60, Test Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure),**

**Appendix A–4 to Part 60, Test Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure),**

**Appendix A–4 to Part 60, Test Method 10—Determination of carbon monoxide emissions from stationary sources,**

**Appendix A–4 to Part 60, Test Method 10A—Determination of carbon monoxide emissions in certifying continuous emission monitoring systems at petroleum refineries,**

**Appendix A–4 to Part 60, Test Method 10B—Determination of carbon monoxide emissions from stationary sources,**

**Appendix A–5 to Part 60, Test Method 15—Determination of hydrogen sulfide, carbonyl sulfide, and carbon disulfide emissions from stationary sources,**

**Appendix A–6 to Part 60, Test Method 16C—Determination of Total Reduced Sulfur Emissions From Stationary Sources,**

**Appendix A–6 to Part 60, Test Method 18—Measurement of gaseous organic compound emissions by gas chromatography,**

**Appendix A–7 to Part 60, Test Method 25C—Determination of nonmethane organic compounds (NMO) in MSW landfill gases,**

**Appendix A–8 to Part 60, Test Method 26—Determination of Hydrogen Chloride Emissions From Stationary Sources,**

**Appendix A–8 to Part 60, Test Method 26A—Determination of hydrogen halide and halogen emissions from stationary sources—isokinetic method,**

**Appendix A–8 to Part 60, Test Method 29—Determination of metals emissions from stationary sources,**

**Appendix A–8 to Part 60, Test Method 30A, NOT IN eCFR**

**Appendix A–8 to Part 60, Test Method 30B, NOT IN eCFR**

**Appendix B to Part 60, Performance Specifications 1—Specifications and test procedures for continuous opacity monitoring systems in stationary sources,**

**Appendix B to Part 60, Performance Specification 2—Specifications and Test Procedures for SO<sub>2</sub> and NO<sub>x</sub> Continuous Emission Monitoring Systems in Stationary Sources,**

**Appendix B to Part 60, Performance Specification 3—Specifications and Test Procedures for O<sub>2</sub> and CO<sub>2</sub> Continuous Emission Monitoring Systems in Stationary Sources,**

**Appendix B to Part 60, Performance Specification 4A—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources,**

**Appendix B to Part 60, Performance Specification 11—Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources,**

**Appendix B to Part 60, Performance Specification 15—Performance Specification for Extractive FTIR Continuous Emissions Monitor Systems in Stationary Sources,**

**Appendix B to Part 60, Performance Specification 16—Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources,**

**Appendix F of Part 60, Procedure 2— Quality Assurance Requirements for Particulate matter Continuous Emission Monitoring Systems at Stationary Sources** (81 FR 59799, August 30, 2016). EPA promulgated technical and editorial corrections and revisions to regulations related to source testing of emissions. EPA made corrections and updates to testing provisions, and added newly approved alternatives to existing testing regulations. These revisions will improve the quality of data and provided flexibility in the use of approved alternative procedures. The revisions do not impose any new substantive requirements on source owners or operators.

**40 CFR 60 Subpart A—General Provisions,**



**40 CFR 60 Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or before September 18, 2015** (81 FR 35823, June 3, 2016). EPA finalized amendments to the current new source performance standards (NSPS) and establishes new standards. Amendments to the current standards improved implementation of the current NSPS. The new standards for the oil and natural gas source category set standards for both greenhouse gases (GHGs) and volatile organic compounds (VOC). Except for the implementation improvements, and the new standards for GHGs, these requirements do not change the requirements for operations covered by the current standards.

**40 CFR 60 Subpart Da—Standards of Performance for Electric Utility Steam Generating Units** (81 FR 20171, April 6, 2016). EPA finalized the technical corrections that EPA proposed on February 17, 2015, to correct and clarify certain text of the EPA's regulations regarding "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial- Institutional Steam Generating Units". EPA also took final action to remove the rule provision establishing an affirmative defense for malfunction.

**40 CFR 60 Subpart Da—Standards of Performance for Electric Utility Steam Generating Units** (79 FR 68777, November 19, 2014). EPA took final action on its reconsideration of the startup and shutdown provisions in the final rules titled, "National Emission Standards for Hazardous Air Pollutants from Coal and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial- Institutional, and Small Industrial- Commercial-Institutional Steam Generating Units." The national emission standards for hazardous air pollutants (NESHAP) issued pursuant to Clean Air Act (CAA) section 112 are referred to as the Mercury and Air Toxics Standards (MATS), and the new source performance standards (NSPS) issued pursuant to CAA section 111 are referred to as the Utility NSPS. EPA took final action on the standards applicable during startup periods and shutdown periods in MATS and on startup and shutdown provisions related to the PM standard in the Utility NSPS.

**40 CFR 60 Subpart F—Standards of Performance for Portland Cement Plants** (80 FR 44771, July 27, 2015). EPA finalized amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants. On February 12, 2013, EPA finalized amendments to the NESHAP and the new source performance standards (NSPS) for the Portland cement industry. Subsequently, EPA became aware of certain minor technical errors in those amendments, and thus issued a proposal to correct these errors on November 19, 2014 (79 FR 68821). EPA received 3 comments on the proposal. In response to the comments received and to complete technical corrections, EPA issued final amendments. In addition, consistent with the U.S. Court of Appeals to the DC Circuit's vacatur of the affirmative defense provisions in the final rule, this action removed those provisions. These amendments do not affect the pollution reduction or costs associated with these standards.

**40 CFR 60 Subpart Ga—Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011** (79 FR 25681, May 6, 2014). EPA corrected document 2012-19691 appearing on pages 48433 through 48448 in the issue of Tuesday, August 14, 2012, on page 48447, corrected Equation 1.

**40 CFR 60 Subpart J—Standards of Performance for Petroleum Refineries,**

**40 CFR 60 Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007** (80 FR 75177, December 1, 2015). EPA finalized the residual risk and technology review conducted for the Petroleum Refinery source categories regulated under national emission standards for hazardous air pollutants (NESHAP) Refinery MACT 1 and Refinery MACT 2. EPA also included revisions to the Refinery MACT 1 and MACT 2 rules in accordance with provisions regarding establishment of MACT standards. EPA also finalized technical corrections and clarifications for the new source performance standards (NSPS) for petroleum refineries to improve consistency and clarity and address issue related to a 2008 industry petition for reconsideration. Implementation of this final rule will result in projected reductions of 5,200 tons per year (tpy) of hazardous air pollutants (HAP) which will reduce cancer risk and chronic health effects.

**40 CFR 60 Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007** (81 FR 45232, July 13, 2016). EPA amended the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Petroleum Refineries in three respects. First, this action adjusted the compliance date for regulatory requirements that apply at maintenance vents during periods of startup, shutdown, maintenance or inspection for sources constructed or reconstructed on or before June 30, 2014. Second, this action amended the compliance dates for the regulatory requirements that apply during startup, shutdown, or hot standby for fluid catalytic cracking units (FCCU) and startup and shutdown for sulfur recovery units (SRU) constructed or reconstructed on or before June 30, 2014. Finally, this action finalized technical corrections and clarifications to the NESHAP and the New Source Performance Standards (NSPS) for Petroleum Refineries. These amendments are being finalized in response to new information submitted after these regulatory requirements were promulgated as part of the residual risk and technology review (RTR) rulemaking, which was published on December 1, 2015. This action will have an insignificant effect on emissions reductions and costs.

**40 CFR 60 Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007** (78 FR 76753, December 19, 2013). EPA took direct final action to amend the Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007. This direct final rule amends the definition of "delayed coking unit" by removing process piping and associated equipment (pumps, valves, and connectors) from the definition. This final rule also removed a redundant definition of "delayed coking unit" from the rule text.

**40 CFR 60 Subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units,**

**40 CFR 60 Subpart DDDD—Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units** (81 FR 40955, June 23, 2016). This action sets forth EPA's final decision on the issues for which it granted



reconsideration on January 21, 2015, which pertain to certain aspects of the February 7, 2013, final rule titled “Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units” (CISWI rule). EPA finalized proposed actions on these four topics: Definition of “continuous emission monitoring system (CEMS) data during startup and shutdown periods;” particulate matter (PM) limit for the waste-burning kiln subcategory; fuel variability factor (FVF) for coal-burning energy recovery units (ERUs); and the definition of “kiln.” This action also included EPA’s final decision to deny the requests for reconsideration of all other issues raised in the petitions for reconsideration of the 2013 final commercial and industrial solid waste incineration rule for which EPA did not grant reconsideration.

**40 CFR 60 Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or before September 18, 2015** (80 FR 48262, August 12, 2015). EPA finalized amendments to new source performance standards (NSPS) for the Oil and Natural Gas Sector. On March 23, 2015, EPA re-proposed its definition of “low pressure gas well” for notice and comment to correct a procedural defect with its prior rulemaking that included this definition. EPA also proposed to amend the NSPS to remove provisions concerning storage vessels connected or installed in parallel and to revise the definition of “storage vessel.” This action finalized the definition of “low pressure gas well” and the amendments to the storage vessel provisions.

**40 CFR 60 Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or before September 18, 2015** (78 FR 58415, September 23, 2013). EPA finalized the amendments to new source performance standards for the oil and natural gas sector. EPA received petitions for reconsideration of certain aspects of the August 12, 2012, final standards. These amendments are a result of reconsideration of certain issues raised by petitioners related to implementation of storage vessel provisions. The final amendments provide clarity of notification and compliance dates, ensure control of all storage vessel affected facilities and update key definitions. This action also corrected technical errors that were inadvertently included in the final standards.

**40 CFR 60 Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or before September 18, 2015** (79 FR 79017, December 31, 2014). EPA finalized amendments to new source performance standards (NSPS) for the oil and natural gas sector. On August 16, 2012, EPA published final NSPS for the oil and natural gas sector. EPA received petitions for administrative reconsideration of certain aspects of the standards. Among issues raised in the petitions were time-critical issues related to certain storage vessel provisions and well completion provisions. On July 17, 2014 (79 FR 41752), EPA published proposed amendments and clarifications as a result of reconsideration of certain issues related to well completions, storage vessels and other issues raised for reconsideration as well as technical corrections and amendments to further clarify the rule. This action finalized these amendments and corrected technical errors that were inadvertently included in the final standards.

**40 CFR 60 Subpart OOOOa—Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015** (82 FR 25730, June 5, 2017). By a letter dated April 18, 2017, EPA announced the convening of a proceeding for reconsideration of the fugitive emission requirements at well sites and compressor station sites in the final rule, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources,” published in the Federal Register on June 3, 2016. In this action EPA granted reconsideration of additional requirements in that rule, specifically the well site pneumatic pumps standards and the requirements for certification by professional engineer. In addition, EPA stayed for three months these rule requirements pending reconsideration.

**40 CFR 60 Subpart T—Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants**

**40 CFR 60 Subpart U—Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants**

**40 CFR 60 Subpart V—Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants**

**40 CFR 60 Subpart W—Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants**

**40 CFR 60 Subpart X—Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities** (80 FR 50385, August 19, 2015). EPA finalized the residual risk and technology review conducted for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA finalized an 8-year review of the current new source performance standards (NSPS) for five source categories. EPA also took final action addressing Clean Air Act (CAA) provisions related to emission standards for hazardous air pollutants, review and revision of emission standards, and work practice standards.

**40 CFR 60 Subpart IIII - Standards of Performance for Stationary Compression Ignition Internal Combustion Engines** (81 FR 44212, July 7, 2016). EPA finalized amendments to the standards of performance for stationary compression ignition (CI) internal combustion engines to allow manufacturers to design the engines so that operators can temporarily override performance inducements related to the emission control system for stationary CI internal combustion engines. The amendments apply to engines operating during emergency situations where the operation of the engine or equipment is needed to protect human life, and to require compliance with Tier 1 emission standards during such emergencies. The EPA also amended the standards of performance for certain stationary CI internal combustion engines located in remote areas of Alaska.

**40 CFR 60 Appendix B—Performance Specifications. Performance Specification 18-Performance Specifications and Test Procedures for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems at Stationary Sources** (80 FR 42397, July 17, 2015). In rule document 2015–16385, appearing on pages 38628 through 38652 in the issue of Tuesday, July 7, 2015, EPA made the following correction: On page 38646, in the first column, in the last paragraph, in the sixth line, “+5” should read “±5”.

**40 CFR 60 Appendix B to Part 60—Performance Specification 18- Performance Specifications and Test Procedures for Gaseous Hydrogen Chloride (HCl) Continuous Emission monitoring Systems at Stationary Sources.**



**Appendix F to Part 60—Quality Assurance Procedure 6. Quality Assurance Requirements for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems Used for Compliance Determination at Stationary Sources** (81 FR 31515, May 19, 2016). EPA took direct final action to make several minor technical amendments to the performance specifications and test procedures for hydrogen chloride (HCl) continuous emission monitoring systems (CEMS). This direct final rule also marked several minor amendments to the quality assurance (QA) procedures for HCl CEMS used for compliance determination at stationary sources. These amendments made several minor corrections and clarify several aspects of these regulations.

**40 CFR 60 Appendix B to Part 60—Performance Specification 18- Performance Specifications and Test Procedures for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems at Stationary Sources. Appendix F to Part 60—Quality Assurance Procedure 6. Quality Assurance Requirements for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems Used for Compliance Determination at Stationary Sources** (80 FR 38628, July 7, 2015). EPA finalized performance specifications and test procedures for hydrogen chloride (HCl) continuous emission monitoring systems (CEMS) to provide sources and regulatory agencies with criteria and test procedures for evaluating the acceptability of HCl CEMS. The final performance specification (Performance Specification 18) includes requirements for initial acceptance, including instrument accuracy and stability assessments. This action also finalized quality assurance (QA) procedures for HCl CEMS used for compliance determination at stationary sources. The QA procedures (Procedure 6) specify the minimum QA requirements necessary for the control and assessment of the quality of CEMS data submitted to the EPA.

#### **NESHAP - 40 CFR PART 61**

##### **SUBPARTS SIGNIFICANTLY REVISED:**

**40 CFR 61 Subpart A—General Provisions** (82 FR 21927, May 11, 2017). EPA took direct final action to update the Code of Federal Regulations delegation tables to reflect the current delegation status of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in Arizona and Nevada.

**40 CFR 61 Subpart A—General Provisions,**

**40 CFR 61 Subpart C—National Emission Standard for Beryllium,**

**40 CFR 61 Subpart D—National Emission Standard for Beryllium Rocket Motor Firing,**

**40 CFR 61 Subpart E—National Emission Standard for Mercury,**

**40 CFR 61 Subpart N—National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants,**

**Appendix B to Part 61 Test Method 101—Determination of particulate and gaseous mercury emissions from chlor-alkali plants (air streams),**

**Appendix B to Part 61 Test Method 101A—Determination of particulate and gaseous mercury emissions from sewage sludge incinerators,**

**Appendix B to Part 61 Test Method 102—Determination of particulate and gaseous mercury emissions from chlor-alkali plants (hydrogen streams),**

**Appendix B to Part 61 Test Method 104—Determination of beryllium emissions from stationary sources,**

**Appendix B to Part 61 Test Method 108—Determination of particulate and gaseous arsenic emissions,**

**Appendix B to Part 61 Test Method 108A—Determination of arsenic content in ore samples from nonferrous smelters** (79 FR 11227, February 27, 2014). EPA promulgated technical and editorial corrections for source testing of emissions and operations. Some current testing provisions contained inaccuracies and outdated procedures, and new alternatives that have been approved are being added. These revisions will improve the quality of data and will give testers additional flexibility to use the newly approved alternative procedures.

**40 CFR 61 Subpart A—General Provisions,**

**Appendix B to Part 61 Test Method 107—Determination of vinyl chloride content of in-process wastewater samples, and vinyl chloride content of polyvinyl chloride resin slurry, wet cake, and latex samples** (81 FR 59799, August 30, 2016). EPA promulgated technical and editorial corrections and revisions to regulations related to source testing of emissions. EPA made corrections and updates to testing provisions, and added newly approved alternatives to existing testing regulations. These revisions will improve the quality of data and provide flexibility in the use of approved alternative procedures. The revisions do not impose any new substantive requirements on source owners or operators.

**40 CFR 61 Subpart W—National Emission Standards for Radon Emissions From Operating Mill Tailings** (82 FR 5142, January 17, 2017). EPA took final action to revise certain portions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Radon Emissions from Operating Mill Tailings. The revisions for this final action are based on EPA's determination as to what constitutes generally available control technology or management practices (GACT) for this area source category. EPA also added new definitions to the NESHAP, revised existing definitions and clarified that the NESHAP also applies to uranium recovery facilities that extract uranium through the in-situ leach method and the heap leach method.

#### **NESHAP - 40 CFR PART 63**

##### **SUBPARTS SIGNIFICANTLY REVISED:**

**40 CFR 63 Subpart A—General Provisions,**

**40 CFR 63 Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater,**

**40 CFR 63 Subpart N—National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks,**



- 40 CFR 63 Subpart O—Ethylene Oxide Emissions Standards for Sterilization Facilities,
- 40 CFR 63 Subpart Y—National Emission Standards for Marine Tank Vessel Loading Operations,
- 40 CFR 63 Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities,
- 40 CFR 63 Subpart GGG—National Emission Standards for Pharmaceuticals Production,
- 40 CFR 63 Subpart RRR—National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production,
- 40 CFR 63 Subpart CCCC—National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast,
- 40 CFR 63 Subpart UUUU—National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing,
- 40 CFR 63 Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines,
- Appendix A to Part 63 Test Method 306—Determination of Chromium Emissions From Decorative and hard Chromium Electroplating and Chromium Anodizing Operations—Isokinetic Method,
- Appendix A to Part 63 Test Method 306A—Determination of Chromium Emissions From Decorative and hard Chromium Electroplating and Chromium Anodizing Operations,
- Appendix A to Part 63 Test Method 308—Procedure for Determination of Methanol Emission From Stationary Sources,
- Appendix A to Part 63 Test Method 315—Determination of Particulate and Methylene Chloride Extractable matter (MCEM) From Selected Sources and Primary Aluminum Production Facilities,
- Appendix A to Part 63 Test Method 316—Sampling and Analysis for Formaldehyde Emissions From Stationary Sources in the Mineral Wool and Wool Fiberglass Industries,
- Appendix A to Part 63 Test Method 321—Measurement of Gaseous Hydrogen Chloride Emissions At Portland Cement Kilns by Fourier Transform Infrared (FTIR) Spectroscopy (79 FR 11227, February 27, 2014). EPA promulgated technical and editorial corrections for source testing of emissions and operations. Some current testing provisions contained inaccuracies and outdated procedures, and new alternatives that have been approved are being added. These revisions will improve the quality of data and will give testers additional flexibility to use the newly approved alternative procedures.
- 40 CFR 63 Subpart A—General Provisions,
- 40 CFR 63 Subpart Y—National Emission Standards for Marine Tank Vessel Loading Operations,
- 40 CFR 63 Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries,
- 40 CFR 63 Subpart UUU—National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units,
- Appendix A to Part 63 Test Method 325A—Volatile Organic Compounds from Fugitive and Area Sources: Sampler Deployment and VOC Sample Collection,
- Appendix A to Part 63 Test Method 325B—Volatile Organic Compounds from Fugitive and Area Sources: Sampler Preparation and Analysis (80 FR 75177, December 1, 2015). EPA finalized the residual risk and technology review conducted for the Petroleum Refinery source categories regulated under national emission standards for hazardous air pollutants (NESHAP) Refinery MACT 1 and Refinery MACT 2. EPA also included revisions to the Refinery MACT 1 and MACT 2 rules in accordance with provisions regarding establishment of MACT standards. EPA also finalized technical corrections and clarifications for the new source performance standards (NSPS) for petroleum refineries to improve consistency and clarity and address issue related to a 2008 industry petition for reconsideration. Implementation of this final rule will result in projected reductions of 5,200 tons per year (tpy) of hazardous air pollutants (HAP) which will reduce cancer risk and chronic health effects.
- 40 CFR 63 Subpart A—General Provisions,
- 40 CFR 63 Subpart AA—National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants,
- 40 CFR 63 Subpart BB—National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizers Production Plants (80 FR 503865, August 19, 2015). EPA finalized the residual risk and technology review conducted for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA finalized an 8-year review of the current new source performance standards (NSPS) for five source categories. EPA also took final action addressing Clean Air Act (CAA) provisions related to emission standards for hazardous air pollutants, review and revision of emission standards, and work practice standards.
- 40 CFR 63 Subpart A—General Provisions,
- 40 CFR 63 Subpart RRR—National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production (80 CFR 56699, September 18, 2015). EPA finalized the residual risk and technology review (RTR), and the rule review, EPA conducted for the Secondary Aluminum Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). In this action, EPA finalized several amendments to the NESHAP based on the rule review. These final amendments included a requirement to report performance testing through the Electronic Reporting Tool (ERT); provisions allowing owners and operators to change furnace classifications; requirements to account for unmeasured emissions during compliance testing for group 1 furnaces that do not have add-on control devices; alternative compliance options for the operating and monitoring requirements for sweat furnaces; compliance provisions for hydrogen fluoride; provisions addressing emissions during periods



of startup, shutdown, and malfunction (SSM); and other corrections and clarifications to the applicability, definitions, operating, monitoring and performance testing requirements. These amendments will improve the monitoring, compliance and implementation of the rule.

**40 CFR 63 Subpart A—General Provisions,**

**Appendix A to Part 63 Test Method 320—Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier** (81 FR 59799, August 30, 2016). EPA promulgated technical and editorial corrections and revisions to regulations related to source testing of emissions. EPA made corrections and updates to testing provisions, and added newly approved alternatives to existing testing regulations. These revisions improved the quality of data and provide flexibility in the use of approved alternative procedures. The revisions do not impose any new substantive requirements on source owners or operators.

**40 CFR 63 Subpart A—General Provisions,**

**40 CFR 63 Subpart LL—National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants** (80 FR 62389, October 15, 2015). EPA finalized the residual risk and technology review (RTR) conducted for the Primary Aluminum Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA took final action regarding new and revised emission standards for various hazardous air pollutants (HAP) emitted by this source category based on the RTR, newly obtained emissions test data, and comments EPA received in response to the 2011 proposal and 2014 supplemental proposal. These final amendments included technology-based standards and work practice standards reflecting performance of maximum achievable control technology (MACT), and related monitoring, reporting, and testing requirements, for several previously unregulated HAP from various emissions sources. Furthermore, based on EPA's risk review, EPA finalized new and revised emission standards for certain HAP emissions from potlines using the Soderberg technology to address risk. EPA also added a requirement for electronic reporting of compliance data, eliminating the exemptions for periods of startup, shutdown, and malfunctions (SSM), and not adopting the affirmative defense provisions proposed in 2011, consistent with a recent court decision vacating the affirmative defense provisions. This action will provide improved environmental protection regarding potential emissions of HAP emissions from primary aluminum reduction facilities.

**40 CFR 63 Subpart A—General Provisions,**

**40 CFR 63 Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins,**

**40 CFR 63 Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production,**

**40 CFR 63 Subpart PPP—National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production** (79 FR 17339, March 24, 2014). EPA finalized the residual risk and technology review conducted for nine source categories regulated under the National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production. The action promulgated amendments concerning the following: Residual risk reviews; technology reviews; emissions during periods of startup, shutdown and malfunction; standards for previously unregulated hazardous air pollutant emission sources; revisions to require monitoring of pressure relief devices that release to the atmosphere; and electronic reporting of performance test results. This action also lifted the stay of requirements for process contact cooling towers at existing sources in one Group IV Polymers and Resins subcategory, issued on February 23, 2001. The revisions to the final rules maintain the level of environmental protection or emissions control on sources regulated by these rules.

**40 CFR 63 Subpart A—General Provisions,**

**40 CFR 63 Subpart XXX—National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese** (80 FR 37365, June 30, 2015). EPA finalized the residual risk and technology review (RTR) conducted for the Ferroalloys Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). These final amendments included revisions to particulate matter (PM) standards for electric arc furnaces, metal oxygen refining processes, and crushing and screening operations, and expanded and revised the requirements to control process fugitive emissions from furnace operations, tapping, casting, and other processes. EPA also finalized opacity limits, as proposed in 2014. However, regarding opacity monitoring, in lieu of Method 9, EPA is requiring monitoring with the digital camera opacity technique (DCOT). Furthermore, EPA finalized emissions standards for four previously unregulated hazardous air pollutants (HAP): Formaldehyde, hydrogen chloride (HCl), mercury (Hg) and polycyclic aromatic hydrocarbons (PAH). Other requirements related to testing, monitoring, notification, recordkeeping, and reporting are included. This rule is health protective due to the revised emissions limits for the stacks and the requirement of enhanced fugitive emissions controls that will achieve significant reductions of process fugitive emissions, especially manganese.

**40 CFR 63 Subpart A—General Provisions,**

**40 CFR 63 Subpart XXX—National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese** (82 FR 5401, January 18, 2017). This action sets forth EPA's final decision on the issues for which it announced reconsideration on July 12, 2016, that pertain to certain aspects of the June 30, 2015, final amendments for the Ferroalloys Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). EPA amended the rule to allow existing facilities with positive pressure baghouses to perform visible emissions monitoring twice daily as an alternative to installing and operating bag leak detection systems (BLDS) to ensure the baghouses are operating properly. In addition, this final action explained that EPA is maintaining the requirement that facilities must use a digital camera opacity technique (DCOT) method to demonstrate compliance with opacity limits. However, this final action revised the rule such that it references the recently updated version of the DCOT method. In this action, EPA also explained that no changes are being made regarding the rule provision that requires quarterly polycyclic aromatic hydrocarbons (PAH) emission testing for furnaces producing ferromanganese (FeMn) with an opportunity for facilities to request decreased compliance test frequency from their permitting



authority after the first year. Furthermore, in this action, EPA denied the request for reconsideration of the PAH emission limits for both FeMn and silicomanganese (SiMn) production furnaces.

**40 CFR 63 Subpart A—General Provisions,**

**40 CFR 63 Subpart JJJJ—National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing,**

**40 CFR 63 Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing** (80 FR 65469, October 26, 2015). EPA finalized national emission standards for hazardous air pollutants (NESHAP) for Brick and Structural Clay Products (BSCP) Manufacturing and NESHAP for Clay Ceramics Manufacturing. All major sources in these categories must meet maximum achievable control technology (MACT) standards for mercury (Hg), non-mercury (non-Hg) metal hazardous air pollutants (HAP) (or particulate matter (PM) surrogate) and dioxins/furans (Clay Ceramics only); health-based standards for acid gas HAP; and work practice standards, where applicable. The final rule, which has been informed by input from industry (including small businesses), environmental groups, and other stakeholders, protects air quality and promotes public health by reducing emissions of HAP listed in section 112 of the Clean Air Act (CAA).

**40 CFR 63 Subpart A—General Provisions,**

**40 CFR 63 Subpart JJJJ—National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing,**

**40 CFR 63 Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing** (80 FR 75817, December 4, 2015). EPA published a final rule in the **Federal Register** on October 26, 2015, titled NESHAP for Brick and Structural Clay Products Manufacturing; and NESHAP for Clay Ceramics Manufacturing. These amendments make two technical corrections to the published regulation. **§ 63.14 [Corrected]** 1. On page 65520: a. In the second column, correct amendatory instruction number 2.b. to read “Revising paragraph (h)(76);” b. In the second column, redesignate paragraph (h)(75) as paragraph (h)(76). **§ 63.8605 [Corrected]** 2. On page 65549, second column, in paragraph (c), fifth line, remove “§ 63.8630(e).” and add “§ 63.8630(c).” in its place.

**40 CFR 63 Subpart E—Approval of State Programs and Delegation of Federal Authorities** (82 FR 21927, May 11, 2017). EPA took direct final action to update the Code of Federal Regulations delegation tables to reflect the current delegation status of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in Arizona and Nevada.

**40 CFR 63 Subpart N—National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks** (80 FR 22116, April 21, 2015). EPA *CFR* Correction in Title 40 of the Code of Federal Regulations, Part 63, §§ 63.1 to 63.599, revised as of July 1, 2014, on page 478, in § 63.343, paragraph (c)(5)(ii) is correctly revised to read as follows: § 63.343 Compliance provisions. [Corrected] \* \* \* \* (c) \* \* \* (5) \* \* \* (ii) On and after the date on which the initial performance test is required to be completed under § 63.7, the owner or operator of an affected source shall monitor the surface tension of the electroplating or anodizing bath. Operation of the affected source at a surface tension greater than the value established during the performance test, or greater than 40 dynes/cm, as measured by a stalagmometer, or 33 dynes/cm, as measured by a tensiometer, if the owner or operator is using this value in accordance with paragraph (c)(5)(i) of this section, shall constitute noncompliance with the standards. The surface tension shall be monitored according to the following schedule:

**40 CFR 63 Subpart X, —National Emissions Standards for Hazardous Air Pollutants from Secondary Lead Smelting** (79 FR 367, January 3, 2014). EPA took direct final action to promulgate amendments to a final rule that revised national emission standards for hazardous air pollutants for existing and new secondary lead smelters. The final rule was published on January 5, 2012. This direct final action amends certain regulatory text to clarify compliance dates. Additionally, EPA made amendments to clarify certain provisions in the 2012 final rule related to monitoring of negative pressure in total enclosures. This action also corrects typographical errors in a table listing congeners of dioxins and furans and the testing requirements for total hydrocarbons.

**40 CFR 63 Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries,**

**40 CFR 63 Subpart UUU—National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units** (81 FR 45232, July 13, 2016). EPA amended the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Petroleum Refineries in three respects. First, this action adjusted the compliance date for regulatory requirements that apply at maintenance vents during periods of startup, shutdown, maintenance or inspection for sources constructed or reconstructed on or before June 30, 2014. Second, this action amended the compliance dates for the regulatory requirements that apply during startup, shutdown, or hot standby for fluid catalytic cracking units (FCCU) and startup and shutdown for sulfur recovery units (SRU) constructed or reconstructed on or before June 30, 2014. Finally, this action finalized technical corrections and clarifications to the NESHAP and the New Source Performance Standards (NSPS) for Petroleum Refineries. These amendments are being finalized in response to new information submitted after these regulatory requirements were promulgated as part of the residual risk and technology review (RTR) rulemaking, which was published on December 1, 2015. This action will have an insignificant effect on emissions reductions and costs.

**40 CFR 63 Subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations** (80 FR 14247, March 18, 2015). EPA finalized the residual risk and technology review (RTR) conducted for the Off-Site Waste and Recovery Operations (OSWRO) source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA finalized amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown and malfunction (SSM); add requirements for reporting of performance testing through the Electronic Reporting Tool (ERT); revise the routine maintenance provisions; clarify provisions pertaining to open-ended valves and lines (OELs); add monitoring requirements for pressure relief devices (PRDs); clarify provisions for some performance test methods and procedures; and make several minor clarifications and corrections. The revisions to the final rule increased the level of emissions control and environmental protection provided by the OSWRO NESHAP.



**40 CFR 60 Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities** (80 FR 76151, December 7, 2015). EPA finalized the residual risk and technology review (RTR) and the rule review EPA conducted for Aerospace Manufacturing and Rework Facilities under the national emissions standards for hazardous air pollutants (NESHAP). In this action, EPA finalized several amendments to the NESHAP based on the review of these standards. These final amendments add limitations to reduce organic and inorganic emissions of hazardous air pollutants (HAP) from specialty coating application operations; remove exemptions for periods of startup, shutdown and malfunction (SSM) so that affected units will be subject to the emission standards at all times; and revise provisions to address recordkeeping and reporting requirements applicable to periods of SSM. These final amendments include a requirement to report performance testing through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI). This action also makes clarifications to the applicability, definitions, and compliance demonstration provisions, and other technical corrections. EPA estimates that implementation of this rule will reduce annual HAP emissions by 58 tons.

**40 CFR 63 Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities** (81 FR 51114, August 3, 2016). EPA took direct final action to amend the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Aerospace Manufacturing and Rework Facilities. In this action, EPA clarified the compliance date for the handling and storage of waste.

**40 CFR 63 Subpart NN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources,**

**Subpart DDD—National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production,**

**40 CFR 63 Subpart NNN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing** (80 FR 45279, July 29, 2015). This action finalized the residual risk and technology reviews (RTR) conducted for the Mineral Wool Production and Wool Fiberglass Manufacturing source categories regulated under national emission standards for hazardous air pollutants (NESHAP). Under this action EPA established pollutant-specific emissions limits for hazardous air pollutants (HAP) that were previously regulated (under a surrogate) and for HAP that were previously unregulated. This action finalized first-time generally available control technologies (GACT) standards for gas-fired glass-melting furnaces at wool fiberglass manufacturing facilities that are area sources. EPA also amended regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); adding requirements for reporting of performance testing through the Electronic Reporting Tool (ERT); and making several minor clarifications and corrections. The revisions in these final rules increased the level of emissions control and environmental protection provided by the Mineral Wool Production and Wool Fiberglass Manufacturing NESHAP.

**40 CFR 63 Subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards,**

**40 CFR 63 Subpart OOO—National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins** (79 FR 60897, October 8, 2014). EPA finalized the residual risk and technology review (RTR) conducted for the Acrylic and Modacrylic Fibers Production, Amino/ Phenolic Resins Production and Polycarbonate Production source categories regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA took final action addressing emissions during periods of startup, shutdown and malfunction, and are adding standards for previously unregulated hazardous air pollutant (HAP) emissions sources for certain emission points. These changes included revisions made in response to comments received on the proposed rule. These final amendments also included clarifying provisions pertaining to open-ended valves and lines, adding monitoring requirements for pressure relief devices and adding requirements for electronic reporting of performance test results, as proposed. EPA estimated that these final amendments will reduce HAP emissions from these three source categories by a combined 137 tons per year.

**40 CFR 63 Subpart III—National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production** (79 FR 48073, August 15, 2014). EPA finalized the residual risk and technology review (RTR) conducted for the Flexible Polyurethane Foam (FPUF) Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA finalized amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown and malfunction (SSM); add requirements for reporting of performance testing through the Electronic Reporting Tool (ERT); clarified the leak detection methods allowed for diisocyanate storage vessels at slabstock foam production facilities; and revise the rule to add a schedule for delay of leak repairs for valves and connectors.

**40 CFR 63 Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry** (81 FR 48356, July 25, 2016). EPA took direct final action to amend the National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry. This direct final rule provided, for a period of 1 year, an additional compliance alternative for sources that would otherwise be required to use an HCl CEMS to demonstrate compliance with the HCl emissions limit. This compliance alternative is needed due to the current unavailability of a calibration gas used for quality assurance purposes. This direct final rule also restored regulatory text requiring the reporting of clinker production and kiln feed rates that was deleted inadvertently.

**40 CFR 63 Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry** (82 FR 28562, Friday, June 23, 2017). EPA took direct final action to amend the National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry. This direct final rule provided a compliance alternative for sources that would otherwise be required to use a hydrogen chloride (HCl) continuous emissions monitoring system (CEMS) to demonstrate compliance with the HCl emissions limit. This compliance alternative is needed due to the current unavailability of the HCl calibration gases used for CEMS quality assurance purposes.

**40 CFR 63 Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry** (80 FR 44771, July 27, 2015). EPA finalized amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement



Plants. On February 12, 2013, EPA finalized amendments to the NESHAP and the new source performance standards (NSPS) for the Portland cement industry. Subsequently, EPA became aware of certain minor technical errors in those amendments, and thus issued a proposal to correct these errors on November 19, 2014 (79 FR 68821). The EPA received 3 comments on the proposal. In response to the comments received and to complete technical corrections, the EPA issued final amendments. In addition, consistent with the U.S. Court of Appeals to the DC Circuit's vacatur of the affirmative defense provisions in the final rule, this action removes those provisions. These amendments do not affect the pollution reduction or costs associated with these standards.

**40 CFR 63 Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry** (80 FR 54728, September 11, 2015). EPA published a final rule in the Federal Register on July 27, 2015, titled National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants. This final rule made technical corrections and clarifications to the regulations published in that final rule. The rule also included a provision describing performance testing requirements when a source demonstrates compliance with the hydrochloric acid (HCl) emissions standard using a continuous emissions monitoring system (CEMS) for sulfur dioxide measurement and reporting.

**40 CFR 63 Subpart RRR—National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production** (81 FR 38085, June 13, 2016). EPA took direct final action to amend the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production (Secondary Aluminum NESHAP). This direct final rule amended the final rule that was published in the **Federal Register** on September 18, 2015, by correcting inadvertent errors, clarifying rule requirements for initial performance tests and submittal of malfunction reports, providing an additional option for new round top furnaces to account for unmeasured emissions during compliance testing, and clarifying what constitutes a change in furnace operating mode. The direct final rule also updated Web site addresses for the EPA's Electronic Reporting Tool (ERT) and the Compliance and Emissions Data Reporting Interface (CEDRI). These amendments will help to improve compliance and implementation of the rule.

**40 CFR 63 Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters** (80 FR 72789, November 20, 2015). This action sets forth EPA's final decision on the issues for which it granted reconsideration on January 21, 2015, that pertain to certain aspects of the January 31, 2013, final amendments to the "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters" (Boiler MACT). EPA retained a minimum carbon monoxide (CO) limit of 130 parts per million (ppm) and the particulate matter (PM) continuous parameter monitoring system (CPMS) requirements, consistent with the January 2013 final rule. EPA made minor changes to the proposed definitions of startup and shutdown and work practices during these periods, based on public comments received. Among other things, this final action addressed a number of technical corrections and clarifications of the rule. These corrections clarified and improved the implementation of the January 2013 final Boiler MACT, but do not have any effect on the environmental, energy, or economic impacts associated with the proposed action. This action also included EPA's final decision to deny the requests for reconsideration with respect to all issues raised in the petitions for reconsideration of the final Boiler MACT for which EPA did not grant reconsideration.

**40 CFR 63 Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units** (81 FR 20171, April 6, 2016). EPA finalized the technical corrections EPA proposed on February 17, 2015, to correct and clarify certain text of the EPA's regulations regarding "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial- Institutional Steam Generating Units". EPA also took final action to remove the rule provision establishing an affirmative defense for malfunction.

**40 CFR 63 Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units** (82 FR 16736, April 6, 2017). EPA amended the electronic reporting requirements for the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil- Fired Electric Utility Steam Generating Units (also known as the Mercury and Air Toxics Standards (MATS)) to allow for the temporary submission, through June 30, 2018, of certain reports using the portable document file (PDF) format and to correct inadvertent errors. With this action owners or operators of Electric Utility Steam Generating Units (EGUs) will be able to continue to use temporarily a single electronic reporting system for MATS data submissions, to rely on correct language for mercury (Hg) relative accuracy test audit (RATA) requirements, and to rely on the correct acceptance criterion for ongoing quality assurance test requirements for Hg RATAs. This extension will allow EPA the necessary time to develop, implement, and test the code necessary so that all MATS reports required to be submitted electronically can be submitted using the Emissions Collection and Monitoring Plan System (ECMPS) Client Tool.

**40 CFR 63 Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units** (80 FR 15510, March 24, 2015). On November 19, 2014, EPA proposed amending certain reporting requirements in the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Steam Generating Units (Mercury and Air Toxics Standards (MATS)) rule. This final rule amended the reporting requirements in the MATS rule by temporarily requiring owners or operators of affected sources to submit certain required emissions and compliance reports to the EPA through the Emissions Collection and Monitoring Plan System (ECMPS) Client Tool, and the rule temporarily suspends the requirement for owners or operators of affected sources to submit certain reports using the Compliance and Emissions Data Reporting Interface (CEDRI).

**40 CFR 63 Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units** (79 FR 68777, November 19, 2014). EPA took final action on its reconsideration of the startup and shutdown provisions in the final rules titled, "National Emission Standards for Hazardous Air Pollutants from Coal and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial- Institutional, and Small Industrial- Commercial-Institutional Steam Generating Units." The national emission standards for hazardous air pollutants (NESHAP) issued pursuant to Clean Air Act (CAA) section 112 are referred to as the Mercury and Air Toxics Standards (MATS), and the new source performance standards (NSPS) issued pursuant to CAA section 111 are referred to



as the Utility NSPS. On November 30, 2012, EPA granted reconsideration of, proposed, and requested comment on a limited set of issues in the February 16, 2012, final MATS and Utility NSPS, including certain issues related to the final work practice standards applicable during startup periods and shutdown periods. On June 25, 2013, EPA reopened the public comment period for the reconsideration issues related to the startup and shutdown provisions of MATS and the startup and shutdown provisions related to the particulate matter (PM) standard in the Utility NSPS. EPA took final action on the standards applicable during startup periods and shutdown periods in MATS and on startup and shutdown provisions related to the PM standard in the Utility NSPS.

**40 CFR 63 Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units** (79 FR 68795, November 19, 2014). EPA took direct final action to amend the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Steam Generating Units (Mercury and Air Toxics Standards (MATS)). This direct final rule amended the reporting requirements in the MATS rule by temporarily requiring affected sources to submit all required emissions and compliance reports to the EPA through the Emissions Collection and Monitoring Plan System (ECMPS) Client Tool and temporarily suspending the requirement for affected sources to submit certain reports using the Electronic Reporting Tool and the Compliance and Emissions Data Reporting Interface (CEDRI).

**40 CFR 63 Subpart YYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities** (80 FR 36247, June 24, 2015). EPA CFR Correction in Title 40 of the Code of Federal Regulations, Part 63 (§ 63.8980 to end of part 63), revised as of July 1, 2014, on page 244, in § 63.10686, paragraph (e) is reinstated to read as follows: § 63.10686 What are the requirements for electric arc furnaces and argon-oxygen decarburization vessels? (e) You must monitor the capture system and PM control device required by this subpart, maintain records, and submit reports according to the compliance assurance monitoring requirements in 40 CFR part 64. The exemption in 40 CFR 64.2(b)(1)(i) for emissions limitations or standards proposed after November 15, 1990 under section 111 or 112 of the CAA does not apply. In lieu of the deadlines for submittal in 40 CFR 64.5, you must submit the monitoring information required by 40 CFR 64.4 to the applicable permitting authority for approval by no later than the compliance date for your affected source for this subpart and operate according to the approved plan by no later than 180 days after the date of approval by the permitting authority.

**40 CFR 63 Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources** (80 FR 5938, February 4, 2015). EPA took direct final action to amend the National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources. This direct final rule withdrew the total non-vinyl chloride organic hazardous air pollutant (TOHAP) process wastewater emission standards for new and existing polyvinyl chloride and copolymers (PVC) area sources.

**40 CFR 63 Subpart JJJJJ—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources** (81 FR 63112, September 14, 2016). This action sets forth EPA’s final decision on the issues for which it announced reconsideration on January 21, 2015, that pertain to certain aspects of the February 1, 2013, final amendments to the “National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers” (Area Source Boilers Rule). EPA retained the subcategory and separate requirements for limited-use boilers, consistent with the February 2013 final rule. In addition, the EPA amended three reconsidered provisions regarding: The alternative particulate matter (PM) standard for new oil-fired boilers; performance testing for PM for certain boilers based on their initial compliance test; and fuel sampling for mercury (Hg) for certain coal-fired boilers based on their initial compliance demonstration, consistent with the alternative provisions for which comment was solicited in the January 2015 proposal. EPA made minor changes to the proposed definitions of startup and shutdown based on comments received. This final action also addressed a limited number of technical corrections and clarifications on the rule, including removal of the affirmative defense for malfunction in light of a court decision on the issue. These corrections will clarify and improve the implementation of the February 2013 final Area Source Boilers Rule. In this action, EPA also denied the requests for reconsideration with respect to the issues raised in the petitions for reconsideration of the final Area Source Boilers Rule for which reconsideration was not granted.

**40 CFR 63 Appendix A to Part 63—Test Method 303—Determination of Visible Emissions From By-Product Coke Oven Batteries** (81 FR 83701, November 22, 2016). EPA finalized revisions to better define the requirements associated with conducting Method 303 training courses. Method 303 is an air pollution test method used to determine the presence of visible emissions (VE) from coke ovens. This action added language that clarified the criteria used by EPA to determine the competency of Method 303 training providers, but did not change the requirements for conducting the test method. These revisions will help entities interested in conducting the required training courses by clearly defining the requirements necessary to do so.

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

The final expedited rulemaking does not diminish a previous grant of authority of a political subdivision of this state.

**8. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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 department did not review, or rely on any study for this rulemaking.

**9. The agency is exempt from providing an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).**

The NSPS and NESHAP standards are “applicable requirements” for purposes of the Title V Operating Permit Program. These standards are already effective and must be followed by the regulated community as of the date they are promulgated by the EPA. Because the regulations are already effective, this rulemaking would impose no new costs on regulated sources. If ADEQ does not incorporate the regulations by reference, only EPA has the authority to enforce the regulations outside of those voluntarily included in a facility’s permit.



**10. A description of any changes between the proposed expedited rulemaking and the final expedited rulemaking:**

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

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

ADEQ did not receive any public or stakeholder comments or objections about the expedited rulemaking.

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

There are no other matters prescribed by statute applicable specifically to ADEQ or this specific rulemaking.

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

The rules are subject to a Title V General Permit.

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

The rules are not more stringent than federal law. The rules incorporate federal standards by reference. Regulated sources within ADEQ’s jurisdiction are already subject to the regulations; however incorporating them by reference provides the State, instead of EPA, the authority to enforce the regulations outside of those voluntarily included in a facility’s permit.

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

No such analysis was submitted.

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

<u>New and revised incorporations by reference (subparts or larger) as of 6/30/17</u>	<u>Location</u>
40 CFR 60, Subparts A, Da, Db, Ec, F, Ga, H, J, Ja, O, T, U, V, W, X, BB, BBa, GG, KK, LL, UU, AAA, NNN, CCCC, DDDD, IIII, JJJJ, OOOO, OOOOa, PPPP, QQQQ, TTTT and UUUU	R18-2-901
40 CFR 61, Subparts A, C, D, E, N and W	R18-2-1101(A)
40 CFR 63, Subparts A, E, G, N, O, X, Y, AA, BB, CC, DD, GG, LL, NN, YY, GGG, NNN, RRR, III, JJJ, LLL, MMM, OOO, PPP, UUU, XXX, UUU, CCCC, JJJJ, UUUU, ZZZZ, DDDDD, JJJJJ, KKKKK, UUUUU, YYYYY, DDDDDD and JJJJJ	R18-2-1101(B)
<u>New and revised incorporations by reference (all appendices) as of 6/30/17</u>	<u>Location</u>
40 CFR Part 60, Appendices A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, B and F	Appendix 2
40 CFR Part 61, Appendix B	Appendix 2
40 CFR Part 63, Appendix A	Appendix 2

**14. The full text of the rule follows:**

**TITLE 18. ENVIRONMENTAL QUALITY  
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY  
AIR POLLUTION CONTROL**

**ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS**

Section  
R18-2-901. Standards of Performance for New Stationary Sources

**ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS**

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

**APPENDIX 2. TEST METHODS AND PROTOCOLS**

**ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS**

R18-2-901. Standards of Performance for New Stationary Sources



Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS), and all accompanying appendices, adopted as of ~~June 28, 2013~~ June 30, 2017, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart D - Standards of Performance for Fossil-Fuel- Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
3. Subpart Da - Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
4. Subpart Db - Standards of Performance for Industrial- Commercial-Institutional Steam Generating Units.
5. Subpart Dc - Standards of Performance for Small Industrial- Commercial-Institutional Steam Generating Units.
6. Subpart E - Standards of Performance for Incinerators.
7. Subpart Ea - Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced after December 20, 1989 and on or Before September 20, 1994.
8. Subpart Eb - Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996.
9. Subpart Ec - Standards of Performance for Hospital/Medical/ Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.
10. Subpart F - Standards of Performance for Portland Cement Plants.
11. Subpart G - Standards of Performance for Nitric Acid Plants.
12. Subpart Ga - Standards of Performance for Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011.
13. Subpart H - Standards of Performance for Sulfuric Acid Plants.
14. Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.
15. Subpart J - Standards of Performance for Petroleum Refineries.
16. Subpart Ja - Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.
17. Subpart K - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
18. Subpart Ka - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
19. Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
20. Subpart L - Standards of Performance for Secondary Lead Smelters.
21. Subpart M - Standards of Performance for Secondary Brass and Bronze Production Plants.
22. Subpart N - Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
23. Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
24. Subpart O - Standards of Performance for Sewage Treatment Plants.
25. Subpart P - Standards of Performance for Primary Copper Smelters.
26. Subpart Q - Standards of Performance for Primary Zinc Smelters.
27. Subpart R - Standards of Performance for Primary Lead Smelters.
28. Subpart S - Standards of Performance for Primary Aluminum Reduction Plants.
29. Subpart T - Standards of Performance for Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
30. Subpart U - Standards of Performance for Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
31. Subpart V - Standards of Performance for Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
32. Subpart W - Standards of Performance for Phosphate Fertilizer Industry: Triple Superphosphate Plants.
33. Subpart X - Standards of Performance for Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
34. Subpart Y - Standards of Performance for Coal Preparation Plants.
35. Subpart Z - Standards of Performance for Ferroalloy Production Facilities.
36. Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
37. Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
38. Subpart BB - Standards of Performance for Kraft Pulp Mills.
39. Subpart BBa – Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013.
- ~~39-40.~~ Subpart CC - Standards of Performance for Glass Manufacturing Plants.
- ~~40-41.~~ Subpart DD - Standards of Performance for Grain Elevators.
- ~~41-42.~~ Subpart EE - Standards of Performance for Surface Coating of Metal Furniture.
- ~~42-43.~~ Subpart GG - Standards of Performance for Stationary Gas Turbines.
- ~~43-44.~~ Subpart HH - Standards of Performance for Lime Manufacturing Plants.
- ~~44-45.~~ Subpart KK - Standards of Performance for Lead-Acid Battery Manufacturing Plants.
- ~~45-46.~~ Subpart LL - Standards of Performance for Metallic Mineral Processing Plants.



- 46-47. Subpart MM - Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.
- 47-48. Subpart NN - Standards of Performance for Phosphate Rock Plants.
- 48-49. Subpart PP - Standards of Performance for Ammonium Sulfate Manufacture.
- 49-50. Subpart QQ - Standards of Performance for Graphic Arts Industry: Publication Rotogravure Printing.
- 50-51. Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.
- 51-52. Subpart SS - Standards of Performance for Industrial Surface Coating: Large Appliances.
- 52-53. Subpart TT - Standards of Performance for Metal Coil Surface Coating.
- 53-54. Subpart UU - Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.
- 54-55. Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
- 55-56. Subpart VVa - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced after November 7, 2006.
- 56-57. Subpart WW - Standards of Performance for Beverage Can Surface Coating Industry.
- 57-58. Subpart XX - Standards of Performance for Bulk Gasoline Terminals.
- 58-59. Subpart AAA - Standards of Performance for New Residential Wood Heaters.
- 59-60. Subpart BBB - Standards of Performance for Rubber Tire Manufacturing Industry.
- 60-61. Subpart DDD - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
- 61-62. Subpart FFF - Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.
- 62-63. Subpart GGG - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries.
- 63-64. Subpart GGGa - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.
- 64-65. Subpart HHH - Standards of Performance for Synthetic Fiber Production Facilities.
- 65-66. Subpart III - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
- 66-67. Subpart JJJ - Standards of Performance for Petroleum Dry Cleaners.
- 67-68. Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
- 68-69. Subpart LLL - Standards of Performance for Onshore Natural Gas Processing; SO<sub>2</sub> Emissions.
- 69-70. Subpart NNN - Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
- 70-71. Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.
- 71-72. Subpart PPP - Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants.
- 72-73. Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.
- 73-74. Subpart RRR - Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
- 74-75. Subpart SSS - Standards of Performance for Magnetic Tape Coating Facilities.
- 75-76. Subpart TTT - Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
- 76-77. Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries.
- 77-78. Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.
- 78-79. Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills.
- 79-80. Subpart AAAA - Standards of Performance for Small Municipal Waste Combustion Units for Which Construction Is Commenced after August 30, 1999, or for Which Modification or Reconstruction Is Commenced after June 6, 2001.
- 80-81. Subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced after November 30, 1999, or for Which Modification or Reconstruction Is Commenced on or after June 1, 2001.
- 81-82. Subpart EEEE - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.
- 82-83. Subpart IIII - Standards of Performance for Stationary Compression Ignition Combustion Engines.
- 83-84. Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.
- 84-85. Subpart KKKK - Standards of Performance for Stationary Combustion Turbines.
- 85-86. Subpart LLLL - Standards of Performance for New Sewage Sludge Incineration Units.
- 86-87. Subpart OOOO - Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.
88. Subpart OOOOa – Standards of Performance for Crude Oil and natural gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015.
89. Subpart PPPP [Reserved].
90. Subpart OOOO – Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces.
91. Subpart TTTT – Standards of Performance for Greenhouse Gas Emission for Electric Generating Units.

#### ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

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

- A. Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs), and all accompanying appendices, adopted as of ~~June 28, 2013~~ June 30, 2017, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.



1. Subpart A - General Provisions.
  2. Subpart B - Radon Emissions from Underground Uranium Mines.
  3. Subpart C - Beryllium.
  4. Subpart D - Beryllium Rocket Motor Firing.
  5. Subpart E - Mercury.
  6. Subpart F - Vinyl Chloride.
  7. Subpart H - Radionuclides Other Than Radon from Department of Energy Facilities.
  8. Subpart I - Radionuclide Emissions from Federal Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.
  9. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
  10. Subpart K - Radionuclide Emissions From Elemental Phosphorus Plants.
  11. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
  12. Subpart M - Asbestos.
  13. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
  14. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
  15. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
  16. Subpart Q - Radon Emissions from Department of Energy Facilities.
  17. Subpart R - Radon Emissions from Phosphogypsum Stacks.
  18. Subpart T - Radon Emissions from the Disposal of Uranium Mill Tailings.
  19. Subpart V - Equipment Leaks (Fugitive Emission Sources).
  20. Subpart W - Radon Emissions from Operating Mill Tailings.
  21. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
  22. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
  23. Subpart FF - Benzene Waste Operations.
- B.** Except as provided in R18-2-1102, the following subparts of 40 CFR 63, NESHAPs for Source Categories, and all accompanying appendices, adopted as of ~~June 28, 2013~~ **June 30, 2017**, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402- 9328.
1. Subpart A - General Provisions.
  2. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
  3. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
  4. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
  5. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
  6. Subpart J - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production.
  7. Subpart L - National Emission Standards for Coke Oven Batteries.
  8. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
  9. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
  10. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
  11. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
  12. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
  13. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
  14. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
  15. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
  16. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non- Nylon Polyamides Production.
  17. Subpart Y - National Emission Standards for Marine Tank Vessel Loading Operations.
  18. Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.
  19. Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
  20. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
  21. Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
  22. Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
  23. Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
  24. Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
  25. Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
  26. Subpart KK - National Emission Standards for the Printing and Publishing Industry.
  27. Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.
  28. Subpart MM - National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicemical Pulp Mills.
  29. Subpart OO - National Emission Standards for Tanks - Level 1.
  30. Subpart PP - National Emission Standards for Containers.



31. Subpart QQ - National Emission Standards for Surface Impoundments.
32. Subpart RR - National Emission Standards for Individual Drain Systems.
33. Subpart SS - National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
34. Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1.
35. Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards.
36. Subpart VV - National Emission Standards for Oil-Water Separators and Organic-Water Separators.
37. Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2.
38. Subpart XX - National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
39. Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.
40. Subpart CCC - National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
41. Subpart DDD - National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
42. Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.
43. Subpart GGG - National Emission Standards for Pharmaceuticals Production.
44. Subpart HHH - National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities.
45. Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
46. Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.
47. Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.
48. Subpart MMM - National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
49. Subpart NNN - National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
50. Subpart OOO - National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins.
51. Subpart PPP - National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production.
52. Subpart QQQ - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting.
53. Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.
54. Subpart TTT - National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
55. Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
56. Subpart VVV - National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.
57. Subpart XXX - National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Siliconmanganese.
58. Subpart AAAA - National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.
59. Subpart CCCC - National Emission Standards for Hazardous Air Pollutants: Manufacture of Nutritional Yeast.
60. Subpart DDDD - National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.
61. Subpart EEEE - National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non- Gasoline).
62. Subpart FFFF - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.
63. Subpart GGGG - National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.
64. Subpart HHHH - National Emissions Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.
65. Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.
66. Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.
67. Subpart KKKK - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.
68. Subpart MMMM - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.
69. Subpart NNNN - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.
70. Subpart OOOO - National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.
71. Subpart PPPP - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.
72. Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.
73. Subpart RRRR - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.
74. Subpart SSSS - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.
75. Subpart TTTT - National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.
76. Subpart UUUU - National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.
77. Subpart VVVV - National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.
78. Subpart WWWW - National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.
79. Subpart XXXX - National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.
80. Subpart YYYYY - National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
81. Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
82. Subpart AAAAA - National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
83. Subpart BBBBB - National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
84. Subpart CCCCC - National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.



85. Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.
86. Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
87. Subpart FFFFF - National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing.
88. Subpart GGGGG - National Emission Standards for Hazardous Air Pollutants: Site Remediation.
89. Subpart HHHHH - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
90. Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
91. Subpart JJJJJ - National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.
92. Subpart KKKKK - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.
93. Subpart LLLLL - National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.
94. Subpart MMMMM - National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations.
95. Subpart NNNNN - National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.
96. Subpart PPPPP - National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands.
97. Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.
98. Subpart RRRRR - National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
99. Subpart SSSSS - National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.
100. Subpart TTTTT - National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.
101. Subpart WWWW - National Emission Standards for Hospital Ethylene Oxide Sterilizers.
102. Subpart YYYYY - National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.
103. Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.
104. Subpart BBBBBB - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities.
105. Subpart CCCCC - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.
106. Subpart DDDDDD - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.
107. Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.
108. Subpart FFFFF - National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.
109. Subpart GGGGGG - National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources: Zinc, Cadmium, and Beryllium.
110. Subpart HHHHHH - National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.
111. Subpart JJJJJ - National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers Area Sources.
112. Subpart LLLLLL - National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.
113. Subpart MMMMMM - National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.
114. Subpart NNNNNN - National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.
115. Subpart OOOOOO - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.
116. Subpart PPPPPP - National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.
117. Subpart QQQQQQ - National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.
118. Subpart RRRRRR - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.
119. Subpart SSSSSS - National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.
120. Subpart TTTTTT - National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.
121. Subpart VVVVVV - National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.
122. Subpart WWWW - National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.
123. Subpart XXXXXX - National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.
124. Subpart YYYYYY - National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.
125. Subpart ZZZZZZ - National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and other Nonferrous Foundries.
126. Subpart AAAAAA - National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.
127. Subpart BBBBBB - National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.



128. Subpart CCCCCC - National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.
129. Subpart DDDDDDD - National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.
130. Subpart EEEEEEE - National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.
131. Subpart HHHHHHH - National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production.

## Appendix 2. Test Methods and Protocols

The following test methods and protocols are approved for use as directed by the Department under this Chapter. These standards are incorporated by reference as applicable requirements revised as of ~~June 28, 2013~~ **June 30, 2017**, and no future editions or amendments. These standards are on file with the Department, and are also available from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

- A. 40 CFR 50;
- B. 40 CFR 50, all appendices;
- C. 40 CFR 51, Appendix M, Section IV of Appendix S, and Appendix W;
- D. 40 CFR 52, Appendices D and E;
- E. 40 CFR 53;
- F. 40 CFR 58;
- G. 40 CFR 58, all appendices;
- H. 40 CFR 60, all appendices;
- I. 40 CFR 61, all appendices;
- J. 40 CFR 63, all appendices;
- K. 40 CFR 75, all appendices.
- L. 40 CFR 51.128, Appendix A(1)(B).
- M. Silt Content Test Method. The purpose of this test method is to estimate the silt content of the trafficked parts of commercial farm roads, as defined in R18-2-610. The higher the silt content, the more fine dust particles that are released when cars and trucks drive on commercial farm roads.
  1. Equipment:
    - a. A set of sieves with the following openings: 4 millimeters (mm), 2mm, 1 mm, 0.5 mm and 0.25 mm and a lid and collector pan
    - b. A small whisk broom or paintbrush with stiff bristles and dustpan 1 ft. in width. (The broom/brush should preferably have one, thin row of bristles no longer than 1.5 inches in length.)
    - c. A spatula without holes A small scale with half ounce increments (e.g. postal/package scale)
    - d. A shallow, lightweight container (e.g. plastic storage container)
    - e. A sturdy cardboard box or other rigid object with a level surface
    - f. Basic calculator
    - g. Cloth gloves (optional for handling metal sieves on hot, sunny days)
    - h. Sealable plastic bags (if sending samples to a laboratory)
    - i. Pencil/pen and paper
  2. Step 1: Look for a routinely-traveled surface, as evidenced by tire tracks. [Only collect samples from surfaces that are not wet or damp due to precipitation, dew or watering.] Use caution when taking samples to ensure personal safety with respect to passing vehicles. Gently press the edge of a dustpan (1 foot in width) into the surface four times to mark an area that is 1 square foot. Collect a sample of loose surface material using a whisk broom or brush and slowly sweep the material into the dustpan, minimizing escape of dust particles. Use a spatula to lift heavier elements such as gravel. Only collect dirt/gravel to an approximate depth of 3/8 inch or 1 cm in the 1 square foot area. If you reach a hard, underlying subsurface that is < 3/8 inch in depth, do not continue collecting the sample by digging into the hard surface. In other words, you are only collecting a surface sample of loose material down to 1 cm. In order to confirm that samples are collected to 1 cm. in depth, a wooden dowel or other similar narrow object at least one foot in length can be laid horizontally across the survey area while a metric ruler is held perpendicular to the dowel. At this point, you can choose to place the sample collected into a plastic bag or container and take it to an independent laboratory for silt content analysis. A reference to the procedure the laboratory is required to follow is in subsection (10) below.
  3. Step 2: Place a scale on a level surface. Place a lightweight container on the scale. Zero the scale with the weight of the empty container on it. Transfer the entire sample collected in the dustpan to the container, minimizing escape of dust particles. Weigh the sample and record its weight.
  4. Step 3: Stack a set of sieves in order according to the size openings specified above, beginning with the largest size opening (4 mm) at the top. Place a collector pan underneath the bottom (0.25 mm) sieve.  
Step 4: Carefully pour the sample into the sieve stack, minimizing escape of dust particles by slowly brushing material into the stack with a whisk broom or brush. (On windy days, use the trunk or door of a car as a wind barricade.) Cover the stack with a lid. Lift up the sieve stack and shake it vigorously up, down and sideways for at least 1 minute.
  5. Step 5: Remove the lid from the stack and disassemble each sieve separately, beginning with the top sieve. As you remove each sieve, examine it to make sure that all of the material has been sifted to the finest sieve through which it can pass; e.g. material in each sieve (besides the top sieve that captures a range of larger elements) should look the same size. If this is not the case, re-stack the sieves and collector pan, cover the stack with the lid, and shake it again for at least 1 minute. (You only need to reassemble the sieve(s) that contain material which requires further sifting.)
  6. Step 6: After disassembling the sieves and collector pan, slowly sweep the material from the collector pan into the empty container originally used to collect and weigh the entire sample. Take care to minimize escape of dust particles. You do not need to



do anything with material captured in the sieves -- only the collector pan. Weigh the container with the material from the collector pan and record its weight.

7. Step 7: If the source is an unpaved road, multiply the resulting weight by 0.38. If the source is an unpaved parking lot, multiply the resulting weight by 0.55. The resulting number is the estimated silt loading. Then, divide by the total weight of the sample you recorded earlier in Step 2 and multiply by 100 to estimate the percent silt content.
8. Step 8: Select another two routinely-traveled portions of the unpaved road or unpaved parking lot and repeat this test method. Once you have calculated the silt loading and percent silt content of the 3 samples collected, average your results together.
9. Step 9: Examine Results. If the average silt loading is less than  $0.33 \text{ oz/ft}^2$ , the surface is STABLE. If the average silt loading is greater than or equal to  $0.33 \text{ oz/ft}^2$ , then proceed to examine the average percent silt content. If the source is an unpaved road and the average percent silt content is 6% or less, the surface is STABLE. If the source is an unpaved parking lot and the average percent silt content is 8% or less, the surface is STABLE. If your field test results are within 2% of the standard (for example, 4%-8% silt content on an unpaved road), it is recommended that you collect 3 additional samples from the source according to Step 1 and take them to an independent laboratory for silt content analysis.
10. Independent Laboratory Analysis: You may choose to collect 3 samples from the source, according to Step 1, and send them to an independent laboratory for silt content analysis rather than conduct the sieve field procedure. If so, the test method the laboratory is required to use comes from the following text: *Procedures For Laboratory Analysis Of Surface/Bulk Dust Loading Samples*, (Fifth Edition, Volume I, Appendix C.2.3 "Silt Analysis", 1995), AP-42, Office of air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.



**NOTICES OF RULEMAKING DOCKET OPENING**

This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening.

A docket opening is the first part of the administrative rulemaking process. It is an "announcement" that the agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires the publication of the Notice of Rulemaking Docket Opening.

Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. Many times an agency may file the Notice of Rulemaking Docket Opening with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

**NOTICE OF RULEMAKING DOCKET OPENING  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
HAZARDOUS WASTE MANAGEMENT**

[R18-88]

- 1. Title and its heading:** 18, Environmental Quality
- Chapter and its heading:** 8, Department of Environmental Quality - Hazardous Waste Management
- Article and its heading:** 1, Remedial Action Requirements  
2, Hazardous Wastes
- Section numbers:** R18-8-101; R18-8-260 through R18-8-280 (*As part of this rulemaking, the Department may add, delete, or modify Sections as necessary.*)
- 2. The subject matter of the proposed rule:**  
The Department of Environmental Quality is considering amendments to state hazardous waste rules to incorporate new federal regulations and make non-substantive technical changes.
- 3. A citation to all published notices relating to the proceeding:**  
None
- 4. The name and address of agency personnel with whom persons may communicate regarding the rule:**  
Name: Mark Lewandowski  
Address: Department of Environmental Quality  
1110 W. Washington St.  
Phoenix, AZ 85007  
Telephone: (602) 771-2230  
Fax: (602) 771-4272  
E-mail: Lewandowski.Mark@azdeq.gov
- 5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**  
To be published in the Notice of Proposed Rulemaking
- 6. A timetable for agency decisions or other action on the proceeding, if known:**  
To be determined

**NOTICE OF RULEMAKING DOCKET OPENING  
DEPARTMENT OF CHILD SAFETY  
CHILD WELFARE AGENCY LICENSING**

[R18-89]

- 1. Title and its heading:** 21, Child Safety
- Chapter and its heading:** 7, Department of Child Safety – Child Welfare Agency Licensing
- Article and its heading:** To be determined
- Section numbers:** To be determined
- 2. The subject matter of the proposed rule:**  
A.R.S. § 8-503 authorizes the Department to establish rules, regulations and standards for the licensing of child welfare agencies and exercise supervision over all child welfare agencies. A.R.S. § 8-505 requires a child welfare agency to be licensed by the Department and assigns the Department the authority to issue and renew licenses for child welfare agencies. A.R.S. § 8-506.01 assigns the Department the authority to deny, suspend or revoke the license of any child welfare agency that willfully violates or fails to maintain the standards of care prescribed by the Department. The Department is developing rules to include in Title 21 Child Safety to enable it to comply with A.R.S. §§ 8-505 and 8-506.01 and any other applicable requirements of A.R.S. Title 8, Chapter 4, Article 4 (A.R.S. §§ 8-501 *et seq*) dealing with child welfare agencies.



The Department is developing new rules covering the Department's licensing, regulation and enforcement of standards for child welfare agencies under Title 21 *Child Safety* that will replace existing rules covering the same subject matter under Title 6 *Economic Security*. The new rules will correct citations, replace references to the Department of Economic Security with the Department of Child Safety and update information to include Department responsibilities, procedures, and practices.

**3. A citation to all published notices relating to the proceeding:**

- Notice of Rulemaking Docket Opening: 23 A.A.R. 1377, May 19, 2017
- Notice of Rulemaking Docket Opening: 22 A.A.R. 999, April 29, 2016
- Notice of Public Information: 21 A.A.R. 1838, September 11, 2015
- Notice of Oral Proceeding: 21 A.A.R. 1866, September 11, 2015

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

- Name: Kathryn Blades, Deputy General Counsel
- Address: Department of Child Safety  
3003 N. Central Ave.  
Phoenix, AZ 85012
- Telephone: (602) 255-2527
- E-mail: Kathryn.Blades@azdcs.gov
- Or
- Name: Angie Trevino, Rules Development Specialist
- Telephone: (602) 255-2569
- E-mail: Angelica.Trevino@azdcs.gov
- Web site: <https://dcs.az.gov/about/dcs-rules-rulemaking>

**5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**

Written comments on this rulemaking can be submitted at any time to [PolicyUnit@AZDCS.GOV](mailto:PolicyUnit@AZDCS.GOV). Formal written comments for the rulemaking record will be accepted after the publication of the Notice of Proposed Rulemaking in the Arizona Administrative Register and prior to the close of public record date, which has not been determined. The Department has not scheduled any oral proceedings at this time.

**6. A timetable for agency decisions or other action on the proceeding, if known:**

The Department plans to consult with interested stakeholders and others during the third quarter of 2018 to develop a draft of the proposed rules. The Department will publish proposed draft rules in the Arizona Administrative Register, possibly in the fourth quarter of 2018, providing the public the opportunity to provide written comments by U.S. Mail, electronic mail, and oral comments during a scheduled public hearing on the proposed rules. The Department plans to consider public comments on the proposed rules prior to publishing the final rules.



## REGISTER INDEXES

The *Register* is published by volume in a calendar year (See “General Information” in the front of each issue for more information).

Abbreviations for rulemaking activity in this Index include:

### **PROPOSED RULEMAKING**

PN = Proposed new Section  
 PM = Proposed amended Section  
 PR = Proposed repealed Section  
 P# = Proposed renumbered Section

### **SUPPLEMENTAL PROPOSED RULEMAKING**

SPN = Supplemental proposed new Section  
 SPM = Supplemental proposed amended Section  
 SPR = Supplemental proposed repealed Section  
 SP# = Supplemental proposed renumbered Section

### **FINAL RULEMAKING**

FN = Final new Section  
 FM = Final amended Section  
 FR = Final repealed Section  
 F# = Final renumbered Section

### **SUMMARY RULEMAKING**

#### **PROPOSED SUMMARY**

PSMN = Proposed Summary new Section  
 PSMM = Proposed Summary amended Section  
 PSMR = Proposed Summary repealed Section  
 PSM# = Proposed Summary renumbered Section

#### **FINAL SUMMARY**

FSMN = Final Summary new Section  
 FSMM = Final Summary amended Section  
 FSMR = Final Summary repealed Section  
 FSM# = Final Summary renumbered Section

### **EXPEDITED RULEMAKING**

#### **PROPOSED EXPEDITED**

PEN = Proposed Expedited new Section  
 PEM = Proposed Expedited amended Section  
 PER = Proposed Expedited repealed Section  
 PE# = Proposed Expedited renumbered Section

#### **SUPPLEMENTAL EXPEDITED**

SPEN = Supplemental Proposed Expedited new Section  
 SPEM = Supplemental Proposed Expedited amended Section  
 SPER = Supplemental Proposed Expedited repealed Section  
 SPE# = Supplemental Proposed Expedited renumbered Section

#### **FINAL EXPEDITED**

FEN = Final Expedited new Section  
 FEM = Final Expedited amended Section  
 FER = Final Expedited repealed Section  
 FE# = Final Expedited renumbered Section

### **EXEMPT RULEMAKING**

#### **EXEMPT PROPOSED**

PXN = Proposed Exempt new Section  
 PXM = Proposed Exempt amended Section  
 PXR = Proposed Exempt repealed Section  
 PX# = Proposed Exempt renumbered Section

#### **EXEMPT SUPPLEMENTAL PROPOSED**

SPXN = Supplemental Proposed Exempt new Section  
 SPXR = Supplemental Proposed Exempt repealed Section  
 SPXM = Supplemental Proposed Exempt amended Section  
 SPX# = Supplemental Proposed Exempt renumbered Section

#### **FINAL EXEMPT RULEMAKING**

FXN = Final Exempt new Section  
 FXM = Final Exempt amended Section  
 FXR = Final Exempt repealed Section  
 FX# = Final Exempt renumbered Section

### **EMERGENCY RULEMAKING**

EN = Emergency new Section  
 EM = Emergency amended Section  
 ER = Emergency repealed Section  
 E# = Emergency renumbered Section  
 EEXP = Emergency expired

### **RECODIFICATION OF RULES**

RC = Recodified

### **REJECTION OF RULES**

RJ = Rejected by the Attorney General

### **TERMINATION OF RULES**

TN = Terminated proposed new Sections  
 TM = Terminated proposed amended Section  
 TR = Terminated proposed repealed Section  
 T# = Terminated proposed renumbered Section

### **RULE EXPIRATIONS**

EXP = Rules have expired  
*See also “emergency expired” under emergency rulemaking*

### **CORRECTIONS**

C = Corrections to Published Rules

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**RULES EFFECTIVE DATES CALENDAR**

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

January		February		March		April		May		June	
Date Filed	Effective Date										
1/1	3/2	2/1	4/2	3/1	4/30	4/1	5/31	5/1	6/30	6/1	7/31
1/2	3/3	2/2	4/3	3/2	5/1	4/2	6/1	5/2	7/1	6/2	8/1
1/3	3/4	2/3	4/4	3/3	5/2	4/3	6/2	5/3	7/2	6/3	8/2
1/4	3/5	2/4	4/5	3/4	5/3	4/4	6/3	5/4	7/3	6/4	8/3
1/5	3/6	2/5	4/6	3/5	5/4	4/5	6/4	5/5	7/4	6/5	8/4
1/6	3/7	2/6	4/7	3/6	5/5	4/6	6/5	5/6	7/5	6/6	8/5
1/7	3/8	2/7	4/8	3/7	5/6	4/7	6/6	5/7	7/6	6/7	8/6
1/8	3/9	2/8	4/9	3/8	5/7	4/8	6/7	5/8	7/7	6/8	8/7
1/9	3/10	2/9	4/10	3/9	5/8	4/9	6/8	5/9	7/8	6/9	8/8
1/10	3/11	2/10	4/11	3/10	5/9	4/10	6/9	5/10	7/9	6/10	8/9
1/11	3/12	2/11	4/12	3/11	5/10	4/11	6/10	5/11	7/10	6/11	8/10
1/12	3/13	2/12	4/13	3/12	5/11	4/12	6/11	5/12	7/11	6/12	8/11
1/13	3/14	2/13	4/14	3/13	5/12	4/13	6/12	5/13	7/12	6/13	8/12
1/14	3/15	2/14	4/15	3/14	5/13	4/14	6/13	5/14	7/13	6/14	8/13
1/15	3/16	2/15	4/16	3/15	5/14	4/15	6/14	5/15	7/14	6/15	8/14
1/16	3/17	2/16	4/17	3/16	5/15	4/16	6/15	5/16	7/15	6/16	8/15
1/17	3/18	2/17	4/18	3/17	5/16	4/17	6/16	5/17	7/16	6/17	8/16
1/18	3/19	2/18	4/19	3/18	5/17	4/18	6/17	5/18	7/17	6/18	8/17
1/19	3/20	2/19	4/20	3/19	5/18	4/19	6/18	5/19	7/18	6/19	8/18
1/20	3/21	2/20	4/21	3/20	5/19	4/20	6/19	5/20	7/19	6/20	8/19
1/21	3/22	2/21	4/22	3/21	5/20	4/21	6/20	5/21	7/20	6/21	8/20
1/22	3/23	2/22	4/23	3/22	5/21	4/22	6/21	5/22	7/21	6/22	8/21
1/23	3/24	2/23	4/24	3/23	5/22	4/23	6/22	5/23	7/22	6/23	8/22
1/24	3/25	2/24	4/25	3/24	5/23	4/24	6/23	5/24	7/23	6/24	8/23
1/25	3/26	2/25	4/26	3/25	5/24	4/25	6/24	5/25	7/24	6/25	8/24
1/26	3/27	2/26	4/27	3/26	5/25	4/26	6/25	5/26	7/25	6/26	8/25
1/27	3/28	2/27	4/28	3/27	5/26	4/27	6/26	5/27	7/26	6/27	8/26
1/28	3/29	2/28	4/29	3/28	5/27	4/28	6/27	5/28	7/27	6/28	8/27
1/29	3/30			3/29	5/28	4/29	6/28	5/29	7/28	6/29	8/28
1/30	3/31			3/30	5/29	4/30	6/29	5/30	7/29	6/30	8/29
1/31	4/1			3/31	5/30			5/31	7/30		



July		August		September		October		November		December	
Date Filed	Effective Date										
7/1	8/30	8/1	9/30	9/1	10/31	10/1	11/30	11/1	12/31	12/1	1/30
7/2	8/31	8/2	10/1	9/2	11/1	10/2	12/1	11/2	1/1	12/2	1/31
7/3	9/1	8/3	10/2	9/3	11/2	10/3	12/2	11/3	1/2	12/3	2/1
7/4	9/2	8/4	10/3	9/4	11/3	10/4	12/3	11/4	1/3	12/4	2/2
7/5	9/3	8/5	10/4	9/5	11/4	10/5	12/4	11/5	1/4	12/5	2/3
7/6	9/4	8/6	10/5	9/6	11/5	10/6	12/5	11/6	1/5	12/6	2/4
7/7	9/5	8/7	10/6	9/7	11/6	10/7	12/6	11/7	1/6	12/7	2/5
7/8	9/6	8/8	10/7	9/8	11/7	10/8	12/7	11/8	1/7	12/8	2/6
7/9	9/7	8/9	10/8	9/9	11/8	10/9	12/8	11/9	1/8	12/9	2/7
7/10	9/8	8/10	10/9	9/10	11/9	10/10	12/9	11/10	1/9	12/10	2/8
7/11	9/9	8/11	10/10	9/11	11/10	10/11	12/10	11/11	1/10	12/11	2/9
7/12	9/10	8/12	10/11	9/12	11/11	10/12	12/11	11/12	1/11	12/12	2/10
7/13	9/11	8/13	10/12	9/13	11/12	10/13	12/12	11/13	1/12	12/13	2/11
7/14	9/12	8/14	10/13	9/14	11/13	10/14	12/13	11/14	1/13	12/14	2/12
7/15	9/13	8/15	10/14	9/15	11/14	10/15	12/14	11/15	1/14	12/15	2/13
7/16	9/14	8/16	10/15	9/16	11/15	10/16	12/15	11/16	1/15	12/16	2/14
7/17	9/15	8/17	10/16	9/17	11/16	10/17	12/16	11/17	1/16	12/17	2/15
7/18	9/16	8/18	10/17	9/18	11/17	10/18	12/17	11/18	1/17	12/18	2/16
7/19	9/17	8/19	10/18	9/19	11/18	10/19	12/18	11/19	1/18	12/19	2/17
7/20	9/18	8/20	10/19	9/20	11/19	10/20	12/19	11/20	1/19	12/20	2/18
7/21	9/19	8/21	10/20	9/21	11/20	10/21	12/20	11/21	1/20	12/21	2/19
7/22	9/20	8/22	10/21	9/22	11/21	10/22	12/21	11/22	1/21	12/22	2/20
7/23	9/21	8/23	10/22	9/23	11/22	10/23	12/22	11/23	1/22	12/23	2/21
7/24	9/22	8/24	10/23	9/24	11/23	10/24	12/23	11/24	1/23	12/24	2/22
7/25	9/23	8/25	10/24	9/25	11/24	10/25	12/24	11/25	1/24	12/25	2/23
7/26	9/24	8/26	10/25	9/26	11/25	10/26	12/25	11/26	1/25	12/26	2/24
7/27	9/25	8/27	10/26	9/27	11/26	10/27	12/26	11/27	1/26	12/27	2/25
7/28	9/26	8/28	10/27	9/28	11/27	10/28	12/27	11/28	1/27	12/28	2/26
7/29	9/27	8/29	10/28	9/29	11/28	10/29	12/28	11/29	1/28	12/29	2/27
7/30	9/28	8/30	10/29	9/30	11/29	10/30	12/29	11/30	1/29	12/30	2/28
7/31	9/29	8/31	10/30			10/31	12/30			12/31	3/1



**REGISTER PUBLISHING DEADLINES**

The Secretary of State's Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

<b>Deadline Date (paper only) Friday, 5:00 p.m.</b>	<b>Register Publication Date</b>	<b>Oral Proceeding may be scheduled on or after</b>
March 23, 2018	April 13, 2018	May 14, 2018
March 30, 2018	April 20, 2018	May 21, 2018
April 6, 2018	April 27, 2018	May 29, 2018
April 13, 2018	May 4, 2018	June 4, 2018
April 20, 2018	May 11, 2018	June 11, 2018
April 27, 2018	May 18, 2018	June 18, 2018
May 4, 2018	May 25, 2018	June 25, 2018
May 11, 2018	June 1, 2018	July 2, 2018
May 18, 2018	June 8, 2018	July 9, 2018
May 25, 2018	June 15, 2018	July 16, 2018
June 1, 2018	June 22, 2018	July 23, 2018
June 8, 2018	June 29, 2018	July 30, 2018
June 15, 2018	July 6, 2018	August 6, 2018
June 22, 2018	July 13, 2018	August 13, 2018
June 29, 2018	July 20, 2018	August 20, 2018
July 6, 2018	July 27, 2018	August 27, 2018
July 13, 2018	August 3, 2018	September 4, 2018
July 20, 2018	August 10, 2018	September 10, 2018
July 27, 2018	August 17, 2018	September 17, 2018
August 3, 2018	August 24, 2018	September 24, 2018
August 10, 2018	August 31, 2018	October 1, 2018
August 17, 2018	September 7, 2018	October 9, 2018
August 24, 2018	September 14, 2018	October 15, 2018
August 31, 2018	September 21, 2018	October 22, 2018
September 7, 2018	September 28, 2018	October 29, 2018
September 14, 2018	October 5, 2018	November 5, 2018
September 21, 2018	October 12, 2018	November 13, 2018
September 28, 2018	October 19, 2018	November 19, 2018
October 5, 2018	October 26, 2018	November 26, 2018
October 12, 2018	November 2, 2018	December 3, 2018



### GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year-Review Reports and any adopted rule submitted to the Governor’s Regulatory Review Council. Council meetings and Register deadlines do not correlate. We publish these deadlines as a courtesy.

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council’s office is located at 100 N. 15th Ave., Suite 402, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit <http://grrc.az.gov>.

#### GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES FOR 2018

[M18-01]

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
Tuesday November 21, 2017	Tuesday December 19, 2017	Wednesday January 3, 2018	Tuesday January 9, 2018
Tuesday December 19, 2017	Tuesday January 23, 2018	Tuesday January 30, 2018	Tuesday February 6, 2018
Tuesday January 23, 2018	Tuesday February 20, 2018	Tuesday February 27, 2018	Tuesday March 6, 2018
Tuesday February 20, 2018	Tuesday March 20, 2018	Tuesday March 27, 2018	Tuesday April 3, 2018
Tuesday March 20, 2018	Tuesday April 17, 2018	Tuesday April 24, 2018	Tuesday May 1, 2018
Tuesday April 17, 2018	Tuesday May 22, 2018	Wednesday May 30, 2018	Tuesday June 5, 2018
Tuesday May 22, 2018	Tuesday June 19, 2018	Tuesday June 26, 2018	Tuesday July 10, 2018
Tuesday June 19, 2018	Tuesday July 24, 2018	Tuesday July 31, 2018	Tuesday August 7, 2018
Tuesday July 24, 2018	Tuesday August 21, 2018	Tuesday August 28, 2018	Wednesday September 5, 2018
Tuesday August 21, 2018	Tuesday September 18, 2018	Tuesday September 25, 2018	Tuesday October 2, 2018
Tuesday September 18, 2018	Tuesday October 23, 2018	Tuesday October 30, 2018	Tuesday November 6, 2018
Tuesday October 23, 2018	Tuesday November 20, 2018	Tuesday November 27, 2018	Tuesday December 4, 2018
Tuesday November 20, 2018	Tuesday December 18, 2018	Thursday January 3, 2019	Tuesday January 8, 2019
Tuesday December 18, 2018	Tuesday January 22, 2019	Tuesday January 29, 2019	Tuesday February 5, 2019

\* Materials must be submitted by 5 PM on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.