



**United States Environmental Protection Agency, Region 9  
Air Division  
Technical Support Document**

**EPA's Notice of Proposed Rulemaking**

**Revision to the Arizona State Implementation Plan  
for the Arizona Department of Environmental Quality**

**Revisions to Air Plan; Arizona; Stationary Sources; New Source Review**

**New or Amended Rules from Arizona Administrative Code, Title 18,  
Chapter 2, Articles 1, 2, 3, and 4; New or Amended Statutory Provisions  
from Arizona Revised Statutes, Title 49, Chapters 1 and 3**

**March 2015**

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# 1. Introduction

This technical support document (TSD) focuses primarily on the preconstruction permitting requirements for stationary sources, also called New Source Review or NSR, in title I of the Clean Air Act (CAA or the Act) and EPA's implementing regulations addressing the State Implementation Plan (SIP) requirements for State NSR programs at title 40 of the Code of Federal Regulations (CFR) part 51, subpart I. This TSD will address the requirements for the three main components of the federal NSR program, and discuss EPA's findings on whether the rules and regulations related to NSR that have been submitted by the Arizona Department of Environmental Quality (ADEQ) for approval into the SIP for Arizona meet federal NSR requirements. In addition, this TSD addresses additional rules and a statutory provision submitted by ADEQ for inclusion in the SIP that are not specifically related to NSR. This TSD also briefly addresses certain older and generally outdated provisions in the Arizona SIP, primarily related to NSR, that ADEQ has requested that EPA remove from the SIP as part of this action, most of which are being replaced the newer ADEQ rules that are the primary focus of this action. Last, the TSD discusses EPA's findings under Sections 110(l) and 193 of the Act relevant to this action.

The three main components of the federal NSR program are briefly summarized as follows:

## PSD Program

Part C of title I of the Act, and the implementing regulations at 40 CFR 51.166, contain the requirements for SIPs to establish preconstruction permitting programs for the prevention of significant deterioration of air quality (PSD) in areas designated as attainment or unclassifiable for the national ambient air quality standards (NAAQS). The PSD program requirements under part C apply to major stationary sources and major modifications, as those terms are defined in 40 CFR part 51, subpart I, at sources that would be located within attainment or unclassifiable areas. The PSD requirements apply to all regulated NSR pollutants, except those pollutants for which an area has been designated as nonattainment.

## Nonattainment NSR Program

Part D of title I of the Act, and the implementing regulations at 40 CFR 51.165, contain the NSR requirements for areas designated nonattainment for a NAAQS. The requirements under part D, referred to as nonattainment NSR or NA-NSR, apply to nonattainment pollutants at major stationary sources and major modifications at sources located in nonattainment areas. This program also includes requirements for new major stationary sources and major modifications located in attainment or unclassifiable areas with emissions that may cause or contribute to violation of a NAAQS in a nonattainment area.

## Minor NSR and General NSR Program Requirements

Section 110(a)(2)(C) of the Act requires that each SIP include a program to provide for "regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D" of title I of the Act. Thus, in addition to the permit programs required in parts C and D of title I of the Act, which apply to new or modified major stationary sources

of pollutants and major modifications, each SIP must include a program to provide for the regulation of the construction and modification of any stationary source within the areas covered by the plan as necessary to assure attainment and maintenance of the NAAQS. These general preconstruction requirements are commonly referred to as the “minor NSR program” requirements and are implemented through EPA’s regulations at 40 CFR 51.160–51.164. These more general program requirements are the only NSR requirements that apply to these “minor” stationary sources and non-major modifications. While these requirements also apply to major sources and major modifications, such sources are also addressed by much more detailed requirements in parts C and D of the Act and their implementing regulations.

## 2. Description of SIP Revision Submittal

The primary rules that are the subject of EPA’s current action and this TSD were adopted by ADEQ and submitted to EPA on October 29, 2012, as supplemented on September 6, 2013, July 2, 2014<sup>1</sup>, and February 23, 2015. In addition, we are acting on two rules that were submitted on July 28, 2011 and supplemented on May 16, 2014.<sup>2</sup> ADEQ is the governor’s designee for submitting official revisions of the Arizona SIP to EPA. Table 1 below identifies the rules reviewed in this action and this TSD for approval into and/or removal from the Arizona SIP.

Not all rules that were submitted with the October 29, 2012 SIP revision are being addressed in this action. Some of these rules were acted on in an earlier action – see *Revisions to the Arizona State Implementation Plan; State Stationary Source Rules*, 79 Fed. Reg. 56655 (Sept. 23, 2014). In addition, we are deferring action until a later date on certain other ADEQ rules or statutory provisions that were submitted with the October 29, 2012 SIP revision. See Table 2.

With the exception of ADEQ rules R18-2-311 and R18-2-312, and A.R.S. § 49-107, the rules that are the subject of this action, collectively, are intended to establish a pre-construction program for reviewing and permitting new or modified stationary sources in Arizona.<sup>3</sup> The SIP submittal that comprises these rules is collectively referred to herein as the “NSR SIP submittal” or “submitted NSR rules.”

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1 ADEQ submitted an additional statutory provision in this submittal, A.R.S. § 49-107, which we are also acting on.

2 We note that portions of ADEQ’s SIP-approved rule R18–2–310, which provides affirmative defenses for excess emissions during malfunctions (R18–2–310(B)) and for excess emissions during startup or shutdown (R18–2- 310(C)), are currently the subject of a separate rulemaking action by EPA. In a 2013 notice of proposed rulemaking, and a 2014 supplemental notice of proposed rulemaking that revised certain of the findings described in the 2013 notice, EPA proposed to find R18–2–310(B) and R18–2–310(C) substantially inadequate to meet CAA requirements and proposed to issue a SIP call with respect to these provisions. See 78 Fed. Reg. 12460, 12533-34 (Feb. 22, 2013); 79 Fed. Reg. 55920, 55946-47 (Sept. 17, 2014). ADEQ’s R18–2–310 is not part of the ADEQ SIP submittal that is under consideration in this action, and this rule is not being evaluated or otherwise addressed by EPA as part of our current action on ADEQ’s SIP submittal.

3 Rules R18-2-301 through R18-2-334 (Article 3 rules) also contain requirements to address the CAA title V requirements for operating permit programs, but we are not evaluating these rules for title V purposes at this time. We will evaluate the Article 3 rules for compliance with the requirements of title V of the Act and EPA’s implementing regulations in 40 CFR part 70 following receipt of an official part 70 program submittal from ADEQ.

This SIP revision will apply to areas of Arizona where ADEQ has jurisdiction. ADEQ's permitting jurisdiction is described below in Section 5.4.

ADEQ's existing SIP-approved NSR program, which consists primarily of the rules requested by ADEQ for removal from the SIP, as listed in Table 1, is significantly out of date. EPA has not acted to approve substantial revisions to the Arizona SIP concerning ADEQ's NSR rules since the 1980s. The majority of the rules in ADEQ's current SIP-approved NSR program have been repealed, revised and replaced by ADEQ with revised rules and new regulatory references for purposes of State law. In so doing, ADEQ has made significant revisions to its NSR program under State law (including, for example, switching from separate preconstruction and operating permit programs to a "unitary" permitting program) that are not yet approved into the SIP. EPA's action on this NSR SIP revision will update much of the NSR SIP for Arizona so that the NSR rules in the Arizona SIP for the areas regulated by ADEQ (or agencies delegated authority by ADEQ) are generally consistent with ADEQ's current NSR rules adopted for State law purposes.

In this action, EPA has reviewed the NSR SIP submittal for consistency with all requirements for a federal NSR program. As discussed in detail in this TSD, we are generally proposing a limited approval and limited disapproval for this submittal. While the NSR SIP submittal represents a significant update and strengthening of the Arizona SIP, we have identified a number of issues that must be addressed before EPA can fully approve ADEQ's revised NSR program. We are also proposing disapproval of two specific aspects of ADEQ's NSR submittal that are analogous to provisions in the federal regulations that have recently been vacated by federal Courts and which are separable from the remainder of the program. In addition, we are proposing a limited approval for a portion of ADEQ's NA-NSR program based on requirements of section 189(e) of the Act related to the permitting of major sources of PM<sub>10</sub> and PM<sub>2.5</sub> precursors.

We have also reviewed ADEQ rules R18-2-311 – *Test Methods and Procedures*, and R18-2-312 – *Performance Tests* as part of this action, although they are not generally considered rules related to NSR. Rules R18-2-311 and R18-2-312 were submitted in a separate SIP package on July 28, 2011. EPA did not act on these rules its September 23, 2014 rulemaking that took action on other rules submitted on July 28, 2011, and instead deferred action until this NSR rulemaking. As such, we are addressing the two rules in this action and are proposing a limited approval and limited disapproval of these rules for the reasons described in Section 6 below. In addition, we reviewed A.R.S. § 49-107 and are proposing approval of A.R.S. § 49-107 into the Arizona SIP.

Table 1 – ADEQ Statutory Provisions and Regulations Reviewed in this SIP Action

<b>Rule or Statutory Provision Addressed in this TSD and Rulemaking</b>	<b>Title</b>	<b>Adoption or Revision Date<sup>4</sup></b>	<b>Existing SIP Rule(s) Requested to be Removed from SIP</b>
A.R.S. § 49-107	Local delegation of state authority	August 18, 1987	R9-3-803
			A.R.S. § 36-1706, R9-3-801, R9-3-802 (replace with recently approved SIP provisions)
			R9-3-306(J)
R18-2-101 (definitions (2), (32), (87), (109), and (122))	Definitions	August 7, 2012	R9-3-101 (except (20))
R18-2-217	Designation and Classification of Attainment Areas	November 15, 1993	None
R18-2-218	Limitation of Pollutants in Classified Attainment Areas	August 7, 2012	R9-3-217(B)
R18-2-301	Definitions	August 7, 2012	R9-3-101 (except (20))
R18-2-302	Applicability; Registrations; Classes of Permits	August 7, 2012	R9-3-301(A-B), R9-3-306(A)
R18-2-302.01	Source Registration Requirements	August 7, 2012	None
R18-2-303	Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration transition; Minor NSR transition	August 7, 2012	None
R18-2-304	Permit Application Processing Procedures	August 7, 2012	R9-3-301(E, M-P), R9-3-306(C-F), and R9-3-318(A,C)
R18-2-306	Permit Contents	December 20, 1999	R9-3-301(C,D,G,H) , R9-3-306(B,G) and R9-3-308
R18-2-306.01	Permits Containing Voluntarily Accepted Emission Limitations and Standards	January 1, 2007	None
R18-2-306.02	Establishment of an Emissions Cap	September 22, 1999	None

<sup>4</sup> Date the adoption or revision became effective.

<b>Rule or Statutory Provision Addressed in this TSD and Rulemaking</b>	<b>Title</b>	<b>Adoption or Revision Date<sup>4</sup></b>	<b>Existing SIP Rule(s) Requested to be Removed from SIP</b>
			R9-3-314 (replace with recently approved SIP provisions)
R18-2-311 (submitted on July 28, 2011)	Test Methods and Procedures	November 15, 1993	R9-3-310
R18-2-312 (submitted on July 28, 2011)	Performance Tests	November 15, 1993	R9-3-312
R18-2-315	Posting of Permit	November 15, 1993	R9-3-315
R18-2-316	Notices by Building Permit Agencies	May 14, 1979	R9-3-316
			R9-3-319 (delete w/o replacement)
			R9-3-322 (delete w/o replacement)
R18-2-319	Minor Permit Revisions	August 7, 2012	R9-3-301 (except (I-K))
R18-2-320	Significant Permit Revisions	August 7, 2012	R9-3-301 (except (I-K))
R18-2-321	Permit Reopenings; Revocation and Reissuance; Termination	August 7, 2012	R9-3-318
R18-2-323	Permit Transfers	February 3, 2007	R9-3-317
R18-2-330	Public Participation	August 7, 2012	R9-3-301(J, L)
R18-2-332	Stack Height Limitation	November 15, 1993	None
R18-2-334	Minor New Source Review	August 7, 2012	None
			Appendix 4 (delete w/o replacement)
			Appendix 5 (delete w/o replacement)
R18-2-401	Definitions	August 7, 2012	R9-3-101 (except (20))
R18-2-402	General	August 7, 2012	R9-3-301 (except (I, K), R9-3-307
R18-2-403	Permits for Sources Located in Nonattainment Areas	August 7, 2012	R9-3-302
R18-2-404	Offset Standards	August 7, 2012	R9-3-303
R18-2-405	Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe	August 7, 2012	None

<b>Rule or Statutory Provision Addressed in this TSD and Rulemaking</b>	<b>Title</b>	<b>Adoption or Revision Date<sup>4</sup></b>	<b>Existing SIP Rule(s) Requested to be Removed from SIP</b>
R18-2-406	Permit Requirements for Sources Located in Attainment and Unclassifiable Areas	August 7, 2012	R9-3-304 (except (H))
R18-2-407	Air Quality Impact Analysis and Monitoring Requirements	August 7, 2012	R9-3-301(F), R9-3-305
R18-2-409	Air Quality Models	August 7, 2012	R9-3-311
R18-2-412	PALs		None

Table 2 – Rules or Provisions Deferred for a Later Action – Submitted or Requested to be removed from SIP on October 29, 2012<sup>5</sup>

<b>Rule or Statutory Provision to be Addressed in a Subsequent TSD and Rulemaking</b>	<b>Existing SIP Requirement Requested to be Removed</b>	<b>Title</b>
R18-2-101(20)		Definitions (begin actual construction)
R18-2-310.01		Reporting Requirements
R18-2-502 <sup>6</sup>		General Permit Development
R18-2-504		Application Coverage under General Permit
R18-2-505		Public Notice
R18-2-509		General Permit Renewal
R18-2-512		Changes to Facilities Granted Coverage under General Permits
R18-2-513		Portable Sources Covered under a General Permit
A.R.S. § 49-426(F)		Permits; duties of director; exceptions; applications; objections; fees
	R9-3-101(20)	Definitions (begin actual construction)
	R9-3-301(I), (K)	Installation Permits: General
	R9-3-304(H)	Installation Permits in Attainment Areas

5 See also ADEQ's February 23, 2015 supplement to its NSR SIP submittal. ADEQ requested that EPA not act on certain portions of its October 29, 2012 submittal. In addition, we are deferring action on other separable pieces of ADEQ's submittal until a later date.

6 The rules we are proposing action on do not reference Article 5 or the specific rules ADEQ submitted as part of its general permits program. Until, EPA takes action on ADEQ's general permit rules, ADEQ must ensure its general permits program is complying with the requirements in its SIP-approved NSR program.

## 2.1 Completeness

With respect to procedures, CAA sections 110(a) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing. Based on our review of the public process documentation included in the October 29, 2012, July 2, 2014, and July 28, 2011 submittals, we find that ADEQ has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules to EPA.

ADEQ's October 29, 2012 and July 2, 2014 NSR SIP submittals were determined complete, according to Appendix V of 40 CFR part 51, by operation of law on April 29, 2013<sup>7</sup> and December 2, 2014, respectively. The SIP submittal package with R18-2-311 and R18-2-312 was considered complete by operation of law on December 28, 2011.

## 3. What are the General Requirements for a SIP-Approved NSR Program?

The NSR program is a preconstruction review and permitting program established under CAA sections 110, 160-169, 172 and 173 that is applicable to certain new stationary sources and modifications at existing stationary sources. The specific regulatory requirements applicable to SIP-approved NSR programs are contained in 40 CFR part 51, subpart I. As stated above, there are three specific sets of permitting requirements included in subpart I: the program commonly referred to as the "minor NSR program" (40 CFR 51.160-51.164), NA-NSR (40 CFR 51.165), and PSD (40 CFR 51.166).

### 3.1 Minor NSR

Section 110(a)(2)(C) requires each SIP to include a program for the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure attainment and maintenance of the NAAQS. In addition to the permit programs required under parts C and D of the CAA for PSD sources and NA-NSR sources, respectively, which are discussed below, EPA's regulations at 40 CFR 51.160-51.164 provide general programmatic requirements to implement this statutory mandate commonly referred to as the "minor NSR program." These minor NSR program regulations impose requirements for SIP approval of State and local programs that are more general in nature as compared with the specific regulatory requirements for PSD and NA-NSR permitting programs. Under EPA's regulations governing the minor NSR program, States and local air agencies retain a level of discretion to define the types and sizes of sources subject to the program, whereas under the PSD and NA-NSR permitting programs, the sources subject to regulation are specified by EPA regulations. However, EPA's regulations require that State minor NSR programs ensure that the

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<sup>7</sup> See September 9, 2013 letter from EPA to ADEQ.

construction or modification of any stationary source would be prevented if (1) it would result in a violation of the applicable control strategy; or (2) it would interfere with the attainment or maintenance of a NAAQS. These general requirements are included in 40 CFR 51.160, 51.161, and 51.163.

In addition, 40 CFR 51.162 requires that each SIP identify the State or local agency that will be responsible for meeting the requirements of 40 CFR part 51, subpart I in each area of the State, and that where such responsibility rests with an agency other than an air pollution control agency, such agency will consult with the appropriate State or local air pollution control agency in carrying out the provisions of subpart I.

Finally, 40 CFR 51.164 requires that SIPs establish procedures that ensure the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in 40 CFR 51.118(b). Such procedures must provide that before a State or local agency issues a permit to a source based on a good engineering practice stack height that exceeds the height allowed by 40 CFR 51.100(ii) (1) or (2), the State must notify the public of the availability of the demonstration study and must provide opportunity for a public hearing on it. The stack height regulation does not restrict in any manner the actual stack height of any source.

Our analysis of how ADEQ's NSR submittal addresses the specific requirements for the minor NSR program is discussed in detail in Sections 5.2 through 5.6 below.

### **3.2 Prevention of Significant Deterioration**

CAA sections 110(a)(2)(C) and 165 establish the general statutory requirements for the PSD program. As noted above, 40 CFR 51.166 sets forth EPA's regulatory requirements for SIP-approved PSD programs. The PSD program applies to any regulated NSR pollutant (as defined in 40 CFR 51.166), except for pollutants designated nonattainment for a NAAQS. The CAA defines "nonattainment areas" as air quality planning areas that exceed the national primary or secondary NAAQS for a given criteria pollutant (or that contribute to ambient air quality in a nearby area that does not meet the NAAQS). In some instances the emission increases of a particular pollutant may be subject to both the PSD program and the NA-NSR program. For example, nitrogen oxides (NO<sub>x</sub>) from a major stationary source in an area designated as attainment for the nitrogen dioxide (NO<sub>2</sub>) NAAQS and nonattainment for the ozone NAAQS could be subject to both permitting programs because, in such cases, NO<sub>x</sub> would be a PSD pollutant as well as a precursor to ozone, a nonattainment pollutant.

The applicability of PSD to a particular source must be determined in advance of construction or modification and is pollutant-specific. The primary criterion is whether the proposed project is sufficiently large (in terms of its emissions) to be a major stationary source or major modification, terms which are defined as described below.

Section 169 of the CAA specifies the emissions threshold, depending on source category, that is used to determine whether a source is a “major emitting facility” and subject to PSD. For PSD purposes, a “major stationary source” is any source belonging to a specified list of 28 source categories<sup>8</sup> that emits or has the potential to emit (PTE) 100 tons per year (tpy) or more of any air pollutant subject to regulation under the CAA, or belonging to any other source category that emits or has the PTE for such pollutants in amounts equal to or greater than 250 tpy. A new source with a PTE at or above the applicable “major stationary source threshold” is also subject to PSD for any other regulated NSR pollutant emitted in “significant” amounts. These significance levels, which EPA has promulgated for criteria pollutants and certain other pollutants, represent a threshold for a de minimis contribution to air quality problems. When EPA has not set a significance level for a pollutant, PSD applies to an increase of the regulated pollutant in any amount (that is, in effect, the significance level is treated as zero).

PSD also applies to existing major stationary sources that undertake a “major modification,” which occurs when: (1) there is a physical change, or change in the method of operation, at a “major stationary source;” (2) the change results in a “significant” emissions increase of a pollutant subject to PSD regulation (at or above the significance level that EPA has set for the pollutant); and (3) there is a “significant net emissions increase” of a pollutant subject to PSD regulation that is at or above the significance level (as defined in 40 CFR 51.166(b)(23)).

The PSD program also applies to greenhouse gas (GHG) emissions when they are “subject to regulation,” as defined in 40 CFR 51.166(b)(48).<sup>9</sup>

Sources subject to PSD review must demonstrate compliance with a number of approval criteria in order to qualify for a PSD pre-construction permit. The most significant of these requirements are the application of the best available control technology (BACT) to the source and the requirement that the source demonstrate that it will not cause or contribute to a violation of the NAAQS or applicable PSD increments.

Our analysis of how ADEQ’s NSR submittal addresses the specific requirements for SIP-approved PSD programs is discussed in section 5.8 below.

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8 See 40 CFR 51.166(b)(1)(i) for the 28-source category list.

9 Emissions of GHGs became subject to regulation under the Clean Air Act on January 2, 2011, and EPA adopted a pre-construction program for regulating GHGs under the PSD program (known as the GHG Tailoring Rule). However, on June 23, 2014, the U.S. Supreme Court issued a decision in *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency* (No. 12-1146) holding that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit (or a CAA title V permit) and thus invalidated EPA’s regulations implementing that approach. The Supreme Court’s decision also said that EPA could continue to require that PSD permits, otherwise required based on emissions of conventional pollutants, contain limitations on GHG emissions based on the application of BACT. EPA expects the portions of EPA’s regulations that would require sources emitting only GHGs in major amounts to obtain a PSD permit to be vacated by the U.S. Court of Appeals for the District of Columbia Circuit, to which the Supreme Court remanded the *UARG* case for further proceedings.

### **3.3 Nonattainment NSR**

The NA-NSR program under sections 172(c)(5) and 173 of the CAA and EPA's implementing regulations at 40 CFR 51.165 only applies to a particular pollutant, and its precursors, if the area is designated as nonattainment for a NAAQS under the CAA for the particular pollutant. The primary criterion for applicability of the program is similar to that of the PSD program, that is, whether the proposed project is sufficiently large (in terms of its emissions) to be a major stationary source or major modification. However, the NA-NSR program has emission thresholds for determining which sources are major stationary sources that are different from those of the PSD program, and the NA-NSR program's thresholds vary based on the nonattainment classification of the particular pollutant.

Generally, a major stationary source in a nonattainment area is defined as a stationary source with a PTE of 100 tpy or more of the nonattainment pollutant. The major stationary source emissions threshold is lower in nonattainment areas that have been determined to have worse air quality. For example, ozone nonattainment areas are classified as being marginal, moderate, serious, severe, or extreme (listed in increasing order of the degree of nonattainment). The major source threshold for these areas varies between 100 tpy and 10 tpy.

In contrast to the PSD program, under the NA-NSR program, if a new major stationary source is subject to the NA-NSR program requirements, any other regulated NSR pollutant emitted by the major stationary source for which the particular area is designated nonattainment triggers NA-NSR requirements only if the source is also a major source of that pollutant.

Modifications to existing major stationary sources (for a particular nonattainment pollutant) are subject to the NA-NSR program requirements at similar "significant" emission rates as those described above for the PSD program. The significant rate is lower in certain nonattainment areas with worse air quality, with the level based on the area's particular nonattainment classification.

Once a source is subject to the NA-NSR program, the source must meet several criteria prior to receiving a pre-construction permit. The most significant of these requirements are the application of the lowest achievable emission rate (LAER) to the source or project and the requirement to offset the emission increases from the project with decreases in emissions from other stationary sources.

Our analysis of how ADEQ's NSR submittal addresses the specific requirements for NA-NSR programs is discussed in Section 5.7 below.

## **4. Summary of Arizona's Submitted Statutory Provisions and Rules**

Below is a brief summary of each rule and statutory provision submitted by Arizona for inclusion in the Arizona SIP that is under consideration in this action and being reviewed in this TSD. These rules represent a comprehensive revision to ADEQ's stationary source pre-construction permitting program and are intended to satisfy the requirements of section 110(a)(2)(C) and parts C and D of title I of the CAA for the areas regulated by ADEQ (or agencies delegated authority by ADEQ). In the next sections of

the TSD – Section 5, Review of NSR SIP submittal, and Section 6, Review of Non-NSR Related Rules and Statutory Provisions – we discuss our more detailed evaluation of the statutory provisions and rules submitted by ADEQ as compared with federal NSR requirements for SIP-approved programs. In this section we are providing only a summary of the contents of each such statutory provision and rule.

## **4.1 Statutory Provisions**

### **A.R.S. § 49-107 – Local delegation of state authority**

A.R.S. § 49-107 establishes how the director may delegate state authority to certain local agencies.

## **4.2 Rules**

The rules under review are found in Articles 1-4 of the Arizona Administrative Code found in Title 18 – Environmental Quality, Chapter 2 – Department of Environmental Quality – Air Pollution Control.

### **4.2.1 Article 1: General**

Rules in Article 1 relate to general definitions used by ADEQ’s air program and materials that have been incorporated by reference.

#### **R18-2-101 – Definitions**

This rule contains numerous definitions used by ADEQ’s air program, which also apply to portions of ADEQ’s air program beyond permitting. EPA has already approved most of the definitions in R18-2-101 into the Arizona SIP for ADEQ, in a separate rulemaking action.<sup>10</sup> As part of the current SIP action, we are reviewing the definitions of the following terms in R18-2-101 (identified as follows by their paragraph numbers within R18-2-101), which EPA has not yet acted to approve into the Arizona SIP: (2) actual emissions, (32) construction, (87) net emissions increase, (109) potential to emit, and (122) regulated NSR pollutant. In addition, we are conducting further review of the following definitions, which were previously approved into the Arizona SIP, as they relate to ADEQ’s NSR program and Federal NSR requirements (again identified as follows by their paragraph numbers within R18-2-101): (13) allowable emissions, (53) federally enforceable, (75) major source, (130) significant, and (139) stationary source.

### **4.2.2 Article 2: Ambient Air Quality Standards; Area Designations; Classifications**

Rules in Article 2 relate to ambient air quality, including establishing ambient air quality standards, area classifications, and monitoring methods for ambient air.

#### **R18-2-217 – Designation and Classification of Attainment Areas**

R18-2-217 contains the PSD area classifications (Class I, II, III) for attainment and unclassifiable areas, and the process for re-designating the classification of a particular area.

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<sup>10</sup> See 79 Fed. Reg. 56655 (Sept. 23, 2014).

#### **R18-2-218 – Limitation of Pollutants in Classified Attainment Areas**

R18-2-218 contains the maximum allowed increases in air pollutant concentrations over the baseline concentration. These maximum allowable increases are also referred to in the Federal NSR rules as increments. The maximum allowable increases vary by area based on the PSD area classification, as determined by R18-2-217. The rule also provides the basis for the determination of the baseline concentration, the major source baseline dates, and the minor source baseline dates.

### **4.2.3 Article 3: Permits and Permit Revisions**

Rules in Article 3 – Permit and Permit Revisions – contain administrative permitting procedures used by ADEQ to issue permits to major and non-major sources. In addition, Article 3 contains the pre-construction requirements for ADEQ’s newly adopted minor NSR program.

#### **R18-2-301 – Definitions**

R18-2-301 establishes twenty-two definitions that apply specifically to Article 3 – Permits and Permit Revisions.

#### **R18-2-302 – Applicability; Registration; Class of Permits**

R18-2-302 provides the basis for determining whether a source is required to obtain a registration or permit. Certain stationary sources are required to obtain a registration, a Class I permit or a Class II permit based on the potential emissions of the source. In addition, the rule establishes transitional requirements for the new registration program until the rule is approved into the SIP.

#### **R18-2-302.01 – Source Registration Requirements**

R18-2-302.01 establishes the procedures for submitting applications for registrations for certain minor stationary sources, registration processing, how to conduct NAAQS compliance reviews, the required contents of registration documents, how to revise a registration and when a registration expires. This rule also has a delayed effective date – it does not become effective until the rule is approved into the SIP.

#### **R18-3-303 – Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition**

R18-2-303 establishes how permits issued prior to September 1, 1993 will be treated and when sources will begin to use the new registration program ADEQ is putting into place. Prior to 1993, ADEQ had separate pre-construction and operating permit programs. ADEQ has since transitioned to a single (or unitary) permitting program that issues pre-construction and operating requirements in a single document.

#### **Rule R18-3-304 – Permit Application Processing Procedures**

R18-2-304 applies to Class I and Class II permits and permit revisions. This rule specifies the requirements governing the submittal of such permit applications, how to submit a timely application, the necessary contents of a complete application, and procedures for the Director’s (referring to ADEQ’s director) action on the permit application.

**R18-2-306 – Permit Contents**

R18-2-306 identifies the specific terms and conditions that must be included in Class I and II permits. Generally, the requirements of this rule are intended to be consistent with the permit content requirement for title V permits in 40 CFR part 70. However, ADEQ also uses requirements in this rule to satisfy NSR program requirements.

**R18-2-306.01 – Permits Containing Voluntarily Accepted Emission Limitations and Standards**

R18-2-306.01 establishes procedures for sources to take voluntary, permanent emission limits for the purposes of avoiding the requirement to obtain a Class I permit or for avoiding one or more otherwise applicable requirements.

**R18-2-306.02 – Establishment of an Emissions Cap**

R18-2-306.02 provides a process for a stationary source to obtain a source-wide emission cap for a particular pollutant.

**R18-2-311 – Test Methods and Procedures**

This rule specifies the test methods and procedures that can be used to determine compliance with requirements established in Chapter 2 of ADEQ's rules (ADEQ's air program) or contained in permits issued pursuant to Chapter 2.

**R18-2-312 – Performance Tests**

This rule requires stationary sources to conduct a performance test within 60 days of achieving the capability to operate at their maximum production rate, but no later than 180 days after initial start-up. The rule also specifies that testing shall be conducted under such conditions specified by State, including, but not limited to appropriate test methods, notification to the State, data reduction, records, and number of test runs.

**R18-2-315 – Posting of Permit**

R18-2-315 requires persons granted a permit to post the permit or certificate of permit issuance at the location where the relevant equipment was installed and to keep a copy of the complete permit onsite. In addition, each piece of equipment must be clearly marked to include the current permit number or serial number listed in the permit for the piece of equipment.

**R18-2-316 – Notice of Building Permit Agencies**

R18-2-316 requires agencies issuing or granting building permits or approvals to evaluate whether a project requires an air pollution permit and, if so, provide written notice to the applicant to contact the Director.

**R18-2-319 – Minor Permit Revisions**

R18-2-319 specifies the types of changes that can qualify as a minor permit revision for Class I and Class II permits, when sources can make the changes qualifying as minor permit revisions, the requirements for minor permit revision applications, and, for Class I permits, EPA and affected state review. For Class I permits, the rule also includes issuance timeframes and procedures for the Director.

**R18-2-320 – Significant Permit Revisions**

R18-2-320 identifies the types of permit revisions that must be processed as significant permit revisions and procedures for issuing such permit revisions.

**R18-2-321 – Permit Reopenings; Revocation and Reissuance; Termination**

R18-2-321 contains the procedures for reopening or terminating a permit for cause and the reasons a permit may be opened or terminated for cause.

**R18-2-323 – Permit Transfers**

R18-2-323 provides the procedures for requesting to transfer a permit to another person. The Director may deny such requests and such decisions are appealable.

**R18-2-330 – Public Participation**

R18-2-330 identifies the types of actions that require the Director to provide public notice, opportunity for public comments, and opportunity for a public hearing. The rule also includes the information that must be included in a public notice and the procedures for issuing such notifications.

**R18-2-332 – Stack Height Limitation**

R18-2-332 provides the calculation and basis for determining good engineering practice (GEP) stack height and requires that the degree of emission limitation required by a source shall not be affected by a stack height that exceeds GEP.

**R18-2-334 – Minor New Source Review**

R18-2-334 is a newly adopted rule by ADEQ for preconstruction permitting of minor sources (“minor NSR”). The rule identifies the types of actions subject to minor NSR permitting, the emission control requirements for minor NSR permit actions and the requirements for an ambient air quality assessment. This rule will not be implemented until approved into the SIP.

#### **4.2.4 Article 4: Permit Requirements for New Major Sources and Major Modifications to Existing Major Sources**

Title 18, Chapter 2, Article 4 of ADEQ’s rules includes ADEQ’s NSR program requirements for major sources.

**R18-2-401 – Definitions**

R18-2-401 includes twenty-six definitions that apply specifically to Article 4 – Permit Requirements for New Major Sources and Major Modification to Existing Major Sources.

**R18-2-402 – General**

R18-2-402 provides the basic requirements for determining applicability of the major NSR program, the requirements for permit applications under the major NSR program, and the basic procedures the Director must use for issuing permits under the major NSR program. The rule includes the requirements that must be met when there is a reasonable possibility of a significant emission increase, even though the project did not trigger the major NSR program, when projected actual emissions are calculated.

**R18-2-403 – Permits for Sources Located in Nonattainment Areas**

R18-2-403 establishes the specific preconstruction review requirements for issuing a permit to a new major stationary source or major modification located in a nonattainment area. The nonattainment NSR program applies only to the particular pollutant, and its precursors, for which the area is designated nonattainment.

**R18-2-404 – Offset Standards**

R18-2-404 contains the standards for obtaining the offsets that are required by R18-2-403 in nonattainment areas.

**R18-2-405 – Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe**

Rule R18-2-405 contains certain requirements that apply only to VOC and NO<sub>x</sub> emissions for major sources in areas designated as serious or severe ozone nonattainment.

**Rule R18-2-406 – Permit Requirements for Sources Located in Attainment and Unclassifiable Areas**

R18-2-406 contains key NSR requirements applicable to major sources and major modifications located in attainment and unclassifiable areas – generally referred to as the PSD program.

**R18-2-407 – Air Quality Impact Analysis and Monitoring Requirements**

R18-2-407 contains the portion of the PSD program requirements that relates to air quality impact analyses and ambient air monitoring requirements.

**R18-2-412 – PALs**

R18-2-412 contains the provisions for establishing plantwide applicability limits – also known as PALs. The PAL provisions are used to set source-wide emission limits for a particular pollutant to avoid the major NSR requirements.

## **5. Review of NSR SIP Submittal**

### **5.1 Summary – NSR Permitting Program – 40 CFR 51.160 through 51.166**

In evaluating the ADEQ submittal that is the subject of this action, EPA reviewed ADEQ’s submitted rules and statutory provisions listed in Table 1 above for compliance with the CAA requirements for SIPs in general as set forth in CAA section 110(a)(2), the requirements for stationary source preconstruction permitting programs in 40 CFR part 51, subpart I (Review of New Sources and Modifications), and the requirements related to SIP revisions in CAA sections 110(l) and 193. EPA has summarized the approval criteria contained in these various materials in this TSD, which describes the basis for our proposed action on the submitted NSR rules.

EPA’s detailed evaluation of whether and how ADEQ meets the specific elements required in 40 CFR part 51, subpart I for SIP approval of an NSR program is included in Attachment 1 to this TSD – *Evaluation of 40 CFR 51.160-51.166 and the ADEQ NSR Submittal (Evaluation)*. This TSD provides a

summary of our evaluation of each rule under review for this action and highlights issues identified in our *Evaluation*, as appropriate. Generally, only those issues that warrant a more detailed discussion are included in the TSD.

In light of the findings made in our *Evaluation* and further discussed in this TSD, we are generally proposing a limited approval and limited disapproval of ADEQ's minor NSR program, PSD program, and NA-NSR program. The rules submitted for each of these CAA program requirements as a whole significantly strengthen the Arizona SIP and update the State's SIP-approved NSR programs so that they are more consistent with current CAA requirements for SIP-approved NSR programs. However, we have identified a number of discrepancies between ADEQ's submittals for each of these programs and the CAA requirements governing such programs that warrant disapproval, as the discrepancies result in ADEQ's NSR programs not meeting some aspects of the CAA requirements for SIP-approved NSR programs. These discrepancies must be addressed by the State in order for EPA to grant full approval of the programs. In addition, we are proposing a limited approval for a portion of ADEQ's NA-NSR program based on requirements of section 189(e) of the Act related to the permitting of major sources of PM<sub>10</sub> and PM<sub>2.5</sub> precursors. We are also proposing disapproval of two specific aspects of ADEQ's PSD program submittal (and one identical aspect of ADEQ's NA-NSR program) that are analogous to provisions in the federal regulations that have recently been vacated by federal Courts and which are separable from the remainder of the program. These issues are discussed further below and in our *Evaluation*.

Finally, we note that rules R18-2-311 and 312 are addressed separately, in Section 6.0, from the requirements for an NSR program as they are not specifically a part of ADEQ's NSR program. These two rules represent general air program requirements under section 110(a)(2) of the Act. We are also proposing a limited approval and limited disapproval of these rules. We have also reviewed A.R.S. § 49-107, which is not specific to the NSR program, and propose to approve into the Arizona SIP, as discussed further below.

#### **5.1.1. Description of ADEQ's Minor NSR Program**

The minor NSR program requirements in 40 CFR 51.160-51.164, apply to stationary sources generally, including minor sources and non-major modifications of major and minor sources. 40 CFR 51.160, 51.161, and 51.163 in particular provide broad discretion for States to develop permitting programs for such sources and modifications that meet these requirements. Here we provide a description of ADEQ's preconstruction permitting and related requirements that apply to minor sources and to non-major modifications of major and minor sources.

The substantive requirements of ADEQ's minor NSR program are contained in R18-2-302.01 – *Source Registration Requirements* and R18-2-334 – *Minor New Source Review*. First, R18-2-302.01 requires new and existing stationary sources with potential emissions lower than the threshold that would require them to obtain a Class I or Class II permit to obtain a preconstruction registration from with ADEQ. Sources are subject to this program based on their potential to emit (without the consideration of elective controls or limits on operation) regulated NSR pollutants in amounts equal to or greater

than specific permitting exemption thresholds set by ADEQ that are discussed below in Section 5.2.2. Each application for a registration will be reviewed by ADEQ to determine whether it will interfere with attainment or maintenance of the NAAQS. This analysis will be based on source-specific considerations. Sources may also use the registration to take elective limits (to avoid obtaining a Class II permit) to reduce their potential to emit. These elective limits cannot be used to avoid the requirement to obtain a registration. A source required to register is generally subject to the public notice requirements in R18-2-330.

R18-2-334 generally requires preconstruction review for the construction or modification of a stationary source that has, or is required to obtain, a Class I or II permit, where the emissions increase would be equal to or greater than the “permitting exemption thresholds” in R18-2-101(99). A Class I permit is generally required for sources with the potential to emit a criteria pollutant at or above 100 tons per year, and a Class II permit is generally required for sources with the potential to emit a criteria pollutant at or above the PSD “significant” rates. However, applicability of R18-2-334 is triggered on a pollutant-specific basis for each NSR pollutant with an emissions increase above the permitting exemption threshold, but not subject to major NSR. See R18-2-334(A)(2)-(3). R18-2-334 requires sources subject to the rule to either apply reasonably available control technology (RACT) for emissions units with potential emissions (or the potential to increase emissions, for modifications) in an amount at least 20% higher than the permitting exemption threshold or conduct an ambient air quality analysis to demonstrate the source would not interfere with attainment or maintenance of the state’s ambient air quality standards. The rule requires public notice in certain circumstances. In addition, sources that have already obtained a registration under R18-2-302.01 become subject to R18-2-334 upon an increase in potential emissions that triggers the requirement to obtain a Class II permit. See R18-2-302(B)(2)(b) and R18-2-302.01(G)(1).

## **5.2. 40 CFR 51.160 – Legally Enforceable Procedures**

40 CFR 51.160 contains the basic CAA SIP requirements for States establishing programs to prevent the construction or modification of sources that would interfere with the State’s control strategy or would interfere with attainment and maintenance of the NAAQS. Our *Evaluation* identifies how ADEQ’s submittal addresses each of the current specific requirements in 40 CFR 51.160. Except as discussed below in Sections 5.2.1 and 5.2.2.3, we find that ADEQ’s submittal meets these Federal program requirements, through requirements established in the following ADEQ rules reviewed for the NSR SIP submittal: R18-2-101(2), (32), (87), (109), and (122); R18-2-301, R18-2-302, R18-2-302.01, R18-2-304, R18-2-306, R18-2-306.01, R18-2-306.02, R18-2-316, R18-2-334, R18-2-401, R18-2-402, R18-2-403, R18-2-406 and R18-2-409. In addition, our review relied on existing SIP-approved provisions in R18-2-101 and R9-3-101(20). While some of the definitions used for ADEQ’s NSR program are already approved into ADEQ’s SIP at R18-2-101, which applies broadly to ADEQ’s air program, in this action, we reconsidered those definitions within the specific context of the federal NSR program’s requirements.

### **5.2.1 Limited Approval and Limited Disapproval Issues under 40 CFR 51.160(a) – (d), (f)**

We are proposing a limited approval and limited disapproval of ADEQ's minor NSR program, in part because it is not fully consistent with the requirements of 40 CFR 51.160(a)–(d) and 40 CFR 51.160(f), as described below. We find that approval of ADEQ's updated minor NSR program, will substantially strengthen the SIP overall, as the submitted minor NSR program generally has more extensive requirements for minor sources and non-major modifications than the current SIP-approved program and lower permitting threshold will provide additional mechanisms for protecting the NAAQS, as well as update the SIP with current State regulations. See our discussion in Section 8. However, specific provisions of the minor NSR program submittal are inconsistent with minor NSR program requirements, and these deficiencies must be addressed before we can fully approve ADEQ's minor NSR program into the SIP. The deficiencies that we have identified with ADEQ's minor NSR program that provide the basis for our limited approval and limited disapproval are described below. Approval issues under 40 CFR 51.160(e) are discussed separately in Section 5.2.2.

#### **40 CFR 51.160(a) and (b)**

These federal regulatory provisions require that ADEQ's SIP set forth legally enforceable procedures that enable the State (or local) agency to determine whether the construction or modification of a source will result in a violation of applicable portions of the control strategy or interference with attainment or maintenance of the NAAQS in the state in which the proposed source or modification is located or in a neighboring State, and that these procedures include means by which the agency responsible for final decisionmaking on an application for approval to construct will prevent such construction or modification if it will result in such violation or interference.

ADEQ's program does not fully satisfy this requirement as it allows certain sources to begin construction when a "proposed final permit" is issued by ADEQ, rather than preventing construction until a final permit has been issued. See R18-2-101(114), R18-2-302(G), R18-2-334(B), R18-2-402(C). The definition for "proposed final permit" in R18-2-101 does not specify that such an action is a final decision for NSR purposes. As a result, the program does not provide ADEQ with clear authority to prevent construction or modification before it issues a final decision on the request for authority to construct as is required per 40 CFR 51.160(a) and (b). ADEQ has clarified that, in effect, under ADEQ's rules, a proposed final permit is treated as a final authorization to construct, and that it will treat proposed final permit as a final, appealable agency action under Arizona law.<sup>11</sup> Nevertheless, a revision to ADEQ's NSR program is necessary to ensure that these types of permit actions clearly serve as a final authority to construct in order to satisfy the federal NSR program requirement that the agency be able to prevent construction until and unless it has issued a final decision on the request for authority to construct.

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<sup>11</sup> See ADEQ Memo – *Proposed Final Permits to be Treated as Appealable Agency Actions*, dated February 10, 2015 and ADEQ's February 23, 2015 Supplement at 2.

#### **40 CFR 51.160(a)(2) and (b)(2)**

ADEQ's program does not contain adequate enforceable procedures to ensure compliance by sources subject to review under its NSR program with all national standards,<sup>12</sup> for a number of reasons. First, although NAAQS is a defined term in ADEQ's regulations, see R18-2-101(85), ADEQ's NSR program generally does not refer to the NAAQS and instead generally references the State's ambient air standards in Article 2 of ADEQ's air program. See R18-2-302.01, R18-2-334, and R18-2-406.<sup>13</sup> Also, in some instances, ADEQ's NSR regulations simply refer to Arizona ambient air quality standards with no specific reference to Article 2, which makes the applicable standards ambiguous.<sup>14</sup> See R18-2-218, R18-2-406, and R18-2-407.

Second, in some instances ADEQ's NSR program does not ensure that a source would not interfere with attainment or maintenance of the NAAQS in neighboring areas outside ADEQ's permitting jurisdiction, as is required under 40 CFR 51.160(a) and (b), as the State air standards are not generally applicable in neighboring States,<sup>15</sup> and the NSR Program submittal does not demonstrate that they are applicable in neighboring States for purposes of ADEQ's NSR program. See R18-2-302.01(C); R18-2-334(C)(2), (F), and (G); and R18-2-406(A)(5)(a) and (b).

Third, for minor sources subject to permitting under R18-2-334, the rule does not meet these federal requirements as it does not require ADEQ to evaluate whether the project under review will interfere with attainment or maintenance of the NAAQS in all cases, and instead allows sources to apply RACT in lieu of such an evaluation and, in some cases, appears to allow sources with lower levels of emissions to avoid both substantive NAAQS review and RACT requirements. See R18-2-334(C)(1)(a)-(b). ADEQ has not demonstrated that this approach ensures that all sources subject to review under its NSR program will not interfere with attainment or maintenance of the NAAQS. While R18-2-334(G) allows Director's discretion to require a NAAQS analysis on a case-by-case basis, we find this discretion too great to ensure compliance with this requirement. Finally, R18-2-302.01(C)(4) needs to include a reference to "or maintenance" of a standard, instead of just "attainment of a standard."

To obtain full approval, ADEQ must ensure that the sources reviewed under its program will not interfere with attainment or maintenance of the NAAQS in all areas, for all construction or modifications subject to review under ADEQ's NSR program, including review of potential air quality impacts from Arizona sources' emissions in neighboring states and local districts where ADEQ is not the permitting authority. In addition, references to ambient air quality standards in ADEQ's NSR rules

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<sup>12</sup> We interpret this requirement to be referring to the NAAQS.

<sup>13</sup> ADEQ's list of state air standards does not contain the current PM<sub>2.5</sub> annual NAAQS of 12 µg/m<sup>3</sup> PM<sub>2.5</sub>. See 78 Fed. Reg. 3086 (Jan. 13, 2013). This is not a disapproval issue for ADEQ's minor NSR and NA-NSR programs, which have three years to adopt programs implementing the new NAAQS. However, as discussed in Section 5.8.2, the new NAAQS is applied immediately upon its effective date to sources subject to the PSD program.

<sup>14</sup> For example, R18-2-407(B) contains "any such pollutant for which no Arizona ambient air quality standard exists." "Arizona ambient air quality standard" is not a defined term in ADEQ's regulations.

<sup>15</sup> See, for example, the definition of "attainment area" in R18-2-101, limiting attainment areas to those in Arizona. A.R.S. § 49-106 provides, in relevant part: "The rules adopted by the department apply and shall be observed throughout this state, or as provided by their terms, and the appropriate local officer, council or board shall enforce them."

should use consistent terminology to the extent ADEQ continues to rely on references to the state standards for its NSR program. Finally, R18-2-302.01(C)(4) needs a reference to “or maintenance” of a standard.

#### **40 CFR 51.160(b)(1)**

For sources subject to ADEQ’s registration program at R18-2-302.01, ADEQ has not demonstrated that its NSR program meets the requirement to ensure that sources subject to NSR review comply with the applicable portions of the control strategy as required by 40 CFR 51.160(b)(1). This requirement is nearly met by R18-2-302.01(E), except that the provision lacks sufficient language to “ensure compliance” with applicable requirements, similar to language in R18-2-306(A)(2). To obtain full approval ADEQ must ensure that sources subject to R18-2-302.01 will comply with the applicable portions of the control strategy.

#### **40 CFR 51.160(c)**

ADEQ’s registration program in R18-2-302.01 does not contain enforceable procedures for the owner or operator to submit the necessary information for ADEQ to determine whether a source will violate the applicable control strategy or interfere with attainment or maintenance of the NAAQS as required by 40 CFR 51.160(c). R18-2-302.01(A)(3) requires applicants to calculate a source’s uncontrolled potential to emit, but then references provisions in another rule, R18-2-327(C), that are used to calculate “actual” emissions. As such, ADEQ’s program contains conflicting procedures for calculating potential emissions. The potential emissions of the source will be used by ADEQ to ensure the source is not violating the control strategy or interfering with attainment or maintenance of the NAAQS. In addition, rule R18-2-327, is not in the Arizona SIP, and has not been submitted to EPA for SIP approval. To obtain full program approval, ADEQ must ensure that potential emissions under R18-2-302.01 are calculated consistent with the definition of “uncontrolled potential to emit” in ADEQ’s rules, and that the regulations governing the method to be used for such calculations are approved into the SIP.<sup>16</sup>

#### **40 CFR 51.160(c)(1)**

ADEQ’s program does not meet the requirement that the applicant submit information related to the nature and amounts of emissions, for certain kinds of emissions units as required by 40 CFR 51.160(c)(1). For Class I and Class II permits, R18-2-304(E)(9) allows sources to avoid providing emission information for “insignificant activities,” as defined in R18-2-101(68). The term “insignificant activities” is generally associated with the title V program. Many of the activities listed in ADEQ’s definition of insignificant activity are for activities that would not be expected to emit regulated NSR pollutants. However, this is not true for all activities, such as those listed under R18-2-101(68)(a-c) that include liquid storage tanks, combustion engines, and “low-emitting processes.”

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16 If ADEQ would like to provide additional clarity on where a source should obtain emission factor information for calculating potential emissions (e.g., use of AP-42), then such information would likely be appropriate to include in R18-2-302.01.

To obtain full NSR program approval, ADEQ must ensure that Class I and Class II permit applications contain all emissions information associated with a particular project in order to determine whether R18-2-334 or Article 4 (major source NSR requirements) applies.

#### **40 CFR 51.160(d)**

For sources subject to R18-2-302.01, ADEQ's program does not meet the requirement in 40 CFR 51.160(d) that its procedures provide that approval of construction or modification will not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy. To obtain full program approval, ADEQ must ensure that its NSR procedures meet this requirement for sources subject to R18-2-302.01.

#### **40 CFR 51.160(f)(1)**

For sources subject to ADEQ's registration program under R18-2-302.01, ADEQ's program does not meet the requirement to use Appendix W to 40 CFR part 51 for air quality modeling. To obtain full program approval ADEQ must ensure that air quality modeling under R18-2-302.01 uses Appendix W.<sup>17</sup>

### **5.2.2 ADEQ's Minor NSR Program and 40 CFR 51.160(e)**

ADEQ's minor NSR program is intended to meet the requirements of 40 CFR 51.160, and encompasses several ADEQ rules. As discussed above, generally, 40 CFR 51.160 requires States to adopt a program and corresponding procedures for preventing the approval of the construction or modification of certain facilities, buildings, structures, or installations, or combinations thereof, if such construction or modification:

1. Will result in a violation of the applicable control strategy; or
2. Will interfere with the attainment or maintenance of a national standard.

The minimum requirements for this program are considerably more general than those applicable for major sources in attainment and nonattainment areas under 40 CFR 51.165 and 51.166. As noted above, a more detailed discussion of our review of ADEQ's minor NSR rules and how they meet the specific elements of 40 CFR 51.160 is available in our *Evaluation*.

40 CFR 51.160(e) requires ADEQ to provide a basis for the types and sizes of facilities, buildings, structures, or installations that will be subject to review under 40 CFR 51.160. As such, 40 CFR 51.160(e) allows state NSR programs to exclude some new minor sources and minor modifications from the NSR program. Such exclusions are appropriate so long as such sources and modifications are not environmentally significant, consistent with the *de minimis* exemption criteria set forth in *Ala.*

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<sup>17</sup> We approve of ADEQ's determination to use screening modeling for sources subject to the registration program, specifically AERSCREEN. Nonetheless, screening techniques must be consistent with Appendix W.

*Power Co. v. Costle*, 636 F.2d 323, at 360-361 (D.C. Cir. 1979).<sup>18</sup> Below, we discuss our evaluation of the basis provided by ADEQ for the types and sizes of facilities, buildings, structures or installations it will subject to review under its minor NSR program.

#### 5.2.2.1 *Summary of Sources Subject to Review under ADEQ's Minor NSR Program*

Historically, ADEQ's minor NSR program required permitting of new or modified non-major sources causing an increase in potential emissions of a criteria pollutant at or above the significant emission rates under the PSD program in 40 CFR 51.166(b)(23)(i). In a May 22, 1996 letter to ADEQ, EPA Region 9 indicated that the significant emission rates used by ADEQ for its minor NSR permitting program did not represent an acceptable threshold for applying the basic preconstruction requirements for minor sources for purposes of the NSR program. To address EPA's concerns, ADEQ assessed other potential lower permitting thresholds for its minor NSR program and selected revised thresholds for its minor NSR program following this assessment. ADEQ provided its basis for the selected thresholds in its October 29, 2012 SIP submittal, which we summarize below.

As part of its assessment of possible thresholds, ADEQ prepared a comparison of the permitting thresholds of minor NSR programs for nearby western states with air quality issues similar to the areas under ADEQ's jurisdiction. (California was not included, because of the unique severity of the nonattainment problems in that state.) Below is Table 3 showing that ADEQ's historic minor source NSR permitting thresholds were generally higher than those applicable in surrounding areas. We also show ADEQ's new minor source NSR thresholds, as well as the minor NSR thresholds in EPA's Tribal Minor NSR rule that have recently become applicable in Tribal areas regulated under that rule (see Table 1 to 40 CFR 49.153), for comparison.

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18 While the *Alabama Power* court discusses the de minimis principle in the context of a Federal administrative agency's authority in promulgating rules to satisfy statutory requirements, the same principle can be applied where a State promulgates rules to satisfy requirements by a Federal administrative agency. With regards to the de minimis principle, the Alabama Court writes: "Determination of when matters are truly de minimis naturally will turn on the assessment of particular circumstances, and the agency will bear the burden of making the required showing. But we think most regulatory statutes, including the Clean Air Act, permit such agency showings in appropriate cases. While the difference is one of degree, the difference of degree is an important one. Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of de minimis authority to provide exemption when the burdens of regulation yield a gain of trivial or no value. That implied authority is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs. For such a situation any implied authority to make cost-benefit decisions must be based not on a general doctrine but on a fair reading of the specific statute, its aims and legislative history." See *Ala. Power Co. v. Costle*, 636 F.2d 323, at 360-361 (D.C.Cir. 1979).

Table 3 Comparison of Permitting Thresholds for other Programs

State	PM <sub>10</sub>	PM <sub>2.5</sub> *	NO <sub>x</sub>	SO <sub>2</sub>	CO	VOC	Lead
Arizona (Historic)	15	--	40	40	100	40	0.6
Colorado (attainment)	5	5	10	10	10	5	0.1
Colorado (nonattainment)	1	1	5	5	5	2	0.1
Nevada	2	--	2	2	--	2	--
Clark County, Nevada	5	--	10	25	25	10	0.3
New Mexico	25	25	25	25	25	25	25
Utah	5	--	5	5	5	5	--
Tribal Minor NSR – attainment	5	3	10	10	10	5	0.1
Tribal Minor NSR - nonattainment	1	0.6	5	5	5	2	0.1
<b>Arizona (New)</b>	<b>7.5</b>	<b>5</b>	<b>20</b>	<b>20</b>	<b>50</b>	<b>20</b>	<b>0.3</b>

\* Many programs, including ADEQ's, did not address PM<sub>2.5</sub> until after the 2008 PM<sub>2.5</sub> Implementation Rule.

In the Tribal Minor NSR rule, EPA stated that the permitting thresholds for its minor NSR program are “not intended to establish a new set of minimum criteria that a Tribe or a state would need to follow in developing its own minor source permitting program.” See 76 Fed. Reg. 38754 (Jul. 1, 2011). Thus, the thresholds in the Tribal Minor NSR rule are not binding in any way on States or tribes developing their own minor NSR programs. Nevertheless, the approach taken by EPA in developing the thresholds in the Tribal Minor NSR Rule represents one approach that EPA has found to be appropriate in establishing such thresholds.

To assess the impact of the thresholds in the Tribal Minor NSR rule, EPA conducted a source distribution analysis using data from the National Emissions Inventory. The analysis concluded that the percentage of *emissions* that would be exempt under the Tribal Minor NSR rule's thresholds would be small (less than 1.5% of total emissions for each pollutant), while these thresholds would require only 14-58% of *stationary sources* (varying based on the individual pollutant) to obtain permits or register. EPA's analysis determined this approach provided “evidence that sources with emissions below the proposed minor NSR thresholds will be inconsequential to attainment and maintenance of the NAAQS.” See 71 Fed. Reg. 48701-03 (Aug. 21, 2006).

To assess potential thresholds for its minor NSR program, ADEQ applied a similar approach to a local data set. During the stakeholder process, ADEQ proposed two alternative scenarios for minor NSR thresholds: one that generally used ½ of the PSD significant rates and one that generally used ¼ of the PSD significant rates. See Table 4.

Table 4 Revised Permitting Thresholds Evaluated by ADEQ

<b>Pollutant</b>	<b>Scenario 1 (1/2 Significant Rate)</b>	<b>Scenario 2 (1/4 Significant Rate)</b>
<b>CO</b>	50	25
<b>NO<sub>x</sub></b>	20	10
<b>SO<sub>2</sub></b>	20	10
<b>VOC</b>	20	10
<b>PM<sub>10</sub></b>	7.5	5
<b>Lead</b>	0.3	0.3

ADEQ used the Maricopa County 2006 emissions inventory to analyze the potential impact of implementing each of these two scenarios for areas within ADEQ’s jurisdiction. Because of the severity of the air quality problems in the Phoenix Metropolitan Area, Maricopa County has for some time employed much lower permitting thresholds than ADEQ has and therefore has a much more complete inventory of smaller emission sources than does ADEQ. ADEQ’s emissions inventory is limited to stationary sources with potential emissions *at* the PSD significant rates. Due to the lack of available data for minor stationary sources under ADEQ’s jurisdiction, it is reasonable for ADEQ to use a nearby emissions inventory for this analysis.

The results of ADEQ’s analysis are in Table 5 below.

Table 5 Results of ADEQ’s Stationary Source Distribution Analysis

<b>Scenario 1</b>	<b>CO</b>	<b>NO<sub>x</sub></b>	<b>Pb</b>	<b>PM<sub>10</sub></b>	<b>SO<sub>2</sub></b>	<b>VOC</b>
% of emissions regulated	34.86	78.38	0	79.47	22.19	59.96
% of sources regulated	2.06	7.6	0	12.57	0.59	8.85
<b>Scenario 2</b>	<b>CO</b>	<b>NO<sub>x</sub></b>	<b>Pb</b>	<b>PM<sub>10</sub></b>	<b>SO<sub>2</sub></b>	<b>VOC</b>
% of emissions regulated	56.86	85.65	0	84.22	72.57	75.89
% of sources regulated	5	13.16	0	15.52	4.13	16.49

Based on the Maricopa County data, using Scenario 2 (generally 1/4 of the PSD significant emission rate) for the minor NSR emission thresholds rather than Scenario 1 (generally 1/2 of the PSD significant emission rate) would result in significantly more coverage of carbon monoxide and sulfur dioxide emissions under ADEQ’s minor NSR program. However, ADEQ stated that stationary source emissions of carbon monoxide are generally dwarfed by mobile source emissions and do not contribute significantly to nonattainment of the carbon monoxide NAAQS. Also, ADEQ reasoned that in the areas within Arizona that are subject to ADEQ’s minor NSR program, the sources that could contribute to noncompliance with the sulfur dioxide NAAQS are well-defined and consist of large industrial sources already subject to the permitting program. ADEQ concluded, based on the above considerations, that for purposes of minor NSR, use of the Scenario 2 thresholds would not offer any substantial benefits over Scenario 1. In addition, ADEQ determined that the Scenario 1 thresholds will bring ADEQ’s

program more in line with those of neighboring states, as summarized above. ADEQ concluded that the minor source thresholds in Scenario 1, shown in Table 4 above, were the appropriate thresholds for its minor NSR program, and adopted rules establishing these thresholds.

As such, EPA has evaluated ADEQ's minor NSR program for compliance with the requirements in 40 CFR 51.160, 51.161, and 51.163 by considering those regulatory requirements that apply to construction or modifications at stationary sources at or above ADEQ's permitting exemption threshold (Scenario 1 above). This is the threshold ADEQ has adopted as necessary and appropriate for meeting the minor NSR requirements. Our review of ADEQ's analysis of minor sources to regulate under 40 CFR 51.160(e) applies to only those areas for which ADEQ has permitting jurisdiction of minor sources. That is, other areas of the State may need a minor NSR program of a different scope under 40 CFR 51.160(e) to address the particular air quality issues and concerns of such areas.

#### *Section 5.2.2.2 Other Sources Exempted from ADEQ's Minor NSR Program*

In addition to the permitting thresholds discussed above, ADEQ's program also exempts other equipment under R18-2-302(C) from the requirement to obtain a permit or registration "unless the source is a major source, or unless operation without a permit would result in a violation of the Act." The exempted equipment includes (1) a stationary source that consists solely of a single categorically exempt activity plus a combination of trivial activities and (2) agricultural equipment used in normal farm operations. ADEQ's rules states that "agricultural equipment used in normal farm operations" does not include equipment classified at a source that requires a permit under title V of the Act, or that is subject to a standard under 40 CFR 60, 61, or 63. In response to an EPA comment on item (1) above, ADEQ's submittal demonstrated that the list of categorically exempt activities were below ADEQ's permitting exemption threshold. EPA approves of ADEQ's determination for this exemption. However, ADEQ's exemption of agricultural equipment appears to be based on a state law related to permitting – A.R.S. § 49-426(B), which states:

*The provisions of this section shall not apply to motor vehicles, to agricultural vehicles or agricultural equipment used in normal farm operations, or to fuel burning equipment which, at a location or property other than a one or two family residence, is rated at less than one million British thermal units per hour. The director may establish by rule additional sources or classifications of sources for which a permit is not required and pollutant-emitting activities and emissions units at permitted sources that are not required to be included in the permit. The director shall not adopt such rules unless the director makes a written finding with supporting facts that the exempted source, class of sources, pollutant-emitting activities or emissions units will have an insignificant adverse impact on air quality. In adopting these rules, the director may consider any rule that is adopted by the administrator pursuant to section 502 of the clean air act and that exempts one or more source categories from the requirement to obtain a permit under title V of the clean air act.*

Below, we identify disapproval issues with ADEQ's approach under 40 CFR 51.160(e).

5.2.2.3 *Program Elements Subject Limited Approval and Limited Disapproval under 40 CFR 51.160(e)*

In sum, ADEQ's analysis looked at the percentage of emissions that can be regulated at two thresholds and concluded "both scenarios result in a relatively large percentage of emissions being subject to regulation compared to the percentage of sources brought into the program." We generally agree with ADEQ on this point as it relates to ADEQ's requirement to select a level of emissions to regulate as part of its program. While we find ADEQ's approach to meeting 40 CFR 51.160(e) generally acceptable, we find that certain aspects of the approach are not consistent with Federal NSR requirements, and are proposing a limited approval and limited disapproval of ADEQ's minor NSR program, in part, based on these issues. Specifically, ADEQ's NSR SIP submittal is deficient under 40 CFR 51.160(e) for the following reasons.

First, ADEQ's submittal does not provide a clear basis that the permitting thresholds selected by ADEQ will ensure a sufficient percentage of minor sources are subject to review in nonattainment areas. As ADEQ points out in its submittal, ADEQ's analysis is based on data for Maricopa County<sup>19</sup>, which has lower NSR permitting thresholds than those adopted by ADEQ due to its local air quality problems. In addition, (1) some of the other permitting programs in Table 3 above have lower permitting thresholds in nonattainment areas than those applicable in attainment areas under their jurisdiction; (2) in looking at a similar analysis of minor source emissions for another permitting program in Region 9, which has local air quality problems, the permitting agency generally set thresholds that include a larger percentage of emissions in the NSR program than the percentage included in ADEQ's program<sup>20</sup>; and (3) typically, nonattainment areas have more control requirements that apply to smaller minor sources, as compared to attainment areas. As such, ADEQ's basis does not clearly address how the proposed permitting thresholds adequately addresses nonattainment areas.<sup>21</sup>

Second, while EPA agrees that, in general, certain types of equipment may be exempted from the minor NSR program, ADEQ must provide a basis under 40 CFR 51.160(e) to demonstrate that regulation of the equipment exempted in R18-2-302(C) and A.R.S. § 49-426(B) is not needed for ADEQ's program to meet federal NSR requirements for attainment and maintenance of the NAAQS or review for compliance with the control strategy. Such demonstration must address:

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19 ADEQ does not have jurisdiction for permitting of minor sources in Maricopa County, AZ.

20 See EPA's Technical Support Document for *Revision of Air Quality Implementation Plan; California; Sacramento Metropolitan Air Quality Management District; Stationary Source Permits*, 78 Fed. Reg. 10589 (Feb. 2, 2014) at 6-7 describing the thresholds applicable in Sacramento as generally excluding less than 5% of the emissions inventory except for SO<sub>2</sub>,

21 In addressing this deficiency, ADEQ does not necessarily have to consider lower permitting exemption thresholds in nonattainment areas. For example, ADEQ could provide further analysis to demonstrate that the adopted thresholds are appropriate for nonattainment areas or consider a different approach, such as requiring minor sources in nonattainment areas subject to a SIP requirement for the nonattainment pollutant, or its precursors, to obtain a registration, if ADEQ can demonstrate that such an approach would serve to satisfy the requirements of 40 C.F.R. 51.160.

1. An explanation of whether the regulatory exemption in R18-2-302(C) for “agricultural equipment used in normal farm operations” constitutes an interpretation or refinement of the exemption for such sources in A.R.S. § 49-426(B), and how the two provisions apply to ADEQ’s NSR program.
2. Identification of the types of equipment ADEQ considers to be “agricultural equipment used in normal farm operations” and whether this type of equipment could potentially be expected to occur at a stationary source subject to title V of the Act, 40 CFR parts 60, 61, or 63, or major NSR, and, if so, whether such equipment is subject to NSR review at such sources.
3. ADEQ’s basis for determining that “agricultural equipment used in normal farm operations” does not need to be regulated as part of ADEQ’s minor NSR program under 40 CFR 51.160(e).
4. ADEQ’s interpretation of the exemption for fuel burning equipment in A.R.S. § 49-426(B) and how it does, or does not, apply in the context of its major and minor NSR programs, and, to the extent such equipment is not subject to NSR review, ADEQ’s basis for determining that equipment exempted under this provision does not need to be reviewed as part of ADEQ’s minor NSR program under 40 CFR 51.160(e).

Third, ADEQ’s minor NSR program sets a permitting exemption threshold for PM<sub>2.5</sub> of 5 tons per year, but ADEQ’s analysis does not provide a basis for this threshold.

To obtain full program approval, ADEQ must (1) demonstrate that the chosen permitting exemption thresholds are appropriate for nonattainment areas, or revise the thresholds, or revise other portions of the minor NSR program, if necessary; (2) provide further explanation of, and an adequate basis under 40 CFR 51.160(e) for, the exemptions for agricultural equipment used in normal farm operations in R18-2-302(C) and A.R.S. § 49-426(B), and fuel burning equipment in A.R.S. § 49-426(B); and (3) provide the basis for the PM<sub>2.5</sub> permitting exemption threshold.<sup>22</sup>

### Section 5.2.3 Recommendations

In addition to the disapproval issues identified above in this section, *i.e.*, Sections 5.2.1 and 5.2.2.3, our *Evaluation* identifies recommendations for correcting typographical errors and making other small revisions to ADEQ’s rules to provide additional clarity and consistency with the federal requirements<sup>23</sup>. Specifically, we note:

1. ADEQ should consider adding a reference to R18-2-409 – *Air Quality Models* in R18-2-334 and R18-2-302.01.

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<sup>22</sup> Addressing this deficiency does not necessarily mean ADEQ must re-evaluate its PM<sub>2.5</sub> permitting exemption threshold or reconsider Maricopa’s emissions inventory, if ADEQ is able to provide a reasonable basis for its selection of 5 tons per year.

<sup>23</sup> We note that the issues discussed solely in the context of EPA “recommendations” in this Technical Support Document and/or our *Evaluation* reflect EPA suggestions for improving ADEQ’s regulatory provisions. Such issues are not bases for our proposed limited disapproval in this action.

2. ADEQ should consider submitted the current version of Appendix 1 to replace the current outdated version in the SIP.

### **5.3 40 CFR 51.161 – Public Availability of Information**

40 CFR 51.161 contains the basic requirements for public participation for the NSR program.<sup>24</sup> Our *Evaluation* identifies how ADEQ’s submittal addresses each of the requirements in 40 CFR 51.161. Except as discussed below, ADEQ’s program generally meets these federal NSR requirements through requirements established in the following rules reviewed for its NSR SIP submittal: R18-2-302.01, R18-2-330, R18-2-334, R18-2-401, and R18-2-402.

However, we are proposing a limited approval and limited disapproval of ADEQ’s program because:

#### **40 CFR 51.161(a)**

ADEQ’s program does not ensure that NSR review for all minor sources regulated under ADEQ’s NSR program, as ADEQ defines it pursuant to 40 CFR 51.160(e), is subject to public notice and comment consistent with 40 CFR 51.161(a). 40 CFR 51.161(a) requires that the program under 51.160 provide for public comment on the information submitted by owners or operators. In addition, the public information must include ADEQ’s analysis of the effects of construction or modification on ambient air, including ADEQ’s proposed approval or disapproval. ADEQ’s program does not meet this requirement because: (1) “modification” of existing sources that become subject to the registration program under R18-2-302.01 (currently only “construction” of a source) are not subject to public notice (see R18-2-302.01(B)(3)); (2) R18-2-334(G) exempts most modifications from public notice; (3) R18-2-330 does not clearly define which public notice requirements apply to registrations; and (4) public participation does not appear to be required for a proposed disapproval of an application for any portion of ADEQ’s NSR program (registration, minor NSR, or major NSR).

To obtain full approval, ADEQ must ensure that public notice and opportunity for comment is required for all portions of ADEQ’s federal NSR program under 40 CFR 51.160(e), clarify the public notice procedures in R18-2-330 that apply to registrations, and ensure that proposed disapprovals are subject to public notice. We do not interpret 40 CFR 51.161(a) as allowing exceptions to the public notice requirements in any circumstance for the program that is defined under 40 CFR 51.160.

#### **40 CFR 51.161(a)**

ADEQ’s registration program at R18-2-302.01(F) does not contain enforceable procedures for sources taking “elective limits” to limit their potential to emit in a manner that allows the source to avoid the public participation requirements in 40 CFR 51.161(a), while otherwise being subject to the registration program. See R18-2-302.01(B)(3)(b) and R18-2-302(E)(1). While this rule contains requirements for monitoring, recordkeeping, and reporting of elective limits, these requirements are not sufficiently

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<sup>24</sup> The federal PSD program includes additional public participation requirements for sources subject to PSD review. These requirements are discussed in Section 5.8 below.

enforceable for purposes of limiting the source's potential to emit, and thereby avoiding public notice, as well other substantive requirements of ADEQ's minor NSR program. In order to meet basic practical enforceability requirements for limiting PTE, R18-2-302.01(F) must also contain (1) a technically accurate limitation and the portions of the source subject to the limitation and (2) the time period for the limitations (hourly, daily, monthly, etc.). Further, if the limitation is over a period longer than daily, R18-2-302.01(F) must specify when to compile daily records to show compliance with the elected limit. See, for example, EPA's guidance on limiting potential to emit: <http://www.epa.gov/reg3artd/permitting/limitPTEmmo.htm> and <http://www.epa.gov/region7/air/nsr/nsrmemos/potoem.pdf>.

To obtain full program approval, ADEQ must impose additional requirements to ensure public availability of information when limiting PTE by rule, including:

- A technically accurate limitation and the portions of the source subject to the limitation<sup>25</sup>;
- Specifying the time period over which the elective limit applies (e.g. daily, monthly);
- If the limitation is a period longer than daily, then monitoring and recordkeeping must be added to require compiling of daily records to show compliance.

#### **40 CFR 51.161(b)(1)**

ADEQ's NSR program does not ensure, for all sources subject to NSR review, the availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of ADEQ's analysis on the effect on air quality as required by this federal regulation. R18-2-330(D)(11) requires the public notice to identify the nearest ADEQ office where documents can be inspected, but there are only two department offices for ADEQ. We do not interpret this provision as meeting the requirement to make information available in the "area affected." In addition, the public notice requirements do not make reference to providing ADEQ's analysis for public inspection. Potentially, this is covered by "all other materials available to the Director that are relevant to the permit decision".<sup>26</sup> But it is not clear that ADEQ would interpret this to mean the Director's own analysis. To obtain full approval, ADEQ's NSR program must ensure that the necessary documents will be available for public inspection in the "area affected" by the action, including the Director's analysis of the effects on ambient air quality.<sup>27</sup>

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25 We recognize that ADEQ's procedures may be too generic to meet this requirement in a way that is approvable into the SIP. ADEQ's approach of allowing the applicant to specify the limit without any public or EPA review in the SIP rule or the registration does not meet the enforceability criteria for limiting PTE. EPA is willing to work with ADEQ to develop approvable standards for limiting PTE in the SIP. However, if ADEQ is unable to revise the rule at this time to meet this criteria, then other portions of ADEQ's rules must be revised to remove public notice exemptions, and exemptions from any other substantive minor NSR requirements, for sources using these elective limits.

26 This requirement is met for ADEQ's registration program at R18-2-302.01(B)(3)(a).

27 For example, one option could be to provide information in the notice for a local library where the public in the affected area could access the Internet, and then also provide a specific web address where the permitting materials can be inspected. The affected area could then go to their local library to access the permitting documents.

#### **40 CFR 51.161(d)**

ADEQ's NSR program does not provide notice to the necessary parties identified in 40 CFR 51.161(d) for sources required to obtain registrations under R18-2-302.01. This requirement is met for sources regulated under the other portions of ADEQ's NSR program at R18-2-334(H) and R18-2-402(I)(2). To obtain full approval, ADEQ's NSR program at R18-2-302.01 should be revised to provide the required notices in 40 CFR 51.161(d).

### **5.4. 40 CFR 51.162 – Identification of Responsible Agency**

40 CFR 51.162 requires that each SIP identify the State or local agency that will be responsible for meeting the requirements of 40 CFR 51, Subpart I – the NSR program. ADEQ supplemented its NSR SIP submittal on July 2, 2014 to address this element. ADEQ's jurisdiction is governed by A.R.S. § 49-402(A) and (B). Section 49-402(A) provides ADEQ unconditional original jurisdiction over five stationary source categories: smelting of metal ores, coal fired electric generating stations, petroleum refineries, Portland cement plants, and portable sources. This jurisdiction applies throughout the state regardless of whether the source is located in a county with its own air pollution control agency. ADEQ may delegate its jurisdiction for these sources to the local county program. We provide additional information concerning NSR jurisdiction within the state, as follows.

#### **Jurisdiction over Major Sources**

Under A.R.S. § 49.402(A)(1), ADEQ has original jurisdiction over major sources in any county that has not received approval from the Administrator for new source review and PSD under the Act. ADEQ interprets this provision as requiring a county air pollution control agency to have EPA approval for both nonattainment NSR and PSD (which can include delegation of this program from EPA) in order to have jurisdiction over major sources.

#### **Jurisdiction over Minor Sources**

Under A.R.S. § 49-402(B), counties or multi-county air quality control regions have jurisdiction for all sources not identified in A.R.S. § 49-402(A), unless ADEQ asserts jurisdiction. Historically, ADEQ asserted jurisdiction over Apache, Cochise, Coconino, Gila, Mohave, Navajo, Santa Cruz, Yavapai, and Yuma counties. There is not a record that ADEQ specifically asserted jurisdiction over Graham, Greenlee, and La Paz counties, but these programs never adopted air quality permitting programs and ADEQ has assumed jurisdiction. ADEQ does not have currently have jurisdiction for minor sources in Maricopa, Pima and Pinal Counties.

ADEQ also has statutory authority under A.R.S. § 49-107 to delegate its authority to administer the State air quality program to county or other local government agencies.<sup>28</sup>

ADEQ's jurisdiction to implement the NSR SIP submittal is summarized below in Table 6. "Original" or "asserted" refers to areas where ADEQ currently has jurisdiction over the identified source category.

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<sup>28</sup> See ADEQ's Supplemental Information submitted on July 2, 2014 at 4, Section 2.1.

Table 6 Summary of Permitting Jurisdiction in Arizona

Area	Source Categories	ADEQ Jurisdiction	County Jurisdiction
Maricopa County	Smelting of metal ores	Original	None
	Coal fired electric generating stations		
	Petroleum refineries		
	Portland cement plants		
	Portable sources		
	All other major and minor sources	None	Original
Pima County	Smelting of metal ores	Original	None
	Coal fired electric generating stations		
	Petroleum refineries		
	Portland cement plants		
	Portable sources		
	Sundt Generating Station	Original	Delegated
	Rosemont Copper Mine (Minor Source)	Asserted	None
All other major and minor sources	None	Original	
Pinal County	Smelting of metal ores	Original	None
	Coal fired electric generating stations		
	Petroleum refineries		
	Portland cement plants		
	Portable sources		
	Major Sources	Original	Delegated
	All other minor sources	None	Original
Rest of State	All	Original	None

### 5.5. 40 CFR 51.163 – Administrative Procedures

40 CFR 51.163 requires each NSR program to include administrative procedures that will be followed in making the determinations specified in 40 CFR 51.160(a). Our *Evaluation* identifies how ADEQ’s submittal addresses each of the requirements in 40 CFR 51.163. ADEQ’s program meets this requirement through various provisions in R18-2-302, R18-2-302.01, R18-2-304, R18-2-306, R18-2-334, R18-2-402, and Appendix 1<sup>29</sup> (already SIP-approved). However, ADEQ’s submittal contains references to other ADEQ rules – R18-2-317 and R18-2-317.02 – that are not in the SIP and have not been submitted for SIP approval. See R18-2-306.02(D), R18-2-319(I), R18-2-304(J), R18-2-306(A), and R18-2-306.02(D). To obtain full program approval, ADEQ must ensure that all of the administrative procedures referenced by ADEQ’s NSR program are submitted for inclusion into the SIP.

<sup>29</sup> Appendix 1 contains ADEQ’s standard permit application form and filing instructions. Appendix 1 was last SIP-approved in the 1980s. We recommend that ADEQ submit the current version for approval into the SIP to replace the existing version.

In addition, we recommend that ADEQ include an additional procedure in R18-2-302.01 that allows the Director to request additional information. While ADEQ intends to have a form for registrations, which could contain all necessary information, it does not appear that this form has been created yet.

## **5.6. 40 CFR 51.164 – Stack Height Provisions**

40 CFR 51.164 requires each NSR program to include certain procedures related to stack heights, including good engineering practice (GEP) stack height provisions. Our *Evaluation* identifies how ADEQ’s submittal addresses each of the requirements in 40 CFR 51.164. In addition to reviewing ADEQ’s submittal as compared with the NSR program requirements of 40 CFR 51.164, we also reviewed ADEQ’s submittal as it relates to certain general SIP program requirements in 40 CFR 51.100 and 51.118. The stack height provisions in the NSR program rely on the general stack height provisions in 40 CFR 51.118(b), which in turn references the definitions in 40 CFR 51.100(hh) through (kk), and therefore our evaluation of ADEQ’s program with respect to these provisions was necessary to determine whether ADEQ’s program satisfied the requirements in 40 CFR 51.164 (see our *Evaluation* for a detailed comparison). Except as discussed below, ADEQ’s submittal generally meets these stack height and related requirements through requirements established in the following rules reviewed for the NSR SIP submittal: R18-2-301, R18-2-332, and R18-2-401.

### **5.6.1 Stack Height Program Elements Subject to Limited Approval and Limited Disapproval**

We are proposing a limited approval and limited disapproval of ADEQ’s minor NSR program submittal in part due to the following deficiencies in the program with respect to the requirements in 40 CFR 51.164:

#### **40 CFR 51.164 and 51.118(a)**

ADEQ’s submittal does not meet the public hearing requirements in 40 CFR 51.164. While R18-2-332(E) contains a reference to holding a public hearing, when required, the provision references ADEQ’s public hearing provision in R18-1-402. R18-1-402 is not in the SIP and has not been submitted for SIP approval. In order to obtain full approval, ADEQ must either reference public hearing provisions in the SIP or submit R18-2-401 for SIP approval.

#### **40 CFR 51.118(b)**

ADEQ’s submittal does not contain language that meets the exception in 40 CFR 51.118(b): “except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in section 111(a)(3) of the Clean Air Act, which were constructed, or reconstruction, or for which major modifications, as defined in §§51.165(a)(1)(v)(A), 51.166(b)(2)(i) and 52.21(b)(2)(i), were carried out after December 31, 1970.” In addition, R18-2-332(A)(3) incorrectly references July 1, 1975 instead of July 1, 1957. To obtain full program approval, ADEQ must ensure that its submittal contains the exception described above and correct the reference to July 1, 1957.

#### **40 CFR 51.100(ii)(2)(i)**

ADEQ's submittal does not contain a requirement that owners or operators seeking to rely on the equation in 40 CFR 51.100(ii)(2)(i) produce evidence that the equation was actually relied on in establishing an emission limitation. To obtain full program approval, ADEQ must ensure its definition for good engineering practice stack height at R18-2-332(B)(2) is consistent with the definition in 40 CFR 51.100(ii)(2)(i).

#### **R18-2-332(D)**

ADEQ's submittal contains a provision at R18-2-332(D) which provides additional provisions for sources "seeking credit because of plume impaction which results in concentrations in violation of national ambient air quality standards or applicable maximum allowable increases." This provision is not contained in the federal regulations and appears to allow for the use of stack heights beyond GEP stack height, as defined in 40 CFR 51.100(ii). To obtain full program approval, ADEQ must ensure that its program meets the GEP stack height definition in 40 CFR 51.100(hh) in all respects.

### **Section 5.6.2 Recommendations**

In addition to the disapproval issues identified above in this section, at Section 5.6.1, our *Evaluation* identifies recommendations for correcting typographical errors and making other small revisions to ADEQ's rules to provide additional clarity and consistency with the federal requirements. All of our recommendations are provided in the *Evaluation*, but we specifically note:

1. ADEQ should consider revising R18-2-332(B)(1) to include "measured from the ground level," for consistency with the federal regulation at 40 CFR 51.100(ii).
2. ADEQ should consider removing the reference to R18-2-403 from R18-2-332(B)(2). The need for this reference is unclear.
3. ADEQ should consider revising R18-2-332(B)(4) to reference "terrain features" instead of "terrain obstacles" for consistency with the federal regulation at 40 CFR 51.100(ii)(3).
4. ADEQ should consider revising R18-2-332(B)(6)(a) to reference "R18-2-406" instead of "Article 4."
5. ADEQ should consider revising R18-2-332(B)(6)(b) to add "or, in the absence of such a limit, the actual emission rate" for consistency with the federal regulation at 40 CFR 51.100(kk)(2).

### **5.7. 40 CFR 51.165 – Permit Requirements (NA-NSR)**

40 CFR 51.165 identifies the requirements for SIP-approved nonattainment NSR programs under sections 172(c)(5) and 173 of the Act. Generally, each source or modification subject to the program requirements must obtain a preconstruction permit that ensures that the Lowest Achievable Emission Rate (LAER) is met and that sufficient offsets in emission reductions are obtained.

We have conducted a detailed review of ADEQ's NSR SIP submittal as compared with the federal requirements for SIP-approved NA-NSR programs in 40 CFR 51.165. ADEQ's NSR SIP submittal generally incorporates the federal NA-NSR program requirements through the date on which ADEQ's rule

revisions to the NSR program were proposed, that is, July 6, 2012. However, as discussed below, there have been some changes to the federal NA-NSR program requirements since this date as a result of court decisions and/or regulatory actions by EPA.

Our *Evaluation* identifies how ADEQ's submittal addresses each of the current specific requirements in 40 CFR 51.165. Except as discussed in Sections 5.7.1 through 5.7.3 below, we find that ADEQ's submittal meets the NA-NSR program requirements through requirements established in the following ADEQ rules reviewed for the NSR SIP submittal: R18-2-101(2), (32), (87), (109), and (122); R18-2-401; R18-2-402; R18-2-403; R18-404; R18-405; and R18-2-406. In addition, our review relied on existing SIP approved provisions in R18-2-101 and R9-3-101(20). While some of the definitions required by the NA-NSR program are already approved into ADEQ's SIP at R18-2-101, which applies broadly to ADEQ's air program, we reconsidered those definitions within in the context of the NA-NSR program.

Although ADEQ's submittal meets most NA-NSR program requirements, we are proposing to disapprove one specific aspect of ADEQ's NA-NSR program relating to the definition of "basic design parameter." The ADEQ rule provision that we are proposing to disapprove is directly comparable to a federal NA-NSR rule provision that has been vacated by a federal court, and we find that it is separable from the remainder of ADEQ's NA-NSR program. Accordingly, we find this provision suitable for disapproval at this time. This issue is described in more detail below in Section 5.7.1.

For most of the remainder of ADEQ's NA-NSR program submittal, we are proposing limited approval and limited disapproval. We find that approval of ADEQ's updated NA-NSR program, aside from the aspects that is separable and is proposed for disapproval as mentioned above, will substantially strengthen the SIP overall, particularly as the current SIP-approved NA-NSR program is significantly out of date when compared with current federal NA-NSR regulatory requirements as well as current State regulations. See our discussion in Section 8. However, specific provisions of the NA-NSR SIP program submittal are inconsistent with NA-NSR program requirements, and these deficiencies must be addressed before we can fully approve ADEQ's NA-NSR program into the SIP. The deficiencies that we have identified with ADEQ's NA-NSR program that provide the basis for our limited approval and limited disapproval are described below in Section 5.7.2.

For one other aspect of ADEQ's NA-NSR SIP submittal, we are proposing limited approval at this time. We cannot determine at this time whether ADEQ's NA-NSR SIP submittal adequately addresses all of elements necessary to satisfy the CAA's title I, part D, subpart 4 requirements regarding NSR permitting of PM<sub>2.5</sub> and PM<sub>10</sub> precursors under CAA section 189(e). This issue is discussed in detail in Section 5.7.3 below.

As noted above, we have determined that all other aspects of ADEQ's submitted NA-NSR program meet the requirements of 40 CFR 51.165. An item warranting additional discussion is described below in Section 5.7.4; however, it is not an issue that warrants limited approval or disapproval action.

We note that in many cases, ADEQ has adopted definitions and program requirements that apply to both the NA-NSR and PSD programs, as 40 CFR 51.165 and 51.166 contain many of the same, or

similar, requirements. For example, ADEQ's R18-2-402 – General – contains the basic requirement for a major source or major modification to obtain a preconstruction permit, and how to determine whether a modification is a major modification. ADEQ then addresses the more program-specific requirements in separate NA-NSR and PSD rules that it has adopted. Because of the overlapping requirements of the two programs, in some instances we are proposing full or limited disapproval under both the NA-NSR and PSD programs for the same requirement in ADEQ's NSR submittal. We evaluated each program separately, so we are identifying the NA-NSR program issues in this section of the TSD – Section 5.7 – and address the PSD program issues in Section 5.8 of the TSD.

### **5.7.1 Definition for Basic Design Parameter**

ADEQ's submittal contains a definition for basic design parameter at R18-2-401(3) that reflects the definition that EPA originally developed as part of its Equipment Replacement Provisions. See 68 Fed. Reg. 61248 (Oct. 27, 2003). However, the definition for basic design parameter, and other elements related to the Equipment Replacement Provisions, were vacated by the D.C. Circuit Court of Appeals in *State of New York v. EPA*, 443 F.3d 880 (D.C. Cir. 2006). While the federal NA-NSR regulations still contain a reference to "basic design parameter," this term is no longer specifically defined under the federal NA-NSR regulations, and application of the definition contained in the Equipment Replacement Provisions that were vacated by the Court of Appeals is inconsistent with federal NA-NSR requirements. As the Court of Appeals found this Equipment Replacement Provisions and, therefore, this definition, impermissible, and because ADEQ's regulation incorporating this definition is a separable portion of ADEQ's NA-NSR program, we are proposing a partial disapproval of ADEQ's submitted NA-NSR program, to disapprove R18-2-401(3).

### **5.7.2 NA-NSR Program Elements Subject to Limited Approval and Limited Disapproval**

As discussed above, we are generally proposing a limited approval and limited disapproval of ADEQ's NA-NSR program, aside from the specific ADEQ rule provision that we are proposing to disapprove as described above.<sup>30</sup> We are proposing this approach because while ADEQ's NA-NSR program generally satisfies federal NA-NSR requirements, and as described in more detail in Section 8, approving the updated ADEQ NA-NSR regulations into the Arizona SIP will substantially strengthen the Arizona SIP overall by generally bringing the regulatory requirements in the SIP up to date, we have identified a number of deficiencies that will not allow us to fully approve the program as currently submitted.<sup>31</sup> Our limited disapproval of ADEQ's NA-NSR program is based on the issues described below.

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30 We are also proposing limited approval for certain aspects of ADEQ's NA-NSR program for PM<sub>2.5</sub> and PM<sub>10</sub> based on issues relating to Part D, subpart 4 of the Act, as described in Section 5.7.4 below.

31 We note that, as described above in Sections 5.2 – 5.6 of this document, certain aspects of ADEQ's NA-NSR program also do not fully satisfy the required program elements for the so-called federal "minor NSR program" as it applies to sources subject to the NA-NSR program. We will not repeat those issues here, but note that certain of ADEQ's NA-NSR program elements must be revised to satisfy federal minor NSR program requirements as well as NA-NSR requirements.

## References to Articles 9 and 11 in ADEQ's submittal

ADEQ's NSR submittal often refers to Articles 9 and/or 11 of ADEQ's regulations where the federal regulations refer to 40 CFR parts 60, 61, or 63; or, similarly, sections 111 or 112 of the Act. See R18-2-101(122)(b); R18-2-401(10); R18-2-402(G)(2); and R18-2-406(A)(4). Articles 9 and 11 are where ADEQ incorporates by reference the federal regulations in 40 CFR parts 60, 61, and 63 (which EPA implements under sections 111 and 112 of the Act). However, these Articles are not in the SIP, have not been submitted for SIP approval, and do not necessarily contain provisions equivalent to *all* of the subparts in parts 60, 61, and 63. In order to obtain full program approval, ADEQ must ensure its SIP-approved program adequately encompasses the requirements in 40 CFR parts 60, 61, or 63, and sections 111 and 112 of the Act, where these provisions are referenced by the required NA-NSR provisions in: 40 CFR 51.165(a)(1)(xiii) – lowest achievable emission rate, (a)(1)(xxxvii) – regulated NSR pollutant, and (a)(1)(xl) – best available control technology.

## 40 CFR 51.165(a)(1): Definitions

ADEQ's submittal contains definitions applicable to the NA-NSR program that do not fully meet 40 CFR 51.165(a)(1), which requires each State plan to contain specific definitions for the NA-NSR program. Deviations from the wording are approvable if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition in 40 CFR 51.165(a)(1). The definitions for ADEQ's NA-NSR program are found in R18-2-101 and R18-2-401. We have carefully reviewed the definitions included in the submittal as compared with the federal NA-NSR definitions in 40 CFR 51.165(a)(1) and have found that generally, ADEQ's submittal contains the definitions necessary to implement a NA-NSR program. However, a number of ADEQ's definitions do not meet the requirements of 40 CFR 51.165(a)(1) because their wording deviates from the wording in the corresponding federal regulatory definitions in 40 CFR 51.165(a)(1) in a manner that appears to be less stringent than the federal definitions, and the State has not demonstrated otherwise.

In addition to the broader deficiencies identified above that also apply to the definitions in the NA-NSR program, the definitions that do not meet the requirements of 40 CFR 51.165(a)(1) are listed below. In most cases, these ADEQ definitions meet most aspects of the federal definition but contain minor changes in wording or missing pieces of the definition that make ADEQ's definition less stringent than the federal definition in some respects. Our *Evaluation* specifically identifies the portions of these ADEQ definitions that appear to be inconsistent with the corresponding Federal definitions and provides more detail. In order to obtain full NA-NSR program approval, ADEQ must either revise the following definitions to conform to the wording in the federal regulation or otherwise demonstrate that they are at least as stringent as the federal regulatory definition in all respects:

### Definitions:

- **40 CFR 51.165(a)(1)(i) Stationary source** – the federal regulation at 40 CFR 51.165(a)(1)(i) defines this term as “any building, structure, facility or installation which emits or may emit a regulated NSR pollutant,” with “regulated NSR pollutant” also being a federally defined term at 40 CFR 51.165(a)(1)(xxxvii), whereas ADEQ's regulation at R18-2-101(139) defines “stationary source” as “any building, structure, facility or installation subject to regulation pursuant to A.R.S. § 49-426(A) which emits or may emit any air pollutant,” with “air pollutant” being an

undefined term in ADEQ's regulation. However, A.R.S. § 49-426(A) provides a cross-reference to certain exemptions from permitting identified in A.R.S. § 49-426(B), specifically agricultural equipment used in normal farm operations and certain fuel burning equipment, which do not appear to be consistent with federal NA-NSR definition. The federal definition of stationary source at 40 CFR 51.165(a)(1)(i) is very broad and does not exclude these source categories from the definition. We agree that it is acceptable for ADEQ to limit its NSR program to certain kinds of stationary sources, as discussed in detail above in Section 5.2.2 with respect to 40 CFR 51.160(e), but the federal definition for a stationary source in the context of the major NA-NSR program is not the appropriate place for such an exclusion, as it does not allow exclusions for certain source categories. For full approval of ADEQ's NA-NSR program into the SIP, ADEQ must demonstrate that its definition of stationary source is at least as stringent as the federal definition at 40 CFR 51.165(a)(1)(i) in all respects.

- **40 CFR 51.165(a)(1)(iv) Major stationary source** – language from subparagraph 40 CFR 51.165(a)(1)(iv)(A)(3) not included in the definition at R18-2-101(75); also see comments above on definition of “stationary source” in 40 CFR 51.165(a)(1)(i).
- **40 CFR 51.165(a)(1)(vi) Net emissions increase** –
  - The requirement of paragraph 40 CFR 51.165(a)(1)(vi)(E)(3) is not met because not all requirements to be approved under subpart I are listed (i.e., R18-2-302.01) in the definition at R18-2-101(87).
  - The equivalent of paragraph 40 CFR 51.165(a)(1)(vi)(G) is not included in ADEQ's definition at R18-2-101(87)
- **40 CFR 51.165(a)(1)(x) Significant** – ADEQ's definition at R18-2-101(130)(b) refers to R18-2-405 for determining significant emissions in serious and severe ozone nonattainment areas. The definition for “significant” at R18-2-405(B) does not use the term “net emissions increase,” which is a term defined by the federal regulations at 40 CFR 51.165(a)(1)(vi).
- **40 CFR 51.165(a)(1)(xi) Allowable emissions** – ADEQ's definition at R18-2-101(13)(b) does not include the “future compliance date” language that is in 40 CFR 51.165(a)(1)(xi)(B) and (C) and ADEQ has not demonstrated that its regulatory language is at least as stringent as the federal definition.
- **40 CFR 51.165(a)(1)(xiv) Federally enforceable** – ADEQ's definition at R18-2-101(53)(d) identifies that requirements included in permits pursuant to R18-2-306.01 or R18-2-306.02 are included in the definition of federally enforceable requirements, but excludes those requirements that are identified as “enforceable only by the state.” With this action, we are approving R18-2-306.01 and R18-2-306.02 into the SIP, making requirements pursuant to these rules federally enforceable. As such, ADEQ does not have the discretion to identify some of those requirements as only enforceable by the state.
- **40 CFR 51.165(a)(1)(xxvii) Regulated NSR pollutant** – ADEQ's definition is missing this language from paragraph 40 CFR 51.165(a)(1)(xxvii)(C): “provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant” at R18-2-101(122)(a).
- **40 CFR 51.165(a)(1)(xxviii) Projected actual emissions** – ADEQ's definition at R18-2-401(20)(b)(iii) does not specifically require inclusion of emissions from malfunctions in the

determination of projected actual emissions, and exempts emissions from a shutdown associated with a malfunction from such determination, while the federal definition at 40 CFR 51.165(a)(1)(xxxvii)(C) requires that emissions from both shutdowns and malfunctions be included.

#### **40 CFR 51.165(a)(2) – Applicability procedures**

The NA-NSR program requirements at 40 CFR 51.165(a)(2) require each plan to have a *preconstruction* review program to satisfy the requirements of sections 172(c) and 173 of the Act. However, ADEQ’s submittal allows a source at R18-2-302(G) and R18-2-402(C) to begin actual construction upon the issuance of a proposed final permit. As previously discussed in Section 5.2.1, ADEQ’s program is ambiguous as to whether a proposed final permit, as defined in R18-2-101(114), constitutes final action by the Director. While ADEQ has issued guidance clarifying that it treats “proposed final permits” as final actions for purposes of preconstruction permitting<sup>32</sup>, in order to obtain full NA-NSR program approval, ADEQ’s regulations must make clear that a source may not begin actual construction before a final determination on an NA-NSR permit application is made by the Director.

#### **40 CFR 51.165(a)(3)(ii)(G) – Claiming credit for emission reductions**

This federal rule provision requires that credit for emission reductions can be claimed only to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51 subpart I or the State has not relied on it in demonstration of attainment or reasonable further progress. ADEQ’s NSR submittal generally addresses this requirement at R18-2-404(H), but also needs to include references to rules R18-2-302.01 and R18-2-334, which are to be approved as part of ADEQ’s NSR regulations under Subpart I.

#### **40 CFR 51.165(a)(6)-(7) – Source obligation**

This portion of the program requires a NA-NSR program to require sources to meet certain obligations, including those related to reasonable possibility.

- **40 CFR 51.165(a)(6)** – ADEQ’s submittal contains an apparent typographical error in R18-2-402(F)(1)(c), which includes a cross-reference to R18-2-401(20)(b)(iii) rather than R18-2-401(20)(b)(iv). To obtain full NA-NSR program approval, this error must be corrected to ensure that the requirement in 40 CFR 51.165(a)(6)(i)(c) for owners and operators to document and maintain a record of certain applicability-related information is satisfied.
- **40 CFR 51.165(a)(7)** – ADEQ’s submittal does not require owners or operators to make information required under 40 CFR 51.165(a)(6) available for review upon request by the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii) as is required by 40 CFR 51.165(a)(7). To obtain full NA-NSR program approval, ADEQ must add this requirement.

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32 See ADEQ Memo dated February 10, 2015 related to proposed final permits, and ADEQ’s February 23, 2015 Supplement at 2.

#### **40 CFR 51.165(a)(9)(i) – Minimum emission offset requirements**

This federal rule provision requires that increases in emissions shall be offset by reductions in emissions using a ratio of emission decreases to emission increases of at least 1 to 1. ADEQ's NSR submittal contains this requirement at R18-2-404(A), but could be interpreted as establishing the ratio as increases to decreases, instead of decreases to increases – "emission increases shall be offset by emission decreases at a ratio of at least 1 to 1." In addition, R18-2-404(A) refers to additional offset requirements in R18-2-405, but does not refer to the offset requirement in R18-2-404(J). To obtain full program approval ADEQ must clarify its regulatory language to ensure the correct offset ratio is used and to ensure that R18-2-404(A) also refers to the offset requirements in 404(J).

#### **40 CFR 51.165(a)(11) – Interprecursor offsets**

This federal rule provision requires emission offsets to be obtained for the same regulated NSR pollutant, unless interprecursor offsetting is permitted for a particular pollutant, as further specified in the rule. ADEQ's NSR SIP submittal does not address interprecursor offsets, and it is not required to, but the submittal does not contain a specific requirement that offsets must be for the same regulated pollutant. To obtain full program approval ADEQ must clarify its regulatory language to ensure offsets must be obtained for the same regulated NSR pollutant, consistent with 40 CFR 51.165(a)(11).

#### **40 CFR 51.165(b)(1) and (2) – Program requirements for sources in attainment areas**

These federal rule provisions require that ADEQ have a preconstruction program that satisfies the requirements of section 110(a)(2)(D)(i) of the Act for any new major stationary source or major modification that would locate in an attainment area, but would cause or contribute to a violation of a NAAQS in any adjacent area. ADEQ's program contains provisions for 40 CFR 51.165(b) at R18-2-406(A)(5)(a)-(b) that generally meet this requirement. However, ADEQ's regulations at R18-2-406(A)(5)(b) refer to the "Arizona primary or secondary ambient air quality standards," which is not a defined term, whereas the analogous federal program provisions refer to the NAAQS. As a result, ADEQ's program does not fully meet the requirements in 40 CFR 51.165(b)(1) and (2) as ADEQ's regulations do not make clear which standards are being referred to, and the submittal does not demonstrate that such standards would apply to areas outside of Arizona for purposes of ADEQ's NSR review. Similarly, ADEQ's regulation at R18-2-406(A)(5)(a) references the state's ambient air quality standards in Article 2, which would not clearly apply to areas outside of Arizona.

#### **40 CFR 51.165(f) – Actuals PALs**

This portion of the NA-NSR program regulations contains requirements for establishing a plantwide applicability limit to avoid the requirement to obtain a NA-NSR permit. To obtain full NA-NSR program approval, ADEQ must address the following deficiencies in the Actuals PALs provisions of its NA-NSR program at R18-2-412 and associated definitions at R18-2-401.

- **40 CFR 51.165(f)(1)(iii)(B)** – ADEQ's provision for PALs does not specify that modifications under a PAL do not need approval through the nonattainment major NSR program. Only the PSD program is mentioned. Note that ADEQ's submittal does not contain a definition for nonattainment major NSR permit (see 40 CFR 51.165(a)(1)(xxx)). ADEQ should either add this definition or considering referencing R18-2-403.

- **40 CFR 51.165(f)(2)(iv)** – Neither the ADEQ regulatory provisions for PALs at R18-2-412 nor the ADEQ regulatory definitions in R18-2-401 that apply in the context of major sources and major modifications contain a definition for *major emissions unit* as is required by 40 CFR 51.165(f)(2)(iv). (This term is also not included in the definitions at R18-2-101 or R18-2-301 that ADEQ submitted for approval as part of this action.)
- **40 CFR 51.165(f)(3)(ii)** – ADEQ’s PAL provision for calculating baseline emissions at R18-2-412(B)(2) does not specify that baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction, as is required by 40 CFR 51.165(f)(3)(ii).
- **40 CFR 51.165(f)(9)** – ADEQ’s PAL provisions at R18-2-412(H) contain an incorrect reference to (H)(4) instead of the definition for major modification, and R18-2-412(H)(5) uses “eliminated” where the federal regulation uses “established.”
- **40 CFR 51.165(f)(10)** – ADEQ’s program contains incorrect cross-references in meeting this requirement, as follows: ADEQ’s PAL renewal provisions at R18-2-412(I)(1) must contain a reference to subsection (D) of R18-2-412 instead of (F), and R18-2-(I)(4)(a) must reference subsection (E) of R18-2-412.

#### **Section 173(a)(4) of the Act**

Section 173(a)(4) of the Act requires that NA-NSR permit programs shall provide that permits to construct and operate may be issued if “the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified.” However, ADEQ’s program does not contain a provision that would prohibit the issuance of NA-NSR permits in areas where the Administrator has made this determination or that requires that ADEQ conduct a review to ensure that this requirement is met. To obtain full program approval, ADEQ must add a provision to its NA-NSR program requirements that ensures compliance with CAA section 173(a)(4).

#### **5.7.3 Part D, Subpart 4 of the Act – Additional Provisions for Particulate Matter Nonattainment Areas**

ADEQ’s NSR submittal does not fully address all of the elements necessary to satisfy the CAA’s Title I, Part D, Subpart 4 requirements regarding PM<sub>2.5</sub> and PM<sub>10</sub> precursors under CAA section 189(e) for purposes of the NA-NSR program, as explained in detail below. However, ADEQ’s NA-NSR SIP submittal represents a considerable strengthening of the currently approved Arizona SIP, which does not address NSR permitting for PM<sub>2.5</sub> or PM<sub>10</sub> at all, as a result of the length of time that has elapsed since EPA last approved substantial revisions to ADEQ’s NSR program. For the reasons explained below, EPA does not yet have the information needed to evaluate the elements necessary to satisfy the CAA’s Title I Part D, Subpart 4 requirements regarding PM<sub>2.5</sub> and PM<sub>10</sub> precursors for purposes of ADEQ’s NA-NSR program in certain nonattainment areas under ADEQ’s jurisdiction. Therefore, EPA is proposing to grant limited approval to the NA-NSR provisions in ADEQ’s NSR submittal with respect to PM<sub>2.5</sub> and PM<sub>10</sub> for those areas, and will consider at a later date whether a limited disapproval is required, as explained below.

### 5.7.3.1 PM<sub>2.5</sub> Precursors under Subpart 4

On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council v. EPA*<sup>33</sup>, issued a decision that remanded the EPA's 2007 and 2008 rules implementing the 1997 PM<sub>2.5</sub> NAAQS. EPA's 2008 implementation rule addressed by the court decision, "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)" (the 2008 NSR PM<sub>2.5</sub> Rule)<sup>34</sup>, promulgated NSR requirements for implementation of PM<sub>2.5</sub> in both nonattainment areas (under the NA-NSR program) and attainment/unclassifiable areas (under the PSD program). The Court of Appeals found that EPA erred in implementing the PM<sub>2.5</sub> NAAQS in these rules for nonattainment areas solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. The Court of Appeals ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." 706 F.3d at 437. Although the Court of Appeals declined to establish a deadline for EPA's response to the remand, EPA intends to promulgate new generally applicable implementation regulations for the PM<sub>2.5</sub> NAAQS in accordance with the requirements of subpart 4. In the interim, however, states and EPA still need to proceed with implementation of the PM<sub>2.5</sub> NAAQS in a timely and effective fashion in order to meet statutory obligations under the CAA and to assure the protection of public health intended by those NAAQS.

ADEQ's NSR SIP submittal generally includes requirements for the PM<sub>2.5</sub> NA-NSR program consistent with the provisions promulgated in the 2008 NSR PM<sub>2.5</sub> Rule. Specifically, ADEQ's NSR SIP submittal includes the PM<sub>2.5</sub> significant emission rates at R18-2-101(130), regulation of certain PM<sub>2.5</sub> precursors (SO<sub>2</sub> and NO<sub>x</sub>) at R18-2-101(130), the regulation of PM<sub>10</sub> and PM<sub>2.5</sub> condensable emissions at R18-2-101(122)(f), and the emissions offset requirements at R18-2-403(A)(3). Separate and aside from the issues identified in Sections 5.7.1 and 5.7.2 above that have resulted in our proposing limited approval and limited disapproval of ADEQ's NA-NSR submittal, EPA has determined that it is not prepared at this time to grant full approval to ADEQ's NSR SIP submittal as to the PM<sub>2.5</sub> NA-NSR program requirements, in light of the Court's remand of the 2008 NSR PM<sub>2.5</sub> Rule, and for the reasons explained below.

EPA is in the process of evaluating the requirements of subpart 4 as they pertain to NA-NSR. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM<sub>10</sub> precursors (and hence under the court decision, PM<sub>2.5</sub> precursors) "except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the standard in the area." Although ADEQ's NSR SIP submittal does include regulation of SO<sub>2</sub> and NO<sub>x</sub> as PM<sub>2.5</sub> precursors, it does not include the regulation of VOCs or ammonia. Nor does the NSR SIP submittal include a demonstration as to whether or not the regulation of VOCs or ammonia is necessary under section 189(e). The evaluation of which precursors need to be controlled to achieve the standard in a particular area is typically conducted in the context of the state's preparing and the EPA's reviewing of an area's attainment plan SIP. In this case, there are two designated PM<sub>2.5</sub>

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33 706 F.3d 428 (D.C. Cir. 2013).

34 73 Fed. Reg. 28321 (May 16, 2008).

nonattainment areas in Arizona, the Nogales (portion of Santa Cruz County, AZ) and West Central Pinal (portion of Pinal County, AZ) areas. Both are designated nonattainment for the 2006 annual PM<sub>2.5</sub> NAAQS. However, on January 7, 2013 and September 4, 2013, EPA finalized determinations of attainment for these areas, respectively (78 Fed. Reg. 887 and 78 Fed. Reg. 54394), which suspended the requirement for the state to submit, among other things, an attainment plan SIP for the area.<sup>35</sup> Accordingly, PM<sub>2.5</sub> attainment plans for SIP approval are not currently before Region 9 for these areas. As Region 9 does not have before it the state's analysis as to which precursors need to be controlled in these areas pursuant to section 189(e) of the Act, as would be generally contained in an attainment plan SIP, it cannot fully approve as complying with the CAA a nonattainment NSR SIP that only addresses a subset of the scientific PM<sub>2.5</sub> precursors recognized by EPA.

On the other hand, while ADEQ's submittal may not yet contain all of the elements necessary to satisfy the CAA requirements when evaluated under subpart 4, the NA-NSR SIP submittal represents a considerable strengthening of the currently approved Arizona SIP, which does not address NSR permitting for PM<sub>2.5</sub> at all. Therefore, EPA is proposing to grant limited approval to the PM<sub>2.5</sub> NA-NSR provisions in ADEQ's NSR submittal for the Nogales and West Central Pinal PM<sub>2.5</sub> nonattainment areas.

For the reasons explained above, EPA is not evaluating at this time whether ADEQ's NA-NSR submittal will require additional revisions relating to PM<sub>2.5</sub> to satisfy the subpart 4 requirements. Once EPA re-promulgates the Federal PM<sub>2.5</sub> regulations with respect to NA-NSR permitting in response to the Court's remand, EPA will consider whether a limited disapproval should also be proposed for ADEQ's PM<sub>2.5</sub> NA-NSR program based on this issue.

#### *5.7.3.2 PM<sub>10</sub> Precursors under Subpart 4*

As discussed above, section 189(e) of the CAA requires that ADEQ's NSR program for PM<sub>10</sub> nonattainment areas apply to major stationary sources of PM<sub>10</sub> precursors, except where the Administrator determines that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area. There are currently eight PM<sub>10</sub> nonattainment areas under ADEQ's permitting jurisdiction: Ajo, Hayden, Nogales, Paul Spur/Douglas, the Pinal County portion of the Maricopa County nonattainment area, West Pinal, Rillito, and Yuma. Except for the Maricopa nonattainment area and the West Pinal nonattainment area, these areas have been nonattainment since 1990 and EPA has never determined that regulation of PM<sub>10</sub> precursors is required under section 189(e) and EPA has made a determination of attainment in those areas without such a requirement. As such, we further consider the PM<sub>10</sub> precursor requirements for the Pinal County portion of the Maricopa PM<sub>10</sub> nonattainment area and the West Pinal PM<sub>10</sub> nonattainment area:

- With respect to the Pinal County portion of the Maricopa PM<sub>10</sub> nonattainment area, on June 10, 2014, EPA finalized its approval of the attainment plan under section 189(d) for the Maricopa PM<sub>10</sub> nonattainment area, including the Pinal County portion of this area, and identified that

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<sup>35</sup> Prior to the Court's decision, EPA would not have reviewed PM<sub>2.5</sub> attainment plan submittals for compliance with Section 189.

EPA has previously determined that PM<sub>10</sub> precursors from major sources do not contribute significantly to PM<sub>10</sub> levels. See 79 Fed. Reg. 7118, 7120, footnote 6 (Feb. 6, 2014).

- With respect to the West Pinal PM<sub>10</sub> nonattainment area, we note that on September 4, 2013, the West Pinal area was redesignated to nonattainment for the 1987 PM<sub>10</sub> standard. ADEQ's NSR SIP submittal generally includes NA-NSR requirements for PM<sub>10</sub> nonattainment areas such as the PM<sub>10</sub> significant emission rate at R18-2-101(130), the regulation of PM<sub>10</sub> and PM<sub>2.5</sub> condensable emissions at R18-2-101(122)(f), and the emissions offset requirements at R18-2-403(A)(3). However, separate and aside from the issues identified in Sections 5.7.1 and 5.7.2 above that have resulted in our proposing limited approval and limited disapproval of ADEQ's NA-NSR submittal, EPA has determined that it is not prepared at this time to grant full approval to ADEQ's NSR SIP submittal as to the PM<sub>10</sub> nonattainment NSR program requirements for the West Pinal nonattainment area. The evaluation of which precursors need to be controlled to achieve the standard in a particular area is typically conducted in the context of the state's preparing and the EPA's reviewing of an area's attainment plan SIP. On February 19, 2014, ADEQ withdrew from EPA's consideration the *Arizona State Implementation Plan Revision for the West Pinal County PM<sub>10</sub> Nonattainment Area* (submitted on December 30, 2013). Accordingly, a PM<sub>10</sub> attainment plan for West Pinal is not currently before Region 9. As such, Region 9 does not have before it the state's analysis as to which precursors need to be controlled in this area pursuant to section 189(e) of the Act, as would be generally contained in an attainment plan SIP, and cannot fully approve as complying with the CAA a nonattainment NSR SIP that does not address scientific PM<sub>10</sub> precursors recognized by EPA.

While ADEQ's submittal may not yet contain all of the elements necessary to satisfy the CAA NA-NSR requirements when evaluated under subpart 4, the proposed revisions to ADEQ's NA-NSR program represent a considerable strengthening of the currently approved Arizona SIP, which does not address NSR requirements for PM<sub>10</sub> at all. Therefore, EPA is proposing to grant limited approval to the PM<sub>10</sub> NA-NSR provisions in ADEQ's NSR submittal as they apply to the West Pinal nonattainment area. Once ADEQ submits a new PM<sub>10</sub> attainment plan for this area, EPA will consider whether a limited disapproval should also be proposed based on this issue.

#### **Section 5.7.4 Additional Discussion of NA-NSR Program Requirements**

##### **Condensable PM**

On December 24, 2012, regulatory revisions related to condensable PM became effective in EPA's NA-NSR regulations at 40 CFR 51.165 (see 77 Fed. Reg. 65107 (Oct. 25, 2012)). These revisions corrected an error where EPA inadvertently identified particulate matter (PM) as a criteria pollutant (that is, a pollutant subject to a NAAQS) when identifying how to treat condensable PM emissions. ADEQ's submittal contains the erroneous language that was originally included in 40 CFR 51.165. We do not consider this to be a disapproval issue. However, EPA believes that since the revisions were made to correct an inadvertent technical error, ADEQ has the discretion to determine that PM is clearly not a criteria pollutant and to therefore implement the rule by not considering PM to include condensable PM. Nevertheless, for clarity, we recommend that ADEQ correct this error in its regulations when

addressing other necessary revisions to its NSR program that are identified as part of this SIP action.

### **Section 5.7.5 Recommendations**

In addition to the disapproval issues identified in Sections 5.7.2 and 5.7.3, our *Evaluation* identifies numerous recommendations for correcting typographical errors and making other small revisions to ADEQ's rules to provide additional clarity and consistency with the federal requirements. All of our recommendations are included in our *Evaluation*, but we specifically note:

1. ADEQ should consider revising R18-2-401(11)(e) to change the reference to "this section" to "this Article."
2. ADEQ should consider revising R18-2-101(13)(a) to use "and" instead of "or" for consistency with the federal regulation at 40 CFR 51.165(a)(1)(xi).
3. ADEQ may want to consider revising R18-2-402(F)(4) to reference (F)(1) instead of (F)(1)(a). See 40 CFR 51.165(a)(6)(v).
4. ADEQ should consider revising R18-2-412(H) to consistently use the term "PAL allowable emissions" as defined in R18-2-401(14).
5. ADEQ should consider revising R18-2-401(18) to reference "Article 3 or 4." See 40 CFR 51.165(f)(2)(ix).
6. When correcting the disapproval issue related to ADEQ's use of "proposed final permit," ADEQ should consider revising R18-2-404(F) to identify whether "by the time a permit issued" refers to the final permit or proposed final permit.

### **5.8 40 CFR 51.166 – Prevention of Significant Deterioration**

40 CFR 51.166 identifies the necessary requirements for a SIP-approved PSD program under sections 160-169 of the Clean Air Act. Generally, each source or modification that is subject to the program must obtain a PSD permit prior to construction. The permit must include applicable Best Available Control Technology (BACT) requirements and ensure that the project will not cause or contribute to a violation of a NAAQS or increment. Sources subject to PSD review must also comply with a number of additional PSD requirements that are detailed in the regulations.

We have conducted a detailed review of ADEQ's NSR SIP submittal as compared with the federal PSD requirements for SIP-approved PSD programs in 40 CFR 51.166. ADEQ's NSR SIP submittal generally incorporates the federal PSD program requirements through the date on which ADEQ's most recent rule revisions to the NSR program were proposed, that is, July 6, 2012. However, as discussed below, there have been a few changes to the federal PSD program requirements since this date as a result of court decisions and/or regulatory actions by EPA.

Our *Evaluation* identifies how ADEQ's submittal addresses each of the current specific requirements in 40 CFR 51.166. Except as discussed below in Sections 5.8.1 and 5.8.2, we find that ADEQ's submittal meets these PSD program requirements, through requirements established in the following ADEQ rules reviewed for the NSR SIP submittal: R18-2-101(2), (32), (87), (109), and (122); R18-2-217; R18-2-218;

R18-2-301; R18-2-302; R18-2-304; R18-2-330; R18-2-401; R18-2-402; R18-2-406; R18-2-407; R18-2-409; and R18-2-412. In addition our review also relied on existing SIP approved provisions in R18-2-101, R9-3-101(20), R9-3-301(I) and (K) and R9-3-304(H). While some of the definitions required by the PSD program are already approved into ADEQ's SIP at R18-2-101, which applies broadly to ADEQ's air program, we reconsidered those definitions within in the context of the PSD program.

Although ADEQ's submittal meets most PSD program requirements, we are proposing to disapprove two specific aspects of ADEQ's PSD program. The ADEQ rule provisions that we are proposing to disapprove are directly comparable to federal PSD rule provisions that have been vacated by federal courts, and we find that they are separable from the remainder of ADEQ's PSD program. Accordingly, we find these provisions suitable for disapproval at this time. These provisions are described below in Section 5.8.1.

For the remainder of ADEQ's PSD program submittal, we are proposing limited approval and limited disapproval. We find that approval of ADEQ's updated PSD program, aside from the two aspects that are separable and will be disapproved as mentioned above, will substantially strengthen the SIP overall, particularly as the current SIP-approved PSD program is significantly out of date when compared with current federal PSD regulatory requirements as well as current State regulations. See our discussion in Section 8. However, specific provisions of the PSD SIP program submittal are inconsistent with PSD program requirements, and these deficiencies must be addressed before we can fully approve ADEQ's PSD program. The deficiencies that we have identified with ADEQ's PSD program that provide the basis for our limited disapproval are described below in Section 5.8.2.

As discussed above, we have determined that all other aspects of ADEQ's submitted PSD program meet the requirements of 40 CFR 51.166. Several other issues warranting additional discussion are described below in Section 5.8.3; however, these are not disapproval issues.

## **5.8.1 PSD Provisions for Which EPA is Proposing Partial Disapproval**

### *5.8.1.1 PM<sub>2.5</sub> Significant Monitoring Concentration*

On January 22, 2013, the U.S. D.C. Circuit Court of Appeals in *Sierra Club v. EPA*, 705 F.3d 458, vacated the parts of two federal PSD rules (40 CFR 51.166(i)(5)(i)(c) and 40 CFR 52.21(i)(5)(i)(c)) establishing a PM<sub>2.5</sub> significant monitoring concentration (SMC), finding that EPA was precluded from using the PM<sub>2.5</sub> SMC to exempt permit applicants from the statutory requirement to compile and submit preconstruction monitoring data as part of a complete PSD application. On December 9, 2013, revisions to 40 CFR 51.166 and 52.21 were published in the Federal Register to remove these vacated

rule elements, effective as of that date. See 78 Fed. Reg. 73698.<sup>36</sup>

ADEQ's submittal at R18-2-407(H)(1)(c) contains the equivalent of the PM<sub>2.5</sub> SMC that was vacated by the Court of Appeals and which has been removed from the federal PSD regulations. As the Court of Appeals found application of this SMC impermissible, and because ADEQ's regulation incorporating this SMC is a separable portion of ADEQ's PSD program, we are proposing a partial disapproval of ADEQ's submitted PSD program, to disapprove R18-2-407(H)(1)(c).

#### *5.8.1.2 Definition for Basic Design Parameter*

ADEQ's submittal contains a definition for basic design parameter at R18-2-401(3) that reflects the definition that EPA originally developed as part of its Equipment Replacement Provisions. See 68 Fed. Reg. 61248 (Oct. 27, 2003). However, the definition for basic design parameter, and other elements related to the Equipment Replacement Provisions, were vacated by the D.C. Circuit Court of Appeals in *State of New York v. EPA*, 443 F.3d 880 (D.C. Cir. 2006). While the federal PSD regulations still contain a reference to "basic design parameter," this term is no longer specifically defined under the federal PSD regulations, and application of the definition contained in the Equipment Replacement Provisions that were vacated by the Court of Appeals is inconsistent with federal PSD requirements. As the Court of Appeals found this Equipment Replacement Provisions and, therefore, this definition, impermissible, and because ADEQ's regulation incorporating this definition is a separable portion of ADEQ's PSD program, we are proposing a partial disapproval of ADEQ's submitted PSD program, to disapprove R18-2-401(3).

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<sup>36</sup> We note that in the same decision, the Court of Appeals granted a request from EPA to vacate and remand to EPA the portions of two related PSD rules (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) addressing the significant impact levels (SILs) for PM<sub>2.5</sub> so that EPA could correct an error in these provisions. In the preamble to the 2010 final rule adding the (k)(2) provision, EPA advised that, "notwithstanding the existence of a SIL, permitting authorities should determine when it may be appropriate to conclude that even a de minimis impact will 'cause or contribute' to an air quality problem and to seek remedial action from the proposed new source or modification." Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC), 75 Fed. Reg. 64864, 64892 (Oct. 20, 2010). In another passage of the preamble, EPA also observed that "the use of a SIL may not be appropriate when a substantial portion of any NAAQS or increment is known to be consumed." *Id.* at 64894. The Court of Appeals' decision in *Sierra Club v. EPA* held that, contrary to these statements in the preamble, the text of the (k)(2) provision "did not give permitting authorities sufficient discretion to require a cumulative air quality analysis" under such circumstances. 705 F.3d at 464. EPA subsequently removed the SILs language at issue from its regulations in the same regulatory action in which it removed the regulatory provisions establishing the SMC for PM<sub>2.5</sub>. 78 Fed. Reg. 73698 (Dec. 9, 2013). However, ADEQ did not adopt the PM<sub>2.5</sub> SILs in the same manner as the language that was found at 40 CFR 51.166(k)(2) prior to the Court of Appeals' vacatur. Instead, ADEQ added the PM<sub>2.5</sub> SILs to its regulations addressing the major NA-NSR program requirement for ensuring that major sources in attainment or unclassifiable areas do not cause or contribute to a violation of a NAAQS in adjacent areas, at R18-2-406(A)(5)(b). As such, ADEQ's PSD program does not contain the erroneous PM<sub>2.5</sub> SILs regulatory language that the Court of Appeals vacated and remanded to EPA, and EPA's regulatory action that removed the vacated language for the PM<sub>2.5</sub> SILs from its PSD regulations does not affect the approvability of ADEQ's PSD program.

## 5.8.2 PSD Program Elements Subject to Limited Approval and Limited Disapproval

As discussed above, we are proposing a limited approval and limited disapproval of ADEQ's PSD program, aside from the specific ADEQ rule provisions that we are proposing to disapprove as described in Section 5.8.1. We are proposing this approach because while ADEQ's PSD program generally satisfies federal PSD requirements, and approving the updated ADEQ regulations into the Arizona SIP will substantially strengthen the Arizona SIP overall by generally bringing the regulatory requirements in the SIP up to date, we have identified a number of deficiencies that will not allow us to fully approve the program as currently submitted.<sup>37</sup> Our limited disapproval of ADEQ's PSD program is based on the issues described below.

### References to Articles 9 and 11 in ADEQ's submittal

ADEQ's submittal often refers to Articles 9 and/or 11 of ADEQ's regulations where the federal regulations refer to 40 CFR parts 60, 61, or 63; or, similarly, sections 111 or 112 of the Act. See R18-2-101(53)(a), (122)(b); R18-2-401(10); R18-2-402(G)(2); and R18-2-406(A)(4). Articles 9 and 11 are where ADEQ incorporates by reference the federal regulations in 40 CFR part 60, 61, and 63 (which EPA implements under sections 111 and 112 of the Act). However, these Articles are not in the SIP, have not been submitted for SIP approval, and do not contain provisions equivalent to all of the subparts in parts 60, 61, and 63. In order to obtain full program approval, ADEQ must ensure its SIP-approved program adequately encompasses the requirements in 40 CFR parts 60, 61, or 63, sections 111 and 112 of the Act, where these provisions are referenced by the required PSD provisions in 40 CFR 51.166(b)(1)(iii)(aa), (b)(12), (b)(16)(i), (b)(17), (b)(47)(ii)(c), (b)(49)(ii), (i)(1)(ii)(aa), and (j).

### References to Increment

ADEQ's submittal uses the term "increment" or "incremental ambient standard," but does not specifically define these terms or otherwise identify what is meant by these terms. While the PSD program does not specifically define the term "increment" either, the term is introduced at 40 CFR 51.166(c) – *Ambient air increments and other measures*. (emphasis added) 40 CFR 51.166(c) then goes on to identify the specific increment values as "maximum allowable increases." ADEQ appears to have taken the approach to use the term "maximum allowable increase" to refer to the increments, which is acceptable. ADEQ adopted the increments, or maximum allowable increases, in R18-2-218 – *Limitation of Pollutants in Classified Attainment Areas*. However, in other rules ADEQ uses "increment" or "incremental ambient standard" where it appears the intent is to refer to the standards established in R18-2-218 and identified in ADEQ's rules as the "maximum allowable increases." See R18-2-406(E), R18-2-412(G)(b), R18-2-101(51), R18-2-319, R18-2-320. To obtain full program approval, ADEQ must ensure it rules identify the maximum allowable increases as the increments, or consistently use one term for referring to these values.

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<sup>37</sup> We note that, as described above in Sections 5.2 – 5.6 of this document, certain aspects of ADEQ's PSD program also do not fully satisfy the required program elements for the so-called federal "minor NSR" program as it applies to sources subject to the PSD program. We will not repeat those issues here, but note that certain of ADEQ's PSD program elements must be revised to satisfy federal minor NSR program requirements as well as PSD requirements.

### **Revised PM<sub>2.5</sub> NAAQS**

On January 15, 2013, EPA issued a final rule revising the NAAQS for PM<sub>2.5</sub> for the annual averaging period, lowering the level of the NAAQS from 15.0 to 12.0 mg/m<sup>3</sup>, effective March 18, 2013 (see 78 Fed. Reg. 3086). This new NAAQS is required to be implemented for PSD sources (unless otherwise grandfathered under provisions at 40 CFR 51.166(i)(10)) beginning with the effective date of the NAAQS. However, ADEQ's PSD program does not provide for the review of new or modified sources for compliance with this new NAAQS as required in 40 CFR 51.166(b)(2)(iii)(i)(2), (b)(35), (d), (g)(3)(iii), (k), and (m)(1). Instead, ADEQ's PSD program currently references state ambient air quality standards, which are set at levels that are equivalent to all of the current NAAQS, except for this newly adopted PM<sub>2.5</sub> NAAQS. See R18-2-218(F)(b)(ii), R18-2-401(25), R18-2-406(A) and R18-2-407(B). Because of the approach used in ADEQ's NSR program, *i.e.*, its reference to state air quality standards instead of the NAAQS, any changes EPA makes to the NAAQS will not be included in ADEQ's program until ADEQ revises its air quality standards rules to adopt the revised NAAQS as state air quality standards. This does not relieve any owner or operator from the requirement to comply with all NAAQS at the time a final PSD permit is issued, including the recently revised new PM<sub>2.5</sub> NAAQS (unless otherwise grandfathered under 40 CFR 51.166). See CAA section 165(a)(3). Therefore, ADEQ must update its regulations to include the new PM<sub>2.5</sub> NAAQS and submit the updated regulations for SIP approval in order to obtain full PSD program approval.

### **Reference to R18-2-408 – Innovative Control Technology**

R18-2-406(A) contains a reference to R18-2-408, but R18-2-408 is not in the SIP and has not been submitted for SIP approval. To obtain full program approval, ADEQ must revise R18-2-406(A) or submit R18-2-408 for SIP approval.

### **40 CFR 51.166(a)(7)(iii) – Applicability**

ADEQ's submittal allows a source at R18-2-302(G) and R18-2-402(C) to begin actual construction upon the issuance of a proposed final permit. As previously discussed in Section 5.2.1, ADEQ's program is ambiguous as to whether a proposed final permit, as defined in R18-2-101(114), constitutes final action by the Director. While ADEQ has issued guidance clarifying that it treats "proposed final permits" as final actions for purposes of preconstruction permitting<sup>38</sup>, in order to obtain full PSD program approval, ADEQ's regulations must make clear that a source may not begin actual construction before a final determination on a PSD permit application is made by the Director.

### **40 CFR 51.166(b): Definitions**

ADEQ's submittal contains definitions applicable to the PSD program that do not fully meet 40 CFR 51.166(b)(1), which requires each State plan to contain specific definitions for the PSD program. Deviations from the wording are approvable if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition in 40 CFR 51.166(b). The definitions for ADEQ's PSD program are generally found in R18-2-101 and R18-2-401. We have carefully reviewed the definitions included in the submittal and ADEQ's SIP as compared

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<sup>38</sup> See ADEQ memo dated February 10, 2015 related to proposed final permits. ADEQ submitted this letter in its February 23, 2015 supplement.

with the federal PSD definitions in 40 CFR 51.166(b) and have found that generally, ADEQ's submittal contains the definitions necessary to implement a PSD program. However, a number of ADEQ's definitions do not meet the requirements of 40 CFR 51.166(b)(1) because their wording deviates from the wording in the corresponding federal regulatory definitions in 40 CFR 51.166(b)(1) in a manner that appears to be inconsistent with the federal definitions, and the State has not demonstrated that they are at least as stringent.

Except for broader deficiencies identified above that also apply to the definitions in the PSD program, the definitions that do not meet the requirements of 40 CFR 51.166(b)(1) are listed below. In most cases, ADEQ's definitions meet most aspects of the federal definition but contain minor changes in wording or missing pieces of the definition that make ADEQ's definition inconsistent with the federal definition in some respects. In order to obtain full program approval, ADEQ must either revise the following definitions to conform to the wording in the federal regulation or otherwise demonstrate that they are at least as stringent as the Federal regulatory definition in all respects.

- **40 CFR 51.166(b)(1) Major stationary source** – language from subparagraph 40 CFR 51.166(b)(1)(i)(c) not included in the definition at R18-2-101(75). See also discussion below of definition of “stationary source” at 40 CFR 51.166(b)(5).
- **40 CFR 51.166(b)(3) Net emissions increase** –
  - ADEQ's definition at R18-2-101(87)(c) identifies that an increase or decrease in actual emissions is creditable only to the extent that the Director has not relied on it in issuing a permit. However, this definition is broader than the definition in the PSD program, which only specifies that the reviewing authority has not relied on the increase or decrease in issuing a PSD permit. In some respects this makes ADEQ's definition more stringent (decreases), but in other respects less stringent (increases).
  - The equivalent of paragraph 40 CFR 51.166(b)(3)(viii) is not included in ADEQ's definition at R18-2-101(87).
- **40 CFR 51.166(b)(5) Stationary source** – the federal regulation at 40 CFR 51.166(b)(5) defines this term as “any building, structure, facility or installation which emits or may emit a regulated NSR pollutant,” with “regulated NSR pollutant” also being a federally defined term at 40 CFR 51.166(b)(49), whereas ADEQ's regulation at R18-2-101(39) defines “stationary source” as “any building, structure, facility or installation subject to regulation pursuant to A.R.S. § 49-426(A) which emits or may emit any air pollutant,” with “air pollutant” being an undefined term in ADEQ's regulation. We note that A.R.S. § 49-426(A) provides a cross-reference to certain exemptions from permitting identified in A.R.S. § 49-426(B), specifically agricultural equipment used in normal farm operations and certain fuel burning equipment, which do not appear to be consistent with federal PSD definition. The federal definition for stationary source is very broad and does not exclude these source categories. We agree that it is acceptable for ADEQ to limit its NSR program to certain kinds of stationary sources, as specified in 40 CFR 51.160(e), but the federal definition for a stationary source in the context of the PSD program is not the appropriate place for such an exclusion, as it does not allow exclusions for certain source categories. See our discussion of 40 CFR 51.160(e) in Section 5.2.2 related to equipment exempted from the NSR program. For full approval of ADEQ's PSD program into the SIP, ADEQ

must demonstrate that its definition is at least as stringent as the federal definition in all respects as that in 40 CFR 51.166(b)(5).

- **40 CFR 51.166(b)(14)** *Major source baseline date* – language equivalent to paragraph 40 CFR 51.166(b)(14)(iv) is not included at ADEQ’s definition in R18-2-218(B)(1).
- **40 CFR 51.166(b)(15)** *Baseline area* – ADEQ’s definition at R18-2-218(D) contains an incorrect reference to R18-2-217 rather than referring to section 107(d)(1)(A)(ii) or (iii) of the Act or the equivalent; also, language equivalent to that in paragraph 40 CFR 51.166(b)(15)(iii) is not included
- **40 CFR 51.166(b)(16)** *Allowable emissions* – ADEQ’s definition at R18-2-101(13)(b) does not include the “future compliance date” language that is in 40 CFR 51.166(b)(16)(ii) and ADEQ has not demonstrated that its regulatory language is at least as stringent as the federal definition;
- **40 CFR 51.166(b)(17)** *Federally enforceable* – ADEQ’s definition at R18-2-101(53)(d) identifies that requirements included in permits pursuant to R18-2-306.01 or R18-2-306.02 are included in the definition of federally enforceable requirements, but excludes those requirements that are identified as “enforceable only by the state.” With this action, we approving R18-2-306.01 and R18-2-306.02 into the SIP, making requirements pursuant to these rules federally enforceable. As such, ADEQ does not have the discretion to identify some of those requirements as only enforceable by the state.
- **40 CFR 51.166(b)(22)** *Complete* – ADEQ’s definition at R18-2-401(4) is missing the second sentence of the federal definition.
- **40 CFR 51.166(b)(23)** *Significant* – ADEQ definition at R18-2-101(130)(e) uses “milligrams” instead of “micrograms” as required in paragraph 40 CFR 51.166(b)(23)(iii).
- **40 CFR 51.166(b)(40)** *Projected actual emissions* – ADEQ’s definition at R18-2-401(20)(b)(iii) does not specifically require inclusion of emissions from malfunctions in the determination of projected actual emissions, and exempts emissions from a shutdown associated with a malfunction from such determination, while the federal definition at 40 CFR 51.166(b)(40)(ii)(b) requires that emissions from both shutdowns and malfunctions be included.
- **40 CFR 51.166(b)(48)** *Subject to regulation* – this definition is not included in ADEQ’s NSR SIP submittal; see discussion below in Section 5.8.3 regarding requirements related to greenhouse gases. ADEQ did not adopt a definition for the term “subject to regulation” or include such definition as part of the NSR SIP submittal, presumably because the federal definition of the term contains the requirements of the GHG Tailoring Rule, and GHGs cannot be regulated under State law. We note, however, that while the GHG program requirements are contained as part of the definition of the term “subject to regulation,” the federal definition of this term also contains non-GHG-specific program elements for determining when a pollutant is “subject to regulation.” As such, ADEQ must still add a definition to its PSD regulations to address these elements of the term “subject to regulation” in order to obtain full program approval.
- **40 CFR 51.166(b)(49)** *Regulated NSR pollutant* – ADEQ’s regulatory definition at R18-2-101(122) does not include the final two sentences of 40 CFR 51.166(b)(49)(i)(a) or the language at 40 CFR 51.166(b)(49)(iv); ADEQ’s definition also includes an incorrect cross-reference to hazardous air pollutants listed under R18-2-1101 that is not consistent with the requirements in 40 CFR

51.166(b)(49)(v); and ADEQ's regulatory definition needs to update the July 1, 2010 date in the cross-reference to section 108 of the Clean Air Act.

#### **40 CFR 51.166(e): Restrictions on area classifications**

To obtain full PSD program approval, ADEQ must address the following deficiencies in its PSD program.

- **40 CFR 51.166(e)(1)** – ADEQ's submittal contains requirements for area classifications in R18-2-217. However, ADEQ's submittal does not completely meet the requirements of 40 CFR 51.166(e) and section 162(a) of the Act, which requires certain areas in existence on August 7, 1977 to be designated as Class I areas. Such designations apply to any boundary changes made to those Class I areas after August 7, 1977. While ADEQ generally includes this requirement at R18-2-217(B), its rule limits such boundary changes to those made prior to March 12, 1993. In order to obtain full program approval, ADEQ must remove the date or update the date used for incorporating boundary changes made to Class I areas to the present.
- **40 CFR 51.166(e)(2)** – ADEQ's NSR submittal at R18-2-217 does not contain a provision consistent with this federal regulatory requirement for Class I area redesignations prior to August 7, 1977 in rule R18-2-217 or elsewhere. Even if it is the case that there are no areas in Arizona that were redesignated Class I prior to August 7, 1977, ADEQ's program must recognize Class I area designations under this provision that may have been made in other states for which sources within ADEQ may have an impact.
- **40 CFR 51.166(e)(3)** – ADEQ's NSR submittal does not include a provision that is fully consistent with this requirement. While ADEQ's rules generally meet this requirement at R18-2-217(D), this rule does not fully meet this requirement because (1) it is not clear what is meant in ADEQ's rule by "all other areas" and (2) it does not contain a provision that ensures that ADEQ recognizes federal legislation that specified the area classification of a particular area.

#### **40 CFR 51.166(f) – Exclusions from increment consumption**

To obtain full PSD program approval, ADEQ must address the following deficiencies in its PSD program.

- **40 CFR 51.166(f)(1)(v) and (f)(4)** – ADEQ's NSR submittal contains provisions that allow for exclusions from increment consumption, for certain temporary emissions, that do not conform with the requirements in the analogous federal rule. First, ADEQ's rule at R18-2-218(F)(5) requires only the ADEQ Director's approval for temporary emissions beyond two years, but the federal program requirements at 40 CFR 51.166(f)(i)(v) and 51.166(f)(4) require the Administrator's approval to allow temporary emissions that exceed two years. In addition, ADEQ's program language does not reference a specific time period beyond two years that it would allow for exclusions from increment consumption, which is not consistent with the federal regulation's requirement at 40 CFR 51.166(f)(4) that the time for such exclusions be specified in the plan. Finally, the provision at R18-2-218(F)(5)(b)(ii), which references the state ambient air quality standards, must be applied to "any" air quality control region. As currently written this provision does not clearly apply to areas outside of Arizona where Arizona's standards would not generally apply. To obtain full program approval ADEQ must remove the Director's discretion to extend the time period for temporary emissions, and broaden the reference to the state ambient air quality standards to apply to any air quality control region.

#### **40 CFR 51.166(g) – Redesignation**

To obtain full PSD program approval, ADEQ must address the following deficiencies in its PSD program.

- **40 CFR 51.166(g)(1)** – ADEQ’s submittal contains provisions at R18-2-217(A) identifying that attainment and unclassifiable areas in the State shall be designated as Class I, II, or III. However, this portion of the PSD program applies to all areas of the State. That is, all areas of the State must be designated as Class I, II, or III irrespective of their attainment designation under Section 107 of the Act.
- **40 CFR 51.166(g)(2)(i)** – ADEQ’s submittal contains provisions at R18-2-217(E) for allowing the state to redesignate certain areas, but the submittal does not adequately meet the public participation requirements specified in the federal regulation, which requires a public hearing consistent with the procedures in 40 CFR 51.102. ADEQ’s redesignation provisions do not specify the public hearing procedures that will be used.
- **40 CFR 51.166(g)(3)** – ADEQ’s provisions for classifying areas to Class III do not clearly identify which areas may be designated as Class III as specified in 40 CFR 51.166(g)(3). Also,
  - **40 CFR 51.166(g)(3)(ii)** – R18-2-217(E) allows for the redesignation to be approved by the Governor or the Governor’s designee. However, the federal program specifically requires the Governor’s approval and does not allow for this approval to be delegated. To obtain full approval ADEQ’s program must require approval of redesignations by the Governor.
  - **40 CFR 51.166(g)(3)(iii)** – R18-2-217(F)(4) contains a reference to “maximum allowable concentration” which appears to refer to R18-2-218(E). However, R18-2-218(E) references the “ambient air quality standards in this Article.” The state’s ambient air quality standards do not generally apply in areas outside of Arizona, and ADEQ’s NSR submittal does not demonstrate that they would apply outside of Arizona for purposes of R18-2-217(F)(4). To obtain full program approval, ADEQ’s regulations must ensure that redesignation to a Class III area would not cause or contribute to a NAAQS violation in areas outside of Arizona.
- **40 CFR 51.166(g)(3)(iv)** – ADEQ’s provisions do not clearly require that a permit application that can only be approved if an area is redesignated to Class III, and material submitted as part of that application, must be available for public inspection prior to the public hearing on the redesignation to Class III.

#### **40 CFR 51.166(i): Exemptions**

The provisions in this section of the federal regulation allow for certain sources or modifications to be exempt from portions of the PSD program’s requirements. These exemptions are an optional portion of the PSD program that states may adopt provided their requirements are consistent with the requirements specified in 40 CFR 51.166(i) for the exemptions. We reviewed the exemptions contained in ADEQ’s rules to ensure they were consistent with the requirements in the federal program. ADEQ’s PSD SIP submittal contains certain exemption provisions that general correspond to those in 40 CFR 51.166(i) but which are less stringent than the federal requirements for those exemptions in certain regards, as follows:

- **40 CFR 51.166(i)(1)(iii)** – ADEQ’s submittal contains a provision at R18-2-406(E) providing an exemption for certain portable stationary sources with a prior permit that contains

requirements equivalent to the PSD requirements in 40 CFR 51.166 (j) through (r), as allowed by 40 CFR 51.166(i)(1)(iii). However, ADEQ's rule at R18-2-406(E) is worded broadly to also allow an exemption for portable sources that have been permitted under Article 4 of ADEQ's regulations, which also includes nonattainment NSR permits and PAL permits. We do not interpret this federal exemption as generally applying to NSR permits, as it is not clear that such permits contain requirements "equivalent" to those in 40 CFR 51.166(j) through (r). To obtain full PSD program approval ADEQ must limit this exemption to those sources with permits that contain requirements equivalent to 40 CFR 51.166(j) through (r).

#### **40 CFR 51.166(k): Source impact analysis**

This portion of the PSD program regulations requires that each source or modification demonstration that allowable increases will not cause or contribute to a violation of any NAAQS, in any air quality control region, or any maximum allowable increase over the baseline concentration in any area.

- **40 CFR 51.166(k)(1)** – ADEQ's submittal contains conditions generally meeting these requirements in rule R18-2-406(A)(5)(a). There are two deficiencies with this provision, however. These deficiencies must be addressed in order for EPA to grant full approval for ADEQ's PSD program.
  - R18-2-406(A)(5) contains an "or" between subsections (a) and (b) that could be interpreted as allowing a source to demonstrate it will not contribute to an increase above the significance levels in an adjacent nonattainment area in lieu of the demonstration required by R18-2-406(A)(5)(a). The provisions of subsection (b) relate to requirements under a different portion of the NSR program – specifically under 40 CFR 51.165. As such, it is likely ADEQ would interpret subsections (a) and (b) as separate requirements with which a source must demonstrate compliance. Nevertheless, the potential for misinterpretation of this substantive requirement of the PSD program provides a basis for our limited disapproval of the PSD program submittal. In order to obtain full PSD program approval, ADEQ must change the "or" between subsections (a) and (b) to an "and", or otherwise revise its regulation in a manner that ensures that ADEQ's program clearly requires each source or modification subject to the PSD program to demonstrate compliance with requirements equivalent to those in 40 CFR 51.166(k).
  - R18-2-406(A)(5)(a) requires that a person applying for a PSD permit demonstrate that the project would not cause a violation of any maximum allowable increase over the baseline concentration in "any attainment or unclassifiable area." However, ADEQ's definition for "attainment area" in the SIP at R18-2-101(19) limits attainment areas to those "in the state." In addition, as discussed previously, it is not clear that ADEQ's references to the state's ambient air standards would apply in areas outside of Arizona. To obtain full program approval, ADEQ must ensure its program applies to areas inside and outside of Arizona.

#### **40 CFR 51.166(l): Air quality models**

This portion of the program specifies the types of air quality modeling required in applications for permits under the PSD program.

- **40 CFR 51.166(l)(2)** – ADEQ’s submittal includes R18-2-406(A)(6)(b), which specifies that the use of a modified or substituted model must be subject to public notice and the opportunity for public comment, but neither the rule nor the submittal makes clear the procedures that would be used for notice and comment for this purpose or demonstrates that such procedures would be consistent with 40 CFR 51.102, as required by 40 CFR 51.166(l)(2). To obtain full PSD program approval, ADEQ’s rules must ensure that the notice and comment procedures that are used for this purpose meet the requirements of 40 CFR 51.102.

**40 CFR 51.166(n): Source information**

This portion of the program specifies information that the applicant must provide.

- **40 CFR 51.166(n)(1) and (3)** – ADEQ’s PSD SIP submittal does not appear to specifically address these requirements, which require that the SIP must require that (1) the owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under procedures established in accordance with 40 CFR 51.166, and (2) upon request of the state, the owner or operator shall also provide specified information concerning air quality impacts and growth. ADEQ’s submittal at R18-2-304, R18-2-402(G) and R18-2-407 identifies the information necessary to obtain a complete application under this program and requires applicants to respond to deficiencies in the application, but these provisions do not appear to fully address the requirements of 40 CFR 51.166(n)(1) and (3). To obtain full PSD program approval, ADEQ must ensure its program requires owner and operators to submit the required information as specified in 40 CFR 51.166(n)(1) and (3).

**40 CFR 51.166(p): Sources impacting Class I areas**

This portion of the program identifies additional requirements related to protection of Federal Class I areas.

- **40 CFR 51.166(p)(1)** – ADEQ’s submittal does not address this requirement, but it is addressed by existing SIP requirements in R9-3-304(H). However, the existing SIP only requires application information to be submitted to the Federal Land Manager, and does not require that this information be provided to EPA as required by this provision. Consistent with 40 CFR 51.166(p)(2), the Federal Land Manager works in consultation with EPA on the protection of Class I lands. As such, submittal of application information to EPA is necessary for full PSD program approval.
- **40 CFR 51.166(p)(3)** – ADEQ’s submittal does not address this requirement, but it is addressed by the existing SIP requirement in R9-3-304(H)(1). However, the existing SIP contains outdated maximum allowable increases that must be updated.
- **40 CFR 51.166(p)(4)** – ADEQ’s submittal generally includes this provision at R18-2-406(F)(2), but contains the phrase “no significant adverse impacts,” which is inconsistent with the federal regulation which requires a demonstration of “no adverse impacts.” The addition of the word “significant” is somewhat ambiguous in this context, but appears to allow variances under circumstances not allowed under the analogous federal regulation. To obtain full PSD program approval, ADEQ’s program must require the owner or operator of a source or modification to make demonstrations for Class I variances that demonstrate the emissions will have no adverse impacts on air quality related values.

- We note that ADEQ has adopted an updated visibility protection rule – R18-2-410 -- that inadvertently was not included in ADEQ’s NSR SIP submittal. We also reviewed that rule for consistency with the requirements in 40 CFR 51.166(p) with the expectation that ADEQ would make any necessary changes to that updated rule rather than to R9-3-304(H). See discussion of R18-2-410 below in Sections 5.8.3 and 5.8.4.

#### **40 CFR 51.166(q): Public participation**

- **40 CFR 51.166(q)(2)(ii)** – ADEQ’s submittal does not ensure that materials available during the public comment period are available in each region in which the proposed source would be constructed as required by 40 CFR 51.166(q)(2)(ii). While ADEQ’s program at R18-2-330(D)(11) requires these materials to be available at the nearest Department office, ADEQ only has two Department offices. As such, it is not clear that in all instances the public affected by a proposed project would have reasonable access in their region to the materials specified in 40 CFR 51.166(q)(2)(ii). To obtain full PSD program approval, ADEQ’s program must include this element.
- **40 CFR 51.166(q)(2)(iii)** – ADEQ’s submittal does not require ADEQ to notify the public of (1) the degree of increment consumption that is expected from the source or modification, or (2) the Director’s preliminary determination, as required by 40 CFR 51.166(q)(2)(iii). To obtain full PSD program approval, ADEQ’s program must include these elements.
- **40 CFR 51.166(q)(2)(vi) and (viii)** – ADEQ’s submittal does not require ADEQ to make the public comments and the written notification of its final determination available in the same location as the preliminary documents as required by 40 CFR 51.166(q)(2)(vi) and (viii). To obtain full PSD program approval, ADEQ’s program must include these elements.
- **40 CFR 51.166(q)(2)(vii)** – ADEQ’s submittal requires the Director to take final action on an application within one year of receipt of a complete application – R18-2-402(I)(3). However, ADEQ’s program also indicates that a source may begin actual construction once a “proposed final permit” is obtained. See R18-2-402(C) and R18-2-302(G). ADEQ’s regulations are ambiguous as to whether a proposed final permit, as defined in R18-2-101(114), constitutes final action by the Director that is subject to administrative and/or judicial review. As EPA has stated previously in the context of our actions on other State SIP submittals, we interpret the CAA to require an opportunity for judicial review of a decision to grant or deny a PSD permit, whether issued by EPA or by a State under a SIP-approved or delegated PSD program. 77 Fed. Reg. 65305, 65306 (Oct. 26, 2012) (EPA’s approval of the San Joaquin Valley Unified Air Pollution Control District’s PSD program into the California SIP); see also 61 Fed. Reg. 1880, 1882 (Jan. 24, 1996) (EPA’s proposed disapproval of Virginia’s PSD program SIP revision due to State law standing requirements that limited judicial review); 72 Fed. Reg. 72617, 72619 (Dec. 21, 2007) (in approving South Dakota’s PSD program, EPA stated that it interprets the CAA and regulations to require at minimum an opportunity for state judicial review of PSD permits). EPA continues to interpret the relevant provisions of the Act as described in these prior rulemaking actions. While ADEQ has issued guidance clarifying that it treats “proposed final permits” as

“appealable agency actions,” under Arizona law,<sup>39</sup> in order to obtain full PSD program approval, ADEQ’s regulations must make clear that a source may not begin actual construction before a final determination on a PSD permit application is made by the Director, which would be subject to administrative and/or judicial review.

#### **40 CFR 51.166(r): Source obligation**

This portion of the program requires a PSD program to require sources to meet certain obligations, including those related to reasonable possibility.

- **40 CFR 51.166(r)(6)** – ADEQ’s submittal contains an apparent typographical error in R18-2-402(F)(1)(c), which includes a cross-reference to R18-2-401(20)(b)(iii) rather than R18-2-401(20)(b)(iv). To obtain full PSD program approval, this error must be corrected to ensure that the requirement in 40 CFR 51.166(r)(6)(i)(c) for owners and operators to document and maintain a record of certain applicability-related information is satisfied.
- **40 CFR 51.166(r)(7)** – ADEQ’s submittal does not require owners or operators to make information required under 40 CFR 51.166(r)(6) available for review upon request by the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii) as is required by 40 CFR 51.166(r)(7). To obtain full PSD program approval, ADEQ must add this requirement.

#### **40 CFR 51.166(w): Actuals PALs**

This portion of the PSD program contains requirements for establishing a plantwide applicability limit to avoid the requirement to obtain a PSD permit. To obtain full PSD program approval, ADEQ must address the following deficiencies in the Actuals PALs provisions of its PSD program at R18-2-412 and associated definitions at R18-2-401.

- **40 CFR 51.166(w)(2)(iv)** – Neither the ADEQ regulatory provisions for PALs at R18-2-412 nor the ADEQ regulatory definitions in R18-2-401 that apply in the context of major sources and major modifications contain a definition for *major emissions unit* as is required by 40 CFR 51.166(w)(2)(iv). (This term is also not included in the definitions at R18-2-101 or R18-2-301 that ADEQ submitted for approval as part of this action.)
- **40 CFR 51.166(w)(3)(ii)** – ADEQ’s PAL provision for calculating baseline emissions at R18-2-412(B)(2) does not specify that baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction, as is required by 40 CFR 51.166(w)(3)(ii).
- **40 CFR 51.166(w)(9)** – ADEQ’s PAL provisions at R18-2-412(H) contain an incorrect reference to (H)(4) instead of the definition for major modification, and R18-2-412(H)(5) uses “eliminated” where the federal regulation uses “established.”
- **40 CFR 51.166(w)(10)** – ADEQ’s PAL renewal provisions at R18-2-412(I)(1) must contain a reference to subsection (D) of R18-2-412 instead of (F). In addition, R18-2-(I)(4)(a) must reference subsection (E) of R18-2-412.

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39 See ADEQ memo dated February 10, 2015 related to proposed final permits. ADEQ submitted this memo in its February 23, 2015 supplement.

## Section 5.8.3 Additional Discussion of PSD Program Requirements

### Condensable PM

On December 24, 2012, regulatory revisions related to condensable PM became effective in EPA's PSD regulations at 40 CFR 51.166 and 40 CFR 52.21 (see 77 Fed. Reg. 65107 (Oct. 25, 2012)). These revisions corrected an error where EPA inadvertently identified particulate matter (PM) as a criteria pollutant (that is, a pollutant subject to a NAAQS) when identifying how to treat condensable PM emissions. ADEQ's submittal contains the erroneous language that was originally included in 40 CFR 51.166. By not including this recent EPA regulatory revision in its PSD SIP submittal, ADEQ's submittal is potentially more stringent than the requirements of 40 CFR 51.166. However, EPA believes that since the revisions were made to correct an inadvertent technical error, ADEQ has the discretion to determine that PM is clearly not a criteria pollutant and to therefore implement the rule by not considering PM to include condensable PM. In addition, ADEQ has three years to adopt this change to the program pursuant to 40 CFR 51.166(a)(6). Nevertheless, for clarity, we recommend that ADEQ correct this error in its regulations when addressing other necessary revisions to its NSR program that are identified as part of this SIP action.

### Applicability to Greenhouse Gas Emissions

ADEQ is currently subject to a Federal Implementation Plan under the PSD program for GHGs because ADEQ did not adopt a PSD program for the regulation of GHGs. See 40 CFR 52.37. ADEQ's NSR SIP submittal does not attempt to correct this program deficiency, as regulation of GHG emissions currently is not permitted under State law. See A.R.S. § 49-191.

EPA implemented the PSD program requirements for GHGs through a rulemaking known as the GHG Tailoring Rule. See 75 Fed. Reg. 31514 (June 3, 2010). The GHG Tailoring Rule set specific thresholds at which emission increases of GHGs become subject to regulation under the PSD program. The GHG Tailoring Rule, for the first time, added a definition to the PSD program for "subject to regulation." 40 CFR 51.166(b)(48). This definition is where the PSD regulations identify the thresholds for regulating GHGs under the PSD program.

On June 23, 2014, the U.S. Supreme Court issued a decision in *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency* (No. 12-1146) holding that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit (or a CAA title V permit) and thus invalidated EPA's regulations implementing that approach. The Supreme Court's decision also said that EPA could continue to require that PSD permits, otherwise required based on emissions of conventional pollutants, contain limitations on GHG emissions based on the application of BACT. EPA expects the portions of EPA's regulations that would require sources emitting only GHGs in major amounts to obtain a PSD permit to be vacated by the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals), to which the Supreme Court remanded the *UARG* case for further proceedings. Because ADEQ's PSD program does not contain provisions for the regulation of GHGs, our review of ADEQ's PSD program is not directly affected by these judicial proceedings. The FIP in place for GHGs for ADEQ's PSD program will remain in place until such time as ADEQ adopts a PSD program for regulating GHGs, submits it to EPA for SIP approval, and

EPA approves the program into the SIP.

### **Visibility Protection and Innovative Control Technology**

ADEQ's updated permitting rules contain provisions related to visibility protection at R18-2-410 – Visibility Protection, and provisions related to innovative control technologies at R18-2-408 – Innovative Control Technology. ADEQ inadvertently did not include these two rules in the NSR SIP submittal. We note that while the innovative control technology provisions of the PSD program generally are not required program elements, rules in ADEQ's SIP submittal reference these provisions and as a result they are necessary elements of ADEQ's SIP-approved PSD program.

Although R18-2-410 was not included in the NSR SIP submittal, ADEQ has older requirements approved into in the Arizona SIP related to visibility protection that we can rely on for our review of these elements of the PSD program as a part of our evaluation of the consistency of ADEQ's submittal with federal PSD requirements.

While R18-2-408 and R18-2-410 are not part of the SIP submittal that is currently before us, in order to facilitate ADEQ's making any revisions to these updated rules that may be necessary for SIP approval, we have reviewed the rules and identified potential approval issues with these rules, which are described below in Section 5.8.4. Accordingly, ADEQ should be able to make the necessary revisions for these rules at the same time it makes the other rule revisions that we have identified as necessary as part of our current SIP action. We expect that ADEQ would make any necessary changes to their visibility protection and innovative control technology rules by revising R18-2-408 and R18-2-410 rather than revising the rules currently in the SIP that address this subject matter. We expect that subsection (H) of R9-3-304, discussed above in Section 5.8.2 in the context of our review of visibility protection-related requirements in 40 CFR 51.166(p), would be removed from the SIP in the future upon EPA's approval into the SIP of R18-2-408. See discussion of R9-3-304 in Section 7 below.

### **Section 5.8.4 Recommendations**

In addition to the disapproval issues identified in Section 5.8.2, our *Evaluation* identifies numerous recommendations for correcting typographical errors and making other small revisions to ADEQ's rules to provide additional clarity and consistency with the federal requirements. All of our recommendations are included in our *Evaluation*, but we specifically note:

1. ADEQ may want to consider revising R18-2-402(D)(6) to refer to the applicability tests in (c) and (d), instead of just (d).
2. ADEQ should consider revising R18-2-401(11)(e) to refer to "Article 4" instead of "this section."
3. ADEQ should revise R18-2-101(74)(c)(vi) to reference January 6, 1975 instead of December 12, 1976. See 40 CFR 51.166(b)(2)(iii)(f).
4. ADEQ should consider revising R18-2-412(A)(2)(b) to reference R18-2-402 and 406, instead of the "PSD program" which ADEQ has not defined. ADEQ could also add the definition of PSD program in 40 CFR 51.166(b)(42).

5. ADEQ should consider revising the definitions for PEMS and CPMS in R18-2-101 to include the examples included in the federal definitions at 40 CFR 51.166(b)(45) and (46).
6. ADEQ should consider revising R18-2-401(2) to reference “a-d” instead of “a-c”.
7. ADEQ should consider revising R18-2-217(C) to clarify that the areas listed can only be “designated or redesignated” as Class I or Class II areas. See 40 CFR 51.166(e)(4).
8. ADEQ should consider revising R18-2-218(F)(4) to include “emission-related” after temporary. See 40 CFR 51.166(f)(1)(iii).
9. ADEQ may want to consider revising R18-2-218(F)(5) to change the potentially outdated reference to “operating permit.”
10. ADEQ should consider revising R18-2-217(F) to include language in 40 CFR 51.166(g)(3)(ii) relating to State legislation or confirm that State law does not require a legislative action to redesignate an area.
11. ADEQ should consider revising R18-2-407(H)(1)(k) to reference “net emissions increase” for clarity. See 40 CFR 51.166(i)(5)(i)(f).
12. ADEQ should consider revising R18-2-406(A) to refer to subsections (B) through (E), instead of (B) through (G). Subsections (F) and (G) do not appear to be applicable in this context.
13. For R18-2-410, which was not submitted for SIP approval, we recommend the following changes in the event that the rule is submitted at a later date. We note that if R18-2-410, as currently adopted, had been submitted as part of the NSR SIP submittal, these issues would have been bases for limited disapproval rather than recommendations.
  - a. R18-2-410(C)(2) – ADEQ should add a requirement to send application information to EPA at the same time as information is submitted to the Federal Land Manger.
14. ADEQ should consider revising R18-2-412(F)(4) to reference (F)(1) instead of (F)(1)(a).
15. For R18-2-408, which was not submitted for SIP approval, we recommend the following changes in the event that the rule is submitted at a later date We note that if R18-2-410, as currently adopted, had been submitted as part of the NSR SIP submittal, these issues would have been bases for limited disapproval rather than recommendations:
  - a. R18-2-408(B)(2) should include a reference to (A)(1) and (A)(2).
  - b. R18-2-408(B)(7) references R18-2-218, but ADEQ should add additional references as not all requirements in 40 CFR 51.166(p) are necessarily in R18-2-218.
16. ADEQ should consider revising R18-2-412(H) to consistently use the term “PAL allowable emissions”, as defined in ADEQ’s program in R18-2-401.
17. ADEQ should consider revising R18-2-412(H)(1)(b) to add “whether and how,” consistent with the federal language at 40 CFR 51.166(w)(9)(i)(b).
18. ADEQ should consider removing R18-2-402(H). The information in this provision may be outdated, and already covered by incorporating Appendix W by reference.

## **6. Review of Non-NSR Related Rules and Statutory Provisions**

In addition to ADEQ’s NSR SIP submittal, we are taking action on rules R18-2-311 and R18-2-312. These rules were submitted to EPA for SIP approval in a separate submittal on May 16, 2014. We delayed acting on rules R18-2-311 and R18-2-312 in a previous action, and are therefore now evaluating and

taking action on the rules. We are also taking action on A.R.S. § 49-107, an Arizona statutory provision concerning local delegation of state authority.

### **6.1 R18-2-311, Test Methods and Procedures**

ADEQ's rule R18-2-311 specifies the test methods and procedures which can be used to determine compliance with requirements established under Arizona Administrative Code, Title 18, Chapter 2 (*i.e.*, ADEQ's air pollution control regulations) or contained in permits issued pursuant to Chapter 2. On October 19, 1984, EPA approved an earlier version of this rule into the SIP.<sup>40</sup> See 49 Fed. Reg. 41026. The current submittal, adopted effective November 15, 1993, renumbers the earlier rule and expands on the previous version by listing additional test methods that may be used to determine compliance. While the current rule improves on the earlier version, we cannot recommend it for full approval into the SIP. We are proposing a limited disapproval because Section D of the rule allows the State to approve alternatives to the applicable SIP without EPA approval, in conflict with the requirements of Clean Air Act section 110(a)(2)(A) and 110(i).<sup>41</sup>

### **6.2 R18-2-312, Performance Tests**

ADEQ's rule R18-2-312 requires stationary sources to conduct a performance test within 60 days of achieving the capability to operate at its maximum production rate, but no later than 180 days after initial start-up. The rule also specifies that testing shall be conducted under such conditions specified by State, including, but not limited to appropriate test methods, notification to the State, data reduction, records, and number of test runs. On April 23, 1982 (47 Fed. Reg. 17485) EPA approved a version of this rule into the SIP.<sup>42</sup> The current submittal, adopted effective November 15, 1993, renumbers the earlier rule and expands on the previous version by including conditions when a test may be stopped and allows compliance to be determined with continuous emission monitoring as long as the applicable quality assurance procedures are followed. While the current rule improves on the earlier version, we cannot recommend it for full approval into the SIP. We are proposing a limited disapproval because Section B of the rule allows the State to approve the use of equivalent and alternative test methods without EPA approval, in conflict with Clean Air Act section 110(a)(2)(A) and 110(i).<sup>43</sup>

### **6.3 A.R.S. § 49-107, Local Delegation of State Authority**

As discussed above in Section 5.4, A.R.S. § 49-107 is the current Arizona state law that provides ADEQ with authority to "delegate to a local environmental agency, county health department, public health services district or municipality any functions, powers or duties which the director believes can be

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40 The rule was previously numbered R9-3-310.

41 See, e.g., "Guidance Document for Correcting VOC Rule Deficiencies," U.S. EPA Region 9, April 1991, revised August 21, 2001 (Little Bluebook).

42 The rule was previously numbered R9-3-312.

43 See, e.g., Little Bluebook.

competently, efficiently and properly performed by the local agency if the local agency accepts the delegation and agrees to perform the delegated functions, powers and duties according to the standards of performance required by law and prescribed by the director,” and other related authorities. This statutory provision establishes that ADEQ has clear authority to delegate various functions under the CAA, including NSR permitting, to county and other local government agencies and, as such we find it to be approvable and propose to approve it into the SIP. This provision will replace 7-1-8.3(R9-3-803) – *Delegation of Authority*, an older ADEQ currently in the SIP, which we are proposing to remove from the SIP as part of this action, as discussed in Section 7 below.

## **7. Review of Existing SIP Rules and Statutory Provisions to be Replaced**

In Section 5 we described our evaluation of ADEQ’s NSR SIP submittal to ensure it meets the NSR requirements of 40 CFR 51.160-166 as well as sections 160-165 of the Act for PSD, sections 172(c) and 173 of the Act for NA-NSR, and section 110(a)(2) of the Act, and in Section 6 we discussed other ADEQ provisions submitted for approval into the SIP that we are taking action on as part of this action. Here we discuss the rules and statutory provisions in ADEQ’s current SIP that ADEQ has requested to be rescinded from the SIP, most of which would be replaced by the newer rules in the SIP submittal that are the subject of our current action.

ADEQ’s existing SIP-approved rules are generally outdated, as we have not acted to approve substantial revisions to ADEQ’s NSR rules since the 1980s. Further, the ADEQ NSR rules currently in the SIP have been repealed for purposes of State law by ADEQ. Significant changes have been made to the Act and the underlying implementing federal NSR regulations since our last substantial action on ADEQ’s NSR SIP. Therefore, replacing the existing, outdated NSR SIP rules with the updated ADEQ rules in this submittal that we propose to approve into the SIP is appropriate and generally serves as an overall strengthening of Arizona’s SIP. In some cases, we approved updated versions of these rules into the SIP in previous rulemaking actions, and a few of the rules are no longer necessary for other reasons. The following is a list of the older SIP-approved rules that ADEQ is requesting that we remove from the SIP and that we are proposing to remove as part of our current action:

- R9-3-101 – *Definitions* (except definition (20))
- R9-3-217(B) – *Attainment Areas: Classification and Standards*
- R9-3-301 – *Installation Permits: General* (except Subsections I and K)
- R9-3-302 – *Installation Permits in Nonattainment Areas*
- R9-3-303 – *Offsets*
- R9-3-304 – *Installation Permits in Attainment Areas* (except Subsection H)
- R9-3-305 – *Air Quality Analysis Monitoring Requirements*
- R9-3-306 – *Operating permits*
- R9-3-307 – *Replacement*
- R9-3-308 – *Permit Conditions*
- R9-3-310 – *Test Methods and Procedures*
- R9-3-311 – *Air Quality Model*
- R9-3-312 – *Performance Test*

R9-3-315 – *Posting of Permits*  
R9-3-314 – *Excess Emissions Reporting*  
R9-3-316 – *Notice by Building Permit Agencies*  
R9-3-317 – *Permit Non-transferable; Exception*  
R9-3-318 – *Denial or revocation of installation or operating permit*  
R9-3-319 – *Permit Fees*  
R9-3-322 – *Temporary Conditional Permits*  
R9-3-1101 – *Jurisdiction*  
A.R.S. § 36-1706 – *State and county control*  
7-1-8(R9-3-801) – *Original State Jurisdiction*  
7-1-8.2(R9-3-802) – *Assertions of Jurisdiction*  
7-1-8.3(R9-3-803) – *Delegation of Authority*  
Appendix 4 – *Fee Schedule for Installation and Operating Permits*  
Appendix 5 – *Fee Schedule for Conditional Permits*

### **R9-3-101 – Definitions**

ADEQ requested that existing SIP rule R9-3-101 – *Definitions* (except definition (20) for “begin actual construction”) be removed from the SIP and replaced by the addition of the definitions in R18-2-101, R18-2-301, and R18-2-401. Definitions in R9-3-101 were added to the SIP on several occasions in the late 1970s and early 1980s. However, this rule has since been repealed by ADEQ for State law purposes. The definitions in ADEQ’s currently adopted rules at R18-2-101, R18-2-301, R18-2-401, and R18-2-701 are either the same or very similar to the versions in the existing SIP. In addition, many of the specific definitions in the existing SIP are outdated due to the significant changes to the Act and its implementing federal regulations since our last action to approve these definitions. The definitions in R18-2-101, except for definitions (2), (20), (32), (87), (109), and (122), and the definitions in R18-2-701, were recently approved into the SIP.<sup>44</sup> Therefore, our action on the NSR SIP submittal, which includes the addition of R18-2-101(2), (32), (87), (109), and (122), R18-2-301 and R18-2-401 into the SIP, allows us to rescind R9-3-101 (except for definition (20)), as this old definitions rule is no longer needed in the SIP, and we are proposing to remove R9-3-101 (except for R9-3-101(20)) from the Arizona SIP.

### **R9-3-217(B) – Attainment Areas: Classifications and Standards**

ADEQ requested that subsection (B) of existing SIP rule R9-3-217 – *Attainment Areas: Classifications and Standards* be rescinded from the SIP and replaced by the addition of R18-2-218 – *Limitation of Pollutants in Classified Attainment Areas*. Both of these rules generally address the ambient air increment requirements under 40 CFR 51.166(c) of the PSD program. However, the current SIP contains very outdated increments (also referred to as “maximum allowable increases”). Therefore, it is appropriate to rescind R9-3-217(B) from the SIP with our action, as it is no longer needed in the Arizona SIP. Accordingly, we are proposing to remove R9-3-217(B) from the Arizona SIP.

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44 79 Fed. Reg. 56655 (Sept. 23, 2014)

### **R9-3-301 – Installation Permits: General**

ADEQ requested that R9-3-301 – *Installation Permits: General* (except for Subsections I and K) be rescinded from the SIP and replaced with R18-2-302 – *Applicability; Registration; Classes of Permits*, R18-2-304 – *Permit Application Processing Procedures*, R18-2-306 – *Permit Contents*, R18-2-319 – *Minor Permit Revisions*, R18-2-320 – *Significant Permit Revisions*, R18-2-330 – *Public Participation*, R18-2-402 – *General*, and R18-2-407 – *Air Quality Impact Analysis and Monitoring Requirements*. R9-3-301 contains preconstruction permitting requirements that: (1) require a construction permit prior to commencing construction, (2) identify the different types of construction permits required and which sources or modifications are required to obtain a particular permit, (3) identify the requirements each source must meet to obtain a permit, (4) identify the required application information, including actions to resolve application deficiencies, (5) require certain sources to assess impacts on Class I areas, (6) require the Director to make a preliminary determination to approve or disapprove a permit, (7) ensure certain public participation requirements are met, and (8) identify the duration of the effectiveness of the permit. With the exceptions of R9-3-301(I) and (K), these requirements are addressed through ADEQ’s NSR SIP submittal through the various rules identified above. However, at ADEQ’s request we will not act to remove R9-3-301 subsections (I) and (K) from the SIP at this time. All other portions of R9-3-301 can be rescinded as part of our action as they are no longer needed in the Arizona SIP. We are therefore proposing to remove R9-3-301 (except for R9-3-301(I) and R9-3-301(K)) from the Arizona SIP.

### **Installation Permits in Nonattainment Areas**

ADEQ requested that R9-3-302 – *Installation Permits in Nonattainment Areas* be rescinded from the SIP and replaced with R18-2-403 – *Permits for Source Located in Nonattainment Areas*. Both of these rules generally address the requirements applicable to the construction of major stationary sources and major modifications in nonattainment areas under 40 CFR 51.165. The basic requirements in the two rules are similar, with R18-2-403, ADEQ’s current version of the rule adopted for State law purposes, being more consistent with the current program requirements in the Act and 40 CFR 51.165. Therefore, it is appropriate to rescind R9-3-302 as part of our action as it is no longer needed in the Arizona SIP. Accordingly, we are proposing to remove R9-3-302 from the Arizona SIP.

### **Offset Standards**

ADEQ requested that R9-3-303 – *Offset Standards* be removed from the SIP and replaced with R18-2-404 – *Offset Standards*. Both of these rules generally address the requirements for obtaining offsets for sources under the NA-NSR program. The basic requirements in the two rules are similar, with R18-2-404, ADEQ’s current version of the rule adopted for State law purposes, being more consistent with the current program requirements in the Act and 40 CFR 51.165. Therefore, it is appropriate to rescind R9-3-303 as part of our action as it is no longer needed in the Arizona SIP. Accordingly, we are proposing to remove R9-3-303 from the Arizona SIP.

### **Installation Permits in Attainment Areas**

ADEQ requested that R9-3-304 – *Installation Permits in Attainment Areas* (except Subsection H) be rescinded from the SIP and replaced with R18-2-406 – *Permit Requirements for Sources Located in Attainments and Unclassifiable Areas*. Both of these rules generally address the requirements for

obtaining a permit under the PSD program. While the basic requirements in the two rules are similar, the existing SIP version is extremely outdated as many revisions and additions have been added to the PSD program since the early 1980s. Therefore, it is appropriate to rescind R9-3-304, except for subsection (H), as part of our action as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-304 (except R9-3-304(H)) from the Arizona SIP.<sup>45</sup>

### **Air Quality Analysis and Monitoring Requirements**

ADEQ requested that R9-3-305 – *Air Quality Analysis and Monitoring Requirements* – be removed from the SIP and replaced with R18-2-407 – *Air Quality Impact Analysis and Monitoring Requirements*. Both of these rules generally address the air quality analysis and additional impact analysis requirements under 40 CFR 51.166(m) and (o). While the basic requirements in the two rules are similar, the existing SIP version contains outdated provisions associated with the PSD program that the newer version does not contain. Therefore, it is appropriate to rescind R9-3-305 as part of our action, as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-305 from the Arizona SIP.

### **Operating Permits**

ADEQ requested that R9-3-306 – *Operating Permits* – be rescinded from the SIP and replaced with R18-2-302 – *Applicability, Registration; Classes of Permits*, R18-2-304 – *Permit Application Processing Procedures*, and R18-2-306 – *Permit Contents*. Existing SIP rule R9-3-306 contains requirements related to operating permits such as (1) the requirement to obtain an operating permit for certain sources, (2) the standards for granting operating permits, (3) the requirements for permit applications, and (4) the applicable public participation requirements. Since the inclusion of this rule in the SIP, ADEQ has switched to a unitary permitting program where construction and operating permits are issued in the same document. All of the requirements in R9-3-306 identified above are met by the NSR SIP submittal. Therefore, it is appropriate to rescind R9-3-306 as part of our action as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-306 from the Arizona SIP.

### **Replacement**

ADEQ requested that R9-3-307 – *Replacement* – be rescinded from the SIP and replaced with requirements in R19-2-402 – *General*. Existing SIP rule R9-3-307 contains certain criteria for determining whether a project at an existing major source triggers the requirement to obtain an installation permit. The applicability criteria for determining whether a project at an existing major source must obtain a major NSR permit is in the NSR SIP submittal at R18-2-402. Therefore, it is appropriate to rescind R9-3-307 as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-307 from the Arizona SIP.

### **Permit Conditions**

ADEQ requested that R9-3-308 – *Permit Conditions* be rescinded from the SIP and replaced with requirements in R18-2-306 – *Permit Contents*. R9-3-308 identifies the basic types of permit conditions the Director may include in each installation or operating permit to assure a source's compliance with applicable requirements. R18-2-306 contains similar, but far more specific, requirements that must be

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45 See ADEQ's February 23, 2015 SIP supplement requesting that we not act to remove subsection (H).

included in each Class I or Class II permit. Therefore, it is appropriate to rescind R9-3-308 from the SIP as part of our action, as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-308 from the Arizona SIP.

#### **Test Methods and Procedures**

ADEQ requested that R9-3-310 – *Test Methods and Procedures* be rescinded from the SIP and replaced with the requirements in R18-2-311 – *Test Methods and Procedures*. Both of these rules contain very similar requirements related to test methods and the procedures used for test methods. However, the differences between the two rules are not substantive and the newer version is the rule that is currently applicable under State law. As such, it is appropriate to rescind R9-3-310 from the SIP as part of our action, as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-310 from the Arizona SIP.

#### **Air Quality Models**

ADEQ requested that R9-3-311 – *Air Quality Models* – be rescinded from the SIP and replaced with R18-2-309 – *Air Quality Models*. Both of these rules contain requirements for air quality models used for determining air quality impacts in the permitting process. However, the current SIP rule contains outdated provisions, and is no longer needed with the addition of R18-2-309. Therefore, it is appropriate to rescind R9-3-311 with our action, as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-311 from the Arizona SIP.

#### **Performance Tests**

ADEQ requested that R9-3-312 – *Performance Tests* be rescinded from the SIP and replaced with the requirements in R18-2-312 – *Test Methods and Procedures*. Both of these rules contain very similar requirements related to the requirements for performance tests. However, the differences between the two rules are not substantive. As such, it is appropriate to rescind R9-3-312 with our approval of R18-2-312, as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-312 from the Arizona SIP.

#### **Posting of Permits**

ADEQ requested that R9-3-315 – *Posting of Permits* be rescinded from the SIP and replaced with R18-2-315 – *Posting of Permit*. Both of these rules contain very similar requirements for posting permits at a permitted source. However, ADEQ has made minor changes to these provisions since R9-3-315 was approved into the SIP. These changes are not substantive, but the newer version of the rule represents the version currently applicable under state law. As such, it is appropriate to rescind R9-3-315 from the SIP with our action, as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-315 from the Arizona SIP.

#### **Excess Emissions Reporting**

ADEQ requested that R9-3-314 – *Excess Emissions Reporting* be rescinded from the SIP and replaced with the requirements in R18-2-310.01 – *Reporting Requirements*. EPA approved R18-2-310.01 into the SIP on September 18, 2001 (66 Fed. Reg. 48087). Both of these rules contain very similar requirements related to reporting excess emissions. The differences between the two rules is not substantive.

Therefore, it is appropriate to rescind R9-3-314, as EPA has approved a newer version of this rule into the SIP. We note the ADEQ submitted a revised version of R18-2-310.01 with its NSR SIP submittal, but we are deferring action on those revisions at this time. As such, the existing SIP-approved version for R18-2-301.01 provides our basis for granting ADEQ's request to remove R9-3-314 from the SIP.

### **Notice by Building Permit Agencies**

ADEQ requested that R9-3-316 – *Notice by Building Permit Agencies* be rescinded from the SIP and replaced with R18-2-316 – *Notice by Building Permit Agencies*. The regulatory language of these two rules is identical. However, the newer version represents the rule that is currently applicable under state law. Therefore, it is appropriate to remove R9-3-316 from the SIP with our action, as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-316 from the Arizona SIP.

### **Permit Non-transferable; Exception**

ADEQ requested that R9-3-317 – *Permit Non-transferable; Exception* be rescinded from the SIP and replaced with R18-2-323 – *Permit Transfers*. Both of these rules contain similar requirements for how permits may be transferred, as ADEQ has made several changes to these provisions since R9-3-316 was approved into the SIP. These changes were not substantive and the newer rule represents the current version applicable under State law. Therefore, it is appropriate to remove R9-3-316 with our action, as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-317 from the Arizona SIP.

### **Denial or Revocation of Installation or Operating Permit**

ADEQ requested that R9-3-318 – *Denial or Revocation of Installation or Operating Permit* – be rescinded from the SIP and replaced with requirements in R18-2-304 – *Permit Application Processing Procedures* and R18-2-321 – *Permit Reopenings; Revocation and Reissuance; Termination*. Existing SIP rule R9-3-318 contains provisions that require the Director to deny a permit application where the applicant cannot demonstrate the source will comply with the applicable requirements, and allows the Director to revoke a permit in certain circumstances. Similar requirements are found in ADEQ's NSR SIP submittal in R18-2-304 and R19-321. As such, it is appropriate to remove R9-3-318 from the SIP with our action, as it is no longer needed in the SIP. Accordingly, we are proposing to remove R9-3-318 from the Arizona SIP.

### **Permit Fees**

ADEQ requested that R9-3-319 – *Permit Fees, Appendix 4 – Fee Schedule for Installation and Operating Permits*, and Appendix 5 – *Fee Schedule for Conditional Permits* be removed from the SIP because such requirements are no longer required for a SIP under section 110(a)(2)(L) of the Act. Pursuant to section 110(a)(2)(L), a permit fee program for major stationary sources is not required for a state implementation plan once the approved fee program is superseded by the fee program required under title V of the Act. ADEQ has an approved title V fee program that applies to major stationary sources (and collects fees related to NSR actions), and therefore removal of these provisions from the SIP is appropriate. Accordingly, we are proposing to remove R9-3-319, Appendix 4, and Appendix 5 from the Arizona SIP.

### **Temporary Conditional Permits**

ADEQ requested that R9-3-322 – *Temporary Conditional Permits* be rescinded from the SIP because this part of its permitting program is no longer administered by ADEQ. R9-3-22 is a short, one-sentence, regulation that allowed the Director to issue temporary permits. As this program is no longer part of ADEQ's permitting program for State law purposes, and is not required for an NSR program, we find it appropriate to rescind this rule as part of our action. Accordingly, we are proposing to remove R9-3-318 from the Arizona SIP.

### **Jurisdiction**

ADEQ requested the rescission of several SIP rules and statutes that relate to permitting jurisdiction in Arizona. On September 23, 2014 we approved A.R.S § 49-402 – *State and county control* into the Arizona SIP. See 79 Fed. Reg. 56655 (Sept. 23, 2014). ADEQ requested that with the approval of A.R.S § 49-402 into the SIP, we also rescind A.R.S. § 36-1706 – *State and county control*, 7-1-8(R9-3-801) – *Original State Jurisdiction*, and R9-3-1101 – *Jurisdiction*. First, A.R.S § 36-1706 appears to be an older version of A.R.S § 49-402, as A.R.S. § 36-1706 was submitted for approval in 1982. Therefore, rescission of A.R.S. § 36-1706 is appropriate and no longer needed in the SIP. Rules 7-1-8(R9-3-801), 7-1-8.3(R9-3-803) and R9-3-1101 are implementing regulations for the corresponding statutory provisions on jurisdiction. These rules have been repealed by ADEQ for State law purposes and not replaced with new implementing regulations, and are not necessary for CAA purposes. Therefore, rescission of these three rules is appropriate considering our approval of the current version of 49-402 in our previous action, which speaks to permitting jurisdiction in Arizona. Accordingly, we are proposing to remove A.R.S. § 36-1706 and Rules 7-1-8(R9-3-801), 7-1-8.3(R9-3-803) and R9-3-1101 from the Arizona SIP.

### **Delegation of Authority**

ADEQ requested that 7-1-8.3(R9-3-803) – *Delegation of Authority* be rescinded from the SIP and replaced with requirements in A.R.S. § 49-107 – *Local delegation of state authority*. Both the rule and the statute address the delegation of permitting authority to local agencies. However, the rule in the SIP has been repealed for purposes of State law and is outdated. As such, it is appropriate to rescind 7-1-8.3(R9-3-803) with our action, as it is no longer needed in the SIP with our proposed approval of A.R.S. § 49-107 into the SIP. Accordingly, we are proposing to remove 7-1-8.3(R9-3-803) from the Arizona SIP.

### **Additional Recommendation**

ADEQ's submittal did not identify any rules in the existing SIP that should be rescinded with the addition of R18-2-217 into the SIP. However, R9-3-217(A) – *Attainment areas; classification and standards* is the existing rule in Arizona's SIP that addresses the same general subject matter as R18-2-217, which ADEQ has submitted for approval into the Arizona SIP. If we finalize our proposal to approve R18-2-217 into the Arizona SIP, we recommend that ADEQ request that R9-3-217(A) be rescinded from the SIP as part of its next NSR SIP submittal.

## **8. Sections 100(a)(2)(E)(i), 110(l) and 193 of the Act**

### **Section 110(a)(2)(E)(i) of the Act**

CAA section 110(a)(2)(E)(i) requires SIPs to provide “necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof).” In addition, in EPA’s recent action on Arizona’s Infrastructure SIP for the 1997 8-hour ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> NAAQS, we conducted a detailed evaluation of Arizona legal authorities that provide for ADEQ’s implementation and enforcement of CAA requirements related to that Infrastructure SIP, as well as information showing that ADEQ has adequate funding and personnel to implement the relevant CAA SIP requirements, and approved that SIP submittal with respect to CAA section 110(a)(2)(E)(i). See 77 Fed. Reg. 66398, 66401 (Nov. 5, 2012); “Technical Support Document: Evaluation of Arizona’s Infrastructure SIP for the 1997 8-hour Ozone, the 1997 PM<sub>2.5</sub>, and the 2006 PM<sub>2.5</sub> NAAQS,” June 15, 2012 (document ID number EPA–R09–OAR–2012–0398–0003) at 16–22. As such, ADEQ has provided the necessary assurances that ADEQ will have adequate personnel, funding, and authority under State law to carry out the proposed revisions to ADEQ’s SIP, consistent with CAA section 110(a)(2)(E)(i).

### **Section 110(l) of the Act**

Section 110(l) states: “Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.”

With respect to the procedural requirements of CAA section 110(l), based on our review of the public process documentation included in the July 28, 2011, October 29, 2012 and July 2, 2014 submittals, we find that ADEQ has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to submittal of this SIP revision and has satisfied these procedural requirements under CAA section 110(l). Also, see our previous discussion in Section 2.1.

With respect to the substantive requirements of section 110(l), as discussed further below, we have determined that our approval of the ADEQ NSR SIP submittal and the other rules and statutory provisions that we are proposing to act on in this action (including but not limited to the rescission of numerous existing NSR SIP rules), as described in this TSD, would strengthen the applicable SIP in most respects. Taken in its entirety, we find that the SIP revision represents a strengthening of ADEQ’s minor NSR, PSD, and NA-NSR programs as compared to the existing SIP-approved NSR program for ADEQ that was last substantially revised in the SIP in the early 1980s, and that our approval of this SIP submittal would not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act.

First, this action corrects a number of deficiencies in ADEQ's current SIP-approved NSR program. ADEQ's existing SIP-approved program does not currently contain these significant program elements, which will be added with our action:

1. Implementation of NSR requirements for PM<sub>10</sub>;
2. Implementation of NSR requirements for PM<sub>2.5</sub>;
3. Regulation of NO<sub>x</sub> as a precursor to ozone;
4. Inclusion of condensable particular matter in NSR permitting for determining PM<sub>10</sub> and PM<sub>2.5</sub> emissions; and
5. Ensuring that the construction or modification of certain non-major sources and non-major modifications will (1) not interfere with attainment or maintenance of the NAAQS and (2) comply with the applicable SIP.

Further, ADEQ has also updated its program to provide for additional permitting flexibilities that have been added to the federal NSR program, such as PALs and the 2002 NSR Reforms.

Second, most of the deficiencies identified in this TSD fit into one of two categories: (1) deficiencies that relate to an NSR program element that has been added since ADEQ's NSR program was approved into the SIP (e.g., the deficiency related to the omission of the definition for *major emissions unit* in the PALs provisions), or (2) deficiencies that exist in the current SIP that were not properly identified as deficiencies when the provisions were approved into the SIP (e.g., ensuring protection of the NAAQS in areas outside of Arizona from stationary source emissions regulated under the NSR program). Therefore, in considering whether our proposed approval of the NSR SIP submittal will interfere with attainment or reasonable further progress, we only consider those deficiencies in the first category, as the deficiencies in the second category are already a part of the current applicable requirements for attainment and RFP in the Arizona SIP. In many cases, the deficiencies in the second category occurred because of the numerous changes to the NSR program since ADEQ's NSR rules were last approved into the SIP. That is, language that may have been approvable previously is no longer approvable.

The most significant deficiency that we have identified, as discussed in detail earlier in this TSD, is the absence of provisions that ensure protection of the 2012 PM<sub>2.5</sub> NAAQS for the PSD program. We identify this as the "most significant" deficiency because it is the most likely to affect the substantive requirements of the overall application of the PSD program, compared to other deficiencies that we do not expect would significantly affect the review of emission impacts (e.g., administrative requirements for permit issuance). However, the 2012 PM<sub>2.5</sub> NAAQS came into effect after ADEQ submitted the NSR SIP submittal to EPA. In addition, although such standard is currently applicable in the context of the PSD program, the implementation requirements for this standard are not due until 2016. Accordingly, there are no applicable requirements in the existing ADEQ SIP-approved NSR program related to this NAAQS that would be affected by the deficiencies in the submitted NSR rules we are approving.

In addition, ADEQ has relaxed its definition of "major stationary source." ADEQ's previous definition applied the PSD and NA-NSR program requirements to existing non-major sources when a project would cause such a *stationary source* to become a "major stationary source." ADEQ is revising its

program to instead subject existing non-major sources to the major NSR program only if the *project* constitutes a “major stationary source” in and of itself, consistent with federal NSR program requirements. We do not find this relaxation to interfere with attainment or reasonable further progress because ADEQ is also strengthening its minor NSR program to address emissions from larger modifications that do not qualify as major modifications under ADEQ’s revised NSR program. While these modifications would no longer be subject to the major NSR program, ADEQ’s minor NSR program would nonetheless apply and ensure the modification does not interfere with attainment or RFP.

In summary, we find that, on balance, the improvements ADEQ is making to its NSR program outweigh the potential relaxations discussed above as compared to ADEQ’s existing SIP-approved NSR program. In addition, we are unaware of any reliance by ADEQ on the continuation of any specific aspect of the permit-related rules currently in the ADEQ portion of the Arizona SIP for the purpose of continued attainment or maintenance of the NAAQS. Given all these considerations, we propose to conclude that our approval of these updated ADEQ regulations into the Arizona SIP would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act.<sup>46</sup>

*Conclusion.* For the reasons set forth above, we can approve the the ADEQ SIP revision as proposed in this action under section 110(l) of the Act.

### **Section 193 of the Act**

Section 193 of the Act, which was added by the Clean Air Act Amendments of 1990, includes a savings clause which provides, in pertinent part: “No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.” We find that the provisions included in ADEQ’s NSR SIP submittal would ensure equivalent or greater emission reductions compared to the SIP-approved NSR program in the nonattainment areas under ADEQ’s jurisdiction. In particular, the NSR provisions in ADEQ’s NSR SIP submittal cover stationary sources in areas that are nonattainment for the current lead, ozone, PM<sub>10</sub>, PM<sub>2.5</sub> and 1-hr SO<sub>2</sub> NAAQS. ADEQ’s current SIP-approved NSR program was approved prior to EPA establishing these NAAQS and the current NSR provisions in the SIP do not reference the current, recently SIP-approved Arizona air quality standards that are comparable to these NAAQS. In addition, ADEQ’s updated NSR rules and our action to approve them into the SIP will expand ADEQ’s review of minor sources in nonattainment areas to require review of smaller sources. We therefore conclude that ADEQ’s NSR SIP submittal will provide for equivalent or greater emissions reductions as compared to the existing SIP-approved ADEQ NSR program for the nonattainment pollutants lead, ozone, PM<sub>10</sub>, PM<sub>2.5</sub> and SO<sub>2</sub>.

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46 This analysis also applies to our approval of R18-2-311 and R18-2-312, which are not generally related to NSR permitting. However, these rules do not contain any substantive changes in the procedures for performance tests or test methods than the rules in the current SIP.

*Conclusion.* For the reasons set forth above, we can approve the submitted NSR program under section 193 of the Act.

## **9. Summary of Proposed Action**

The new or amended statutory provisions and rules evaluated herein generally meet the applicable CAA requirements. Our action would have the effect of significantly updating ADEQ's SIP-approved NSR program.

Pursuant to section 110(k) of the CAA and for the reasons provided above, EPA is proposing a limited approval and limited disapproval of revisions to the ADEQ portion of the Arizona SIP that govern the issuance of permits for stationary sources, including the review and permitting of major sources and major modifications under parts C and D of title I of the CAA. Specifically, EPA is proposing a limited approval and limited disapproval of the new and amended ADEQ regulations listed in Table 1, above, as a revision to the ADEQ portion of the Arizona SIP. In addition, EPA would remove or supersede existing provisions in the SIP as described in Section 8. We are also proposing to partially disapprove two provisions of ADEQ's NSR program that have been vacated by the courts. Finally, we are proposing a limited approval of ADEQ's nonattainment NSR program under section 189 of the Act related to PM<sub>10</sub> and PM<sub>2.5</sub> precursors.

We are proposing this action because, although we find that the new and amended rules meet most of the applicable requirements for such permit programs and that the SIP revisions improve the existing SIP, we have found certain deficiencies that prevent full approval, as explained in this TSD. The intended effect of this proposed limited approval and limited disapproval action is to update the applicable SIP with current ADEQ permitting regulations and to set the stage for remedying deficiencies in these regulations.

## **10. Attachment**

- *Evaluation of 40 CFR 51.160-51.166 and the ADEQ NSR Submittal*, EPA Region 9, February 2015