

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 6, 2015.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2015-06220 Filed 3-17-15; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR part 52**

[EPA-R09-OAR-2015-0187; FRL-9924-48-Region 9]

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the applicable state implementation plan (SIP) for the State of Arizona. These revisions are primarily intended to serve as a replacement of ADEQ's existing SIP-approved rules for the issuance of New Source Review (NSR) permits for stationary sources, including but not limited to review and permitting of major sources and major modifications under the Clean Air Act (CAA or Act). After a lengthy stakeholder process, the State of Arizona developed and submitted a NSR program for SIP approval that satisfies most of the applicable Clean Air Act and NSR regulatory requirements, and will significantly update ADEQ's existing SIP-approved NSR program. It also represents an overall strengthening of ADEQ's SIP-approved NSR program by clarifying and enhancing the NSR permitting requirements for major and minor stationary sources. This proposed action will update the applicable plan and set the stage for remedying certain deficiencies in these rules. We are seeking comment on our proposed action and plan to follow with a final action.

**DATES:** Any comments must arrive by April 17, 2015.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-

OAR-2015-0187, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the online instructions.

2. *Email:* [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov).

3. *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

**Instructions:** All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or email. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Lisa Beckham, EPA Region 9, (415) 972-3811, [beckham.lisa@epa.gov](mailto:beckham.lisa@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, the terms "we," "us," and "our" refer to EPA.

**Table of Contents**

I. The State's Submittals

A. Which rules or statutory provisions did the State submit?  
B. Are there previous versions of the statutory provisions or rules in the Arizona SIP?  
C. What is the purpose of this proposed rule?

**II. EPA's Evaluation**

A. How is EPA evaluating the rules and statutory provisions?  
B. Do the rules meet the evaluation criteria for Minor New Source Review?  
1. Legally Enforceable Procedures  
2. ADEQ's Program Under 40 CFR 51.160(e)  
3. Public Availability of Information  
4. Administrative Procedures  
5. Stack Height Procedures  
C. Do the rules meet the evaluation criteria for Prevention of Significant Deterioration (PSD)?  
1. General PSD Program Requirements  
2. Restrictions on Area Classifications  
3. Redesignations  
4. Impacts on Class I Areas  
5. Public Participation  
6. Plantwide Applicability Limits  
7. Definitions  
8. PM<sub>2.5</sub> Significant Monitoring Concentration  
9. Definition for Basic Design Parameter  
D. Do the rules meet the evaluation criteria for Nonattainment New Source Review?  
1. General Nonattainment NSR Program Requirements  
2. Plantwide Applicability Limits  
3. Definitions  
4. Definition for Basic Design Parameter  
5. Additional Provisions for Particulate Matter Nonattainment Areas  
E. Review of Non-NSR Related Rules and Statutory Provisions  
F. Review of Rules and Statutory Provisions Requested To Be Removed From the SIP  
G. Do the rules meet the evaluation criteria under Sections 110(l) and 193 of the Act?  
H. Conclusion

**III. Public Comment and Proposed Action****IV. Incorporation by Reference****V. Statutory and Executive Order Reviews****Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.

(iii) The initials *A.R.S.* mean or refer to the Arizona Revised Statutes.

(iv) The initials *BACT* mean or refer to Best Available Control Technology.

(v) The initials *CFR* mean or refer to Code of Federal Regulations.

(vi) The initials *CO* means or refer to carbon monoxide.

(vii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(viii) The initials *FIP* mean or refer to Federal Implementation Plan.

(ix) The initials *GHG* mean or refer to greenhouse gas.  
 (x) The initials *IBR* mean or refer to incorporation by reference.  
 (xi) The initials *LAER* mean or refer to Lowest Achievable Emissions Rate.  
 (xii) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.  
 (xiii) The initials *NA-NSR* mean or refer to Nonattainment New Source Review.  
 (xiv) The initials *NO<sub>x</sub>* mean or refer to nitrogen oxides.  
 (xv) The initials *NSR* mean or refer to New Source Review.  
 (xvi) The initials *PAL* mean or refer to Plantwide Applicability Limits.  
 (xvii) The initials *PM<sub>10</sub>* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).  
 (xviii) The initials *PM<sub>2.5</sub>* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).  
 (xix) The initials *PSD* mean or refer to Prevention of Significant Deterioration.  
 (xx) The initials *PTE* mean or refer to potential to emit.  
 (xxi) The initials *RACT* mean or refer to reasonable available control technology.  
 (xxii) The initials *SIP* mean or refer to State Implementation Plan.  
 (xxiii) The initials *SMC* mean or refer to significant monitoring concentration.  
 (xxiv) The initials *SO<sub>2</sub>* mean or refer to sulfur dioxide.  
 (xxv) The words *State* or *Arizona* mean the State of Arizona, unless the context indicates otherwise.

(xxvi) The initials *TSD* mean or refer to the technical support document for this action.  
 (xxvii) The initials *VOC* mean or refer to volatile organic compound.

**I. The State's Submittals**

*A. Which rules or statutory provisions did the State submit?*

On July 28, 2011 and October 29, 2012, ADEQ submitted revisions to the ADEQ portion of the Arizona SIP. On May 16, 2014, ADEQ supplemented the July 28, 2011 submittal. On September 6, 2013, July 2, 2014, and February 16, 2015, ADEQ supplemented the October 29, 2012 submittal. Collectively, these submittals generally comprise ADEQ's current program for preconstruction review and permitting of new or modified stationary sources under ADEQ's jurisdiction in Arizona (as described below).<sup>1</sup> The NSR SIP revisions that are the subject of this action,<sup>2</sup> referred to herein as the "NSR SIP submittal" represent a comprehensive revision to ADEQ's preconstruction review and permitting program and are intended to satisfy the requirements under both part C (prevention of significant deterioration) (PSD) and part D (nonattainment new source review) of title I of the Act as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act.<sup>3</sup> The

preconstruction review and permitting programs are often collectively referred to as "New Source Review" (NSR).

The proposed revisions to the SIP that are subject to this action cover those areas of Arizona where ADEQ has jurisdiction. Currently, ADEQ has permitting jurisdiction for the following stationary source categories in all areas of Arizona: Smelting of metal ores, coal-fired electric generating stations, petroleum refineries, Portland cement plants, and portable sources. ADEQ also has permitting jurisdiction for major and minor sources in the following counties: Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Mohave, Navajo, Santa Cruz, Yavapai, and Yuma. Finally, ADEQ has permitting jurisdiction over major sources in Pinal County<sup>4</sup> and the Rosemont Copper Mine in Pima County.

Table 1 lists the rules we are proposing for approval in today's action with the corresponding effective dates and submittal dates. The submitted rules are from the Arizona Administrative Code, Title 18—Environmental Quality, Chapter 2—Department of Environmental Quality—Air Pollution Control, Articles 1, 2, 3, and 4. The submitted statutory provision is from Title 49 of the Arizona Revised Statutes, Chapter 1, Article 1.

TABLE 1—SUBMITTED STATUTES AND RULES PROPOSED FOR APPROVAL IN THIS ACTION

Rule or statute	Title	State effective date	Submitted
A.R.S § 49-107	Local delegation of state authority	08/18/1987	07/2/2014
R18-2-101 [only definitions (2), (32), (87), (109), and (122)].	Definitions	08/07/2012	10/29/2014
R18-2-217	Designation and Classification of Attainment Areas	11/15/1993	10/29/2014
R18-2-218	Limitation of Pollutants in Classified Attainment Areas.	08/07/2012	10/29/2014
R18-2-301	Definitions	08/07/2012	10/29/2014
R18-2-302	Applicability; Registration; Classes of Permits	08/07/2012	10/29/2014
R18-2-302.01	Source Registration Requirements	08/07/2012	10/29/2014
R18-2-303	Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration transition; Minor NSR transition.	08/07/2012	10/29/2014
R18-2-304	Permit Application Processing Procedures	08/07/2012	10/29/2014
R18-2-306	Permit Contents	12/20/1999	10/29/2014
R18-2-306.01	Permits Containing Voluntarily Accepted Emission Limitations and Standards.	01/01/2007	10/29/2014
R18-2-306.02	Establishment of an Emissions Cap	09/22/1999	10/29/2014
R18-2-311	Test Methods and Procedures	11/15/1993	07/28/2011

<sup>1</sup> In addition, these submittals and our current action also address two rules and one statutory provision that are not directly related to NSR.  
<sup>2</sup> 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 FR 12460, 12533-34, Feb. 22, 2013; 79 FR 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.  
<sup>3</sup> 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 revision submittal from ADEQ.  
<sup>4</sup> ADEQ has delegated implementation of the major source program to the Pinal County Air Quality Control District.

TABLE 1—SUBMITTED STATUTES AND RULES PROPOSED FOR APPROVAL IN THIS ACTION—Continued

Rule or statute	Title	State effective date	Submitted
R18-2-312	Performance Tests	11/15/1993	07/28/2011
R18-2-315	Posting of Permit	11/15/1993	10/29/2014
R18-2-316	Notice by Building Permit Agencies	05/14/1979	10/29/2014
R18-2-319	Minor Permit Revisions	08/07/2012	10/29/2014
R18-2-320	Significant Permit Revisions	08/07/2012	10/29/2014
R18-2-321	Permit Reopenings; Revocation and Reissuance	08/07/2012	10/29/2014
R18-2-323	Permit Transfers	02/03/2007	10/29/2014
R18-2-330	Public Participation	08/07/2012	10/29/2014
R18-2-332	Stack Height Limitation	11/15/1993	10/29/2014
R18-2-334	Minor New Source Review	08/07/2012	10/29/2014
R18-2-401 [excluding definition (3)]	Definitions	08/07/2012	10/29/2014
R18-2-402	General	08/07/2012	10/29/2014
R18-2-403	Permits for Sources Located in Nonattainment Areas.	08/07/2012	10/29/2014
R18-2-404	Offset Standards	08/07/2012	10/29/2014
R18-2-405	Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe.	08/07/2012	10/29/2014
R18-2-406	Permit Requirements for Sources Located in Attainment and Unclassifiable Areas.	08/07/2012	10/29/2014
R18-2-407 [excluding subsection (H)(1)(c)]	Air Quality Impact Analysis and Monitoring Requirements.	08/07/2012	10/29/2014
R18-2-409	Air Quality Models	11/15/1993	10/29/2014
R18-2-412	PALS	08/07/2012	10/29/2014

On December 28, 2012, April 29, 2013, and December 2, 2014, ADEQ's July 28, 2011, October 29, 2012, and July 2, 2014 submittals, respectively, were deemed complete by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. Each of these submittals includes evidence of public notice and adoption of the regulation. Our technical support document (TSD) provides additional background information on each of the submitted rules.

*B. Are there previous versions of the statutory provisions or rules in the Arizona SIP?*

EPA has not approved significant revisions or updates to ADEQ's SIP-approved NSR program since the 1980s. The existing SIP-approved NSR program for new or modified stationary sources under ADEQ's jurisdiction generally consists of the rules identified below in Table 2 that we are proposing to supersede in or delete from the Arizona SIP. Collectively, these regulations established the NSR requirements for both major and minor stationary sources under ADEQ jurisdiction in Arizona, including requirements for the generation and use of emission

reduction credits in nonattainment areas.

Consistent with ADEQ's stated intent to have the submitted NSR rules replace the existing NSR program in the SIP, EPA's approval of the regulations identified above in Table 1 generally would have the effect of superseding our prior approval of the current SIP-approved NSR program.<sup>5</sup> Table 2 lists the existing rules in the Arizona SIP that would be superseded or removed from the Arizona SIP as a result of our proposed action. If EPA were to take final action as proposed herein, these rules generally would be replaced in, or otherwise deleted from, the SIP by the submitted set of rules listed in Table 1.

TABLE 2—SIP RULES SUPERSEDED OR REMOVED FROM ARIZONA SIP IN THIS ACTION

Rule or statute	Title	EPA Approval date	Federal Register citation
R9-3-101	Definitions	Various	Various
R9-3-217(B)	Attainment Areas: Classification and Standards	04/23/1982	47 FR 17486
R9-3-301, [excluding subsections (I), (K)]	Installation Permits: General	05/03/1983	48 FR 198879
R9-3-302	Installation Permits in Nonattainment Areas	08/10/1988	53 FR 30220
R9-3-303	Offset Standards	08/10/1988	53 FR 30220
R9-3-304, [excluding subsection (H)]	Installation Permits in Attainment Areas	05/03/1983	48 FR 19879
R9-3-305	Air Quality Analysis and Monitoring Requirements	05/03/1983	48 FR 19879
R9-3-306	Source Registration Requirements	05/03/1983	48 FR 19879
R9-3-307	Replacement	05/05/1982	47 FR 19328
R9-3-308	Permit Conditions	04/23/1982	47 FR 17485
R9-3-311	Air Quality Models	04/23/1982	47 FR 17485
R9-3-314	Excess Emissions Reporting	04/23/1982	47 FR 17485
R9-3-315	Posting of Permits	04/23/1982	47 FR 17485

<sup>5</sup> Except for certain sections that ADEQ requested that we not remove from the SIP at this time.

TABLE 2—SIP RULES SUPERSEDED OR REMOVED FROM ARIZONA SIP IN THIS ACTION—Continued

Rule or statute	Title	EPA Approval date	Federal Register citation
R9-3-316 .....	Notice by Building Permit Agencies .....	04/23/1982	47 FR 17485
R9-3-317 .....	Permit Non-transferrable; Exception .....	04/23/1982	47 FR 17485
R9-3-318 .....	Denial or Revocation of Installation or Operating Permit.	04/23/1982	47 FR 17485
R8-3-319 .....	Permit Fees .....	04/23/1982	47 FR 17485
R9-3-322 .....	Temporary Conditional Permits .....	10/19/1984	49 FR 41026
R9-3-1101 .....	Jurisdiction .....	05/03/1983	48 FR 19879
Appendix 4 .....	Fee Schedule for Installation and Operating Permits	09/19/1977	42 FR 16926
Appendix 5 .....	Fee Schedule for Conditional Permits .....	09/19/1977	42 FR 46926

### C. What is the purpose of this proposed rule?

The purpose of this proposed rule is to present our evaluation under the CAA and EPA's regulations of rules and statutory provisions submitted by ADEQ on July 28, 2011, October 29, 2012, and July 2, 2014, which are identified in Table 1. We provide our reasoning in general terms below, and include our more detailed analysis in the TSD, which is available in the docket for this proposed rulemaking.

## II. EPA's Evaluation

### A. How is EPA evaluating the rules and statutory provisions?

EPA has reviewed the provisions submitted by ADEQ that are the subject of this action, including those governing NSR for stationary sources under ADEQ jurisdiction for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), EPA's regulations for stationary source permitting programs in 40 CFR part 51, sections 51.160 through 51.166, and the CAA requirements for SIP revisions in CAA section 110(l) and 193.<sup>6</sup>

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

<sup>6</sup>CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. CAA section 193, which was added by the CAA Amendments of 1990, includes a savings clause that 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."

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 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 adoption and submittal of these rules to EPA.

With respect to substantive requirements, we have generally reviewed the ADEQ provisions that are the subject of our current action in accordance with the CAA and applicable regulatory requirements, focusing primarily on those that apply to: (1) General preconstruction review programs, including for minor sources, under section 110(a)(2)(C) of the Act; (2) PSD permit programs under part C of title I of the Act; and (3) Nonattainment NSR permit programs under part D of title I of the Act (NA-NSR). For the most part, ADEQ's submittal satisfies applicable CAA requirements, specifically including the applicable requirements for these three preconstruction review programs and would strengthen the applicable SIP by updating the regulations and adding requirements to address new or revised NSR permitting and other requirements promulgated by EPA, but the submitted rules also contain specific deficiencies that prevent full approval. Below, we discuss generally our evaluation of ADEQ's submittal and the deficiencies that are the basis for our proposed action on these rules. Our TSD contains a more detailed evaluation as well as additional recommendations for program improvements.

### B. Do the rules meet the evaluation criteria for Minor New Source Review?

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 National Ambient Air Quality Standards (NAAQS). In addition to the permit programs required under parts C and D of the CAA for PSD sources and nonattainment 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 statutory and 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 nonattainment NSR permitting programs, the sources subject to regulation are specified by EPA regulations. The substantive requirements for the preconstruction review and permitting of minor stationary sources under ADEQ jurisdiction are ADEQ rules R18-2-302.01 and R18-2-334. These rules, and other administrative rules included in the minor NSR portion of the SIP submittal, satisfy most of the statutory and regulatory requirements for minor NSR programs, but these rules also contain several deficiencies that form the basis for our proposed limited disapproval, as discussed below.

We are proposing a limited approval and limited disapproval of ADEQ's minor NSR program because it is not fully consistent with the requirements of 40 CFR 51.160, 40 CFR 51.161, 40 CFR 51.163 and 40 CFR 51.164, 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 ADEQ's current SIP-approved program and lower permitting thresholds that will provide additional mechanisms for protecting the NAAQS, as well as updating the SIP with current State regulations for minor sources and non-major modifications. However, specific provisions of the minor NSR program submittal are inconsistent with federal 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.

### 1. Legally Enforceable Procedures

40 CFR 51.160 requires that each NSR program contain certain legally enforceable procedures. We have identified several deficiencies with ADEQ's program as it pertains to these requirements.

First, as required by 40 CFR 51.160(a), ADEQ's permitting procedures are not enforceable in all instances. ADEQ's program 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>7</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.

Second, ADEQ's program does not contain adequate enforceable procedures to ensure compliance by sources subject to review under its NSR program with the NAAQS as required by 40 CFR 51.160(a)(2) and (b)(2). 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>8</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>9</sup> See R18-2-218, R18-2-406, and R18-2-407. 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>10</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). Also, 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 reasonably available control technology (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

<sup>8</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 FR 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, the new NAAQS is applied immediately upon its effective date to sources subject to the PSD program.

<sup>9</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>10</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."

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."

Third, 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).

Fourth, 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. In addition, rule R18-2-327, is not in the Arizona SIP, and has not been submitted to EPA for SIP approval.

Fifth, 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 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."

Sixth, 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

<sup>7</sup> 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.

will not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

Finally, 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 as required by 40 CFR 51.160(f)(1).

## 2. ADEQ's Program Under 40 CFR 51.160(e)

40 CFR 51.160(e) requires ADEQ's submittal 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. 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. Power Co. v. Costle*, 636 F.2d 323, at 360-361 (D.C. Cir. 1979). Here, 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. Historically, ADEQ's minor NSR program required permitting of minor sources and non-major modifications 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 NSR purposes. To address EPA's concerns, ADEQ assessed other potential permitting thresholds for its minor NSR program and selected revised thresholds for its minor NSR program following this assessment. A detailed analysis of ADEQ's assessment is provided in our TSD. ADEQ's new minor NSR program established a minimum preconstruction review threshold for new or modified stationary sources with potential emissions or emissions increases of: 50 tons per year (tpy) of carbon monoxide; 20 tpy of NO<sub>x</sub>, SO<sub>2</sub>, and VOC; 7.5 tpy for PM<sub>10</sub>; 5 tpy for PM<sub>2.5</sub>; and 0.3 tpy for lead. We find ADEQ's general approach to meeting 40 CFR 51.160(e) acceptable. We are proposing a limited disapproval of ADEQ's minor NSR program based in part on the following issues concerning the approach:

First, ADEQ's submittal does not provide a clear basis for concluding that the exemption 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>11</sup>, which has lower NSR permitting thresholds than the exemption thresholds adopted by ADEQ due to Maricopa County's 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>12</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 its adopted preconstruction review exemption thresholds adequately address nonattainment areas.<sup>13</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: (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.

<sup>11</sup> ADEQ does not have jurisdiction for permitting of minor sources in Maricopa County, AZ.

<sup>12</sup> See EPA's Technical Support Document for *Revision of Air Quality Implementation Plan; California; Sacramento Metropolitan Air Quality Management District; Stationary Source Permits*, 78 FR10589, 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>.

<sup>13</sup> 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 CFR 51.160.

§ 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); and (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).

Finally, 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.

## 3. Public Availability of Information

40 CFR 51.161 requires that each NSR program contain certain procedures related to public participation. We have identified several deficiencies with ADEQ's program as it pertains to these requirements.

First, 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).

Second, ADEQ's registration program at R18-2-302.01(F) does not contain the necessary 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 ADEQ's rule contains requirements for monitoring, recordkeeping, and reporting of elective limits, these requirements are not sufficiently 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 when issuing a registration. In order to meet practical enforceability requirements for limiting the potential to emit (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. Additional detail on this issue is provided in our TSD.

Third, 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. See 40 CFR 51.161(b)(1). 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>14</sup> But it is not clear that ADEQ would interpret this to mean the Director's own analysis.

Finally, ADEQ's NSR program does provide notice to the necessary parties in 40 CFR 51.161(d) for sources required

to obtain registrations under R18-2-302.01.

#### 4. 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). While ADEQ's program generally meets the requirements of this provision, ADEQ's submittal contains references to other ADEQ rules, R18-2-317 and R18-2-317.02, which 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).

#### 5. Stack Height Procedures

40 CFR 51.164 requires that each NSR program contain certain provisions related to good engineering practice for stack heights. 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). We have identified several deficiencies with ADEQ's program as it pertains to these requirements.

First, ADEQ's submittal does not meet the public hearing requirements in 40 CFR 51.164 and 51.118(a). 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.

Second, 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 reconstructed, 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 as that date appears in 40 CFR 51.118(b).

Third, 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. See R18-2-332(B)(2).

Finally, ADEQ's submittal contains a provision at R18-2-332(D) that 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).

In sum, while we have identified several disapproval issues with ADEQ's minor NSR program requirements as they correspond to federal minor NSR program requirements, compared to the existing SIP, approving ADEQ's minor NSR program into the Arizona SIP nonetheless represents a significant overall strengthening of ADEQ's NSR program, as discussed above. Thus, we are proposing a limited approval and limited approval of ADEQ's minor NSR program submittal.

#### C. Do the rules meet the evaluation criteria for Prevention of Significant Deterioration (PSD)?

Part C of title I of the Act contains the provisions for the prevention of significant deterioration (PSD) of air quality in areas designated "attainment" or "unclassifiable" for the NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such areas. EPA's regulations for SIP-approved PSD permit programs are found in 40 CFR 51.166.

ADEQ rules R18-2-402 and R18-2-406 contain the substantive requirements for review and permitting of PSD sources under ADEQ's jurisdiction. These regulations satisfy most of the statutory and regulatory requirements for PSD permit programs, but these and other rules in the NSR SIP submittal contain several deficiencies that form the basis for our proposed limited disapproval, or proposed disapprovals as discussed below.

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 Sections II.C.8 and 9.

<sup>14</sup> This requirement is met for ADEQ's registration program at R18-2-302.01(B)(3)(a).

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 G below. 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 Sections II.C.1 through 7.

#### 1. General PSD Program Requirements

First, 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. See 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).

Second, 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 of using 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 increments 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.

Third, 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 FR 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)(j)(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 general approach used in ADEQ's NSR program with respect to incorporating the NAAQS, *i.e.*, the program's 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).

Fourth, 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.

Fifth, 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, 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>15</sup>, 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.

Sixth, ADEQ's NSR submittal contains provisions that allow for exclusions from increment consumption, for certain temporary emissions, that do not conform to 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.

Seventh, 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 such permits, as it is not clear that such permits contain requirements "equivalent" to those in 40 CFR 51.166(j) through (r).

Eight, ADEQ's submittal contains conditions generally meeting the requirements of 40 CFR 51.166(k)(1) in rule R18-2-406(A)(5)(a). However, 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

<sup>15</sup> See ADEQ memo dated February 10, 2015 related to proposed final permits, and ADEQ's February 23, 2015 Supplement at 2.

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 addition, 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.

Ninth, 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).

Tenth, ADEQ’s PSD SIP submittal does not appear to specifically address the requirements of 40 CFR 51.166(n)(1) and (3), 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 for 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).

Eleventh, 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). See 40 CFR 51.166(r)(6).

Finally, 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).

## 2. Restrictions on Area Classifications

40 CFR 51.166(e) contains provisions related to restrictions on area classifications (Class I, II, or III). We have identified several deficiencies in ADEQ’s program with respect to these provisions.

First, 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 require 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.

Second, ADEQ’s NSR submittal at R18-2-217 does not contain a provision consistent with the federal regulatory requirement for Class I area redesignations prior to August 7, 1977 in rule R18-2-217 or elsewhere as required by 40 CFR 51.166(e)(2). 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. See 40 CFR 51.166(e)(2).

Finally, ADEQ’s NSR submittal does not include a provision that is fully consistent with 40 CFR 51.166(e)(3). While ADEQ’s rules generally meet this requirement at R18-2-217(D), this rule does not fully meet the requirements of 40 CFR 51.166(e)(3) 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.

## 3. Redesignations

40 CFR 51.166(g) contains provisions allowing certain areas classified as Class

I, II, or III to be redesignated to another classification. We have identified several deficiencies in ADEQ’s program with these provisions.

First, 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. See 40 CFR 51.166(g)(1).

Second, 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 at 40 CFR 51.166(g)(2)(i), 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. See 40 CFR 51.166(g)(2)(i).

Third, ADEQ’s provisions for redesignating 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).

Fourth, R18-2-217(E) allows for the redesignation to be approved by the Governor or the Governor’s designee. However, the federal program at 40 CFR 51.166(g)(3)(ii) specifically requires the Governor’s approval and does not allow for this approval to be delegated. See 40 CFR 51.166(g)(3)(ii).

Fifth, 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). See 40 CFR 51.166(g)(3)(iii).

Finally, 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. See 40 CFR 51.166(g)(3)(iv).

## 4. Impacts on Class I Areas

40 CFR 51.166(p) contains additional requirements related to protection of Federal Class I areas. We have identified several deficiencies in ADEQ’s program with these provisions.

First, ADEQ's submittal does not address the requirements of 40 CFR 51.166(p)(1), but they are generally 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.

Second, ADEQ's submittal does not address the requirement under 40 CFR 51.166(p)(3), 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. See 40 CFR 51.166(p)(3).

Finally, ADEQ's submittal generally includes the provisions of 40 CFR 51.166(p)(4) 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.

#### 5. Public Participation

40 CFR 51.166(q) contains several specific public participation requirements for issuing PSD permits. We have identified several public participation deficiencies in ADEQ's program.

First, 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).

Second, 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).

Third, 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).

Finally, 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). See 40 CFR 51.166(q)(2)(vii). 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 FR 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 FR 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 FR 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>16</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.

#### 6. Plantwide Applicability Limits

ADEQ's rules contain provisions for using plantwide applicability limits (PALs) in R18-2-412. We have identified the following deficiencies with ADEQ's PALs provisions program as they relate to the PSD program.

First, 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.)

Second, 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).

Third, 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." See 40 CFR 51.166(w)(9).

Finally, 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. See 40 CFR 51.166(w)(10).

#### 7. Definitions

ADEQ's submittal contains definitions applicable to the PSD program that do not fully meet the requirements of 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). We have carefully reviewed the definitions used in ADEQ's PSD program as compared 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 may be less stringent than the federal definitions, and the State has not demonstrated otherwise.

*Major stationary source* at 40 CFR 51.166(b)(1)—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 the definition of "stationary source" in 40 CFR 51.166(b)(5).

<sup>16</sup> See ADEQ memo dated February 10, 2015 related to proposed final permits. ADEQ submitted this memo in its February 23, 2015 supplement.

*Net emissions increase* at 40 CFR 51.166(b)(3)—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). In addition, the equivalent of paragraph 40 CFR 51.166(b)(3)(viii) is not included in ADEQ’s definition at R18–2–101(87).

*Stationary source* at 40 CFR 51.166(b)(5)—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 the 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.

*Major source baseline date* at 40 CFR 51.166(b)(14)—language equivalent to paragraph 40 CFR 51.166(b)(14)(iv) is not included at ADEQ’s definition in R18–2–218(B)(1).

*Baseline area* 40 CFR 51.166(b)(15)—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.

*Allowable emissions* at 40 CFR 51.166(b)(16)—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.

*Federally enforceable* at 40 CFR 51.166(b)(17)—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.

*Complete* at 40 CFR 51.166(b)(22)—ADEQ’s definition at R18–2–401(4) is missing the second sentence of the federal definition.

*Significant* at 40 CFR 51.166(b)(23)—ADEQ definition at R18–2–101(130)(e) uses “milligrams” instead of “micrograms” as required in paragraph 40 CFR 51.166(b)(23)(iii).

*Projected actual emissions* at 40 CFR 51.166(b)(40)—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.

*Subject to regulation* at 40 CFR 51.166(b)(48)—this definition is not included in ADEQ’s NSR SIP submittal. 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 Greenhouse Gas (GHG) Tailoring Rule, and GHGs cannot be regulated under Arizona state law.<sup>17</sup> 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

<sup>17</sup> 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.

non-GHG-specific program elements for determining when a pollutant is “subject to regulation.” As such, ADEQ must add a definition to its PSD regulations to address these elements of the term “subject to regulation” in order to obtain full program approval.

*Regulated NSR pollutant* at 40 CFR 51.166(b)(49)—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 CAA section 108.

#### 8. PM<sub>2.5</sub> Significant Monitoring Concentration

On January 22, 2013, the U.S. DC 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 FR 73698.

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).

#### 9. 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 FR 61248 Oct. 27, 2003. However, the definition for basic design parameter, and other elements related to the Equipment Replacement Provisions, were vacated by the DC 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).

*D. Do the rules meet the evaluation criteria for Nonattainment New Source Review?*

Part D of title I of the Act contains the general requirements for areas designated “nonattainment” for the NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such nonattainment areas, commonly referred to as “Nonattainment New Source Review” or “NA–NSR.” EPA’s regulations for NA–NSR permit programs are found in 40 CFR 51.165. Most areas under ADEQ’s jurisdiction are currently designated as “attainment” or “unclassifiable/attainment” for all NAAQS pollutants. However, there are some areas under ADEQ’s jurisdiction that are nonattainment and warrant a NA–NSR program. See 40 CFR 81.303.

R18–2–402 through 405 contain the substantive NA–NSR requirements for review and permitting of major sources and major modifications in nonattainment areas under ADEQ jurisdiction in Arizona. These regulations satisfy most of the statutory and regulatory requirements for NA–NSR permit programs, but these rules contain several deficiencies that do not allow us to fully approve the NA–NSR program submittal that is the subject of this action, as discussed below.

Although ADEQ’s NA–NSR program 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 II.D.4.

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 aspect 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 G below. 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 immediately below in Sections II.D.1 through 3.<sup>18</sup>

1. General Nonattainment NSR Program Requirements

First, as discussed above with respect to ADEQ’s PSD program submittal, ADEQ’s NA–NSR program 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. See 40 CFR 51.165(a)(1)(xiii)—lowest achievable emission rate, (a)(1)(xxvii)—regulated NSR pollutant, and (a)(1)(xl)—best available control technology.

Second, the nonattainment NSR program requirements at 40 CFR

<sup>18</sup> 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 II.D.5 below.

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, as previously discussed in this preamble, 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. 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>19</sup> 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.

Third, 40 CFR 51.165(a)(3)(ii)(G) 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.

Fourth, 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). 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.

Fifth, 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).

Sixth, 40 CFR 51.165(a)(9)(i) 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 NA–NSR submittal contains this requirement at R18–2–404(A), but could

<sup>19</sup> See ADEQ Memo dated February 10, 2015 related to proposed final permits and ADEQ’s February 23, 2015 Supplement at 2.

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(f).

Seventh, 40 CFR 51.165(a)(11) 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 NA–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.

Eighth, 40 CFR 51.165(b) requires 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.

Finally, 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).

## 2. Plantwide Applicability Limits

ADEQ’s rules contain provisions for using plantwide applicability limits (PALs) in R18–2–412. We have identified the following deficiencies with ADEQ’s PALs provisions program as they relate to the NA–NSR program.

First, 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. ADEQ’s submittal does not contain a definition for nonattainment major NSR program (see 40 CFR 51.165(a)(1)(xxx)). ADEQ should either add this definition or considering referencing R18–2–403. See 40 CFR 51.165(f)(1)(iii)(B).

Second, 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).

Third, 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).

Fourth, ADEQ’s PAL provisions at R18–2–412(H) contain an incorrect reference to R18–2–412(H)(4) instead of the definition for major modification, and R18–2–412(H)(5) uses “eliminated” where the federal regulation uses “established.” See 40 CFR 51.165(f)(9).

Finally, ADEQ’s program contains incorrect cross-references in meeting the requirements of 40 CFR 51.165(f)(1), 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.

## 3. Definitions

ADEQ’s submittal contains definitions applicable to the nonattainment NSR program that do not fully meet the requirements of 40 CFR 51.165(a)(1), which requires each State plan to contain specific definitions for the nonattainment 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). We have carefully reviewed the definitions used in ADEQ’s nonattainment NSR program as compared with the federal PSD 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 may be less stringent than the federal definitions, and the State has not demonstrated otherwise.

*Stationary source* at 40 CFR 51.165(a)(1)(i)—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 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. 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.

*Major stationary source* at 40 CFR 51.165(a)(1)(iv)—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).

*Net emissions increase* at 40 CFR 51.165(a)(1)(vi)—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). In addition, the equivalent of paragraph 40 CFR 51.165(a)(1)(vi)(G) is not included in ADEQ’s definition at R18–2–101(87).

*Significant* at 40 CFR 51.165(a)(1)(x)—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).

*Allowable emissions* at 40 CFR 51.165(a)(1)(xi)—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.

*Federally enforceable* at 40 CFR 51.165(a)(1)(xiv)—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.

*Regulated NSR pollutant* at 40 CFR 51.165(a)(1)(xxxvii)—ADEQ’s definition is missing this language from paragraph 40 CFR 51.165(a)(1)(xxxvii)(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).

*Projected actual emissions* at 40 CFR 51.165(a)(1)(xxviii)—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.

#### 4. 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 FR 61248, Oct. 27, 2003. However, the definition for basic design parameter, and other elements related to the Equipment Replacement Provisions, were vacated by the DC 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. Additional Provisions for Particulate Matter Nonattainment Areas

On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council v. EPA*,<sup>20</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>21</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 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 an area’s attainment plan SIP. In this case, there are two designated PM<sub>2.5</sub> 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

<sup>20</sup> 706 F.3d 428 (D.C. Cir. 2013).

<sup>21</sup> 73 FR 28321 May 16, 2008.

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 FR 887 and 78 FR 54394), which suspended the requirement for the state to submit, among other things, an attainment plan SIP for the area.<sup>22</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.

In addition, 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. As discussed below, we have identified one area under ADEQ's jurisdiction, the West Pinal PM<sub>10</sub> nonattainment area, for which we are proposing a limited approval with respect to PM<sub>10</sub> under section 189(e) of the Act.

On September 4, 2013, the West Pinal area was redesignated to nonattainment for the 1987 p.m.<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 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.

#### *E. 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 July 28, 2011. 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.

First, ADEQ's rule R18-2-311 specifies the test methods and procedures which can be used to determine compliance with requirements established under ADEQ's air program. On October 19, 1984, EPA approved an earlier version of this rule into the SIP.<sup>23</sup> See 49 FR 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 CAA sections 110(a)(2)(A) and 110(i).<sup>24</sup>

Second, 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 FR 17485) EPA approved a version of this rule into the SIP.<sup>25</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 CAA sections 110(a)(2)(A) and 110(i).<sup>26</sup>

<sup>23</sup> The rule was previously numbered R9-3-310.

<sup>24</sup> See, e.g., "Guidance Document for Correcting VOC Rule Deficiencies," U.S. EPA Region 9, April 1991, revised August 21, 2001 (Little Bluebook).

<sup>25</sup> The rule was previously numbered R9-3-312.

<sup>26</sup> See, e.g., Little Bluebook.

<sup>22</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.

Third, 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 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.

#### *F. Review of Rules and Statutory Provisions Requested To Be Removed From the SIP*

In Table 2 of this preamble we identify the rules and statutory provisions we are proposing to remove or supersede from the SIP as part of this action. ADEQ's existing SIP-approved NSR 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 proposed for removal are no longer necessary for other reasons. Our TSD provides additional detail.

#### *G. Do the rules meet the evaluation criteria under Section 110(l) and 193 of the Act?*

CAA 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).

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 above in this preamble, 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 proposed action would correct 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: (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 with the ADEQ rule provisions on which we are taking action 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 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 above in this notice, is the absence of provisions that ensure protection of the 2012 PM<sub>2.5</sub> NAAQS for the PSD program. This deficiency 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

revised 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 and other portions of the SIP that are the subject of this section outweigh the deficiencies 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 the ADEQ regulations and statute that are the subject of this action into the Arizona SIP would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act.<sup>27</sup>

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

Section 193 of the Act, which was added by the CAA Amendments of 1990, includes a savings clause that 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 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 PM<sub>10</sub>, PM<sub>2.5</sub> and SO<sub>2</sub>.

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

#### H. Conclusion

For the reasons stated above and explained further in our TSD, we find that the submitted NSR rules satisfy most of the applicable CAA and regulatory requirements for minor NSR, PSD, and nonattainment NSR permit programs under CAA section 110(a)(2)(C) and parts C and D of title I of the Act but also contain certain deficiencies that prevent us from proposing a full approval of the NSR SIP submittal. Therefore, we are proposing a limited approval and limited disapproval of the submitted NSR rules. We do so based also on our finding that, while the rules do not meet all of the applicable requirements, the rules would represent an overall strengthening of the SIP by clarifying and enhancing the NSR permitting requirements for major and minor stationary sources under ADEQ’s jurisdiction in Arizona. In addition, we are also proposing to remove the existing statutes and rules listed in Table 2 from the SIP, which are outdated and mostly being superseded by our proposed action. As discussed above, we are proposing a partial

disapproval of two elements of ADEQ’s program, which have been vacated from the PSD program (and is one case also from the NA–NSR program) by the courts. We are also proposing a limited approval of ADEQ’s nonattainment NSR program for the Nogales and West Central Pinal PM<sub>2.5</sub> nonattainment areas and the West Pinal PM<sub>10</sub> nonattainment area under section 189(e) of the Act. Finally, we are proposing a limited approval and limited disapproval of two ADEQ rules relating to test methods and procedures and performance tests, and proposing to approve into the SIP an Arizona statutory provision relating to local delegation of state authority.

### III. Public Comment and Proposed Action

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 preconstruction review and the issuance of preconstruction 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. We are also proposing to remove the existing statutes and rules listed in Table 2 from the SIP, which are outdated and mostly being superseded by our proposed action. In addition, we are also proposing to partially disapprove two provisions of ADEQ’s NSR program that have been vacated by the courts. We are proposing a limited approval of ADEQ’s nonattainment NSR program in certain nonattainment areas under section 189 of the Act related to PM<sub>10</sub> and PM<sub>2.5</sub> precursors. Finally, we are proposing a limited approval and limited disapproval of two ADEQ rules relating to test methods and procedures and performance tests, and proposing to approve into the SIP an Arizona statutory provision relating to local delegation of state authority.

EPA is 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 further in this preamble and in the TSD for this rulemaking. The intended effect of our proposed limited approval and limited disapproval action is to update the applicable SIP with current ADEQ

<sup>27</sup> Our analysis and conclusion here also apply to our approval of R18–2–311 and R18–2–312, which are not generally related to NSR permitting. We note that these rules do not contain any substantive changes in the procedures for performance tests or test methods as compared with the analogous rules in the current SIP. Similarly, our analysis and conclusion here also extends to our approval of A.R.S. § 49–107 into the SIP. The provisions in this state statute relate specifically to local delegation of state authority and thus would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act.

regulations and to set the stage for remedying deficiencies in these regulations.

If finalized as proposed, our limited disapproval action would trigger an obligation on EPA to promulgate a Federal Implementation Plan unless the State of Arizona corrects the deficiencies, and EPA approves the related plan revisions, within two years of the final action. Additionally, for those deficiencies that relate to the Nonattainment NSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the ADEQ nonattainment areas 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in these areas six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if Arizona submits and we approve, prior to the implementation of the sanctions, SIP revisions that correct the deficiencies that we identify in our final action. The EPA intends to work with ADEQ to correct the deficiencies identified in this action in a timely manner.

We will accept comments from the public on this proposed action for the next 30 days.

#### IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the ADEQ rules and Arizona statutory provisions listed in Table 1 of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

#### V. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

##### B. Paperwork Reduction Act

This action does not impose an information collection burden under the

provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because EPA’s proposed limited approval/limited disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

##### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This proposed rule does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any one year. Thus,

this rule is not subject to the requirements of section 202 or 205 of UMRA. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule does not impose regulatory requirements on any government entity.

##### E. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

##### F. Executive Order 13175, Coordination With Indian Tribal Governments

Under Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

This proposed rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials. The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

##### G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as

applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it proposes to approve a State rule implementing a Federal standard.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS. EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations

because it does not change the level of environmental protection for any affected populations.

Dated: March 4, 2015.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2015–06143 Filed 3–17–15; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R07–OAR–2015–0123; FRL–9924–54–Region 7]**

**Approval and Promulgation of Implementation Plans; State of Missouri, Construction Permits Required**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for the State of Missouri submitted on October 2, 2013. This proposed rulemaking will amend the SIP to update the construction permits rule to incorporate by reference recent EPA actions related to plantwide applicability limitations (PALs) for greenhouse gases (GHGs) and to correct the definition of “regulated NSR pollutant.” Other revisions include modifying the notification period for initial equipment start-up and clarifying de minimis permit air quality analysis requirements.

**DATES:** Comments must be received on or before April 17, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0123, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email:* [Higbee.paula@epa.gov](mailto:Higbee.paula@epa.gov).

3. *Mail or Hand Delivery:* Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

*Instructions:* Direct your comments to Docket ID No. EPA–R07–OAR–2015–0123. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office’s official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7028 or by email at [Higbee.paula@epa.gov](mailto:Higbee.paula@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” or “our” refer to EPA. This section provides additional information by addressing the following:

- I. What is being addressed in this document?
- II. Background
- III. Have the requirements for approval of a SIP revision been met?