

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

CENTER FOR BIOLOGICAL	)	
DIVERSITY,	)	
	)	
Petitioner,	)	Case No.: _____
	)	
v.	)	
	)	
MICHAEL S. REGAN, Administrator,	)	<b>PETITION FOR REVIEW</b>
United States Environmental Protection	)	
Agency; DEBORAH JORDAN, Acting	)	
Regional Administrator, U.S. EPA Region	)	
9; and UNITED STATES	)	
ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondents.	)	
_____	)	

Pursuant to Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1), Rule 15 of the Federal Rules of Appellate Procedure, and Circuit Rule 15-1, the Center for Biological Diversity hereby petitions the Court for review of the final action of Respondents Michael S. Regan, Administrator, United States Environmental Protection Agency; Deborah Jordan, Acting Regional Administrator, U.S. EPA Region 9; and United States Environmental Protection Agency published at 86 Fed. Reg. 31927–31939 (June 16, 2021) and titled “Air Plan Approval; Arizona; Stationary Sources; New Source Review Updates.” [Attachment 1]

Dated this 13th day of August, 2021.

*s/ Jennifer B. Anderson*

\_\_\_\_\_  
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## **Attachment 1**

**Air Plan Approval; Arizona; Stationary Sources; New Source Review Updates**

**86 Fed. Reg. 31927 (June 16, 2021)**

#### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: June 9, 2021.

**Cheryl Newton,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, EPA amends title 40 CFR part 52 as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

#### § 52.1870 [Amended]

■ 2. In § 52.1870, the table in paragraph (c) is amended by removing the heading "Chapter 3745-71 Lead Emissions" and the entries for "3745-71-01", "3745-

71-03", "3745-71-05", and "3745-71-06".

[FR Doc. 2021-12554 Filed 6-15-21; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R09-OAR-2020-0589; FRL-10024-21-Region 9]

#### Air Plan Approval; Arizona; Stationary Sources; New Source Review Updates

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Arizona Department of Environmental Quality's (ADEQ) portion of the Arizona State Implementation Plan (SIP) that were submitted to the EPA by the ADEQ. These revisions concern the ADEQ's SIP-approved rules for the issuance of New Source Review (NSR) permits for stationary sources under the Clean Air Act (CAA or Act). This action updates the ADEQ's NSR rules in the Arizona SIP and corrects the remaining deficiencies in the ADEQ's NSR program that we identified as the basis for our limited disapprovals in final rulemaking actions in 2015 and 2016. Additionally, we are finding that the ADEQ's SIP-approved NSR permitting program meets requirements for visibility protection for major stationary sources under the Act and are removing the Federal Implementation Plans (FIPs) for the ADEQ related to these visibility protection requirements.

**DATES:** This rule is effective on July 16, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2020-0589. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other

than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Lisa Beckham, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3811 or by email at [beckham.lisa@epa.gov](mailto:beckham.lisa@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we,” “us,” and “our” refer to the EPA.

**Table of Contents**

- I. Proposed Action
- II. Public Comments and EPA Responses
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**Definitions**

For 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 *Ag BMP* mean or refer to the State of Arizona’s Agricultural Best Management Practices program.
- (iv) The initials *ARS* mean or refer to the Arizona Revised Statutes.
- (v) The initials *CBI* mean or refer to confidential business information.
- (vi) The initials *CFR* mean or refer to the Code of Federal Regulations.
- (vii) The initials *CO* mean or refer to carbon monoxide.
- (viii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (ix) The initials *FIP* mean or refer to Federal Implementation Plan.
- (x) The initials *MMBtu/hr* mean or refer to million British thermal units per hour.
- (xi) The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.
- (xii) The initials *NESHAP* mean or refer to the National Emission Standards for Hazardous Air Pollutants.
- (xiii) The initials *NNSR* mean or refer to Nonattainment New Source Review.
- (xiv) The initials *NO<sub>x</sub>* mean or refer to oxides of nitrogen.
- (xv) The initials *NSPS* mean or refer to New Source Performance Standards.
- (xvi) The initials *NSR* mean or refer to New Source Review.

(xvii) 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, or fine particulate matter.

(xviii) The initials *PM<sub>10</sub>* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers.

(xix) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xx) The initials *SER* mean or refer to significant emission rate.

(xxi) The initials *SIP* mean or refer to State Implementation Plan.

(xxii) The initials *SO<sub>2</sub>* mean or refer to sulfur dioxide.

(xxiii) The words *State* or *Arizona* mean the State of Arizona, unless the context indicates otherwise.

(xxiv) The initials *TSD* mean or refer to the technical support document for this action unless the context indicates otherwise.

**I. Proposed Action**

On December 23, 2020 (85 FR 83868), the EPA proposed to approve revisions to the ADEQ portion of the Arizona SIP consisting of several rule revisions and demonstrations submitted by the ADEQ related to the ADEQ’s CAA NSR permitting program.

First, we proposed to approve a July 22, 2020 SIP submittal from the ADEQ that contains rule revisions and other demonstrations primarily intended to correct deficiencies in the ADEQ’s minor NSR program (referred to hereinafter as the “2020 Minor NSR submittal”). The deficiencies being corrected by the 2020 Minor NSR submittal were identified in a November 2, 2015<sup>1</sup> final limited approval and limited disapproval action by the EPA (referred to hereinafter as the EPA’s “2015 NSR action”).<sup>2</sup> Our 2015 NSR action was the result of an extensive review of the ADEQ’s NSR program, in response to a comprehensive NSR program update submitted by the ADEQ to the EPA in a 2012 SIP revision (referred to hereinafter as the “2012 NSR SIP submittal”). The 2012 NSR SIP submittal represented the ADEQ’s first comprehensive update to its SIP-approved NSR program since the 1980s. Our review of the 2012 NSR SIP submittal for compliance with CAA requirements therefore included all aspects of the ADEQ’s minor NSR, Prevention of Significant Deterioration (PSD), and nonattainment NSR (NNSR) permitting programs, including NSR-related visibility requirements for major stationary sources. In a May 4, 2018

final rule,<sup>3</sup> we approved revisions to the ADEQ’s NSR program, submitted to the EPA in 2017, that corrected a large portion of the deficiencies identified in our 2015 NSR action, primarily related to the PSD and NNSR programs (referred to hereinafter as the “2018 Major NSR action”). Thus, the 2020 Minor NSR submittal that is the subject of our present action addresses the remaining deficiencies from our 2015 NSR action.

Second, our December 23, 2020 proposed action also included our proposed approval of a March 29, 2019 SIP submittal, and a January 14, 2020 supplemental submittal, from the ADEQ. These two submittals are intended to resolve an ADEQ NNSR program deficiency related to the permitting of ammonia as a precursor to PM<sub>2.5</sub> in the West Central Pinal and Nogales PM<sub>2.5</sub> nonattainment areas (the March 29, 2019 submittal and January 14, 2020 supplement are collectively referred to hereinafter as the “Ammonia PM<sub>2.5</sub> NSR submittal”). In a June 22, 2016<sup>4</sup> final limited disapproval rule action, we had identified additional deficiencies in the ADEQ’s NNSR program related to PM<sub>2.5</sub> precursors (referred to hereinafter as the EPA’s “2016 PM<sub>2.5</sub> precursor action”). In our 2018 Major NSR action, in addition to approving rule revisions to the ADEQ’s NSR program, the EPA conditionally approved<sup>5</sup> the ADEQ’s NNSR program pursuant to CAA section 110(k)(4) solely with respect to ammonia as a precursor to PM<sub>2.5</sub> under section 189(e) of the Act.<sup>6</sup> We found in our 2018 Major NSR action that the ADEQ’s SIP revisions otherwise resolved the deficiencies identified in our 2016 PM<sub>2.5</sub> precursor action.<sup>7</sup> In addition to resolving the deficiency that was the basis for our conditional approval for ammonia as a precursor to PM<sub>2.5</sub> under CAA section 189(e), the Ammonia PM<sub>2.5</sub> NSR submittal also includes other

<sup>3</sup> 83 FR 19631 (May 4, 2018).

<sup>4</sup> 81 FR 40525 (June 22, 2016).

<sup>5</sup> 83 FR 19631, 19634. The conditional approval was based upon a December 6, 2017 letter from the State committing to submit a SIP revision to the EPA consisting of rule revisions and/or demonstrations that would correct the deficiencies related to ammonia as a precursor to PM<sub>2.5</sub> under the NNSR program requirements in CAA section 189(e). See 83 FR 19631, 19633–19634.

<sup>6</sup> Concurrent with our proposed conditional approval action in 2018, we made an interim final determination that the State of Arizona had satisfied the requirements of part D of the CAA permitting program for areas under the jurisdiction of ADEQ with respect to PM<sub>2.5</sub> precursors under section 189(e). See 83 FR 1195 (January 10, 2018) and 83 FR 1212 (January 10, 2018). The effect of our interim final determination was that the imposition of sanctions that had been triggered were deferred.

<sup>7</sup> See 83 FR 19631, 19633–19634.

<sup>1</sup> 80 FR 67319 (Nov. 2, 2015).

<sup>2</sup> In the 2015 NSR action, we also finalized other actions, including a partial disapproval related to the fine particulate matter (PM<sub>2.5</sub>) significant monitoring concentration, and limited approvals, without corresponding limited disapprovals, related to section 189(e) of the Act.

minor and technical rule revisions to the ADEQ’s NSR program that we proposed to approve in our December 23, 2020 proposed action.<sup>8</sup>

Finally, our December 23, 2020 proposal also included our proposed determination that the ADEQ’s SIP-approved NSR program meets the visibility requirements for major NSR programs in 40 CFR 51.307. Accordingly, we proposed to update 40 CFR 52.145(b) to remove the existing visibility FIPs<sup>9</sup> for those stationary sources subject to the ADEQ’s permitting jurisdiction.

The EPA’s proposal and technical support document (TSD) for this rulemaking action have more information about the content of the ADEQ’s SIP submittals (collectively

referred to hereinafter as the “2019–20 NSR submittals”), the deficiencies in the ADEQ’s NSR program that are being corrected, and our rationale for proposing approval.

The rules that the EPA proposed to approve into the ADEQ’s portion of the Arizona SIP are listed in Table 1 of this notice, and the existing SIP-approved rules that we proposed to remove or supersede from the SIP are listed in Table 2 of this notice. The rules are from the Arizona Administrative Code, Title 18—Environmental Quality, Chapter 2—Department of Environmental Quality—Air Pollution Control, Articles 1, 3, and 4.<sup>10</sup> These rules apply to all areas and stationary sources in Arizona for which the ADEQ has permitting jurisdiction.

The 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. The 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, the ADEQ has permitting jurisdiction over major sources in Pinal County (currently delegated to Pinal County Air Quality Control District) and any source in Maricopa, Pima, or Pinal County for which the ADEQ asserts jurisdiction.

TABLE 1—SUBMITTED RULES

Rule	Title	State effective date
R18–2–101, except (20) .....	Definitions .....	<sup>11</sup> 2/1/2020
R18–2–301 .....	Definitions .....	2/1/2020
R18–2–302 .....	Applicability; Registration; Classes of Permits .....	3/21/2017
R18–2–302.01 .....	Source Registration Requirements .....	2/1/2020
R18–2–304 .....	Permit Application Processing Procedures .....	2/1/2020
R18–2–306 .....	Permit Contents .....	3/21/2017
R18–2–306.01 .....	Permits Containing Voluntarily Accepted Emission Limitations and Standards .....	3/21/2017
R18–2–317 .....	Facility Changes Allowed Without Permit Revisions—Class I .....	8/7/2012
R18–2–317.01 .....	Facility Changes that Require a Permit Revision—Class II .....	8/7/2012
R18–2–317.02 .....	Procedures for Certain Changes that Do Not Require a Permit Revision—Class II .....	8/7/2012
R18–2–319 .....	Minor Permit Revisions .....	3/21/2017
R18–2–320 .....	Significant Permit Revisions .....	3/21/2017
R18–2–334 .....	Minor New Source Review .....	2/1/2020
R18–2–406 .....	Permit Requirements for Sources Located in Attainment and Unclassifiable Areas .....	2/1/2020

TABLE 2—RULES TO BE REMOVED OR SUPERSEDED

Rule	Title	EPA approval date	Federal Register citation
R18–2–101 .....	Definitions .....	May 4, 2018 .....	83 FR 19631
R18–2–301 .....	Definitions .....	November 2, 2015 .....	80 FR 67319
R18–2–302 .....	Applicability; Registration; Classes of Permits .....	November 2, 2015 .....	80 FR 67319
R18–2–302.01 .....	Source Registration Requirements .....	November 2, 2015 .....	80 FR 67319
R18–2–304 .....	Permit Application Processing Procedures .....	November 2, 2015 .....	80 FR 67319
R18–2–306 .....	Permit Contents .....	November 2, 2015 .....	80 FR 67319
R18–2–306.01 .....	Permits Containing Voluntarily Accepted Emission Limitations and Standards .....	November 2, 2015 .....	80 FR 67319
R18–2–319 .....	Minor Permit Revisions .....	November 2, 2015 .....	80 FR 67319
R18–2–320 .....	Significant Permit Revisions .....	November 2, 2015 .....	80 FR 67319
R18–2–334 .....	Minor New Source Review .....	November 2, 2015 .....	80 FR 67319
R18–2–406 .....	Permit Requirements for Sources Located in Attainment and Unclassifiable Areas .....	May 4, 2018 .....	83 FR 19631
R9–3–217, paragraph A .....	Attainment Areas; Classification and Standards .....	April 23, 1982 .....	47 FR 17483

<sup>8</sup> The ADEQ’s January 14, 2020 submittal requested that specific paragraphs from certain revised rules be added to the Arizona SIP. The 2020 Minor NSR submittal clarified that the ADEQ requests that the entirety of each revised rule (with one exception) be included in the SIP, rather than only the selected paragraphs identified in the earlier submittal.

<sup>9</sup> The visibility FIPs are implemented at 40 CFR 52.27 for attainment areas and 40 CFR 52.28 for nonattainment areas.

<sup>10</sup> One older rule provision that we are removing from the Arizona SIP, listed in Table 2, was from the Arizona Administrative Code, Title 9, Chapter 3, Article 2.

<sup>11</sup> This rule contains a new provision stating that a particular revised subsection, R18–2–101(131)(f), will take effect on the effective date of the EPA Administrator’s action approving it as part of the Arizona SIP. Therefore, the revised version of R18–2–101(131)(f) would become effective on the effective date of our approval of the current submittal of R18–2–101.

## II. Public Comments and EPA Responses

The EPA's proposal provided for a 30-day public comment period. We received one set of comments from Arizona Center for Law in the Public Interest and the Center for Biological Diversity ("the commenters"). Below, we summarize the comments received and provide our responses. The full text of the comments is available in the docket for this action.

*Comment:* The commenters state that the ADEQ's minor NSR program is inadequate because it does not regulate ammonia and volatile organic compounds (VOCs) as PM<sub>2.5</sub> precursors. The commenters argue that the EPA's approval of the 2020 Minor NSR submittal will interfere with attainment of the PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) in areas under the ADEQ's jurisdiction that are designated nonattainment for PM<sub>2.5</sub>. The commenters argue that this also means that the submittal does not comply with CAA section 110(l) and Appendix V to 40 CFR part 51. Further, the commenters argue that the 2020 Minor NSR submittal is insufficient because it does not include a modeling demonstration that the regulation of VOCs or ammonia is unnecessary to ensure protection of the PM<sub>2.5</sub> NAAQS.

*Response:* As an initial matter, we note that the commenters' argument that the ADEQ's minor NSR program must regulate VOCs and ammonia as precursors to PM<sub>2.5</sub> in PM<sub>2.5</sub> nonattainment areas where the ADEQ has jurisdiction does not address the specific revisions to the ADEQ's minor NSR program that are the focus of the EPA's current action. As explained in section I of this **SUPPLEMENTARY INFORMATION** section, the EPA previously undertook an extensive review of the ADEQ's NSR program (minor NSR, PSD, and NNSR) in 2015 to ensure that the program met all Clean Air Act requirements. In our 2015 NSR action, we found that the ADEQ's updated program largely met Clean Air Act requirements, but we identified a number of specific deficiencies in our final action that needed to be corrected in order for ADEQ to gain full approval from the EPA. Most of the identified deficiencies were corrected and submitted to the EPA for approval in 2017 and were approved in our 2018 Major NSR action. We are currently acting on the ADEQ's 2019–20 NSR submittals that correct the remaining deficiencies that we identified as the bases for our final limited disapproval in our 2015 NSR action and that formed the basis for the conditional approval in

our 2018 Major NSR action. The EPA found in our 2015 NSR action that the ADEQ's minor NSR program met all the requirements for a minor NSR program in CAA section 110(a)(2)(C) and 40 CFR 51.160–51.164 with the exception of specific deficiencies that the ADEQ is now addressing with the 2020 Minor NSR submittal. In light of the recent and extensive review and approval by the EPA of the ADEQ's NSR program, we find that the commenters' concerns regarding PM<sub>2.5</sub> precursors in the ADEQ's minor NSR program are not germane to the deficiencies with the ADEQ's minor NSR program that we identified previously and that we are addressing in this action. Nevertheless, we will explain why we disagree with the commenters that the ADEQ's minor NSR program must regulate VOCs and ammonia as precursors to PM<sub>2.5</sub> in the areas where the ADEQ has permitting jurisdiction, and why we disagree that the EPA's approval of these revisions to the ADEQ's SIP-approved minor NSR program is inconsistent with CAA section 110(l) and Appendix V to 40 CFR part 51.

The commenters are concerned that this action will interfere with attainment of the PM<sub>2.5</sub> NAAQS in designated PM<sub>2.5</sub> nonattainment areas under the ADEQ's permitting jurisdiction because the ADEQ's minor NSR program and the 2020 Minor NSR submittal do not specifically regulate ammonia and VOC as precursors to PM<sub>2.5</sub> in the ADEQ's minor NSR program.<sup>12</sup> As a result, the commenters conclude, the 2020 Minor NSR submittal does not meet CAA section 110(l) and section 2.2(d) of Appendix V to 40 CFR part 51. To support their concerns, the commenters point generally to examples of operations that can emit ammonia and VOC, and imply that the method to demonstrate that this action complies with CAA section 110(l) and section 2.2(d) of Appendix V to 40 CFR part 51 is through a modeling demonstration that they assert is required by section 2.2(e) of Appendix V to 40 CFR part 51.

To evaluate the commenters' concerns, it is important to understand the requirements in the Act governing how permitting authorities must address precursors in NSR programs for nonattainment areas. Part D of title I of the Act contains specific requirements for the development of an NNSR program for *major* sources (and major modifications) in nonattainment areas.

<sup>12</sup> The ADEQ's SIP-approved minor NSR program expressly regulates oxides of nitrogen (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) as PM<sub>2.5</sub> precursors at R18–2–101(123).

Among other requirements, in a PM<sub>2.5</sub> nonattainment area, the NNSR program must apply to major sources of direct PM<sub>2.5</sub> emissions and to major sources of PM<sub>2.5</sub> precursors, unless the EPA determines that such precursor sources do not contribute significantly to PM<sub>2.5</sub> levels that exceed the standard in the nonattainment area. See CAA section 189(e). For purposes of the NNSR program, the EPA has identified NO<sub>x</sub>, SO<sub>2</sub>, VOCs, and ammonia as precursors to PM<sub>2.5</sub>. See 40 CFR 51.165(a)(1)(xxxvii)(C)(2). Our proposed action explained that we have determined that the ADEQ's NNSR program for PM<sub>2.5</sub> fully satisfies CAA section 189(e), and the commenters do not dispute this. The requirements of CAA section 189(e) do not, however, apply to NSR permitting under the minor NSR program.

The Act's requirements for minor NSR programs are far less prescriptive in general than those applicable for NSR programs regulating proposed new major sources and major modifications. CAA section 110(2)(a)(C), which governs minor NSR programs, requires the "regulation of the modification and construction of any stationary source within the areas covered by the plan as *necessary* to assure that national ambient air quality standards are achieved." (emphasis added) The EPA's implementing regulations for minor NSR programs require that such programs include legally enforceable procedures that enable the state to determine whether the construction or modification of sources will result in a violation of applicable portions of the control strategy or interference with attainment or maintenance of the NAAQS, and, if so, to prevent such construction or modification. See 40 CFR 51.160(a)–(b). States are not required to regulate the construction of all new or modified stationary sources under their minor NSR programs; rather, the procedures must identify the types and sizes of sources regulated under the state's minor NSR program, and the state's plan must discuss the basis for determining which sources will be subject to review. 40 CFR 51.160(e).<sup>13</sup> Thus, the Act provides considerable discretion for permitting authorities to develop minor NSR programs determined "necessary" to assure the NAAQS are achieved in their respective geographic areas. Consistent with CAA section 110(a)(2)(C) and the implementing regulations governing minor NSR programs at 40 CFR 51.160–

<sup>13</sup> The EPA's implementing regulations also include other largely procedural requirements for minor NSR programs at 40 CFR 51.160–51.164.

51.164, the EPA has determined, as explained in our proposal, that the ADEQ's program now meets the relevant requirements for a minor NSR program.

In response to the commenter's specific concerns here, we consider the two PM<sub>2.5</sub> nonattainment areas in Arizona—Nogales and West Central Pinal. Regarding the Nogales area, where the ADEQ has minor NSR permitting jurisdiction, the ADEQ's 2020 Minor NSR submittal explains that "[t]he Nogales PM<sub>2.5</sub> nonattainment area was found to have attained the 2006 24-hour PM<sub>2.5</sub> NAAQS in 2017."<sup>14</sup> Further, while the ADEQ's minor NSR program does not specifically regulate VOC as a PM<sub>2.5</sub> precursor, minor sources of VOC are, in fact, regulated by the ADEQ's minor NSR program at a source-wide permitting threshold of 20 tons per year. The 2020 Minor NSR submittal contains an analysis showing that this permitting threshold is expected to cover at least 86% of VOC emissions in areas subject to ADEQ permitting jurisdiction.<sup>15</sup> For the West Central Pinal PM<sub>2.5</sub> nonattainment area, the Pinal County Air Quality Control District, not the ADEQ, has primary permitting jurisdiction for minor sources. Accordingly, the ADEQ's minor NSR permitting program generally does not apply in the West Central Pinal PM<sub>2.5</sub> nonattainment area.<sup>16</sup>

Although the commenters mention certain types of operations that may emit ammonia and VOCs, the commenters do not provide information or explanation that demonstrates that the ADEQ's regulating those pollutants as precursors to PM<sub>2.5</sub> in the PM<sub>2.5</sub> nonattainment areas under the ADEQ's jurisdiction as part of the ADEQ's minor NSR program is necessary to achieve the PM<sub>2.5</sub> NAAQS in any such areas. As explained above, the only PM<sub>2.5</sub> nonattainment area where the ADEQ has primary jurisdiction for minor sources, the Nogales area, is already attaining the PM<sub>2.5</sub> NAAQS. Moreover, in addition to regulating direct PM<sub>2.5</sub> emissions, the ADEQ's minor NSR program regulates emissions of NO<sub>x</sub> and SO<sub>2</sub> as PM<sub>2.5</sub> precursors and regulates

VOC emissions in general. In light of the information described above, we find that the ADEQ's determination to not regulate sources of ammonia and VOCs as PM<sub>2.5</sub> precursors in its minor NSR program in the PM<sub>2.5</sub> nonattainment areas under its jurisdiction is reasonable and not necessary to ensure that the PM<sub>2.5</sub> NAAQS are achieved.

The commenters also indicate that the EPA's approval of the 2020 Minor NSR submittal conflicts with the requirement in CAA section 110(l) that the EPA "shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress. . . or any other applicable requirement of this chapter." Our December 23, 2020 proposed approval contained our analysis that our action met these requirements of CAA section 110(l): "We have determined that our action on the 2019–20 NSR submittals would, as described herein, strengthen the applicable SIP. This action is primarily intended to correct numerous deficiencies in the ADEQ's NSR program and provides other revisions to enhance and update the program. Accordingly, this action will not interfere with attainment and reasonable further progress, or any other applicable requirement."<sup>17</sup> The commenters did not address this analysis or explain how this action to correct deficiencies in the ADEQ's minor NSR program will interfere with any applicable requirement concerning attainment and reasonable further progress or any other CAA requirement in the PM<sub>2.5</sub> nonattainment areas under the ADEQ's jurisdiction that are of concern to the commenter. This action strengthens the overall SIP and does not relax any SIP requirements related to attaining the PM<sub>2.5</sub> NAAQS in Arizona.

The commenters make the related argument that the ADEQ's SIP revision does not satisfy section 2.2(d) of Appendix V to 40 CFR part 51 because it does not regulate VOCs and ammonia as precursors to PM<sub>2.5</sub> and therefore interferes with attainment of the PM<sub>2.5</sub> NAAQS in areas under ADEQ's jurisdiction that are designated nonattainment for PM<sub>2.5</sub>.<sup>18</sup> As described above, the 2019–20 SIP submittals contain sufficient information to

support our conclusion that the ADEQ's decision not to specifically regulate VOC and ammonia as PM<sub>2.5</sub> precursors for its minor NSR program is acceptable and will not interfere with attainment of the PM<sub>2.5</sub> NAAQS.

Lastly, in response to the commenter's argument that the ADEQ should have included a modeling demonstration relating to ammonia and VOC as PM<sub>2.5</sub> precursors to meet the requirements of section 2.2(e) of Appendix V to 40 CFR part 51, the commenters have not accurately characterized these requirements.<sup>19</sup> We do not interpret section 2.2(e) of Appendix V to require that every SIP submittal contain a modeling demonstration, as implied by the commenters. Instead, when a modeling demonstration is necessary and is therefore included in a submittal to support the SIP revision, then the submittal must also contain the underlying modeling information outlined in section 2.2(e). We find that section 2.2(e) of Appendix V is not applicable to the 2020 Minor NSR submittal because modeling was not used to support this SIP revision nor was a modeling demonstration required in this instance.

*Comment:* The commenters consider the ADEQ's minor NSR thresholds of one-half the "significant" emission rates (SERs) in the PSD program<sup>20</sup> to be arbitrary and unsupported by modeling or other evidence demonstrating protection of the NAAQS, in violation of CAA section 110(l) and sections 2.2(d) and (e) in Appendix V to 40 CFR part 51. The commenters argue that merely comparing the percentage of emissions regulated by the ADEQ's program to other programs does not address whether thresholds are "protective of the NAAQS". The commenters assert that the ADEQ misplaced focus on the contributions of current sources in nonattainment areas under its jurisdiction and whether those areas are now violating the NAAQS. Instead, the ADEQ should have focused on ensuring that *additional* sources (or new modifications of existing sources) do not jeopardize attainment or maintenance of the NAAQS in the future.

*Response:* We respectfully disagree with the commenters that the ADEQ has not provided an adequate rationale for

<sup>14</sup> 2020 Minor NSR submittal at 19; section 4.4.3.2. See also 82 FR 21711 (May 10, 2017) (EPA determination of attainment by the attainment date).

<sup>15</sup> 2020 Minor NSR submittal at 16; Table 4–2.

<sup>16</sup> We also note that the ADEQ's March 29, 2019 SIP revision related to ammonia as a PM<sub>2.5</sub> precursor provides results from a 2010 ADEQ study that determined the speciation of PM<sub>2.5</sub> emissions in the West Central Pinal nonattainment area. The study showed that 90% of PM<sub>2.5</sub> emissions in the West Central Pinal nonattainment area originate from direct PM<sub>2.5</sub> sources, and less than 10% from PM<sub>2.5</sub> precursors. March 29, 2019 SIP submittal at 11; Table 3–3.

<sup>17</sup> 85 FR 83868, 83876 (Dec. 23, 2020).

<sup>18</sup> The commenters reference the portion of section 2.2(d) that requires SIP submittals to "demonstrat[e] that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented." See 40 CFR part 51, Appendix V, section 2.2(d).

<sup>19</sup> Section 2.2(e) of Appendix V requires that a SIP submittal include the "[m]odeling information required to support the proposed revision, including input data, output data, models used, justification of model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis."

<sup>20</sup> See 40 CFR 51.166(b)(23)(i).



its permitting exemption thresholds for minor sources in nonattainment areas and minor sources of PM<sub>2.5</sub> in attainment areas under CAA section 110(l) and Appendix V to 40 CFR part 51.

First, we note that with the exception of the thresholds for PM<sub>2.5</sub> sources, in our 2015 NSR action, the EPA previously approved the ADEQ's permitting thresholds for minor NSR as they apply in attainment areas, and, accordingly, those thresholds were not changed as part of the 2020 Minor NSR submittal. The EPA's prior approval was based on the ADEQ's demonstration that the emissions from the sources and projects to be exempted from its minor NSR program under these thresholds were inconsequential to attainment or maintenance of the NAAQS.<sup>21</sup> However, in our 2015 NSR action, we also determined that the ADEQ had not provided a rationale for the PM<sub>2.5</sub> permitting exemption threshold, nor had it provided an adequate rationale for why the permitting exemption thresholds were appropriate for nonattainment areas.<sup>22</sup> In this action, we are considering only the 2020 Minor NSR submittal and the ADEQ's rationale for its permitting exemption thresholds as they apply to minor sources in *nonattainment* areas, and to minor sources of PM<sub>2.5</sub> in attainment areas.

The commenters specifically take issue with the ADEQ's comparing the percentage of emissions regulated by its NSR program to the percentage of emissions regulated by other NSR programs, and assert that the ADEQ's approach should focus more on future sources of emissions and ensuring that such sources do not jeopardize the NAAQS. As described below, the ADEQ's approach did not rest solely on comparing its permitting thresholds to other programs, and we find that the approach ensures that the ADEQ's minor NSR program reviews the necessary sources to ensure attainment and maintenance of the NAAQS.

Prior to 2012, the ADEQ's minor NSR program required permitting of non-major sources with potential emissions of a criteria pollutant at or above the SERs from the PSD program reflected in 40 CFR 51.166(b)(23)(i). To address concerns raised by the EPA regarding

these historic permitting thresholds, the ADEQ assessed other potential lower permitting thresholds for its minor NSR program and ultimately selected revised, lower thresholds. In 2012, the ADEQ chose to use a method similar to the method that the EPA used to develop permitting thresholds under its minor NSR program applicable in Indian country, known as the "Tribal Minor NSR rule."<sup>23</sup> To inform its selection of minor NSR permitting thresholds in developing the Tribal Minor NSR rule, the EPA conducted a source distribution analysis using data from the National Emissions Inventory. The EPA's analysis concluded that the percentage of *emissions* that would be exempt from minor NSR under the Tribal Minor NSR rule's thresholds would be small (less than 1.5% of total emissions for each pollutant), while the program's permitting thresholds would require only 14–58% of *stationary sources* (varying based on the individual pollutant) to obtain permits or register under the Tribal Minor NSR rule. The EPA's analysis determined that this approach provided "evidence that sources with emissions below the proposed minor NSR thresholds will be inconsequential to attainment and maintenance of the NAAQS."<sup>24</sup> We stated that the permitting thresholds for the minor NSR program applicable in Indian country are "not intended to establish a new set of minimum criteria that a Tribe or a state would need to follow in developing its own minor source permitting program."<sup>25</sup> Nevertheless, the approach taken by the EPA in developing the thresholds in the Tribal Minor NSR rule represents one approach that EPA has found to be appropriate in establishing such thresholds.

To assess potential thresholds for its minor NSR program, the ADEQ applied a similar approach to a local data set. During the stakeholder process, the ADEQ proposed two alternative scenarios for its revised minor NSR thresholds: One that generally used one half of the PSD SERs (Scenario 1) and one that generally used one quarter of the PSD SERs (Scenario 2). The ADEQ's analysis looked at the percentage of emissions that would be regulated at the two thresholds and concluded that "both scenarios result in a relatively large percentage of emissions being subject to regulation compared to the percentage of sources brought into the program." The results of the analysis showed that using Scenario 2 for the

minor NSR emission thresholds rather than Scenario 1 would result in significantly more coverage of carbon monoxide (CO) and SO<sub>2</sub> emissions under the ADEQ's minor NSR program. However, the ADEQ reasoned that stationary source emissions of CO are generally dwarfed by mobile source emissions and do not contribute significantly to nonattainment of the CO NAAQS. Also, the ADEQ reasoned that in the areas within Arizona that are subject to its minor NSR program, the sources that could contribute to noncompliance with the SO<sub>2</sub> NAAQS are well-defined and consist of large industrial sources already subject to the permitting program. The ADEQ concluded, based on the above considerations, that for purposes of minor NSR, use of the Scenario 2 thresholds would not offer any substantial benefits over Scenario 1, and set numerical exemption thresholds for the pollutants in its minor NSR program that equate to one half of the PSD SERs.<sup>26</sup>

In response to the EPA's determination in our 2015 NSR action that the ADEQ needed to justify the chosen permitting thresholds for PM<sub>2.5</sub> and to further justify the thresholds as they apply in nonattainment areas, in its 2020 Minor NSR submittal, the ADEQ continued to build on its prior analyses supporting the current permitting thresholds in its minor NSR program.<sup>27</sup> First, the ADEQ updated its prior source distribution analysis to use the National Emissions Inventory, the same data set that the EPA used for its analysis for the Tribal Minor NSR program, and to include PM<sub>2.5</sub> emissions. The analysis shows that the ADEQ's NSR program is expected to cover approximately 98% of PM<sub>2.5</sub> emissions in counties where the ADEQ has minor source permitting jurisdiction and approximately 96% of PM<sub>2.5</sub> emissions in PM<sub>2.5</sub> nonattainment areas where the ADEQ has minor source permitting jurisdiction. Further, the

<sup>26</sup> See Appendix A of the ADEQ's 2012 NSR SIP submittal at 1547–1549 for a detailed discussion of the ADEQ's approach and analysis. See also, the Technical Support Document for the EPA's Notice of Proposed Rulemaking, Revision to the Arizona State Implementation Plan for the Arizona Department of Environmental Quality, March 2015 ("EPA's 2015 TSD") at 22–25. The ADEQ's "permitting exemption thresholds" are found at R18–2–101(101). The thresholds are ton per year values set for various pollutants that determine when a permit or registration is required for new sources and when minor NSR review is triggered for modifications. If potential source-wide emissions from all regulated pollutants are below the permitting exemption thresholds, then the source is "exempt" from the ADEQ's permitting and registration program.

<sup>27</sup> See 2020 Minor NSR submittal at 14–20 for the full discussion.

<sup>21</sup> In reviewing the ADEQ's minor NSR program under 40 CFR 51.160(e), we considered it appropriate for the ADEQ to exclude emissions from its NSR program if such emissions would be "inconsequential to attainment or maintenance of the NAAQS." 80 FR 67319, 67325. This was the same standard that the EPA used in developing the permitting thresholds for its minor NSR program for Indian country. 76 FR 38748, 38758 (Jul. 1, 2011).

<sup>22</sup> Id.

<sup>23</sup> 76 FR 38748 (July 1, 2011).

<sup>24</sup> 71 FR 48695, 48701–48703 (Aug. 21, 2006).

<sup>25</sup> 76 FR 38748, 38754.

ADEQ considered the types of emission sources in each of the nonattainment areas where it has minor source permitting jurisdiction that contribute to nonattainment. For example, the Hayden and Miami SO<sub>2</sub> nonattainment areas are attributable to the copper smelters operating in each area, and the Nogales nonattainment area for particular matter with an aerodynamic diameter less than or equal to 10 microns (“PM<sub>10</sub>”) is attributable to paved road dust, construction, and residential wood burning. As we summarized in the TSD for our December 23, 2020 proposed action, “[t]his discussion shows that minor sources are not currently significant contributors to the nonattainment issues in these areas.”<sup>28</sup>

In consideration of the information summarized in this response, we disagree with the commenters that the ADEQ’s approach to revising its minor source permitting thresholds for PM<sub>2.5</sub> and in designated nonattainment areas where it has minor source permitting jurisdiction was arbitrary and unsupported. We find that the ADEQ has provided sufficient evidence that its NSR program will apply to the vast majority of emissions where the ADEQ has permitting jurisdiction, including in Arizona’s nonattainment areas, and including PM<sub>2.5</sub> emissions in attainment areas.<sup>29</sup> As a result, we conclude that those emissions exempted from the ADEQ’s NSR program under its minor NSR permitting exemption thresholds will be inconsequential to attainment and maintenance of the NAAQS.

While we agree with the commenters’ general proposition that the NSR program focuses on the review of new sources and modifications to existing sources, we disagree that this means that the rationale and analysis provided by the ADEQ to support its permitting exemption thresholds is inadequate. The commenters have not suggested or provided an alternative analysis that they believe would be appropriate to demonstrate the insufficiency of the minor NSR thresholds at issue, other than a generic reference to “modeling.” We find the ADEQ’s rationale persuasive and find that the ADEQ has demonstrated that the permitting thresholds it has established by

considering local conditions will capture the types and sizes of sources that are necessary for review to ensure such sources will not interfere with attainment and maintenance of the NAAQS in the areas where the ADEQ has minor NSR permitting jurisdiction.<sup>30</sup> Thus, the additional analysis and information provided by the ADEQ in the 2020 Minor NSR submittal is sufficient for demonstrating that the permitting thresholds for minor sources in nonattainment areas and minor sources of PM<sub>2.5</sub> in attainment areas meet the requirements of CAA section 110(l) and Appendix V to 40 CFR part 51<sup>31</sup> and will not interfere with attainment and maintenance of the NAAQS.

*Comment:* The commenters assert that the 2020 Minor NSR submittal fails to demonstrate under 40 CFR 51.160(e) that review of “agricultural equipment used in normal farm operations” under the ADEQ’s minor NSR program is not needed for the ADEQ’s program to meet federal NSR requirements for attainment and maintenance of the NAAQS or review for compliance with the control strategy. The commenters take issue with several aspects of the ADEQ’s rationale, that we discuss in detail below, and further conclude that this exemption violates CAA section 110(l) and sections 2.2(d) and (e) of Appendix V to 40 CFR part 51.

*Response:* As discussed below, we respectfully disagree with the commenters that the 2020 Minor NSR submittal does not demonstrate that the State’s exemption for “agricultural equipment used in normal farm operations” in its NSR program is approvable under 40 CFR 51.160(e). The ADEQ’s submittal demonstrates that regulation of these exempt sources under its minor NSR program 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. As the ADEQ has explained in

<sup>30</sup> The NSR program is only one aspect of the CAA requirements that must be implemented to ensure attainment and maintenance of the NAAQS. The NSR program is generally intended to allow for increases in emissions if it can be demonstrated that the increases will not interfere with attainment. Among other CAA programs, the comprehensive set of requirements found in CAA title I, part D are designed to ensure that State and local authorities with jurisdiction over nonattainment areas require the necessary reductions to reach attainment.

<sup>31</sup> As explained above, the commenters do not accurately characterize the SIP submittal completeness criteria in Section 2.2(e) of Appendix V to 40 CFR part 51 as it relates to modeling. We find that section 2.2(e) is not applicable to the 2020 Minor NSR submittal because it did not contain modeling to support the SIP revision, nor is modeling required in this instance.

detail, this exemption could potentially apply only to a very narrow group of minor sources that would not otherwise be exempt from minor NSR review under exemptions already approved by the EPA in our 2015 NSR action. Further, the ADEQ retains authority to require a permit even for the sources that will fit within this exemption if it determines that doing so is necessary to protect the NAAQS or enforcement of the control strategy. For these reasons, we also disagree that the exemption violates CAA section 110(l) and section 2.2(d) of Appendix V to 40 CFR part 51.<sup>32</sup>

The State of Arizona exempts “agricultural equipment used in normal farm operations” from the general requirement to obtain an air permit.<sup>33</sup> The ADEQ’s permitting regulations implement this exemption by exempting “agricultural equipment used in normal farm operations” from the requirement to obtain a registration or permit at R18–2–302(C). R18–2–302(C) makes clear that this exemption does not apply if the source is a “major source” or if “operation without a permit would result in a violation of the [Clean Air] Act.” R18–2–302(C)(2) also clarifies that “agricultural equipment used in normal farm operations” does not include equipment classified as a source that requires a permit under title V of the Act or that is subject to a standard under 40 CFR parts 60, 61, or 63.

We identified this exemption as one of the bases for our limited disapproval of the ADEQ’s 2012 NSR SIP submittal in our 2015 NSR action because the submittal did not adequately justify the exemption as required by 40 CFR 51.160(e),<sup>34</sup> and it was unclear how the

<sup>32</sup> As noted previously, the commenters do not accurately characterize section 2.2(e) of Appendix V, which requires that SIP submittals include certain information that supports modeling when modeling is otherwise required to be conducted for a SIP revision. The CAA does not require all SIP submittals to contain modeling, and modeling was not included in or required to support the 2020 Minor NSR submittal. Therefore, we continue to find that section 2.2(e) of Appendix V is not applicable to the 2020 Minor NSR submittal in general, nor does it apply specifically to the ADEQ’s demonstration supporting the exemption of agricultural equipment used in normal farm operations.

<sup>33</sup> See ARS 49–426(B), which states, in part, in reference to the State law requirements for obtaining air permits: “The provisions of this section shall not apply to motor vehicles, to agricultural vehicles or agricultural equipment used in normal farm operations, or to fuel burning equipment which, at a location or property other than a one or two family residence, is rated at less than one million British thermal units per hour.” (emphasis added)

<sup>34</sup> See 40 CFR 51.160(e): “The procedures must identify types and sizes of facilities, buildings, structures, or installations which will be subject to

<sup>28</sup> Technical Support Document for EPA’s Notice of Proposed Rulemaking: Air Plan Approval; Arizona; Stationary Sources; New Source Review Updates, November 2020 (“EPA’s 2020 TSD”) at 15.

<sup>29</sup> The ADEQ’s program requires permitting or registration for new and existing sources. While a NAAQS review is generally only triggered for new sources or modifications, the ADEQ’s permitting of existing sources provides additional protection that such sources are also complying with all other applicable CAA requirements.

exemption in state law applied in the context of the ADEQ's NSR program.<sup>35</sup> In response to this limited disapproval, the ADEQ provided a detailed discussion of the exemption in the 2020 Minor NSR submittal. As summarized below, the ADEQ's 2020 Minor NSR submittal demonstrates that the exemption is only available to a limited set of minor sources not otherwise exempt under exemptions we have already approved into the Arizona SIP as part of the ADEQ's NSR program, and the program's potential exemption of such sources would be inconsequential to attainment and maintenance of the NAAQS.

First, the 2020 Minor NSR submittal clarified that the exemption at R18–2–302(C) represents the ADEQ's interpretation of the agricultural exemption in Arizona Revised Statutes (ARS) section 49–426(B):

This rule represents ADEQ's official implementation and interpretation of the statutory exemption under its rulemaking authority in ARS §§ 49–425 and 49–426(B). The rule has been recognized as valid by the Arizona Attorney General in its opinion supporting the state's Title V program in 1993.<sup>36</sup> In approving Arizona's Title V program in 1996, EPA deferred to this opinion but stated that it would revisit this issue if "a successful legal challenge to [the regulatory exemption] occurs."<sup>37</sup> In the subsequent 23 years, there has been no such challenge.

Section 4.2.1 of the 2020 Minor NSR submittal at 10.

Second, the ADEQ confirmed that the ADEQ interprets its permitting requirements such that its permitting determinations (including for the registration program component of its minor NSR program) are made on a source-wide basis. As a result, if "agricultural equipment used in normal farm operations" is located at the same stationary source as equipment that requires a permit, then the ADEQ's permit requirements, and potentially NSR, extend to the entire source and all of its pollutant-generating activities, including any equipment that might otherwise meet the definition of "agricultural equipment used in normal farm operations". These two clarifications mean that the agricultural equipment exemption is potentially available only to a subset of minor sources. See section 4.2.2 of the 2020 Minor NSR submittal at 10–11.

review under this section. The plan must discuss the basis for determining which facilities will be subject to review."

<sup>35</sup> See section 5.2.2.3 of the EPA's 2015 TSD at 26–27 and 80 FR 67319, 67323.

<sup>36</sup> Attorney General's Opinion, 2 (Nov. 15, 1993), Appendix D of the 2020 Minor NSR submittal.

<sup>37</sup> 61 FR 55910, 55915 (Oct. 30, 1996).

While the term "normal farm operations" is not specifically defined by statute or rule, the ADEQ stated that the State of Arizona's Agricultural Best Management Practices (Ag BMP) program for commercial farming operations in PM<sub>10</sub> nonattainment areas provides guidance on the State's interpretation of the types of activities that constitute normal farm operations. This includes activities such as tillage, planting, and harvesting; areas of a commercial farm that are not normally in crop production (*i.e.*, fallow); areas of a commercial farm that are normally in crop production; significant agricultural earthmoving activities; traffic over unpaved access connections or unpaved roads or feed lanes; animal waste handling and transporting; arenas, corrals, and pens; and canals. The ADEQ stated that it interprets the normal farm operations exemption as applicable to the types of equipment used for these activities and to crop and feed processing equipment that produces only fugitive emissions. In the ADEQ's experience, farm emissions tend to consist almost exclusively of fugitive dust generated by the disturbance of soils. It is important to note that the ADEQ's current SIP-approved NSR program already exempts fugitive emissions,<sup>38</sup> at R18–2–302(F), in determining whether a stationary source is subject to minor NSR permitting requirements. See sections 4.2.3 and 4.2.4 of the 2020 Minor NSR submittal at 11–12.<sup>39</sup> As a result, most of the sources that would meet the definition of "agricultural equipment used in normal farm operations" would be sources of fugitive emissions that are already exempt from minor NSR under the ADEQ's SIP-approved minor NSR program.

The ADEQ also recognized that it is possible for equipment used in normal farm operations to be a part of a stationary source that produces stack (*i.e.*, non-fugitive) emissions greater than the ADEQ's permitting exemption thresholds, and it may also be possible for normal farm operations themselves to be configured in such a way as to produce stack emissions. However, the ADEQ believes that, in most cases, such a stationary source would not qualify for the permitting exemption because equipment used in normal farm operations "does not include equipment classified as a source that requires a

<sup>38</sup> Fugitive emissions are defined in the ADEQ's SIP-approved regulations at R18–2–101(59) as "those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening." See section 4.2 of the 2020 Minor NSR submittal at 9, n.14.

<sup>39</sup> See also 80 FR 67319, 67320, Table 1.

permit under Title V of the Act, or that is subject to a standard under 40 CFR 60, 61, or 63." Because the ADEQ determines permit applicability on a source-wide basis, if a stationary source that engaged in normal farm operations qualified as a CAA title V source or included equipment subject to a New Source Performance Standard (NSPS) or National Emission Standard for Hazardous Air Pollutants (NESHAP) in 40 CFR parts 60, 61, or 63, then the entire source would require a permit, and potentially be subject to minor NSR if its emissions were above the ADEQ's minor NSR permitting exemption thresholds. In the ADEQ's experience, most permitted sources include one or more pieces of equipment subject to an NSPS, such as a boiler, stationary engine, or fuel storage tank. The ADEQ concluded that it is likely that if equipment used in normal farm operations were collocated with equipment with stack emissions exceeding the permitting exemption thresholds, at least some of that equipment would be subject to an NSPS, and therefore the normal farm operations exemption would not apply. See section 4.2.5 of the 2020 Minor NSR submittal at 12–13.

Finally, the ADEQ explained that under R18–2–302(C), equipment used in normal farm operations is not exempt if "operation [of the equipment] without a permit would result in a violation of the Act," which provides a final safeguard for its NSR program. In a situation where agricultural equipment used in normal farm operations with stack emissions above the permitting exemption thresholds used the exemption to avoid permitting, the ADEQ would invoke this provision as necessary to ensure that any such source does not endanger attainment or maintenance of the NAAQS or enforcement of the control strategy. The ADEQ explained that whenever it becomes aware of such a source through citizen complaint, inspection of the facility under the Ag BMP program, inspection of a nearby or related facility, notice from a building permit agency, or other means, the ADEQ will evaluate the facility using the methodology in R18–2–302.01(C) to determine whether it should be subject to permitting and minor NSR. See section 4.2.5 of the 2020 Minor NSR submittal at 13.

In our proposed action, we found that the ADEQ had demonstrated that its exemption for agricultural equipment used in normal farm operations is extremely limited in scope, and the potential sources exempted from permitting would be inconsequential to attainment and maintenance of the

NAAQS. We stated that our determination was based on the ADEQ's interpretation of the narrow manner in which the exemption applies, the limited types of operations that are considered to be "normal farm operations," and the ADEQ's retention of authority to address any potentially exempt sources that may endanger attainment or maintenance of the NAAQS or enforcement of the control strategy. We agreed that the vast majority of these operations are likely already exempted from the ADEQ's SIP-approved minor NSR program under the general exemption for excluding fugitive emissions in permitting applicability determinations. We concluded that the ADEQ's basis and explanation for the exemption from minor NSR review for agricultural equipment used in normal farm operations was acceptable.<sup>40</sup>

The commenters question certain aspects of the ADEQ's explanation and the EPA's rationale for approving the agricultural exemption as described above. First, the commenters disagree with the ADEQ's explanation of the permit exemption not being applicable to sources that are subject to a standard under 40 CFR parts 60, 61, or 63 or that are title V sources. The commenters do not see how this interpretation, which they say results in a "blanket" exemption for minor sources from permitting, is protective of the NAAQS. In response, this explanation simply clarifies the scope of the exemption by confirming that major sources and sources subject to a standard under 40 CFR parts 60, 61, or 63 cannot use the exemption. We disagree with the commenters that this interpretation by the ADEQ results in a "blanket" exemption for minor sources. Among other things, we note that sources that are subject to a standard under 40 CFR parts 60, 61, or 63 are often minor sources. The ADEQ has clarified that if any aspect of a stationary source is subject to one of these federal standards, then the entire stationary source, including any "agricultural equipment used in normal farm operations," becomes subject to the ADEQ's permitting program.<sup>41</sup>

<sup>40</sup> 85 FR 83868, 83873.

<sup>41</sup> The commenters also state that "the fact that no one has challenged [R18-2-302(C)] does not mean a challenge could not occur in the future." This concern appears to address the ADEQ's reference to the fact that the Arizona Attorney General issued an opinion recognizing the validity of this exemption in support of the State's Title V program in 1993. See section 4.2.1 of the 2020 Minor NSR submittal at 10. As the ADEQ explained, the EPA stated in 1996 that it would defer to this opinion of the Arizona Attorney General in the absence of a successful legal challenge to the regulation. The commenters did

Second, the commenters take issue with the ADEQ's explanation that it expects the overwhelming majority of emissions from "agricultural equipment used in normal farm operations" to be fugitive emissions. The commenters assert that the fact that most of these exempted emissions are expected to be fugitive does not explain how the exemption is protective of the NAAQS. In response, it is important to understand the context for this explanation from the ADEQ. In our 2015 NSR action, as part of our limited approval and limited disapproval of the ADEQ's NSR program, the EPA approved of the ADEQ minor NSR program's treatment of fugitive emissions in determining when a permit is required. The ADEQ's minor NSR program requires fugitive emissions to be included in permit applicability determinations for certain industrial source categories listed in R18-2-101(23), such as Portland cement plants, primary lead smelters, primary copper smelters, and fossil-fuel-fired steam electric plants; and for sources which, as of August 7, 1980, were being regulated under section 111 or 112 of the Act. Fugitive emissions are not included in permit applicability determinations for any other minor sources; however, fugitive emissions are reviewed in minor NSR permit actions for any source triggering review because of non-fugitive emissions. See R18-2-101(12), R18-2-101(128), and R18-2-302(F). In our 2015 NSR action, we approved the ADEQ's minor NSR program under 40 CFR 51.160(e), including its treatment of sources of fugitive emissions, with the exception of the specific limited disapproval issues that we identified and that the ADEQ is addressing in the 2020 Minor NSR submittal. See section 5.2.2.3 of the EPA's 2015 TSD at 26-27; 80 FR 67319, 67323, 67332. In its 2020 Minor NSR submittal, the ADEQ is clarifying that the overwhelming majority of sources that could potentially use the agricultural equipment permit exemption are fugitive emissions sources that the EPA already approved for exemption from determining whether a permit is required, in our 2015 action. As a result, the agricultural equipment exemption does not create an additional large category of sources exempt from minor NSR permitting.

The commenters, however, further argue that fugitive dust emissions from agricultural equipment are primarily addressed through the State's Ag BMP program, and that "experience with the

not otherwise explain how this concern affects the approvability of the 2020 Minor NSR submittal.

Ag BMP program in both Maricopa County and Pinal County has demonstrated that it is wholly inadequate to ensure compliance with the PM<sub>10</sub> NAAQS." The commenters are concerned that the two PM<sub>10</sub> nonattainment areas in Maricopa and Pinal counties continue to violate the NAAQS despite the adoption of the Ag BMP program. The commenters point to recent exceedances of the PM<sub>10</sub> NAAQS in the Phoenix planning area (which covers portions of Maricopa and Pinal counties) and the fact that the West Pinal nonattainment area did not attain the PM<sub>10</sub> standard by the attainment date and was recently reclassified to serious nonattainment for PM<sub>10</sub>. While the nonattainment issues in these areas are concerning, it is important to recognize that the Maricopa County Air Quality Department and Pinal County Air Quality Control District, rather than the ADEQ, have original jurisdiction for permitting minor sources in these areas of Arizona,<sup>42</sup> thus the ADEQ's minor NSR program would generally be inapplicable in these areas. Given that the ADEQ's minor NSR program does not generally extend to sources in the Phoenix and West Pinal PM<sub>10</sub> nonattainment areas, the commenters' concerns about the use of the Ag BMP program to address fugitive dust in the Phoenix and West Pinal PM<sub>10</sub> nonattainment areas do not indicate that the ADEQ's regulation of exempt agricultural equipment used in normal farm operations in other areas that are within the ADEQ's minor NSR permitting jurisdiction is necessary for attainment and maintenance of the NAAQS.<sup>43</sup>

Third, the commenters question the ADEQ's statement that "[i]n the overwhelming majority of the remaining cases, equipment used in normal farm operations will be located at a stationary source that either qualifies as a title V source or includes equipment subject to a new source performance standard (NSPS)". The commenters believe that the ADEQ has not supported this claim. The commenters are also concerned because they claim that the NSPS standards do not apply during periods of startup, shutdown, and malfunction, while the NAAQS apply at all times. We disagree that the ADEQ did not support this claim. Section 4.2.5 of the 2020 Minor NSR submittal provides the

<sup>42</sup> See the ADEQ's July 2, 2014 supplement to the 2012 NSR SIP submittal at 8-9.

<sup>43</sup> We note that the commenters' general concerns about the sufficiency of the Arizona Ag BMP program in the Phoenix and West Pinal PM<sub>10</sub> nonattainment areas are outside the scope of this action on revisions to the ADEQ's minor NSR program.

ADEQ's rationale.<sup>44</sup> For example, the submittal explains that, in the ADEQ's experience, most permitted sources include one or more pieces of equipment subject to an NSPS, such as boilers, stationary engines, or fuel storage tanks. The ADEQ clarified that a stationary source subject to such a standard could not make use of the agricultural equipment exemption.

The ADEQ's submittal further explains that under section 111 of the Clean Air Act, EPA is required to maintain a list of, and adopt NSPS for, all categories of sources that cause or significantly contribute to "air pollution which may reasonably be anticipated to endanger public health or welfare." The ADEQ notes that, consistent with the breadth of this charge, the EPA has adopted standards for dozens of common sources of criteria pollutants, criteria pollutant precursors, greenhouse gases, and other pollutants. The ADEQ reasons that it is therefore likely that if equipment used in normal farm operations were collocated with equipment with stack emissions exceeding the permitting exemption thresholds, at least some of that equipment would be subject to an NSPS, and the exemption would not apply.<sup>45</sup>

We believe the ADEQ's explanation to be sufficiently supported based on the ADEQ's knowledge and experience with the pollutant-generating activities it oversees.<sup>46</sup>

Finally, the commenters challenge the ADEQ's statement that "[i]n the few, if any, cases where equipment used in normal farm operations is located at a non-title V source that has stack emissions above the permitting exemption thresholds but does not include NSPS or NESHAP equipment, ADEQ retains the authority to require a

permit to the extent necessary to assure protection of the NAAQS and the control strategy."<sup>47</sup> The commenters express concern because they are unclear on how the ADEQ would know that a permit is needed or that there is a potential NAAQS issue if sources aren't required to submit applications for review. We understand the commenters' concern on this issue, because the NSR program is intended to require review of sources prior to construction or modification to ensure that sources and modifications are constructed in a manner that will not cause or contribute to a NAAQS violation. However, our approval of the ADEQ's agricultural equipment exemption under 40 CFR 51.160(e) is based on the totality of the information presented by the ADEQ in the 2020 Minor NSR submittal. The ADEQ has demonstrated that the exemption creates a narrow category of sources that may be exempt from minor NSR review, as compared to the program we have already approved. However, in the potential instances where a stationary source is otherwise not required to obtain a permit in advance, the ADEQ has clarified that it has the authority to later require a permit and limit operations to protect the NAAQS. That is, minor sources defined as agricultural equipment used in normal farm operations cannot operate in a manner that would interfere with attainment and maintenance of the NAAQS by relying on the permitting exemption in State law.

In sum, the ADEQ has provided a detailed and well-supported rationale for its exemption of "agricultural equipment used in normal farm operations" from its minor NSR program, and demonstrated that any potentially exempted sources are inconsequential to attainment and maintenance of the NAAQS. Further, because the exemption will not interfere with the NAAQS, it is consistent with CAA section 110(l) and section 2.2(d) of Appendix V to 40 CFR part 51.

*Comment:* The commenters state that the ADEQ failed to justify the exemption for certain small stationary fuel burning equipment rated at less than one million British thermal units per hour (MMBtu/hr) found in Arizona state law. The commenters are concerned that the ADEQ's rationale does not justify the exemption or ensure protection of the NAAQS, as the ADEQ did not present modeling or other evidence in support of the exemption or to support that this equipment would not otherwise require a permit.

*Response:* We disagree with the commenters that the ADEQ has not adequately justified the Arizona state law exemption for small fuel burning equipment (those rated at less than 1 MMBtu/hr) in ARS section 49-426(B) within the context of its NSR program. The ADEQ's 2020 Minor NSR submittal provides an analysis of the state law exemption because the EPA identified it as a limited disapproval issue in our 2015 NSR action. In our 2015 NSR action, we found that the ADEQ's 2012 NSR submittal did not describe how the state law exemption for small fuel burning equipment applied in the context of its NSR program. Further, to the extent the ADEQ's NSR program exempts some sources from minor NSR review under the state law exemption, we found that the ADEQ needed to provide an adequate justification under 40 CFR 51.160(e).<sup>48</sup>

In the 2020 Minor NSR submittal, the ADEQ confirmed that it interprets the exemption as (1) being available only to those stationary sources that consists "solely of equipment with a cumulative heat input rate" of less than 1 MMBtu/hr, and (2) having already been effectively SIP-approved by the EPA because all such equipment falls under the ADEQ's existing SIP-approved exemption for "categorically exempt activities" at R18-2-302(C)(1) and R18-2-101(23).<sup>49</sup>

As explained by the ADEQ in the 2020 Minor NSR submittal, the EPA reviewed the ADEQ's permitting and registration exemption for "categorically exempt activities" in our 2015 NSR action. R18-2-302(C) provides that a stationary source that consists solely of a single "categorically exempt activity" plus any combination of trivial activities<sup>50</sup> does not require a permit or registration, unless the source is a major source or operation without a permit would result in a violation of the Act. The ADEQ defines a "categorically exempt activity" at R18-2-101(24) and it includes various categories of smaller fuel-burning equipment. For example, one category is "any combination of diesel-, natural gas- or gasoline-fired engines with cumulative power equal to or less than 145 horsepower" and another is "any combination of boilers with a cumulative maximum design heat input capacity of less than 10 million Btu/hr." The ADEQ explained in its 2012 NSR SIP submittal how the cumulative heat input or power rating

<sup>44</sup> 2020 Minor NSR submittal at 12-13.

<sup>45</sup> Section 4.2.5 of the 2020 Minor NSR submittal at 12; see also the detailed discussion in section 4.2.5 of the 2020 Minor NSR submittal at 12-13.

<sup>46</sup> On the issue of the NSPS standards not applying during periods of startup, shutdown, or malfunction (we disagree with this broad categorization), while the NAAQS do, we believe the commenters misunderstand how the ADEQ's permitting program works and how the normal farm operations exemption would apply to a source that includes equipment subject to an NSPS. The ADEQ does not allow stationary sources to use the agricultural equipment exemption to avoid NSR review if the stationary source is also subject to a standard under 40 CFR parts 60, 61, or 63. This means that the entire stationary source becomes subject to the ADEQ's permitting program, including potential NAAQS reviews for new or modified sources, if even a single piece of equipment is subject to an NSPS. The way the various NSPS apply in general during periods of startup, shutdown, or malfunction is not germane to the scope of the normal farm operations exemption.

<sup>47</sup> 2020 Minor NSR submittal at 9.

<sup>48</sup> See section 5.2.2.3 of the EPA's 2015 TSD at 26-27; 80 FR 67319, 67323.

<sup>49</sup> See section 4.3 of the 2020 Minor NSR submittal at 13-14.

<sup>50</sup> Trivial activities under the ADEQ's permitting program are defined R18-2-101(146).

for each category of equipment was determined by estimating the worst-case potential emissions for the category and ensuring that such emissions would be below the ADEQ's permitting exemption thresholds.<sup>51</sup> With this clarification, we approved of the "categorically exempt activities" in the 2015 NSR action.<sup>52</sup> To illustrate this concept, the 2020 Minor NSR submittal also contains a sample calculation for a boiler burning No. 6 fuel oil with a heat input rating of 10 MMBtu/hr. The sample calculation shows that potential emissions of NO<sub>x</sub> from such equipment would be 16.1 tons per year and below the ADEQ's 20 tpy minor NSR permitting exemption threshold for NO<sub>x</sub>. Accordingly, the smaller fuel-burning equipment, rated less than 1 MMBtu/hr, that is exempt under ARS section 49–426(B) would have emissions well below the ADEQ's approved permitting exemption thresholds, and therefore would not otherwise require a permit or registration under the ADEQ's program. The ADEQ explains that the purpose of the exemption for categorically exempt activities is to allow such low-emitting small fuel-burning installations, which would not in any case require a permit, to avoid having to perform unnecessary emissions calculations.<sup>53</sup>

Given the rationale provided by the ADEQ, and our prior review and approval under 40 CFR 51.160(e) of the ADEQ's exemption of "categorically exempt activities" under its minor NSR program, we disagree with the commenters that the ADEQ has not adequately justified the state law exemption.<sup>54</sup> The ADEQ has demonstrated that fuel burning equipment rated less than 1 MMBtu/hr is equipment that falls within the existing SIP-approved category of "categorically exempt activities," and also that it is equipment that would otherwise not require a permit or registration compared to the ADEQ's approved<sup>55</sup> permitting thresholds. In sum, the state law exemption for small fueling burning equipment has previously been determined by the EPA

to be inconsequential to attainment and maintenance of the NAAQS, and the commenters have not provided information demonstrating why they believe this exemption is not protective of the NAAQS, or otherwise provided information that calls into question our previous approval of the ADEQ's exemption for categorically exempt activities under 40 CFR 51.160(e).

*Comment:* The ADEQ states that its NSR program applies to the areas of the State where the ADEQ has permitting jurisdiction (all counties in Arizona other than Maricopa, Pima, and Pinal, except where the ADEQ asserts jurisdiction). The commenters state that the ADEQ should explain whether the minor NSR programs in Maricopa, Pima, and Pinal counties are SIP-approved and meet all CAA requirements. To the extent they do not, the ADEQ should fix any deficiencies with the 2020 Minor NSR submittal.

*Response:* As the commenters note, the 2020 Minor NSR submittal, and the requirements therein relating to the ADEQ's minor NSR permitting program, are applicable only to those portions of the Arizona SIP where the ADEQ has minor NSR permitting jurisdiction. The EPA reviewed the ADEQ's submitted SIP revision and determined that it complies with all relevant CAA requirements for approval into the Arizona SIP. In addition, this revision will correct several outstanding deficiencies in the ADEQ's minor NSR program that were previously identified by the EPA. The commenters' questions about the sufficiency of the minor NSR permitting programs for other areas and sources within Arizona that are within the jurisdiction of Maricopa, Pima, and Pinal counties, and which are not covered by ADEQ's minor NSR program, are not germane to the EPA's current SIP action on the 2020 Minor NSR submittal. The CAA does not require that the ADEQ (or the EPA) address all components of the minor NSR program implemented by all permitting authorities in Arizona in any particular SIP action.

### III. EPA Action

No comments changed our assessment of our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving the ADEQ's 2019–20 NSR submittals, specifically including the 2020 Minor NSR submittal and the Ammonia PM<sub>2.5</sub> NSR submittal. We find that the ADEQ has corrected all remaining deficiencies identified as the bases for our final limited disapproval of the ADEQ's NSR program in our 2015 NSR action and the basis for our conditional approval of the

ADEQ's NNSR program in our 2018 Major NSR action. Thus, the issues that formed the basis for our final limited disapproval in 2015 of the ADEQ's minor NSR, PSD, and NNSR programs and our conditional approval in 2018 of the ADEQ's NNSR program are now fully resolved. Our final action updates the ADEQ's SIP-approved program, corrects previously identified deficiencies, and recognizes that the ADEQ's NSR program also satisfies the CAA visibility requirements in 40 CFR 51.307. Additionally, the sanctions and sanctions clocks triggered by our 2016 PM<sub>2.5</sub> precursor action for the West Pinal and Nogales PM<sub>2.5</sub> nonattainment areas will be permanently terminated on the effective date of this final approval action.

This action approves the rules listed in Table 1 of this notice into the ADEQ portion of the Arizona SIP and removes or supersedes the rules listed in Table 2 of this notice from the ADEQ portion of the Arizona SIP. We are also revising 40 CFR 52.119 to remove the conditional approval of the State's plan related to ammonia as a PM<sub>2.5</sub> precursor, as we are now fully approving this component of the State's plan. Finally, in conjunction with the EPA's SIP approval of the ADEQ's visibility program for sources subject to the ADEQ's PSD and NNSR programs, we are revising 40 CFR 52.145(b) to remove the visibility FIP at 40 CFR 52.27, as well as the visibility FIP at 40 CFR 52.28 for those stationary sources subject to the ADEQ's permitting jurisdiction, as these FIPs are no longer applicable.

### IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the ADEQ rules described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>56</sup> The EPA has made, and will continue to make, these documents available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER**

<sup>51</sup> See Appendix A to the 2012 NSR SIP submittal at 1570 and 1571.

<sup>52</sup> EPA's 2015 TSD at 25.

<sup>53</sup> Section 4.3 of 2020 Minor NSR submittal at 13–14.

<sup>54</sup> The commenters specifically identified "modeling" as an example of the type of evidence to support this exemption. Modeling was not required to make this demonstration.

<sup>55</sup> In our 2015 NSR action, we approved of the ADEQ's "permitting exemption thresholds" for each regulated pollutant, except PM<sub>2.5</sub>, and our approval of the thresholds was limited to their application in attainment areas. With today's action, we are now also approving the thresholds as they apply to PM<sub>2.5</sub> and nonattainment areas.

<sup>56</sup> 62 FR 27968 (May 22, 1997).

**INFORMATION CONTACT** section of this preamble for more information).

Also in this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions from the EPA-approved rules for the ADEQ portion of the Arizona SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

**V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
  - Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 8, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

Accordingly, EPA amends Part 52, Chapter I, Title 40 of the Code of Federal Regulations as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

- 1. The authority citation for part 52 continues to read as follows:

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

**Subpart D—Arizona**

**§ 52.119 [Amended]**

- 2. In § 52.119, remove and reserve paragraph (a).
- 3. In § 52.120, paragraph (c), Table 2 is amended:
  - a. Under the heading “Title 9, Chapter 3”, by removing the center heading “Article 2” and the entry for “R9–3–217, paragraph A”;
  - b. Under the heading “Title 18, Chapter 2, Article 1 (General)”, by revising the entry for “R18–2–101 (except 20)”;
  - c. Under heading “Title 18, Chapter 2, Article 3 (Permits and Permit Revisions)”, by:
    - i. Revising the entries for “R18–2–301,” “R18–2–302,” “R18–2–302.01,” “R18–2–304,” “R18–2–306,” “R18–2–306.01”;
    - ii. Adding, in numerical order, entries for “R18–2–317,” “R18–2–317.01,” and “R18–2–317.02”; and
    - iii. Revising the entries for “R18–2–319,” “R18–2–320,” and “R18–2–334”; and
  - d. Under the heading “Title 18, Chapter 2, Article 4 (Permit Requirements for New Major Sources and Major Modifications to Existing Major Sources)”, by revising the entry for “R18–2–406.”

The additions and revisions read as follows:

**§ 52.120 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

TABLE 2—EPA-APPROVED ARIZONA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
<b>Article 1 (General)</b>				
R18–2–101 (except 20).	Definitions .....	February 1, 2020 ...	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.

TABLE 2—EPA-APPROVED ARIZONA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
<b>Article 3 (Permits and Permit Revisions)</b>				
R18-2-301	Definitions	February 1, 2020	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
R18-2-302	Applicability; Registration; Classes of Permits.	March 21, 2017	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
R18-2-302.01	Source Registration Requirements	February 1, 2020	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
*	*	*	*	*
R18-2-304	Permit Application Processing Procedures.	February 1, 2020	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
R18-2-306	Permit Contents	March 21, 2017	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
R18-2-306.01	Permits Containing Voluntarily Accepted Emission Limitations and Standards.	March 21, 2017	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
*	*	*	*	*
R18-2-317	Facility Changes Allowed Without Permit Revisions—Class I.	August 7, 2012	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
R18-2-317.01	Facility Changes that Require a Permit Revision—Class II.	August 7, 2012	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
R18-2-317.02	Procedures for Certain Changes that Do Not Require a Permit Revision—Class II.	August 7, 2012	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
R18-2-319	Minor Permit Revisions	March 21, 2017	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
R18-2-320	Significant Permit Revisions	March 21, 2017	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
*	*	*	*	*
R18-2-334	Minor New Source Review	February 1, 2020	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
<b>Article 4 (Permit Requirements for New Major Sources and Major Modifications to Existing Major Sources)</b>				
*	*	*	*	*
R18-2-406	Permit Requirements for Sources Located in Attainment and Unclassifiable Areas.	February 1, 2020	[INSERT Federal Register CITATION], June 16, 2021.	Submitted on July 22, 2020.
*	*	*	*	*

\* \* \* \* \*

■ 4. In § 52.145, revise paragraph (b) to read as follows:

**§ 52.145 Visibility protection.**

\* \* \* \* \*

(b) *Regulations for visibility new source review.* The provisions of § 52.28 are hereby incorporated and made part of the applicable plan for the State of Arizona only for those stationary sources under the permitting jurisdiction of the Pima County Department of Environmental Quality or the Maricopa County Air Quality Department. The provisions of § 52.28 also remain the applicable plan for any Indian reservation lands, and any other area of Indian country where the EPA or an Indian tribe has demonstrated that a

tribe has jurisdiction, located within the State of Arizona.

\* \* \* \* \*

[FR Doc. 2021-12431 Filed 6-15-21; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 141 and 142**

[EPA-HQ-OW-2017-0300; FRL-10024-33-OW]

RIN 2040-AG15

**National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is delaying until December 16, 2021, the effective date of the National Primary Drinking Water



## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition for Review were mailed via first class mail, postage prepaid, this 13th day of August, 2021 to:

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*s/ Jennifer B. Anderson*

---

Jennifer B. Anderson

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

CENTER FOR BIOLOGICAL )  
DIVERSITY, )

Petitioner, )

v. )

MICHAEL S. REGAN, Administrator, )  
United States Environmental Protection )  
Agency; DEBORAH JORDAN, Acting )  
Regional Administrator, U.S. EPA Region )  
9; and UNITED STATES )  
ENVIRONMENTAL PROTECTION )  
AGENCY, )

Respondents. )

Case No.: \_\_\_\_\_

**PETITIONER’S RULE 26.1  
CORPORATE DISCLOSURE  
STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the Center for Biological Diversity hereby discloses that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

Dated this 13th day of August, 2021.

*s/ Jennifer B. Anderson* \_\_\_\_\_

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petitioner's Rule 26.1 Corporate Disclosure Statement were mailed via first class mail, postage prepaid, this 13th day of August, 2021 to:

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