(d) *Effective date.* This rule will be effective from October 27, 2015 to November 15, 2015 and will be enforced with actual notice while emergency salvage operations are ongoing.

Dated: October 27, 2015.

M. C. Long,

Captain, U.S. Coast Guard, Acting Captain of the Port Miami.

[FR Doc. 2015–27751 Filed 10–30–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0187; FRL–9930–43–Region 9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of, and other actions on, revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the applicable state implementation plan (SIP) for the State of Arizona (State or Arizona) under the Clean Air Act (CAA or Act). These revisions submitted by Arizona are primarily intended to serve as a replacement of ADEQ's existing SIP-approved rules for the issuance of New Source Review (NSR) permits for stationary sources, including review and permitting of major and minor sources under the Act. After a lengthy stakeholder process, the State submitted a NSR program for SIP approval that satisfies most of the applicable CAA and NSR regulatory requirements, and which will significantly update ADEQ's existing SIP-approved NSR program. It also represents an overall strengthening of ADEQ's SIP-approved NSR program by clarifying and enhancing the NSR requirements for major and minor stationary sources. This final action updates the applicable plan while allowing ADEQ to remedy certain deficiencies in ADEQ's rules.

DATES: This rule is effective December 2, 2015.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2015–0187 for this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. Some docket materials, however, may be publicly available only at the hard copy location (*e.g.,* voluminous records, maps, copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

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

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

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

(iv) The initials *AQIA* mean or refer to air quality impact analysis.

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

(vi) The initials *CFR* mean or refer to 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 *GHG* mean or refer to greenhouse gas.

(xi) The initials *IBR* mean or refer to incorporation by reference.

(xii) The initials *LAER* mean or refer to Lowest Achievable Emissions Rate.

(xiii) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(xiv) The initials *NA–NSR* mean or refer to Nonattainment New Source Review.

(xv) The initials NO_X mean or refer to nitrogen oxides.

(xvi) The initials *NSR* mean or refer to New Source Review.

(xvii) The initials *PAL* mean or refer to Plantwide Applicability Limits

(xviii) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers.

(xix) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).

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

(xxi) The initials *PTE* mean or refer to potential to emit.

(xxii) The initials *RACT* mean or refer to reasonably available control technology.

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

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

(xxv) The initials *SMC* mean or refer to significant monitoring concentration.

(xxvi) The initials SO_2 mean or refer to sulfur dioxide.

(xxvii) The initials *SRP* mean or refer to the Salt River Project Agricultural Improvement and Power District.

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

(xxix) The initials *TSD* mean or refer to the technical support document for this action.

(xxx) The initials *VOC* mean or refer to volatile organic compound.

I. Background

On March 18, 2015, the EPA provided notice of, and requested public comment on, our proposed CAA rulemaking to revise certain portions of the Arizona SIP for ADEQ. See 80 FR 14044 (Mar. 18, 2015). We proposed action on SIP submittals that comprise ADEQ's updated program for preconstruction review and permitting of new or modified stationary sources under ADEQ's jurisdiction in Arizona.[1] The SIP submittals that are the subject of this action, referred to herein as the ''NSR SIP submittal,'' provide a comprehensive revision to ADEQ's preconstruction review and permitting program for stationary sources and are intended to satisfy requirements under both part C (prevention of significant deterioration) (PSD) and part D (nonattainment new source review) of title I of the Act as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act.

As a component of its NSR SIP submittal, ADEQ also requested the removal from the Arizona SIP of numerous older rules, as well as one Arizona statutory provision, which are mostly superseded by the newer provisions that are the subject of this action or by newer provisions that have already been approved into the Arizona SIP. Accordingly, our action also will remove certain provisions from the Arizona SIP.

The EPA's rulemaking action on the ADEQ NSR SIP submittal is intended to update the applicable SIP consistent with ADEQ's requests, while allowing ADEQ to remedy certain deficiencies in

[1] These submittals and our current action also address two rules and one statutory provision that are not directly related to NSR.

the submittal where ADEQ's rules do not fully meet CAA requirements. In our proposed rulemaking action, we primarily proposed a limited approval and limited disapproval, with certain exceptions and additions with respect to specific statutory and rule provisions, as follows. We proposed partial disapproval of two specific components of ADEQ's NSR submittal that we believed were analogous to provisions in the federal NSR regulations that had been vacated by federal Courts and that we determined were separable from the remainder of the NSR SIP submittal. In addition, we proposed a limited approval for a portion of ADEQ's nonattainment NSR (NA–NSR) program based on requirements of section 189(e) of the Act related to the permitting of major sources of PM_{10} and $PM_{2.5}$ precursors, but did not propose a limited disapproval on this basis. For two non-NSR rules for which ADEQ requested SIP approval, we also proposed a limited approval and limited disapproval. For a non-NSR statutory provision for which ADEQ requested SIP approval, A.R.S. § 49–107, we proposed full approval into the SIP. Last, we proposed to remove numerous NSR and non-NSR rules from the SIP as requested by ADEQ.[2]

The ADEQ NSR SIP submittal was extensive in scope. We prepared a comprehensive Evaluation of the submittal in light of the requirements of the CAA and its implementing regulations, and provided a detailed discussion of our findings in the Technical Support Document (TSD) for our proposed action. Both the Evaluation and the TSD were available in the docket for our rulemaking during the public comment period. Our proposed rule discussed our analysis and findings, but focused primarily on the issues that formed the basis for our limited approval/limited disapproval of the ADEQ NSR SIP submittal, and referenced the TSD for additional information concerning our analysis. The Evaluation was an attachment to the TSD.

II. The EPA's Evaluation of the SIP Revision

A. What action is the EPA finalizing?

The EPA is finalizing a SIP revision for the ADEQ portion of the Arizona SIP for the rules and statutory provision listed in Table 1. The SIP revision will be codified in 40 CFR 52.120 by incorporating by reference the rules and statutory provision in ADEQ's NSR SIP submittal as listed in Table 1.[3] Certain non-regulatory submittals and clarifications provided by ADEQ will also be included as part of the Arizona SIP in 40 CFR 52.120. In this final action, the EPA is relying, in part, on the clarifications and interpretations provided by ADEQ, as described in the discussion of our responses to comments in Section II.C below.

TABLE 1—SUBMITTED STATUTES AND RULES APPROVED IN THIS ACTION

Rule or statute	Title	State effective date	Submitted
A.R.S. § 49–107	Local delegation of state authority	8/18/1987	07/2/2014
R18–2–101 [only definitions (2), (32), (87), (109), and (122)].	Definitions	08/07/2012	10/29/2012
R18–2–217	Designation and Classification of Attainment Areas	11/15/1993	10/29/2012
R18–2–218	Limitation of Pollutants in Classified Attainment Areas	08/07/2012	10/29/2012
R18–2–301	Definitions	08/07/2012	10/29/2012
R18–2–302	Applicability; Registration; Classes of Permits	08/07/2012	10/29/2012
R18–2–302.01	Source Registration Requirements	08/07/2012	10/29/2012
R18–2–303	Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration transition; Minor NSR Transition.	08/07/2012	10/29/2012
R18–2–304	Permit Application Processing Procedures	08/07/2012	10/29/2012
R18–2–306	Permit Contents	12/20/1999	10/29/2012
R18–2–306.01	Permits Containing Voluntarily Accepted Emission Limitations and Standards.	1/1/2007	10/29/2012
R18–2–306.02	Establishment of an Emissions Cap	09/22/1999	10/29/2012
R18–2–311	Test Methods and Procedures	11/15/1993	07/28/2011
R18–2–312	Performance Tests	11/15/1993	07/28/2011
R18–2–315	Posting of Permit	11/15/1993	10/29/2012
R18–2–316	Notice by Building Permit Agencies	05/14/1979	10/29/2012
R18–2–319	Minor Permit Revisions	08/07/2012	10/29/2012
R18–2–320	Significant Permit Revisions	08/07/2012	10/29/2012
R18–2–321	Permit Reopenings; Revocation and Reissuance	08/07/2012	10/29/2012
R18–2–323	Permit Transfers	02/03/2007	10/29/2012
R18–2–330	Public Participation	08/07/2012	10/29/2012
R18–2–332	Stack Height Limitation	11/15/1993	10/29/2012
R18–2–334	Minor New Source Review	08/07/2012	10/29/2012
R18–2–401	Definitions	08/07/2012	10/29/2012
R18–2–402	General	08/07/2012	10/29/2012
R18–2–403	Permits for Sources Located in Nonattainment Areas	08/07/2012	10/29/2012
R18–2–404	Offset Standards	08/07/2012	10/29/2012
R18–2–405	Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe.	08/07/2012	10/29/2012

[2] See Table 2, which identifies those rules and statutory provisions that are being removed from the Arizona SIP. This updated table corrects certain typographical errors in the preamble of our proposed action. See our discussion of those errors in our responses to comments 14–15 in our Response to Comments document.

[3] We listed an incorrect submittal date for certain rules in the ADEQ NSR SIP submittal in Table 1 of our proposed action; this date is corrected in Table 1 here. See response to comment 13 in our Response to Comments document.

TABLE 1—SUBMITTED STATUTES AND RULES APPROVED IN THIS ACTION—Continued

Rule or statute	Title	State effective date	Submitted
R18–2–406	Permit Requirements for Sources Located in Attainment and Unclassifiable Areas.	08/07/2012	10/29/2012
R18–2–407 [excluding subsection (H)(1)(c)]	Air Quality Impact Analysis and Monitoring Requirements.	08/07/2012	10/29/2012
R18–2–409	Air Quality Models	11/15/1993	10/29/2012
R18–2–412	PALs	08/07/2012	10/29/2012

In addition, this final action removes the rules and appendices listed in Table 2 from the ADEQ portion of the Arizona SIP.

TABLE 2—SIP RULES AND APPENDICES REMOVED FROM ARIZONA SIP IN THIS ACTION

Rule or appendix	Title	EPA approval date	**Federal Register** citation
R9–3–101 [excluding subsection (20)]	Definitions	Various	Various
R9–3–217(B)	Attainment Areas: Classification and Standards	04/23/1982	47 FR 17483
R9–3–301, [excluding subsections (I), (K)]	Installation Permits: General	05/03/1983	48 FR 19878
R9–3–302	Installation Permits in Nonattainment Areas	08/10/1988	53 FR 30220
R9–3–303	Offset Standards	08/10/1988	53 FR 30220
R9–3–304, [excluding subsection (H)]	Installation Permits in Attainment Areas	05/03/1983	48 FR 19878
R9–3–305	Air Quality Analysis and Monitoring Requirements	05/03/1983	48 FR 19878
R9–3–306	Source Registration Requirements	05/03/1983	48 FR 19878
R9–3–307	Replacement	05/05/1982	47 FR 19326
R9–3–308	Permit Conditions	04/23/1982	47 FR 17483
R9–3–310	Test Methods and Procedures	10/19/1984	49 FR 41026
R9–3–311	Air Quality Models	04/23/1982	47 FR 17483
R9–3–312	Performance Tests	04/23/1982	47 FR 17483
R9–3–314	Excess Emissions Reporting	04/23/1982	47 FR 17483
R9–3–315	Posting of Permits	04/23/1982	47 FR 17483
R9–3–316	Notice by Building Permit Agencies	04/23/1982	47 FR 17483
R9–3–317	Permit Non-transferrable; Exception	04/23/1982	47 FR 17483
R9–3–318	Denial or Revocation of Installation or Operating Permit.	04/23/1982	47 FR 17483
R8–3–319	Permit Fees	04/23/1982	47 FR 17483
R9–3–322	Temporary Conditional Permits	10/19/1984	49 FR 41026
R9–3–1101	Jurisdiction	05/03/1983	48 FR 19878
Appendix 4	Fee Schedule for Installation and Operating Permits	09/19/1977	42 FR 46926
Appendix 5	Fee Schedule for Conditional Permits	09/19/1977	42 FR 44926

In summary, this action is primarily a limited approval and limited disapproval of a SIP submittal from Arizona for the ADEQ portion of the Arizona SIP that governs preconstruction review and the issuance of preconstruction permits for stationary sources, including the review and permitting of new major sources and major modifications under parts C and D of title I of the CAA as well as review of new and modified minor sources. The intended effect of our final limited approval and limited disapproval action is to update the applicable SIP with current ADEQ regulations, while allowing ADEQ to remedy the identified deficiencies in these regulations. We are also removing at ADEQ's request certain rules and appendices from the Arizona SIP, which are outdated and which are mostly being superseded by this action. In addition, we are finalizing a partial disapproval of one provision in ADEQ's NSR program that has been vacated by the courts. We are finalizing a limited approval of ADEQ's NA–NSR program for certain nonattainment areas based on requirements under section 189 of the Act related to PM_{10} and $PM_{2.5}$ precursors (without a limited disapproval on this basis). Last, we are finalizing a limited approval and limited disapproval of two ADEQ non-NSR rules relating to test methods and procedures and performance tests, and finalizing the approval of an Arizona statutory provision relating to local delegation of state authority.

We are finalizing the above-described action because, although we find that the new and amended rules submitted by ADEQ meet most of the applicable CAA requirements for preconstruction review programs and other CAA requirements, and that overall the SIP revisions improve and strengthen the existing SIP, we have found certain deficiencies that prevent full approval, as explained in our proposed action and in the TSD for this rulemaking, and in this final action and our Response to Comments document.

We reviewed the ADEQ NSR SIP submittal in accordance with applicable CAA requirements, primarily including those that apply to: (1) General preconstruction review programs, including for minor sources, under section 110(a)(2)(C) of the Act; (2) PSD permit programs under part C of title I of the Act; and (3) NA–NSR permit programs under part D of title I of the Act. For the most part, ADEQ's submittal satisfies the applicable CAA requirements, including those for these preconstruction review programs, and our approval will strengthen the applicable SIP by updating the

regulations and adding provisions to address new or revised federal NSR permitting and other requirements. However, the submitted rules also contain specific deficiencies and inconsistencies with CAA requirements that prevent us from granting full SIP approval. These deficiencies form the basis for our limited approval and limited disapproval action, and for our partial disapproval of one rule provision.

B. What changes is the EPA making from its proposed action?

We are largely finalizing our action as proposed. However, in response to public comments we received, our final action differs in some respects from our proposed action. For certain deficiencies identified in our proposal as bases for limited disapproval, we have changed our determination and no longer find that these are bases for our limited disapproval. In addition, we have changed our determination concerning one of the ADEQ rule provisions for which we had proposed partial disapproval; we are not finalizing our partial disapproval of this provision.

Specifically, the following issues that had been identified in our proposed action as bases for limited disapproval are not a basis for our final limited disapproval: (1) ADEQ's use of the term ''proposed final permit'' in its rules for the minor NSR, PSD and NA–NSR programs; (2) a question concerning whether ADEQ rule R18–2–334(E) requires ADEQ to review potential impacts on the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for all minor sources subject to new source review under ADEQ rule R18–2–334;[4] (3) the lack of a definition in ADEQ's PSD regulations for the term ''subject to regulation;'' (4) the lack of a reference in ADEQ's PSD rules to pollutants subject to regulation in the definition of ''regulated NSR pollutant,'' per 40 CFR 51.166(b)(49)(iv); (5) the lack of certain language in ADEQ's PSD rules concerning condensable particulate matter, per 40 CFR 51.166(b)(49)(i); (6) potential ambiguity as to whether references to the undefined term ''Arizona Ambient Air Quality Standards'' in ADEQ's NSR regulations refer to ADEQ's Article 2 air quality standards; (7) language concerning the calculation of baseline actual emissions under ADEQ's plantwide applicability limits (PALs) provisions for the PSD and NA–NSR programs; and (8) public notice requirements for alternative or modified air modeling under ADEQ's rules for the PSD program. In addition, we are not finalizing a partial disapproval of ADEQ's definition for ''basic design parameter.'' We now find the ADEQ NSR SIP submittal approvable with respect to these particular issues. Our rationale for changing our determination on these issues is included in our Response to Comments document for this action, and some of these issues are also discussed in the Public Comments and Responses section below.

In addition, we are making three technical corrections to address typographical errors, as noted by commenters: (1) Correction of SIP submittal dates listed in Table 1 (listing the rules and statutory provisions that we are approving into the SIP) so that ''10/29/2012'' is listed instead of ''10/29/2014,'' (2) correction of Table 2 (the list of rules and appendices that we are removing from the SIP) to exclude subsection (20) from the provisions of ADEQ rule R9–3–101 that we are removing from the SIP, and (3) the addition of ADEQ rules R9–3–310 and R9–3–312 to the list of rules in Table 2. Additional detail regarding these technical corrections is provided in response to comments 13 through 15 in our Response to Comments document.

C. Public Comments and Responses

Our March 18, 2015 proposed rule included a 30-day public comment period that ended on April 17, 2015. We received 3 written comments, one each from the Office of Robert Ukeiley, the Salt River Project Agricultural Improvement and Power District (SRP), and ADEQ. Copies of each comment have been added to the docket for this action and are accessible at *www.regulations.gov.* Our Response to Comments document in the docket for this action contains a summary of all comments received and the EPA's responses to the comments. Below we provide the major issues raised by commenters and our responses to those comments.

Comment 1:

The **Federal Register** notice does not make it clear if the Arizona rules proposed to be approved into the SIP include the $PM_{2.5}$ increments. The EPA must disapprove this rule if it does not include the $PM_{2.5}$ increments.

Response 1:

In the EPA's March 18, 2015 **Federal Register** notice, we proposed to approve ADEQ rule R18–2–218 into the Arizona SIP, and stated ''ADEQ adopted the increments, or maximum allowable increases, in R18–2–218—*Limitation of Pollutants in Classified Attainment Areas.''* 80 FR 14044, 14045, 14051. The $PM_{2.5}$ increments are included in Section A of ADEQ rule R18–2–218. As such, ADEQ submitted, and we are approving into the Arizona SIP, ADEQ rule R18–2–218 containing the $PM_{2.5}$ increments.[5]

Comment 2:

ADEQ states that its methodology for establishing minor NSR thresholds was valid for all areas under ADEQ's jurisdiction. The CAA does not impose strict, specific requirements on NSR programs for minor sources, as it does for major NSR. Rather, section 110(a)(2)(C) generally requires that each state include a program regulating the modification and construction of any stationary source *as necessary* to assure achievement of the NAAQS. The sizes of minor source facilities, buildings, structures, or installations are assessed and compared to threshold levels to determine whether their potential to emit is so high as to affect the NAAQS. Each state establishes its own threshold levels to define the limits of its minor NSR regulations to create an effective pollution control strategy without also creating unnecessary regulatory burden.

Citing the EPA's proposed Tribal NSR Rule, ADEQ states that in the past, the EPA has asserted that threshold levels are appropriate where ''sources and modifications with emissions below the thresholds are inconsequential to attainment and maintenance of the NAAQS.'' [6] In creating a federal minor NSR program for Indian Country, the EPA emphasized the importance of a cost-effective plan, as well as one that reduces the burden on sources and reviewing authorities.

ADEQ set an adequate, yet cost-effective threshold level of one half the significant emission rate (SER) for nonattainment areas. Just as the EPA did in the Tribal Minor NSR Rule, ADEQ identified the level at which a lower threshold merely creates a larger pool of regulated minor sources without

[4] Due to a typographical error, in discussing this issue, the notice for our proposed action inadvertently referenced subsection (G) of R18–2–334 instead of subsection (E).

[5] Our proposed action also points out that certain terminology used in ADEQ's PSD rules with respect to the increments is not clear, and that ADEQ's rules contain provisions that allow for exclusions from increment consumption for certain temporary emissions that do not conform to the analogous federal regulatory requirements. These issues provided a basis for our proposed limited disapproval of ADEQ's PSD program. See Section II.C.1 of the preamble at 80 FR 14051. Neither this commenter nor any other commenter addressed these specific issues, thus we continue to believe that these issues are deficiencies that ADEQ must correct for full approval of the PSD portion of the ADEQ NSR SIP submittal, and these issues provide a basis for our final limited disapproval.

[6] 71 FR 48696, 48701 (Aug. 21, 2006).

substantially reducing emissions. Research data provided by a consultant was used to make an informed determination which threshold levels would in fact be most cost-effective, while still achieving the goals of the minor source program. ADEQ included a table of the results provided by its contractor for two potential NSR threshold scenarios.[7] Scenario 1 illustrates the impact of a minor threshold of one half the SER and Scenario 2 illustrates the impact of a threshold set at one quarter the SER. Lowering the threshold beyond one half the SER essentially doubles the percentage of sources regulated, which certainly increases the state's ability to reach more minor sources. However, regulating more sources does not necessarily translate to effective emissions reductions. Rather there is a diminishing return on emission reductions as the threshold level is pushed further down to include sources with fewer emissions.

ADEQ illustrated this statement through a figure provided in its comments showing a comparison of potential threshold levels and relative impact, by pollutant.[8] The figure compares the percent of emissions regulated with the percent of sources regulated at the two NSR exemption scenarios considered by ADEQ. ADEQ states that the slopes between the significance level points in the graph for each pollutant illustrate the incremental percentage of emissions that would be covered when the threshold level is moved from one half to one quarter. Both possible threshold options would result in a relatively large percentage of emissions from minor sources becoming subject to regulation. However, the average emissions covered per source decreases significantly for all additional sources that fall below one half of the significant level. The disproportionate effect between the changes in the amount of sources relative to the change in the amount of emissions covered provides a firm basis for ADEQ's decision. The thresholds in ADEQ's minor NSR program meet federal requirements without creating a system in which the burdens of regulation would outweigh the benefits to air quality.

Response 2:

As noted by ADEQ, CAA section 110(a)(2) generally requires that each state include a program regulating the modification and construction of any stationary source as necessary to assure achievement of the NAAQS. While we appreciate ADEQ's comments on this issue, to date, ADEQ has not provided sufficient information about the nature, scope and emissions that are contributing to nonattainment in the areas subject to ADEQ's jurisdiction to change our proposed determination that ADEQ has not provided an adequate basis for its NSR exemption thresholds as applied in such nonattainment areas.

The implementing regulations for the minor NSR program make clear that SIPs must include legally enforceable procedures that enable the decisionmaking authority to determine whether the construction or modification of stationary sources will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of the NAAQS, and that such procedures include means by which the decisionmaking authority can prevent such construction or modification if it will result in such violation or interference. 40 CFR 51.160(a) and (b). Further, 40 CFR 51.160(e) provides:

> The procedures must identify types and sizes of facilities, buildings, structures or installations which will be subject to review under this section. The plan must discuss the basis for determining which facilities will be subject to review.

Under CAA section 110(a)(2) and 40 CFR 51.160(e), we agree with ADEQ that States are not necessarily required to regulate all stationary sources under the minor NSR program. States can exempt from review those stationary sources with emissions that they can demonstrate would not pose a threat to the attainment or maintenance of the NAAQS, thereby satisfying the requirement in CAA section 110(a)(2)(C) that their minor NSR program regulate the modification and construction of any stationary source within the areas covered by the plan as necessary to ensure that the NAAQS are achieved. The EPA's interpretation was discussed in the proposal for our Tribal Minor NSR Rule:

> A review of several State minor NSR programs indicated that a number of State programs have established cutoff levels or minor NSR thresholds, below which sources are exempt from their minor NSR rules. We believe that such an approach is also appropriate in Indian country. Section 110(a)(2)(C) of the Act requires minor NSR programs to assure that the NAAQS are attained and maintained. Applicability thresholds are proper in this context provided that the sources and modifications with emissions below the thresholds are inconsequential to attainment and maintenance of the NAAQS. For each pollutant, only around 1 percent (or less) of total emissions would be exempt under the minor NSR program.

Review of New Sources and Modifications in Indian Country, Proposed Rule, 71 FR 48696, 48703 (Aug. 21, 2006); see also Review of New Sources and Modifications in Indian Country, Final Rule, 76 FR 38758 (finding that sources with emissions below the NSR exemption thresholds selected by the EPA in the Tribal Minor NSR Rule would be inconsequential to attainment or maintenance of the NAAQS). We note that in our Tribal NSR Rule, ''the selected minor source thresholds distinguish between minor stationary sources of regulated NSR pollutants located in nonattainment areas and attainment areas,'' with lower thresholds in nonattainment areas. 71 FR at 48702; see 76 FR at 38758 (finalizing thresholds as proposed).

In our proposed action on ADEQ's NSR SIP submittal, we found deficiencies in the basis ADEQ provided for determining which sources would be subject to review under its minor NSR program under 40 CFR 51.160(e), applying the statutory and regulatory standard discussed above. 80 FR at 14049. These deficiencies provided a basis (among other bases) for our proposed limited disapproval of ADEQ's minor NSR program. As stated in our proposal, we found ADEQ's general approach to meeting 40 CFR 51.160(e) acceptable. However, we proposed a limited disapproval for three aspects of ADEQ's minor NSR program under 40 CFR 51.160(e): The adequacy of ADEQ's NSR exemption thresholds for nonattainment areas; certain exemptions for agricultural and fuel burning equipment; and the lack of any basis for the $PM_{2.5}$ NSR exemption threshold in any areas under ADEQ's jurisdiction. None of the comments on our proposal addressed our proposed limited disapprovals related to agricultural and fuel burning equipment exemptions or the missing explanation in the submittal for the $PM_{2.5}$ NSR exemption threshold. As such, we continue to determine that these two issues warrant a limited disapproval, and further consider ADEQ's comments as they apply to the basis provided for ADEQ's NSR exemption thresholds for pollutants in nonattainment areas.[9]

ADEQ's comments focus largely on the argument that expanding its minor

[7] The EPA provided the same table in its TSD for this action. See Table 5 of the TSD—Results of ADEQ's Stationary Source Distribution Analysis.

[8] See ADEQ's April 17, 2015 comment letter at 14.

[9] We note that the reasoning the EPA provides in these responses to comments concerning NSR exemption thresholds in nonattainment areas would apply equally to our review of the basis for NSR exemption thresholds for $PM_{2.5}$ in nonattainment areas.

NSR program to cover even smaller sources (*i.e.,* sources with emissions of approximately ¼ of the PSD significant emission rates) would result in diminishing returns on emission reductions. ADEQ argues that while more emissions would be regulated under such an approach, in some instances, this would result in significantly more stationary sources becoming subject to the program. In the case of VOC, for example, the percentage of all stationary sources regulated would approximately double from 8% to 16%. ADEQ appears to reason that while ADEQ would be able to regulate more emissions with such a lower threshold, the types of projects brought into the program would be smaller and less likely to be regulated in a way to achieve useful emission reductions. However, as discussed above, our determination of whether a minor NSR program is sufficient to meet CAA SIP requirements is based on whether the State has provided an adequate basis that the exempt emissions do not need to be reviewed to ensure attainment and maintenance of the NAAQS in the particular geographic areas covered by the program because they are inconsequential to attainment or maintenance, considering the particular air quality concerns in such areas. The information provided by ADEQ to date, including the amount of sources regulated as compared with the volume of emissions per such source, does not demonstrate that the adopted thresholds are those necessary to assure attainment and maintenance of the NAAQS. For example, if an area happens to have a large volume of sources in a particular source category that are typically minor sources but emit the pollutants that contribute to nonattainment, then regulation of those sources may be necessary to assure attainment and maintenance of the NAAQS in that area. The thresholds established in the Tribal NSR Rule exempted around 1 percent of total emissions, while exempting from 42 percent to 76 percent of sources, depending on the pollutant. 76 FR at 68758.

We recognize that the reference that the EPA made in its proposed action to ADEQ's submittal not providing a clear basis for concluding that its NSR exemption thresholds would ensure that a ''sufficient percentage of minor sources'' would be subject to review in nonattainment areas, rather than referring to a ''sufficient percentage of minor source emissions,'' was imprecise and may have led to confusion about the nature of the EPA's concern. As such, we are clarifying that our disapproval is related to ensuring that ADEQ's NSR program exempts from review only those sources with emissions that do not pose a threat to attainment and maintenance of the NAAQS because they are inconsequential to attainment or maintenance. The particular percentage of stationary sources that are being regulated would generally not be an adequate basis under 40 CFR 51.160(e) for determining the sizes and types of stationary sources that will be subject to NSR review as necessary to ensure compliance with CAA section 110(a)(2) and 40 CFR 51.160(a) and (b). As noted, the Tribal NSR Rule exempted as many as 76 percent of the *sources* of a pollutant, but required review of about 99% of total *emissions.* 76 FR at 38758. In this case, ADEQ has not shown that the emissions exempt from its NSR program will not threaten attainment and maintenance of the NAAQS in its nonattainment areas. Accordingly, after consideration of ADEQ's comments, we continue to find that a limited disapproval of ADEQ's program under 40 CFR 51.160(e), as it pertains to the NSR exemption threshold for nonattainment areas, is necessary.

As stated in our proposal, in addressing this deficiency, ADEQ does not necessarily have to consider overall lower NSR exemption thresholds in nonattainment areas, see 80 FR 14049 n. 13, although, as noted, the Tribal NSR Rule established lower thresholds for nonattainment areas. 76 FR at 38758. For example, ADEQ could provide further analysis to demonstrate that the adopted thresholds are protective of the NAAQS in nonattainment areas, or ADEQ could consider a different approach, such as requiring minor sources in nonattainment areas subject to a pre-existing SIP requirement for the nonattainment pollutant, or its precursors, to be subject to review under ADEQ's registration program. In addressing this limited disapproval issue, we recommend that ADEQ focus its consideration on the contribution that emissions from minor stationary sources with emissions below its currently adopted NSR exemption thresholds are expected to make with respect to attainment and maintenance of the NAAQS in nonattainment areas.

In addition, we wish to clarify that while the EPA's proposed rulemaking for the Tribal NSR program discussed cost-effectiveness and attempted to strike a ''balance between environmental protection and economic growth,'' it also recognized the need for exemption thresholds to ensure ''that sources with emissions below the proposed minor NSR thresholds will be inconsequential to attainment and maintenance of the NAAQS.'' 71 FR at 48703. See also 76 FR at 38758. The EPA recognized the overarching need for standards stringent enough to ensure NAAQS protection, and agreed to ''consider changing the minor NSR thresholds as appropriate'' to ensure that they are sufficiently protective. 76 FR at 38759. Thus, cost-effectiveness is not a relevant criterion for determining whether a minor NSR program's exemption thresholds will assure attainment and maintenance of the NAAQS, and the test is not whether the benefits of the program outweigh the burdens of regulation, but whether the state's program meets the requirement in CAA section 110(a)(2)(C) to ''assure that national ambient air quality standards are achieved.''

Comment 3:

SRP and ADEQ state that the EPA may not substitute its policy preferences for ADEQ's in proposing to disapprove ADEQ's minor NSR program with respect to nonattainment areas. There are no regulatory provisions or CAA statutory provisions that specify that a State must regulate a ''sufficient percentage'' of minor sources in nonattainment areas. The EPA's objection appears to be based on its own policy preferences, and the EPA simply lacks authority to substitute its preferences for those of the State. The EPA points to no flaws in the reasoning behind the analysis, nor does the EPA provide an alternative analysis demonstrating that modifications or construction of minor sources of a certain size or type have caused air quality concerns within ADEQ's jurisdiction.

Further, each state, region, and control area encounters unique circumstances that contribute to air quality issues, as well as the strategies necessary to comply with the requirements of the CAA. At page 14049 n. 12 of the proposal, which accompanied a generalized comparison to other states, the EPA referenced threshold levels for Sacramento, California. It is erroneous for the EPA to compare Arizona's minor NSR program with that of California, due to the extraordinary severity of the nonattainment problems in California. The EPA's implication that ADEQ should create a minor source NSR program that looks and functions like other states, and particularly California, is an improper basis for disapproval.

ADEQ also asserts that the EPA has advanced no reason for concluding that ADEQ's analysis is any less valid for nonattainment areas than it is for attainment areas.

Response 3:

Contrary to the commenters' assertions, our proposed limited disapproval of ADEQ's program concerning the NSR exemption threshold for nonattainment areas was not based on a policy preference by the EPA to regulate ''more'' sources in nonattainment areas. As explained in detail in our response to comment 2, the EPA's proposed disapproval based on 40 CFR 51.160(e) stemmed in part from the lack of sufficient justification in ADEQ's NSR submittal to support its chosen thresholds for coverage of the minor NSR program in nonattainment areas as required by 40 CFR 51.160(e) and CAA section 110(a)(2). It is the State's obligation to demonstrate that emissions from sources exempt under its chosen NSR exemption threshold will not pose a threat to attainment or maintenance of the NAAQS. We found at the time of our proposal that ADEQ had not done so with respect to the NSR exemption thresholds in nonattainment areas, and we continue to find that this is the case.[10]

Our March 18, 2015 proposed action made clear that ADEQ could consider various options for addressing this deficiency and we did not mandate that ADEQ adhere to a particular policy choice of the EPA in this regard. 80 FR at 14049 and n. 13. See also response to comment 2. The EPA agrees with the commenters that ADEQ has the discretion to determine the types and sizes of sources that need to be regulated under its NSR program to attain and maintain the NAAQS. But ADEQ, like other States, must provide a reasoned basis for the scope of emissions (and stationary sources of such emissions) regulated under its program that demonstrates that exemption of such emissions from NSR review will not threaten the attainment and maintenance of the NAAQS in nonattainment areas.

Air quality concerns in nonattainment areas differ from those in attainment areas and thus the measures necessary to attain and maintain the NAAQS may be more stringent in nonattainment areas than in attainment areas. When an area is already in nonattainment with a NAAQS for a particular pollutant, it is logical to conclude that relatively low levels of emissions increases of that nonattainment pollutant may well contribute to nonattainment and interfere with achievement of the NAAQS, while a source with the same level of emissions in an attainment area may pose little threat to maintaining the NAAQS. Thus, SIPs may need to provide greater or more detailed justification for exempting smaller sources of emissions from NSR review in nonattainment areas, depending on the particular air quality concerns in the area at issue. Indeed, as noted, the EPA's Tribal NSR Rule established more stringent thresholds for minor NSR in nonattainment areas, in most cases at 50% of the thresholds for attainment areas. 76 FR 38758 (Table).

ADEQ's jurisdiction covers both attainment and nonattainment areas, and ADEQ's analysis supporting its NSR exemption thresholds made no distinction between these types of areas nor did it provide additional information to support the thresholds in nonattainment areas under ADEQ's jurisdiction. For example, ADEQ's analysis indicated that it would exempt approximately 65% of CO emissions, 78% of SO_2 emissions, and 40% of VOC emissions from review under its NSR program. By comparison, the EPA's analysis for the Tribal Minor NSR program, cited by ADEQ in its analysis, demonstrated that the EPA anticipated exempting around 1% of stationary source emissions from review under NSR, based on National Emissions Inventory data for all stationary point source emissions in both attainment and nonattainment areas. As such, ADEQ did not provide enough detail to demonstrate that NSR review of emissions from the exempted sources would not be necessary for attainment and maintenance of the NAAQS in nonattainment areas because sources below the thresholds would be ''inconsequential to attainment or maintenance of the NAAQS.'' 76 FR at 38758. Accordingly, we found that ADEQ had not provided an adequate basis under 40 CFR 51.160(e) for its NSR program exemption thresholds as they pertain to nonattainment areas.

In the case of attainment areas, the EPA is approving the basis provided by ADEQ for its selected NSR exemption thresholds. We find it reasonable to conclude, based on the information and analysis provided by ADEQ, that expanding the NSR program to cover more emissions in areas that are already attaining the NAAQS will ensure that those areas will continue to attain and maintain the NAAQS. We cannot reach the same conclusion for nonattainment areas where the minor sources in a particular nonattainment area may, in fact, significantly contribute to nonattainment in that area.[11]

The reference in our proposal to the approaches taken by other permitting programs, including a California agency, with respect to NSR exemption thresholds in nonattainment areas is not an indication that the EPA believes that such approaches or thresholds are required for ADEQ, but simply information showing that it is common for agencies in nonattainment areas to find it necessary to regulate more emissions. In providing this information, the EPA was not suggesting that there was a particular percentage of emissions that should be regulated, but that other nonattainment areas have found it necessary to exempt fewer emissions from their programs (including Maricopa County, Arizona, Colorado, and the EPA's Tribal Minor NSR rule, which were also referenced in our proposed action).[12] It was ADEQ's lack of demonstration that its selected thresholds are adequate to ensure attainment and maintenance of the NAAQS in light of the specific air quality issues in the nonattainment areas under its jurisdiction that led to our proposed disapproval.

In sum, the EPA did not conclude that ADEQ's NSR exemption thresholds are necessarily deficient, or suggest that some other agency's threshold must be applied. The EPA's proposed limited disapproval for ADEQ's NSR exemption thresholds for nonattainment areas under 40 CFR 51.160(e) relates only to the fact that ADEQ had not provided an adequate basis for the thresholds that were set for these areas. As discussed in response to comment 2, our final limited disapproval is also based on this finding.

Comment 4:

ADEQ submitted comments related to the EPA's proposed limited disapproval of ADEQ's NSR SIP submittal for its use of the term ''proposed final permit.'' ADEQ explains that the purpose of allowing sources to construct after issuance of a proposed final permit—the version of the permit that ADEQ

[10] We addressed the comment concerning the reference in the EPA's proposal to regulation of a ''sufficient percentage of minor sources'' in our response to comment 2.

[11] We acknowledge that ADEQ's analysis explained that sources that contribute to noncompliance with the SO_2 NAAQS are well-defined, large industrial sources already subject to the permitting program. However, ADEQ's analysis did not provide information or details to support these statements or otherwise provide information sufficient to allow the EPA to reach the conclusion that the NSR exemption thresholds selected by ADEQ exempt only those stationary sources with emissions that do not pose a threat to attainment and maintenance of the NAAQS in nonattainment areas.

[12] There was a typographical error in our FR notice that referenced a ''Table 3,'' when there was not a Table 3 in the **Federal Register** notice. The notice should have referenced Table 3 of our TSD.

forwards to the EPA for review under the title V program for title V sources—is to ensure that Arizona's unitary permit program does not place restrictions on Arizona industries that they would not face in jurisdictions with binary permitting programs. Under a binary program, separate permits are issued to construct and operate, and only permits to operate are subject to the EPA's review under title V. Thus a source in a jurisdiction with a binary program ordinarily would have the authority to proceed with construction under a construction permit before the EPA's review of the title V permit or permit revision occurred.

ADEQ specifically takes issue with the EPA's proposed determination that the program does not provide ADEQ with clear authority to prevent construction or modification before it issues a final decision on the request for authority to construct as is required per 40 CFR 51.160(a) and (b). 80 FR at 14048. ADEQ states that this objection is invalid for two reasons. First, 40 CFR 51.160(b) does not require a minor NSR program to include authority to prevent construction ''before [an agency] issues a final decision.'' It requires only that the program include procedures by which the agency ''will prevent . . . construction or modification.'' The Arizona program manifestly includes such procedures: ADEQ can prevent construction of a source that threatens the NAAQS or control strategy by denying the permit application before a proposed final permit is issued. No more is required. Second, by ''final'' the EPA appears to mean subject to administrative and judicial review. See 80 FR at 14053. The EPA maintains that although ADEQ has issued guidance stating that it ''will treat [a] proposed final permit as a final, appealable agency action,'' the rule itself is not sufficiently clear to be fully approved. 80 FR at 14048.

The EPA, however, has mischaracterized ADEQ's guidance. ADEQ did not state that it ''will treat'' proposed final permits'' as appealable agency actions. Rather, the Department stated that it ''must'' do so. Under Arizona administrative law, an ''appealable agency action'' is defined as ''an action that determines the legal rights, duties or privileges of a party.'' A.RS. § 41–1092(3). Because a proposed final permit or permit revision under the revised rules determines the applicant's right to construct, it must be treated as an appealable agency action separate from the issuance of the final permit or permit revision. ADEQ must therefore issue a notice of appealable agency action under A.R.S § 41–1092.03 for both the proposed final permit or permit revision, as well as the final permit or permit revision.

ADEQ states that there is no ambiguity under Arizona law (which mirrors the administrative law of most states). Under the clear terms of ADEQ's regulations, a proposed final permit confers a right to construct and is therefore appealable.

Response 4:

The EPA appreciates ADEQ's comments concerning the question of whether ADEQ's NSR program provides for the issuance of a final NSR decision prior to sources being allowed to begin construction. Our proposed action on ADEQ's NSR SIP submittal stated that certain sources were allowed to begin construction upon issuance of a proposed final permit, and that we believed that ADEQ's regulations were ambiguous as to whether issuance of a ''proposed final permit'' was a final NSR decision. As a result, we proposed to find that ADEQ's NSR SIP submittal did not satisfy several related CAA requirements, and those deficiencies provided some of the bases for our proposed limited disapproval of ADEQ's PSD program, NA–NSR program, and minor NSR program.

The EPA continues to believe that the CAA and its implementing regulations require that PSD and NA–NSR programs must provide for the issuance of final NSR permit decisions imposing permit conditions necessary to ensure compliance with the applicable NSR program requirements before sources subject to those programs may begin construction. We also interpret the CAA to require that PSD programs provide an opportunity for judicial review of PSD permit decisions. See generally CAA sections 110(a)(2)(C), 165, 172(c)(5), 173; 40 CFR 51.165(a)(2), 51.166(a)(7)(iii), 166(q)(2)(vii).[13]

The CAA and its implementing regulations also require that minor NSR programs provide for legally enforceable procedures including means by which the Agency responsible for final decisionmaking on an application for approval to construct or modify has authority to prevent such construction or modification if such construction or modification will result in a violation of applicable portions of the control strategy or will interfere with the attainment or maintenance of a NAAQS. CAA section 110(a)(2)(C), 40 CFR 51.160(a)–(b). We continue to believe that decisionmaking authorities must make final NSR decisions for minor sources, as well as major sources, subject to their NSR program prior to allowing sources to begin construction in order to satisfy this requirement that the plan provide for such ''legally enforceable procedures.'' [14]

The EPA acknowledges the interpretation that ADEQ recently provided to clarify that ADEQ *must* treat ''proposed final permits'' as ''appealable agency actions,'' which are defined under Arizona law as actions that ''determine[] the legal rights, duties or privileges of a party'' pursuant to A.R.S. section 41–1092(3). ADEQ Memorandum—Proposed Final Permits to Be Treated as Appealable Agency Actions, dated February 10, 2015. ADEQ also provided additional clarifications after the end of the public comment period, specifically stating that ''[p]roposed final permits are enforceable at the time that the permits are issued.'' [15] After further review of this issue and consideration of ADEQ's comments and interpretation of its regulations, and in reliance on ADEQ's stated interpretation of its regulations, we have determined that ''proposed final permits'' constitute final, binding, and enforceable NSR decisions by ADEQ that are issued before sources may begin construction and which are immediately subject to review.

We therefore conclude that ADEQ's NSR program provides, in all instances, for the issuance of a final NSR decision prior to sources being allowed to begin construction, thus this issue no longer provides a basis for our limited disapproval of the ADEQ NSR SIP submittal. Specifically, we agree that: (1) ADEQ's NSR program provides ADEQ with clear authority to prevent construction or modification before it issues a final decision on the request for authority to construct as required by 40 CFR 51.160(a) and (b); (2) ADEQ's PSD

[13] The notice for our proposed action noted discussed the fact that we interpret the CAA to require an opportunity for judicial review of a decision to grant or deny a PSD permit, whether issued by the EPA or by a State under a SIP-approved or delegated PSD program. See 80 FR 14053.

[14] We agree that ADEQ has authority to decline to issue a proposed final permit for a particular source if it finds that the emissions from such source would result in a violation of applicable portions of the control strategy or would interfere with the attainment or maintenance of the NAAQS. However, in cases where a permit requirement would be needed to ensure compliance with the NAAQS for a particular source, if such a permit decision were not final, binding and enforceable at the time construction of the source was authorized, there would not be a legally enforceable procedure in place to prevent construction of that source in a manner that could violate the NAAQS as required by 40 CFR 51.160.

[15] See June 8, 2015 email ''Clarification of ADEQ's Comments on the EPA's Proposed Action'' from Eric C. Massey, Air Quality Division Director at ADEQ to Lisa Beckham, Air Permits Office, EPA Region 9.

and NA–NSR programs do not allow a source to begin construction prior to issuance of a final PSD or NA–NSR permit; and (3) ADEQ's PSD program satisfies the CAA requirement for an opportunity for judicial review of PSD permit decisions. We are also including the clarifying memorandum from ADEQ dated February 10, 2015 as additional material in our final rule.

However, we continue to recommend that ADEQ revise its regulations to clarify that a proposed final permit is a final, enforceable, and appealable NSR permit decision in order to minimize confusion among the public and the regulated community. We reiterate that such a revision is not a requirement for approval of ADEQ's NSR program into the SIP.

Comment 5:

ADEQ disagrees with the EPA's proposed limited disapproval of ADEQ's program under 40 CFR 51.160(a)(2) and (b)(2) because rule R18–2–334 does not require ADEQ to evaluate whether the project under review will interfere with attainment or maintenance of the NAAQS in all cases, and instead allows sources to apply reasonably available control technology (RACT) in lieu of such an evaluation. ADEQ also takes issue with the EPA's determination that R18–2–334(E) allows for too great of Director's discretion when determining when to require a NAAQS analysis. ADEQ believes this objection is fundamentally at odds with the EPA's own approach to air quality impact analysis (AQIA) in the Tribal Minor NSR Rule. The tribal rule initially imposes a case-by-case control technology requirement, but gives the ''reviewing authority'' (which may be the EPA or a tribe with delegated authority) discretion to conduct an AQIA. 40 CFR 51.154(c) and (d). ADEQ also cites to the EPA's response to comments for the Tribal Minor NSR Rule where the EPA indicated that reviewing authorities implementing the Tribal Minor NSR Rule should be allowed the discretion to determine when an AQIA might be needed from the applicant. See 76 FR 38761. Further, ADEQ argues that ADEQ's rule is actually stricter and confers less discretion than the EPA's Tribal Minor NSR Rule. ADEQ must consider the source's emission rates, location of emission units within the facility and their proximity to ambient air, the terrain in which the source is or will be located, the source type, the location and emissions of nearby sources, and background concentration of regulated minor NSR pollutants. By comparison, the criteria in the EPA's Tribal Minor NSR Rule states that if the reviewing authority has reason to be concerned that the construction of your minor source or modification *would* cause or contribute to a NAAQS or PSD violation, it *may* require the source to conduct and submit an AQIA. (emphasis added). ADEQ believes that this comparison demonstrates that ADEQ's discretion is far from being ''too great;'' ADEQ's discretion under R18–2–334(E) is minimal.

Finally, ADEQ disagrees with the EPA's determination that R18–2–334(C)(1)(a)–(b) ''appears to allow sources with lower levels of emissions to avoid both substantive NAAQS review and RACT requirements'' and that the state's minor NSR Program therefore fails to ensure ''that all sources subject to review under its NSR program will not interfere with attainment or maintenance of the NAAQS.'' This objection is incorrect for two reasons. First, R18–2–334(C)(1)(a)–(c) represents ADEQ's reasonable judgment that the imposition of RACT on units with low emissions (20 percent of the source threshold) within a source otherwise subject to RACT is not a cost-effective means of protecting the NAAQS. Second, this provision does not, as the EPA contends, allow sources to avoid substantive NAAQS review. This provision clearly applies solely to sources that elect to comply with minor NSR through installation of RACT. These sources remain subject to the obligation to conduct an AQIA on the Director's request under R18–2–334(E), and there is nothing in the rule to suggest that emissions from units below the R18–2–334(C)(1)(a)–(b) thresholds would be excluded from the AQIA.

SRP also disagrees with the EPA's proposed disapproval based on the EPA's finding that the Director's discretion under R–18–2–334(E) was too great, and asserts that the EPA's proposed action conflicts with the EPA's policy on approving director discretion provisions. SRP argues that the Director's discretion in this regard is sufficiently specific in identifying when it applies and what criteria are to be applied and that therefore the relevant provisions are fully approvable into the Arizona SIP.

Response 5:

Upon review of ADEQ's comments, including clarifications regarding how the provisions of R18–2–334(E) apply, and in reliance on ADEQ's stated interpretation of its regulations, we no longer find that ADEQ's minor NSR program does not satisfy 40 CFR 51.160(a)(2) and (b)(2) based on the view that rule R18–2–334 does not require ADEQ to evaluate whether all sources subject to review under that rule may interfere with attainment or maintenance of the NAAQS.[16] After the close of the public comment period, ADEQ provided additional clarifications, stating that it interprets R18–2–334 to ''require[] ADEQ to consider the air quality impacts of a project, using the criteria established in R18–2–334(E)(1) through (6), in each instance where the applicant has not submitted an AQIA under R18–2–334(C)(2).'' [17] ADEQ has explained that it interprets R18–2–334 to require ADEQ to consider, for *all* sources subject to R18–2–334, whether there is reason to believe that the source could interfere with attainment or maintenance of the NAAQS. Some sources will comply with this requirement by submitting an AQIA under R18–2–334(C)(2). All other sources will be reviewed by ADEQ using the criteria in R18–2–334(E), and those criteria will be used to determine whether a more formal AQIA is necessary. That is, ADEQ does not have discretion to determine in which instances it will or won't apply the criteria in R18–2–334(E)(1) through (6); instead, ADEQ interprets its regulations to require that ADEQ apply such criteria for all sources subject to R18–2–334 where the applicant has not submitted an AQIA. Accordingly, this issue does not provide a basis for our final limited disapproval.

We would also like to clarify that our proposed limited disapproval was not specifically related to ADEQ's choice to apply RACT for some sources subject to R18–2–334 while allowing certain smaller sources subject to the rule to avoid RACT. Rather, our proposed disapproval action related only to what we understood to be the potential for sources subject to R18–2–334 to apply RACT (or to proceed without applying RACT for certain sources with lower emissions) *in lieu of any review* by ADEQ of the source's potential impacts on the NAAQS under the ADEQ NSR program. As discussed immediately above, this is no longer a concern as ADEQ has explained that it must review all sources subject to R18–2–334 to consider whether the source could interfere with attainment or maintenance of the NAAQS.

Given our revised determination on this issue, it is not necessary to address all the arguments made by SRP concerning this issue, but we note that we agree with SRP (and ADEQ) that the

[16] The EPA's proposal inadvertently referred to R18–2–334(G) instead of R18–2–334(E) when describing this issue.

[17] See June 8, 2015 email ''Clarification of ADEQ's Comments on EPA's Proposed Action'' from Eric C. Massey, Air Quality Division Director at ADEQ to Lisa Beckham, Air Permits Office, EPA Region 9.

criteria ADEQ will be applying when making its determination under R18–2–334(E) do not afford undue discretion to the Director.

Comment 6:

One commenter takes issue with the EPA's statements that finalizing its proposed limited disapproval would trigger an obligation for the EPA to promulgate a Federal Implementation Plan (FIP) and impose CAA sanctions if ADEQ does not correct the alleged deficiencies within 18 to 24 months. The commenter asserts that this contradicts the statutory limitations on the EPA's SIP-action authority under the CAA.

Section 110(c)(1) provides the EPA the authority to promulgate a FIP in only two circumstances: (1) The State failed to make a required SIP submission, or (2) the Administrator disapproves a SIP submission in whole or part. Section 179(a) contains similar conditions for imposing sanctions in nonattainment areas. The commenter claims that the EPA interprets its authority to impose a FIP or sanctions only when the disapproval relates to a mandatory SIP submission. In support of this assertion, the commenter cites to one action from Region 6 of the EPA that disapproved elements of the Texas Commission of Environmental Quality's (TCEQ's) major NSR rule to address the 2002 NSR changes (''[t]he provisions in these submittals . . . were not submitted to meet a mandatory requirement of the Act. Therefore, this final action to disapprove . . . the State submittals does not trigger a sanction or Federal Implementation Plan clock.''). The commenter concludes that such an interpretations of Section 110(c)(1) and Section 179(a) are reasonable because the EPA would otherwise, for example, be required to promulgate a FIP for disapproving a State's request to include odor provisions in its SIP that are unrelated to NAAQS compliance.

The commenter further states that ADEQ's current SIP contains fully-approved, minor NSR and major NSR permitting programs. As such, the State's requested SIP revisions addressed in the EPA's proposed action are not mandatory. The commenter further argues that the EPA referenced no information suggesting that it made a formal call for plan revision as required by Section 110(k)(5) of the CAA related to its proposed limited disapproval of ADEQ's NSR SIP submittal. As such, in general, Arizona is not under a mandatory duty to revise its existing SIP with regards to its NSR programs. The commenter argues that it is inappropriate for the EPA to replace a fully approved-SIP with a program that it alleges does not fully satisfy CAA requirements by using an approach that triggers the FIP clock and potentially imposes sanctions. ADEQ could withdraw the requested SIP submission and face no threat of a FIP or sanctions.

Response 6:

The EPA disagrees with the commenter's statement that the EPA's limited disapproval in this action does not trigger a FIP clock or potential sanctions, and disagrees that the EPA's action is inappropriate in light of this result.

The EPA continues to believe that limited disapproval of ADEQ's NSR SIP submittal triggers an obligation to promulgate a FIP unless ADEQ corrects the identified deficiencies and the EPA approves the related SIP revisions within 2 years, and that sanctions would be triggered by the EPA's limited disapproval of ADEQ's NA–NSR program revisions based on deficiencies related to CAA title I, Part D requirements for nonattainment areas if ADEQ fails to remedy the identified deficiencies so that the EPA can approve the revisions into the SIP before the sanctions apply. As stated in the notice for our proposal, we intend to work with ADEQ to remedy these deficiencies in a timely manner. Importantly, we note that the EPA's other option would have been a full disapproval of ADEQ's NSR SIP submittal, which would have required ADEQ to continue to implement the outdated rules in its SIP while also implementing its newer rules under State law. This would require ADEQ and permit applicants to continue to implement and comply with two redundant and sometimes inconsistent sets of NSR rules, contrary to ADEQ's request to update its SIP to incorporate its newer rules and remove its older, outdated rules.

Pursuant to section 110(c)(1) of the CAA, the EPA must promulgate a FIP within two years after our final limited disapproval of ADEQ's NSR SIP submittal, unless ADEQ adequately corrects the identified deficiencies and the EPA approves the corrected program into the Arizona SIP before that time. The commenter argues that the FIP clock applies only when a disapproval relates to a mandatory SIP submission, and asserts that the submitted revisions are not mandatory because ADEQ's existing SIP contains fully-approved minor and major NSR programs, and the revisions were not developed in response to a SIP call under CAA section 110(k)(5). The EPA disagrees with the commenter's argument.

Even if the EPA has not issued a SIP call under CAA section 110(k)(5),[18] a FIP is generally required under CAA section 110(c)(1) when the EPA disapproves a plan submission, unless the State adequately corrects the basis for the disapproval and the EPA approves a corrected SIP submittal in a timely manner, or the EPA determines that an existing plan is in place that meets the relevant CAA requirements. See *AIR* v. *EPA,* 686 F.3d 668, 675–76 (9th Cir. 2012). We note that NSR programs consistent with CAA requirements are required elements of a SIP. CAA §§ 110(a)(2)(C), 161, 165, 172(c)(5), 173; 40 CFR 51.160–51.166.

In this case, the EPA cannot rely on provisions in the existing Arizona SIP to adequately address the deficiencies with the ADEQ NSR SIP submittal that we identified in our proposed rule and which form the basis for our final limited disapproval. ADEQ must address these deficiencies in a timely manner in order to avoid the requirement for the EPA to promulgate a FIP. As we made clear in the notice for our proposed action,[19] ADEQ's NSR SIP submittal included the removal of most of ADEQ's existing NSR program elements from the Arizona SIP.[20] Upon our final action,[21] there will not be an ''existing plan'' that could potentially satisfy the specific CAA NSR requirements that the EPA has determined are not satisfied in ADEQ's NSR SIP submittal.[22] In general, the

[18] There is no existing SIP call under CAA section 110(k)(5) that specifically pertains to the deficiencies with ADEQ's NSR program.

[19] See 80 FR at 14046–14047.

[20] See October 29, 2012 ADEQ submittal at 4 and Table 2–1; see also ADEQ's February 23, 2015 supplemental submittal at 3–7.

[21] We note that the EPA's limited approval/limited disapproval of ADEQ's NSR SIP submission allows ADEQ to use its updated NSR rules, to the extent the EPA is granting limited approval in this action, to carry out the NSR program. Continuing to leave old and outdated Arizona NSR SIP elements in place would not be consistent with ADEQ's SIP submission and request to the EPA, and would require ADEQ and permit applicants to implement and comply with two redundant and sometimes inconsistent sets of NSR rules. Whether ADEQ could withdraw its ADEQ NSR SIP submittal and what consequences would ensue is not relevant; ADEQ has not done so.

[22] The commenter asserts that when the EPA disapproved elements of the Texas Commission of Environmental Quality's (TCEQ's) major NSR rule, the EPA found that the provisions in the submittals were not submitted to meet a mandatory requirement of the Act and thus noted that its final action to disapprove the State submittals did not trigger a sanction or FIP clock. The TCEQ example is inapposite, however, because our action on the ADEQ NSR SIP submittal approves rules with identified deficiencies into the SIP where the action in Region 6 did not. The EPA found the deficiencies in the TCEQ submission to be separable and issued partial disapprovals for them, resulting in a SIP that did not contain the deficiencies. In that situation,

EPA's role in reviewing SIP submittals, including the ADEQ NSR SIP submittal, is to defer to the State's choices as to how to implement CAA requirements provided those choices are consistent with the pertinent CAA requirements, whether or not a program submittal is considered ''mandatory.'' The EPA's limited approval/limited disapproval action on ADEQ's NSR SIP submittal, including ADEQ's request to remove old and largely outdated NSR provisions from the Arizona SIP, allows us to approve into the SIP the State's choice to adopt and implement its updated and strengthened NSR program while giving ADEQ time to remedy certain deficiencies that cause us not to grant full approval of the submittal. Furthermore, even if one assumed *arguendo* that these older Arizona NSR provisions were not being removed from the Arizona SIP, the commenter has not explained how the old NSR provisions would, in fact, meet the NSR requirements for which the EPA has found specific deficiencies in ADEQ's updated NSR program.[23]

Similarly, for deficiencies related to CAA title I, Part D requirements for nonattainment areas, final limited disapproval of ADEQ's NSR SIP submission will result in the application of sanctions under CAA section 179 unless the deficiencies have been adequately corrected before the sanctions apply.

As with its arguments concerning the FIP clock, the commenter argues that CAA sanctions apply only when a disapproval relates to a mandatory SIP submission, and asserts that the submitted revisions are not mandatory because ADEQ's existing SIP contains fully-approved NSR permitting programs, and the revisions were not developed in response to a SIP call under CAA section 110(k)(5). The EPA again disagrees with the commenter's argument.

Even if the EPA has not issued a SIP call under CAA section 110(k)(5), sanctions generally will apply under CAA section 179 when the EPA disapproves a plan submission based on plan deficiencies that relate to title I, Part D requirements, unless ADEQ adequately corrects those deficiencies and the EPA takes action to approve a corrected plan submittal before the sanctions apply, or the EPA determines that the existing plan meets the applicable Part D requirements. See 40 CFR 52.31. A NA–NSR program that meets CAA requirements is a required element of a SIP. CAA §§ 110(a)(2)(C), 172(c)(5), 173; 40 CFR 51.165.

As discussed above, ADEQ's NSR SIP submittal included the removal of most of ADEQ's existing NSR program elements from the Arizona SIP, so upon the EPA's final action there will not be older NA–NSR SIP provisions that could potentially meet the CAA NA–NSR requirements that the EPA has determined are not satisfied in the NA–NSR program in ADEQ's NSR SIP submittal. The EPA's limited approval/limited disapproval action on ADEQ's NSR SIP submittal, including ADEQ's request to remove old and largely outdated NSR provisions from the Arizona SIP, allows us to approve into the SIP the State's choice to adopt and implement its updated and strengthened NA–NSR program while giving ADEQ time to remedy certain deficiencies that cause us not to grant full approval of the submittal. Furthermore, even if one assumed *arguendo* that these older Arizona NA–NSR provisions were not being removed from the Arizona SIP per ADEQ's request, the commenter has not explained how the old NA–NSR provisions would, in fact, meet the specific NA–NSR requirements for which the EPA has found deficiencies with ADEQ's updated NA–NSR program. For example, ADEQ's old SIP-approved program did not include NO_X as a precursor to ozone.

We note that the EPA is also finalizing a partial disapproval—rather than limited approval/limited disapproval—for a separable ADEQ NSR program provision that is analogous to a previous federal NSR provision that a federal Court determined is not a permissible component of PSD programs—the $PM_{2.5}$ significant monitoring concentration (SMC). As there is no deficiency related to this issue in the approved plan following our partial disapproval, neither a FIP requirement nor sanctions will result from this partial disapproval action.

The EPA's limited disapproval action is based on program elements in ADEQ's NSR SIP submittal that do not meet CAA requirements and are not satisfied by the existing Arizona SIP provisions that remain in place following our final action.[24] We wish to clarify that all of the bases for our final limited disapproval action on the ADEQ NSR SIP submittal must be adequately addressed in a timely manner in order to avoid a requirement for a FIP or, for Part D deficiencies, the application of sanctions.

Finally, our final limited disapproval also addresses some SIP elements or provisions that are not required (*e.g.,* deficiencies concerning optional PAL provisions), but were not separable from ADEQ's NSR SIP submittal as they were an integrated part of that submittal. Because we are approving these provisions into the SIP, the EPA will be obligated to implement a FIP and/or sanctions will apply (as applicable) for such optional program elements that remain in the SIP if the deficiencies in those elements are not corrected to ensure consistency with CAA requirements.

Comment 7:

SRP states that to proceed using the limited approval, limited disapproval mechanism, The EPA must make an on-the-record determination that the disapproved elements are not severable from the approved elements. The EPA has not made this finding or provided this explanation in its proposed notice.

Response 7:

The EPA disagrees with this comment. The commenter cites no authority for this unsupported proposition. Under CAA sections 110(k)(3) and 301(a) and the EPA's long-standing guidance, limited approval and partial approval are alternatives to full approval or full disapproval of a complete plan submission. Limited approval may be appropriate where a plan submittal contains some provisions that meet applicable CAA requirements and other provisions that do not, and the provisions are not separable. Partial approval may be used where a separable

whether the deficiencies that were disapproved were contained in ''mandatory'' SIP submissions was relevant because if they were ''mandatory'' then disapproval likely would have resulted in TCEQ needing to submit another plan revision to replace the disapproved plan elements. But because the deficiencies were found to be separable and contained in plan elements that were not mandatory, the EPA issued a partial disapproval of those elements, keeping the deficiencies out of the approved SIP and with TCEQ under no obligation to submit another SIP revision because the disapproved plan elements were not ''mandatory.'' In contrast, the provisions including the identified deficiencies in the ADEQ NSR SIP submittal are integrated parts of the submittal and are being approved into the SIP as part of our limited approval/limited disapproval action, so whether the ADEQ plan revisions containing the deficiencies are ''mandatory'' is not relevant and is not a basis to avoid a FIP duty or sanctions.

[23] ADEQ noted in its submittal that its existing SIP-approved program did not include the PM_{10} increments, the NO_2 increments, or updates related to the ''WEPCO'' rule for determining when a project is a modification at an electric generating unit. In addition, ADEQ stated that a basis for its revisions to its minor NSR program was to correct the deficiency that its program lacked explicit procedures designed ''to assure that national ambient air quality standards are achieved,'' as required by section 110(a)(2)(C) of the Act. See Appendix A of ADEQ's October 29, 2012 SIP submittal at 1546 and 1547.

[24] In addition, ADEQ's NSR SIP submittal did not address the regulation of greenhouse gases (GHGs) under the PSD program. As discussed in the notice for our proposed action on ADEQ's NSR SIP submittal, a FIP is currently in place in Arizona to address PSD requirements for GHGs. See 80 FR at 14054 n.17.

portion of a plan submittal meets all applicable CAA requirements. The EPA has discretion under the CAA to choose an appropriate approval or disapproval mechanism for a plan submission, and there is no required ''finding'' that the provisions are not separable for a proposed or final limited approval or limited disapproval SIP action. See Processing of State Implementation Plan (SIP) Revisions, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992 (*www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf*).

Nevertheless, in general, we believe that, with the exception of the partial disapproval of the $PM_{2.5}$ SMC that we are finalizing, the components of ADEQ's NSR SIP submittal are interrelated and not separable from the submittal as a whole and therefore not appropriate for partial disapproval. ADEQ has not provided us with any basis to conclude that particular aspects of its NSR SIP submittal for which we proposed limited disapproval are not integral or interrelated parts of the submittal or are otherwise separable and appropriate for partial disapproval. Further, the commenter has not demonstrated that any portion of the ADEQ NSR SIP submittal for which we proposed limited disapproval is, in fact, separable and appropriate for partial disapproval rather than limited disapproval.

Comment 8:

One commenter states that the EPA's assertion that ADEQ may not exclude certain pollutant-emitting activities from PSD misinterprets the EPA's regulations. The commenter points to 40 CFR 51.160(e) and states that a State may exclude activities that it anticipates will have negligible or insignificant environmental impacts from either the major or minor NSR permit programs. This regulatory approach makes sense because it allows for a practical integration of the multiple preconstruction requirements. There is no basis for requiring a State to regulate activities with the more stringent requirements contained in the PSD or NA NSR program when those activities fall below the levels of concern established for the minor NSR program.

Response 8:

The regulations governing PSD and NA–NSR SIP programs contain the fundamental requirement that such programs adopt a specified definition for ''stationary source.'' 40 CFR 51.165(a)(1)(i), 51.166(b)(5). The regulations require the use of the prescribed definition, and state that deviations from the specified wording will be approved only if ''the State specifically demonstrates that the submitted definition is ''more stringent, or at least as stringent, in all respects'' as the prescribed definition. 40 CFR 51.165(a)(1), 51.166(b). As explained in reference to the NA–NSR program in our March 18, 2015 proposal:

ADEQ must demonstrate that its definition of stationary source is at least as stringent as the federal definition at 51.165(a)(1)(i) in all respects.

See 80 FR at 14056; see also 80 FR at 14054 for the PSD program. The commenter has not addressed how ADEQ's definition would be at least as stringent as the definitions in 51.165(a)(1)(i) and 51.166(b)(5) in light of the exemption language referenced in our proposal, see 80 FR at 14054, nor has ADEQ provided the necessary demonstration that its definition of stationary source is at least as stringent as the definition of ''stationary source'' under the federal PSD and NA–NSR programs. Indeed, ADEQ's comments did not address this basis of our proposed limited disapproval. We continue to find that this issue provides a basis for limited disapproval of ADEQ's NSR SIP submittal.

We do not interpret 40 CFR 51.160(e) as allowing states to develop less stringent definitions for these programs without the necessary demonstration that the submitted definition is ''more stringent, or at least as stringent, in all respects'' as the prescribed definition as required by 40 CFR 51.165(a)(1) and 51.166(b). Section 51.160(e) does not contain any language giving states the discretion to exclude any type of source from the more specific major source permitting requirements in section 51.165 and 51.166. Section 51.160(e) does not say anything about sources that have ''negligible or insignificant environmental impacts.'' This section simply requires that a state plan identify the types and sizes of stationary sources that are covered by the ''legally enforceable procedures'' required under section 51.160(a) to review construction or modification of stationary sources. Sections 51.165 and 51.166 provide more detailed procedures that must apply to major stationary sources. These more specific provisions in sections 51.165 and 51.166 make clear that those procedures must cover the type and size of source covered by the definitions at 40 CFR 51.165(a)(1)(i) and 51.166(b)(5).

Comment 9:

One commenter takes issue with our proposed limited disapproval of ADEQ's definition of projected actual emissions on the basis that it does not specifically require malfunction emissions to be included in the post-change projection. The EPA has not shown how ADEQ's exclusion of this term from ADEQ's definition makes the definition less stringent than the Federal rules. Malfunctions, by definition, are emissions associated with an unpredictable and not reasonably preventable event. In this respect, it is axiomatic that a source cannot reasonably project emissions that it cannot predict. By excluding malfunctions from its projected actual emissions procedure, ADEQ recognizes the EPA's own interpretation of ''malfunctions'' and is no less stringent than the federal definition. The EPA's proposed action also is inconsistent with other Regional Office SIP approvals that have approved definitions of ''projected actual emissions'' that do not require inclusion of malfunction emissions.[25] Moreover, the comparable paragraph in the Federal definition of ''projected actual emissions'' merely clarifies that projected actual emissions includes all post-change emissions. The EPA could approve ADEQ's ''projected actual emissions'' definition by severing and not acting on paragraph R18–2–401(20)(b)(iii) and the definition would not lose its intended meaning.

Response 9:

The commenter asserts that the EPA has not shown that ADEQ's exclusion of malfunction emissions from the definition of ''projected actual emissions'' makes the definition less stringent. However, ADEQ has the burden of demonstrating that its alternative definitions are not less stringent than the ones in the EPA's regulation. See 40 CFR 51.165(a)(1), 51.166(b). ADEQ's definitions under the PSD and NA–NSR programs warrant a limited disapproval because the EPA cannot reasonably conclude that ADEQ's definition is at least as stringent as the definitions in 40 CFR 51.165(a)(1) and/or 51.166(b). We note that ADEQ's definition for ''baseline actual emissions'' specifically includes startup, shutdown, and malfunction emissions, while ADEQ's definition for ''projected actual emissions'' includes startup and shutdown emissions but does not include malfunction emissions. Further, ADEQ's definition of ''projected actual emissions'' specifically excludes malfunction emissions associated with a shutdown. Based on the exclusion of malfunction emissions from the

[25] See, *e.g.,* The EPA's approval of Georgia's PSD program, Georgia's PSD program at 391–3–1; and the EPA's approval of South Carolina's regulation at Chapter 7 Regulation 62.5.

definition of ''projected actual emissions'', and in the absence of a response from ADEQ on this issue, we conclude that ADEQ has not shown that its definition is as stringent as the federal definition. In addition, without a clearer statement from ADEQ, we cannot determine that R18–2–401(20)(b)(iii) is separable from the rest of the ADEQ definition of projected actual emissions without losing the apparently intended meaning by ADEQ to specifically include startup and shutdown but exclude malfunction emissions. We note that ADEQ's comments did not address this basis for our proposed limited disapproval.

With respect to the claim that the EPA has previously approved PSD or NA–NSR programs that do not include malfunctions emissions under the definition for projected actual emissions, we note that the examples provided by the commenter are not completely analogous. In those programs, the definition of baseline actual emissions also excluded malfunction emissions, whereas ADEQ has included those emissions in its definition of baseline actual emissions. Without further justification from ADEQ, this inconsistency across definitions makes it difficult for the EPA to determine the relative stringency of ADEQ's definitions as compared with those in 40 CFR 51.165 and 51.166. The commenter has not provided any information about the nature of the demonstrations that was supplied by the states that obtained the EPA approval for excluding malfunction emissions from both the definition of baseline actual emissions and projected actual emissions.

Notwithstanding prior action by the EPA in the context of SIPs in the distinct circumstances noted above, the EPA believes the proper interpretation of these definitions is that they require that all emissions, pre- and post-change, including malfunctions, be included in the definitions included in SIPs, consistent with the regulatory text, absent a demonstration that the State's regulation is at least as stringent as the federal definition as required by 40 CFR 51.165(a)(1) and 51.166(b).

We note that in reviewing this comment, we also reviewed our proposed limited disapproval related to the calculation of baseline actual emissions under ADEQ's PALs program at R18–2–412(B)(2). See 80 FR 14053. Upon review, we determined that our proposed limited disapproval related to the calculation of baseline actual emissions under ADEQ's PALs program at R18–2–412(B)(2) was in error because ADEQ's definition for baseline actual emissions at R18–2–401(2)(i) specifically includes startup, shutdown, and malfunction emissions. Therefore, this issue no longer provides a basis for our limited disapproval of ADEQ's NSR SIP submittal.

Comment 10:

One commenter asserts that ADEQ's definition of regulated NSR pollutant is not deficient for not including the final two sentences in 40 CFR 51.166(b)(49)(i)(a). This language addresses issuance of permits before January 1, 2011. Since this SIP revision applies to changes after this date, it is not necessary for the definition to address circumstances that existed before SIP approval. Moreover, absence of the language, in any case, does not affect the stringency of the definition.

Response 10:

We agree with the commenter that while ADEQ may want to add to its definition these two sentences that provide additional clarification, this clarifying language is not necessary for SIP approval. As such, we no longer find this difference to be a deficiency with ADEQ's NSR program, and this issue is not a basis for our final limited disapproval.

Comment 11:

The EPA proposes to disapprove ADEQ's major NSR programs because the SIP submittal does not include a definition for ''subject to regulation.'' Although the Federal regulations contain a definition for ''subject to regulation,'' the EPA made clear, at the time it adopted this definition, that states may adopt (or already have) alternative pathways for defining applicability of the major NSR program—the EPA did not intend for codification of ''subject to regulation'' to be a necessary element for SIP approval. See 75 FR 31514 at 31525. The EPA chose the ''subject to regulation'' pathway because it determined that this would allow other states to adopt the EPA's definition through interpretation without the need for a SIP revision.

ADEQ's major source definition refers to NSR regulated pollutants. ADEQ's definition of NSR regulated pollutant covers all pollutants ADEQ is currently required to regulate under its major NSR programs. ADEQ's program is not currently deficient for failing to include some unknown air pollutant that the EPA may regulate in the future. Should the EPA regulate such an air pollutant in the future, the EPA may follow the pathway it used for GHGs and issue a SIP call at that time. Similarly, ADEQ's definition of regulated NSR pollutant is not currently deficient for failing to include some unidentified air pollutant that the EPA might name in the future.

Response 11:

After further review and consideration of the comment, we are not including the absence of a definition of the term ''subject to regulation'' as a basis for our limited disapproval of the ADEQ NSR SIP submittal. Similarly, we are also not including the omission in ADEQ's PSD rules of language analogous to that in 40 CFR 51.166(b)(49)(iv) as a basis for our final limited disapproval of the ADEQ NSR SIP submittal. We note, however, that contrary to commenters' assertion, the ADEQ SIP is deficient because ADEQ's definition of regulated NSR pollutant does not cover all pollutants ADEQ is currently required to regulate under its major NSR programs, in that ADEQ's program does not regulate GHGs. However, the EPA has separately taken action to address this deficiency. The EPA previously established a FIP for GHGs for Arizona because ADEQ could not apply its PSD program to GHGs due to a State law prohibition.

Comment 12:

One commenter states that we must approve ADEQ's definition of basic design parameter because the D.C. Circuit made no finding in *State of New York* v. *EPA* that the use of the ''basic design parameter'' definition was ''impermissible.'' This issue was not before the court in *State of New York* v. *EPA.* At the time the EPA codified the replacement unit provisions, the EPA relied on a previously codified definition of ''basic design parameter'' to explain how it will interpret the phrase ''basic design parameters'' in implementing the replacement unit provisions. The vacatur of the ''basic design parameters'' definition for purposes of a separate, unrelated rulemaking has no effect on the EPA's stated interpretation of that phrase for purposes of the replacement unit provisions. Accordingly, the EPA's statements in the preamble remain its interpretation for purposes of implementing those provisions. ADEQ's definition is fully consistent with the EPA's interpretation.

Response 12:

The EPA agrees with the commenter that our proposed partial disapproval of the definition for ''basic design parameter'' was erroneous. We note that ADEQ did not adopt any of the other provisions of the Equipment Replacement Provisions, which were the subject of the D.C. Circuit Court's decision in *State of New York* v. *EPA.* We agree with the commenter that ADEQ's adoption of a definition for basic design parameter is acceptable in this case, and consistent with the EPA's past statements related to this term.

Therefore, we are not finalizing a partial disapproval of ADEQ's definition for basic design parameter. Our final action includes this definition as part of ADEQ's NSR SIP submittal for which the EPA is finalizing a limited approval/limited disapproval, but it is not a basis for our limited disapproval.

III. Final Action

Pursuant to section 110(k) of the CAA, the EPA is finalizing a limited approval and limited disapproval of the ADEQ rules listed in Table 1 above. We are also approving into the Arizona SIP the Arizona statutory provision relating to local delegation of state authority identified in Table 1 above. In addition, we are removing from the Arizona SIP certain rules and appendices, which are outdated and mostly being superseded by this action. See Table 2 above. We are also finalizing a partial disapproval of one provision of ADEQ's NSR SIP submittal concerning the $PM_{2.5}$ SMC, as the analogous federal regulatory provision has been vacated by a federal Court.[26] Last, we are finalizing a limited approval (but not a limited disapproval) based on requirements under section 189 of the Act related to PM_{10} and $PM_{2.5}$ precursors for ADEQ's nonattainment NSR program for the Nogales and West Central Pinal $PM_{2.5}$ nonattainment areas and the West Pinal PM_{10} nonattainment area.

Our limited approval and limited disapproval action will approve the updated rules included in the ADEQ NSR SIP submittal into the ADEQ portion of the Arizona SIP.[27] However, ADEQ must correct certain deficiencies in the approved rules in order to obtain full approval for its NSR SIP submittal. Our TSD and proposal for this action described in detail the deficiencies we identified with ADEQ's NSR SIP submittal which we determined were bases for limited approval and limited disapproval. With the exception of the changes we are making from our proposal as described in section II.B of this preamble, we are finalizing our action as proposed. For some of these disapproval issues, no adverse comment was received during the public comment period on our proposed action; where comments were received on these issues, we addressed the comments in our Response to Comments document. See section C of this preamble. A list summarizing the bases for our limited disapproval is included in a memorandum to the file for this action.[28]

Our limited disapproval action will trigger an obligation on the EPA to promulgate a FIP unless Arizona corrects the deficiencies that are the bases for the limited disapproval, and the EPA approves the related plan revisions, within two years of the final action. Additionally, for those deficiencies that are bases for our limited disapproval that relate to NA–NSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the nonattainment areas under ADEQ's jurisdiction 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in these areas six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if Arizona submits, and we approve, prior to the implementation of the sanctions, SIP revisions that correct the deficiencies that we identify in our final action.[29] We intend to work with ADEQ to correct the deficiencies identified in this action in a timely manner.

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 and the statutory provision described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

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

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

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

D. Unfunded Mandates Reform Act

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves or disapproves pre-existing requirements under State or local law, and imposes no new requirements.

E. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or in the distribution of power and

[26] The EPA's partial disapproval concerning the $PM_{2.5}$ SMC does not require follow-up action by ADEQ. However, for clarity, ADEQ may wish to remove this disapproved provision from its regulations.

[27] This excludes the $PM_{2.5}$ SMC provision for which we issuing a partial disapproval, as discussed elsewhere in this action.

[28] ''List of Bases for Final Limited Disapproval of ADEQ NSR SIP Submittal,'' Lisa Beckham, Air Permits Office, EPA Region 9, June 22, 2015.

[29] In addition, ADEQ must also address our limited approval under section 189 of the Act related to PM_{10} and $PM_{2.5}$ precursors for the Nogales and West Central Pinal $PM_{2.5}$ nonattainment areas and the West Pinal PM_{10} nonattainment area. However, because this issue is not a basis for our limited disapproval action, it does not trigger a FIP clock or the potential for sanctions.

responsibilities among the various levels of government, as specified in Executive Order 13132.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. 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. Thus, Executive Order 13175 does not apply to this rule.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves or disapproves State rules intended to implement a Federal standard.

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

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

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, the EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes application of VCS to this action would be inconsistent with the Clean Air Act.

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

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

The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of environmental protection for any affected populations.

K. Congressional Review Act

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. The EPA will submit a report containing this rule 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).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *January 4, 2016.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: June 29, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

40 CFR part 52 is amended 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.*

■ 2. Section 52.120 is amended:
■ a. By revising paragraphs (c)(27)(i)(C), (c)(43)(i)(C), (c)(45)(i)(D).
■ b. By adding paragraph (c)(47)(i)(A)(*1*).
■ c. By revising paragraph (c)(50)(i)(C).
■ d. By revising paragraph (c)(54)(i)(E).
■ e. By adding paragraph (c)(54)(i)(H).
■ f. By revising paragraph (c)(56)(i)(C).
■ g. By adding paragraphs (c)(59)(i)(A)(*2*) and (c)(161)(i)(A)(*6*).
■ h. By revising the introductory text of paragraph (c)(162)
■ i. By adding paragraphs (c)(162)(i)(A)(*3*) and (*4*), and (c)(162)(ii).

The revisions and additions read as follows:

§ 52.120 Identification of plan.

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(c) * * *

(27) * * *

(i) * * *

(C) Previously approved in paragraphs (c)(27)(i)(A) and (B) of this section and now deleted without replacement: R9–3–101 (all paragraphs and nos. listed), paragraph B of R9–3–217, R9–3–301 (all paragraphs listed), R9–3–306 (all paragraphs listed), R9–3–307 (all paragraphs listed), R9–3–308, R9–3–310 (Paragraph C), R9–3–311 (Paragraph A), R9–3–312, R9–3–314, R9–3–315, R9–3–316, R9–3–317, R9–3–318, R9–3–518 (Paragraphs B and C), R9–3–319, R9–3–1101, and Appendix 10 (Sections

A10.1.3.3, A10.1.4 and A10.2.2 to A10.3.4).

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(43) * * *

(i) * * *

(C) Previously approved in paragraphs (c)(43)(i)(A) and (B) of this section and now deleted without replacement: R9–3–101 (all paragraphs and nos. listed), R9–3–301 (all paragraphs listed), R9–3–302 (all paragraphs listed), R9–3–303, R9–3–306 (all paragraphs listed), R9–3–307 (all paragraphs listed), and R9–3–518 (Paragraph A.1 to A.5).

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(45) * * *

(i) * * *

(D) Previously approved in paragraphs (c)(45)(i)(A) and (B) of this section and now deleted without replacement: R9–3–101 (all paragraphs and nos. listed), R9–3–301 (all paragraphs listed), R9–3–306 (all paragraphs listed), R9–3–311 (all paragraphs listed), R9–3–509, and Appendix 10 (Sections A10.2 and A10.2.1).

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(47) * * *

(i) * * *

(A) * * *

(*1*) Previously approved in this paragraph (c)(47)(i)(A) and now deleted without replacement: R9–3–101 (all paragraphs and nos. listed).

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(50) * * *

(i) * * *

(C) Previously approved in paragraph (c)(50)(i)(A) of this section and now deleted without replacement: R9–3–310 (Paragraphs A and B) and Appendix 10 (Sections A10.1–A10.1.3.2).

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(54) * * *

(i) * * *

(E) Previously approved in paragraphs (c)(54)(i)(B) and (c)(54)(i)(C) of this section and now deleted without replacement: R9–3–101 (all nos. listed except no. 20).

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(H) Previously approved in paragraphs (c)(54)(i)(B), (C), and (D) of this section and now deleted without replacement: R9–3–301 (all paragraphs except paragraphs I and K), R9–3–302 (all paragraphs listed), R9–3–303 (all paragraphs listed), R9–3–304 (all paragraphs except paragraph H), R9–3–305, R9–3–306 (paragraph A only), and R9–3–1101 (all paragraphs listed).

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(56) * * *

(i) * * *

(C) Previously approved in paragraphs (c)(56)(i)(A) and (B) of this section and now deleted without replacement: R9–3–101 (Nos. 135 and 157), R9–3–218, R9–3–310, R9–3–322, R9–3–1101 and Appendix 11.

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(59) * * *

(i) * * *

(A) * * *

(*2*) Previously approved in paragraph (c)(59)(i)(A)(*1*) of this section and now deleted without replacement: R9–3–303.

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(161) * * *

(i) * * *

(A) * * *

(*6*) Arizona Administrative Code, Title 18, ''Environmental Quality'', chapter 2,''Department of Environmental Quality—Air Pollution Control'', R18–2–311, ''Test Methods and Procedures,'' and R18–2–312, ''Performance Tests,'' effective November 15, 1993.

(162) The following plan revision was submitted on October 29, 2012, and supplemented on September 6, 2013 and July 2, 2014, by the Governor's designee.

(i) * * *

(A) * * *

(*3*) Arizona Administrative Code, Title 18, ''Environmental Quality,'' chapter 2 ''Department of Environmental Quality—Air Pollution Control,'' R18–2–101, ''Definitions,'' only definition nos. (2), (32), (87), (109), and (122), effective August 7, 2012; R18–2–217, ''Designation and Classification of Attainment Areas,'' effective November 15, 1993; R18–2–218, ''Limitation of Pollutants in Classified Attainment Areas,'' effective August 7, 2012; R18–2–301, ''Definitions,'' effective August 7, 2012; R18–2–302, ''Applicability; Registration; Classes of Permits,'' effective August 7, 2012; R18–2–302.01, ''Source Registration Requirements,'' effective August 7, 2012; R18–2–303, ''Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition,'' effective August 7, 2012; R18–2–304, ''Permit Application Processing Procedures,'' effective August 7, 2012; R18–2–306, ''Permit Contents,'' effective December 20, 1999; R18–2–306.01, ''Permits Containing Voluntarily Accepted Emission Limitations and Standards,'' effective January 1, 2007; R18–2–306.02, ''Establishment of an Emissions Cap,'' effective September 22, 1999; R18–2–315, ''Posting of Permit,'' effective November 15,1993; R18–2–316, ''Notice by Building Permit Agencies,'' effective May 14, 1979; R18–2–319, ''Minor Permit Revisions,'' August 7, 2012; R18–2–320, ''Significant Permit Revisions,'' effective August 7, 2012; R18–2–321, ''Permit Reopenings; Revocation and Reissuance; Termination,'' effective August 7, 2012; R18–2–323, ''Permit Transfers,'' effective February 3, 2007; R18–2–330, ''Public Participation,'' effective August 7, 2012; R18–2–332, ''Stack Height Limitation,'' effective November 15, 1993; R18–2–334, ''Minor New Source Review'' effective August 7, 2012; R18–2–401 ''Definitions,'' effective August 7, 2012; R18–2–402 ''General,'' effective August 7, 2012; R18–2–403 ''Permits for Sources Located in Nonattainment Areas,'' effective August 7, 2012; R18–2–404, ''Offset Standards,'' effective August 7, 2012; R18–2–405, ''Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe,'' effective August 7, 2012; R18–2–406, ''Permit Requirements for Sources Located in Attainment and Unclassifiable Areas,'' effective August 7, 2012; R18–2–407, ''Air Quality Impact Analysis and Monitoring Requirements,'' excluding subsection (H)(1)(c), effective August 7, 2012; R18–2–409, ''Air Quality Models,'' effective November 15, 1993; and R18–2–412, ''PALs'' effective August 7, 2012.

(*4*) Arizona Revised Statutes, title 49, ''Environment,'' chapter 1 ''General Provisions'', section 49–107, ''Local delegation of state authority,'' effective July 1, 1987.

(ii) Additional materials.

(A) Arizona Department of Environmental Quality.

(*1*) *Setting Applicability Thresholds,* pages 1547–1549 in Appendix A to ''State Implementation Plan Revision: New Source Review'' adopted on October 29, 2012.

(*2*) Memorandum, ''Proposed Final Permits to be Treated as Appealable Agency Actions,'' dated February 10, 2015, from Eric Massey, Air Quality Division Director to Balaji Vaidyanathan, Permit Section Manager, submitted on February 23, 2015.

(*3*) ''State Implementation Plan Revision: New Source Review—Supplement,'' relating to the division of jurisdiction for New Source Review in Arizona, adopted on July 2, 2014.

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