



**SIP Revision: Clean Air Act  
Section 110(k)(5) - SIP call for Startup,  
Shutdown, and Malfunction.**

*Air Quality Division  
September 8, 2016 Draft*

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## **Completeness Criteria (40 C.F.R. Part 51, Appendix V, § 2.0)**

### **Appendix V § 2.1 - Administrative Materials**

**(a) A formal signed, stamped, and dated letter of submittal from the Governor or his designee, requesting EPA approval of the plan or revision thereof (hereafter “the plan”).**

See the cover letter for this SIP submission and Appendix A, Exhibit A-1 for delegation of authority letter from Misael Cabrera, Director of ADEQ, to Timothy Franquist, Director of the ADEQ Air Quality Division, authorizing Mr. Franquist to perform any act the ADEQ Director is authorized to perform under the state air quality statutes, including the submission of SIPs to EPA.

**(b) Evidence that the State has adopted the plan in the State code or body of regulations; or issued the permit, order, consent agreement (hereafter “document”) in final form.**

See the cover letter to this document wherein the state adopts and submits this SIP revision. This is the method of Arizona state adoption.

**(C) Evidence that the State has the necessary legal authority under State law to adopt and implement the plan.**

The Arizona Department of Environmental Quality (ADEQ) has responsibility for air pollution control and abatement, and as such, is required to adopt and “maintain a state implementation plan that provides for implementation, maintenance, and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.”<sup>1</sup> ADEQ also maintains authority to issue and administer rules, adopt county rules, and to submit such rules for approval in the SIP. Copies of Arizona Revised Statutes sections 49-101, 49-104, 49-106, 49-404, and 49-425 are attached in Appendix A, Exhibit A-2.

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<sup>1</sup> A.R.S. §49-404(A).

**(d) A copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, including indication of the changes made (such as redline/strikethrough) to the existing approved plan, where applicable.**

A copy of the official state regulation, signed, stamped, and dated by the appropriate state official, including the effective date, will be attached as Appendix C, Exhibit C-1.

Table 2-1 below shows the rules being added and replaced by this SIP Revision.

**(e) Evidence that the State followed all of the procedural requirements of the State’s laws and constitution in conducting and completing the adoption/issuance of the plan.**

As demonstrated in Sections (b), (c), and (g), ADEQ has complied with all requirements of state law for adoption of this SIP Revision.

**(f) Evidence that public notice was given of the proposed change consistent with procedures approved by EPA, including the date of publication of such notice.**

Proof that ADEQ gave public notice in accordance with A.R.S. § 49-444 will be attached as Appendix B, Exhibit B-1 to the final SIP revision.

**(g) Certification that public hearing(s) were held in accordance with the information provided in the public notice and the State’s laws and constitution, if applicable and consistent with the public hearing requirements in 40 CFR 51.102.**

The certification and other documents related to the public hearing will be attached as Appendix B, Exhibits B-1 through B-5 to the final SIP revision.

**(h) Compilation of public comments and the State’s response thereto.**

A compilation of comments received and the State’s responses will be attached as Appendix B, Exhibit B-6 in the final SIP once the public comment and hearing period ends.

## Appendix V § 2.2 - Technical Support

### **(a) Identification of all regulated pollutants affected by the plan.**

All regulated pollutants affected by the plan can be identified as the six commonly known “criteria pollutants,” Particle Matter (PM<sub>10</sub> and PM<sub>2.5</sub>), Ground-level Ozone (O<sub>2</sub>), Carbon Monoxide (CO), Sulfur Dioxide (SO<sub>2</sub>), Nitrogen Dioxide (NO<sub>2</sub>), and Lead (Pb).<sup>2</sup>

### **(b) Identification of the locations of affected sources including the EPA attainment/ nonattainment designation of the locations and the status of the attainment plan for the affected areas(s).**

All permitted sources within the State of Arizona are affected by this plan.

### **(c) Quantification of the changes in plan allowable emissions from the affected sources; estimates of changes in current actual emissions from affected sources or, where appropriate, quantification of changes in actual emissions from affected sources through calculations of the differences between certain baseline levels and allowable emissions anticipated as a result of the revision.**

Not applicable because quantification of allowable emissions or actual emissions is not necessary to support removal of R18-2-310 from Arizona’s SIP in order to address the inadequacies outlined in the EPA’s “SIP Call.”

### **(d) The State's demonstration that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented.**

The effect of removing R18-2-310 from the Arizona SIP will be to make civil penalties available in federal court against sources that qualify for the startup, shutdown, or malfunction affirmative defense. This will not impair the SIP’s protection of national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstrations, or visibility.

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<sup>2</sup> 40 C.F.R. §50

**(e) Modeling information required to support the proposed revision, including input data, output data, models used, justification of model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis.**

Not applicable because no modeling is required to support removal of R18-2-310 from Arizona’s SIP in order to address the inadequacies outlined in the EPA’s “SIP Call.”

**(f) Evidence, where necessary, that emission limitations are based on continuous emission reduction technology.**

Not necessary because no new emissions limitations or alterations to existing emission limitations are being implemented.

**(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels.**

Not necessary because no new emissions limitations or alterations to existing emission limitations are being implemented.

**(h) Compliance/enforcement strategies, including how compliance will be determined in practice.**

Arizona proposes to address the inadequacies of affirmative defenses as determined by the EPA in the “SIP Call” by removing R18-2-310 from Arizona’s SIP, but not from the Arizona Administrative Code. Although the affirmative defenses in R18-2-310 will no longer be available in federal court actions to enforce the Arizona SIP, it will remain available in state court actions.

**(i) Special economic and technological justifications required by any applicable EPA policies, or an explanation of why such justifications are not necessary.**

Not applicable because there are no special economic or technological justifications required for removal of R18-2-310 from Arizona’s SIP.

# 1 Introduction

## 1.1 Statement of Purpose

Pursuant to Section 110(k)(5) of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) issued a SIP Call “finding that certain SIP provisions in 36 states [including Arizona] are substantially inadequate to meet CAA requirements.”<sup>3</sup> This action triggered a requirement for Arizona to correct the inadequacies identified in Arizona rule R18-2-310, which is part of Arizona’s State Implementation Plan (SIP), within 18 months (November 22, 2016) of the publication of the finding (May 22, 2015) in order to avoid potential sanctions and a Federal Implementation Plan (FIP).<sup>4</sup>

Under the authority granted by the Governor and the State of Arizona, the Arizona Department of Environmental Quality (ADEQ) is responsible for the preparation and submittal of this SIP revision.<sup>5</sup> The purpose of this SIP revision is to remove Arizona’s rule R18-2-310 from Arizona’s SIP so it is no longer federally enforceable and would only be applicable to state enforcement actions, thus meeting the requirements of the SIP Call.

## 1.2 Regulatory Background

The 1970 amendments to the CAA required air agencies to prepare air plans to be approved by the EPA.<sup>6</sup> At that time it was widely believed that emissions limitations were not required to be met during Startup, Shutdown, and Malfunction (SSM) periods (i.e. exemptions).<sup>7</sup> It was common for states to include exemptions for excess emissions occurring during these periods.<sup>8</sup> Many of the original SIPs approved by the EPA from 1971 to 1972 included SSM provisions that were broad and loosely defined.<sup>9</sup>

In 1977 the EPA notified states these exemptions were inconsistent with certain requirements of the CAA and began to be more careful to approve only SIP rules that were consistent with the CAA.<sup>10</sup> The EPA issued several guidance memoranda to help states implement rules that were consistent with the CAA.<sup>11</sup>

On September 20, 1999 the EPA issued a guidance memorandum that prohibited automatic exemptions and director’s discretion exemptions from state SIPs.<sup>12</sup> The memorandum allowed

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<sup>3</sup> 80 Fed. Reg. 33840 (June 12, 2015).

<sup>4</sup> *Id.*

<sup>5</sup> A.R.S. §49-104

<sup>6</sup> 78 Fed. Reg. 12460, 12463-64 (February 22, 2013).

<sup>7</sup> *Id.* at 12464.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> <https://www3.epa.gov/ttn/naaqs/aqmguide/collection/t5/excessem2.pdf>

## SIP Revision: Clean Air Act Section 110(k)(5) – SIP Call for Startup, Shutdown, and Malfunction.

affirmative defenses to sources in court proceedings, if sources could provide substantial proof that the violation was unpreventable.<sup>13</sup>

In 2001 the EPA finalized approval of Arizona’s SIP revision of R18-2-310 Affirmative Defenses for Excess Emissions Due to SSM.<sup>14</sup> These rules were narrowly tailored to provide an affirmative defense for certain emissions in excess of an emission standard during SSM periods, so long as the source met specific requirements.<sup>15</sup>

In 2011 the Sierra Club filed a petition for rulemaking with the EPA.<sup>16</sup> The Sierra Club argued certain affirmative defense provisions in SIPs providing “an affirmative defense for monetary penalties for excess emissions in judicial proceedings” were contrary to the CAA.<sup>17</sup>

In 2013 the EPA issued a Notice of Proposed Rulemaking (NPRM) in response to the petition filed by the Sierra Club.<sup>18</sup> The EPA proposed to grant the petition in part for violations that occurred during periods of startup and shutdown, but deny in part for violations that occurred due to malfunctions.<sup>19</sup>

In 2014 a federal court ruled Section 304(a) of the CAA precluded the EPA from creating any “affirmative defense provision applicable to private civil suits.”<sup>20</sup> In response the EPA issued a Supplemental Notice of Proposed Rulemaking (SNPRM) to include removal of affirmative defenses for malfunctions during SSM periods.<sup>21</sup>

In 2015 the EPA issued a Notice of Final Rulemaking (NFR) finding certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP Call, which included Arizona.<sup>22</sup> Accordingly, the EPA found section R18-2-310 of Arizona’s SIP to be substantially inadequate to meet the requirements of section 113(b) and section 304(a) of the CAA. The final action became effective on May 22, 2015 creating a deadline for Arizona to submit its corrective SIP revision no later than November 22, 2016 or become subject to possible sanctions and FIPs.<sup>23</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> 66 Fed. Reg. 48087-88 (September 18, 2001).

<sup>15</sup> A.A.C. R18-2-310

<sup>16</sup> 78 Fed. Reg. 12460, 12463 (February 22, 2013).

<sup>17</sup> *Id.* at 12464

<sup>18</sup> *Id.* at 12460

<sup>19</sup> *Id.* at 12465

<sup>20</sup> 79 Fed. Reg. 55920 (September 17, 2014).

<sup>21</sup> *Id.*

<sup>22</sup> 80 Fed. Reg. 33840 (June 12, 2015).

<sup>23</sup> *Id.*

## 2 Removal of R18-2-310 from Arizona’s SIP

Arizona proposes to remove R18-2-310 from the SIP so that it is no longer federally enforceable. Affirmative defenses would effectively be removed from citizen suits and federal suits. However, the affirmative defense provision would remain unchanged in the Arizona Administrative Code (AAC) and would remain applicable only for state enforcement actions in state court. This revision meets the requirements of the CAA because it in no way alters the jurisdiction of federal courts to assess penalties in EPA enforcement actions and citizen suits.

**Table 2-1 Rules to Be Added to and Removed from the SIP**

Change	Reason
Remove R18-2-310 Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown from Arizona’s SIP.	EPA issued a “SIP Call” finding R18-2-310 substantially inadequate to meet certain provisions of the CAA and requiring Arizona to take corrective action and submit a SIP revision.

### **3 Conclusion**

In response to EPA’s May 22, 2015 SIP Call, ADEQ formally requests removal of rule R18-2-310 from Arizona’s SIP. Once removed from the SIP this rule, which allows affirmative defenses for excess emissions during SSM periods will no longer be federally enforceable, thus meeting the requirements of the SIP Call. Affirmative defenses will remain available to permitted sources in state court actions.

# Appendix A: Statutory Authority.

# Exhibit A-1: Delegation of Authority.



Douglas A. Ducey  
Governor

## ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

April 15, 2016

To: Timothy S. Franquist Jr.  
Division Deputy Director  
Air Quality Division

Under A.R.S. §49-104 (D) (2), I authorize you, Timothy S. Franquist Jr., Division Deputy Director, Air Quality Division, Arizona Department of Environmental Quality, to perform any act, including execution of any pertinent documents, which I as Director of the Arizona Department of Environmental Quality am authorized or required to do by law with respect to A.R.S. Title 49, chapters 1 and 2 and any other acts relating to air quality including personnel actions.

This authority shall remain in effect until it is revoked or upon your separation from the Arizona Department of Environmental Quality. You may further delegate this authority in the best interest of the agency, however, those delegations must be in writing and you must forward a copy of any further delegations to me.

This delegation is effective as of April 18, 2016 and revokes all earlier delegations. I ratify all acts performed by you as Air Quality Division Deputy Director concerning the duties and functions in this delegation letter.

A handwritten signature in black ink, appearing to read "Misael Cabrera".

Misael Cabrera  
Director

## Exhibit A-2: Authorizing Statutes.

### Arizona Revised Statutes.

#### 49-101. Definitions

In this title, unless the context otherwise requires:

1. "Approximately equal" means, for purposes of fees adopted pursuant to section 49-480, excluding per ton emissions fees, an amount that is not greater than ten per cent more than the fees or costs charged by the state for similar state permits or approvals.
2. "Department" means the department of environmental quality.
3. "Director" means the director of environmental quality who is also the director of the department.

#### 49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. Beginning in 2014, the department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
  12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
  13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
  14. Assist the department of health services in recruiting and training state, local and district health department personnel.
  15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
  16. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
  17. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph shall not be construed to adversely affect standards adopted by an Indian tribe under federal law.
  18. Provide administrative and staff support for the oil and gas conservation commission.
- B. The department, through the director, shall:
1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
  2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
  3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
  4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
  5. Contract with other agencies, including laboratories, in furthering any department program.
  6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
  7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection H, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems

be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules shall:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. After July 20, 2011, the department shall establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state

agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

2. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

#### 49-106. [Statewide application of rules](#)

The rules adopted by the department apply and shall be observed throughout this state, or as provided by their terms, and the appropriate local officer, council or board shall enforce them. This section does not limit the authority of local governing bodies to adopt ordinances and rules within their respective jurisdictions if those ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the department, but this section does not grant local governing bodies any authority not otherwise provided by separate state law.

#### 49-404. [State implementation plan](#)

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

49-425. Rules; hearing

A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

# Appendix B:

## Documents Related to Public Notice and Comment.

## Exhibit B-1: Public Notice and Affidavit of Publication of Notice.

Public notice and affidavit of publication of notice cannot be provided for until after the public notice and comment period have ended. Public notice and affidavit of publication of notice will be included in the Final SIP Revision.

## Exhibit B-2: Public Hearing Agenda.

Public Hearing Agenda cannot be provided for until after the public notice and comment period have ended. Public Hearing Agenda will be included in the Final SIP Revision.

## Exhibit B-3: Public Hearing Sign-In Sheet.

Public Hearing sign-in sheet cannot be provided for until after the public hearing has ended. Public hearing sign-in sheet will be included in the Final SIP Revision.

## Exhibit B-4: Public Hearing Officer Certification.

Public hearing officer certification cannot be provided for until after the public notice and comment period has ended. Public hearing officer certification will be included in the Final SIP Revision.

## Exhibit B-5: Public Hearing Transcript.

Public hearing transcript cannot be provided for until after the public hearing has ended. Public hearing transcript will be included in the Final SIP Revision.

## Exhibit B-6: Compilation of Comments and State Responses.

Compilation of comments and state responses cannot be provided for until after the public notice and comment period has ended. Compilation of comments and state responses certification will be included in the Final SIP Revision.

# Appendix C:

## Reference Documents Related to EPA SSM SIP Call.



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

**ARTICLE 1. GENERAL**

*Article 1 consisting of Section R9-3-101 renumbered as Article 1, Section R18-2-101 (Supp. 87-3).*

- Section  
 R18-2-101. Definitions  
 R18-2-102. Incorporated Materials  
 R18-2-103. Applicable Implementation Plan; Savings

**ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS**

*Article 2, consisting of Sections R18-2-201 through R18-2-290, adopted effective August 8, 1991 (Supp. 91-3).*

*Article 2, consisting of Sections R18-2-201 through R18-2-220, repealed effective August 8, 1991 (Supp. 91-3).*

*Article 2 consisting of Sections R9-3-201, R9-3-202, R9-3-204 through R9-3-207, and R9-3-215 through R9-3-219 renumbered as Article 2, Sections R18-2-201, R18-2-202, R18-2-204 through R18-2-207, and R18-2-215 through R18-2-219 (Supp. 87-3).*

- Section  
 R18-2-201. Particulate Matter: PM<sub>10</sub> and PM<sub>2.5</sub>  
 R18-2-202. Sulfur Oxide (Sulfur Dioxide)  
 R18-2-203. Ozone: One-hour Standard and Eight-hour Average Standard  
 R18-2-204. Carbon monoxide  
 R18-2-205. Nitrogen Oxides (Nitrogen Dioxide)  
 R18-2-206. Lead  
 R18-2-207. Renumbered  
 R18-2-208. Reserved  
 R18-2-209. Reserved  
 R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations  
 R18-2-211. Reserved  
 R18-2-212. Reserved  
 R18-2-213. Reserved  
 R18-2-214. Reserved  
 R18-2-215. Ambient air quality monitoring methods and procedures  
 R18-2-216. Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data  
 R18-2-217. Designation and Classification of Attainment Areas  
 R18-2-218. Limitation of Pollutants in Classified Attainment Areas  
 R18-2-219. Repealed  
 R18-2-220. Air pollution emergency episodes

**ARTICLE 3. PERMITS AND PERMIT REVISIONS**

*Article 3, consisting of Sections R9-3-301 through R9-3-332, adopted effective November 15, 1993 (Supp. 93-4).*

*Article 3, consisting of Sections R9-3-301 through R9-3-319, and R9-3-321 through R9-3-323 repealed effective November 15, 1993 (Supp. 93-4).*

*Article 3 consisting of Sections R9-3-301 through R9-3-319 and R9-3-321 through R9-3-323 renumbered as Article 3, Sections R18-2-301 through R18-2-319 and R18-2-321 through R18-2-323 (Supp. 87-3).*

- Section  
 R18-2-301. Definitions  
 R18-2-302. Applicability; Registration; Classes of Permits  
 R18-2-302.01. Source Registration Requirements

- R18-2-303. Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition  
 R18-2-304. Permit Application Processing Procedures  
 R18-2-305. Public Records; Confidentiality  
 R18-2-306. Permit Contents  
 R18-2-306.01. Permits Containing Voluntarily Accepted Emission Limitations and Standards  
 R18-2-306.02. Establishment of an Emissions Cap  
 R18-2-307. Permit Review by the EPA and Affected States  
 R18-2-308. Emission Standards and Limitations  
 R18-2-309. Compliance Plan; Certification  
 R18-2-310. Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown  
 R18-2-310.01. Reporting Requirements  
 R18-2-311. Test Methods and Procedures  
 R18-2-312. Performance Tests  
 R18-2-313. Existing Source Emission Monitoring  
 R18-2-314. Quality Assurance  
 R18-2-315. Posting of Permit  
 R18-2-316. Notice by Building Permit Agencies  
 R18-2-317. Facility Changes Allowed Without Permit Revisions - Class I  
 R18-2-317.01. Facility Changes that Require a Permit Revision - Class II  
 R18-2-317.02. Procedures for Certain Changes that Do Not Require a Permit Revision - Class II  
 R18-2-318. Administrative Permit Amendments  
 R18-2-318.01. Annual Summary Permit Amendments for Class II Permits  
 R18-2-319. Minor Permit Revisions  
 R18-2-320. Significant Permit Revisions  
 R18-2-321. Permit Reopenings; Revocation and Reissuance; Termination  
 R18-2-322. Permit Renewal and Expiration  
 R18-2-323. Permit Transfers  
 R18-2-324. Portable Sources  
 R18-2-325. Permit Shields  
 R18-2-326. Fees Related to Individual Permits  
 R18-2-326.01. Emissions-Based Fee Increase Related to Individual Permits for Fiscal Year 2011  
 R18-2-327. Annual Emissions Inventory Questionnaire  
 R18-2-328. Conditional Orders  
 R18-2-329. Permits Containing the Terms and Conditions of Federal Delayed Compliance Orders (DCO) or Consent Decrees  
 R18-2-330. Public Participation  
 R18-2-331. Material Permit Conditions  
 R18-2-332. Stack Height Limitation  
 R18-2-333. Acid Rain  
 R18-2-334. Minor New Source Review

**ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES**

*Article 4, consisting of Sections R18-2-401 through R18-2-411, adopted effective November 15, 1993 (Supp. 93-4).*

*Article 4, consisting of Sections R18-2-401 through R18-2-410, renumbered as Article 6, Sections R18-2-601 through R18-2-610 (Supp. 93-4).*

- e. Additional requirements specified in sections 114(a)(3) and 504(b) of the Act or pursuant to R18-2-306.01.
- 3. A requirement for any document required to be submitted by a permittee, including reports, to contain a certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
- 4. Inspection and entry provisions that require that upon presentation of proper credentials, the permittee shall allow the Director to:
  - a. Enter upon the permittee's premises where a source is located, emissions-related activity is conducted, or records are required to be kept under the conditions of the permit;
  - b. Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
  - c. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;
  - d. Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and
  - e. Record any inspection by use of written, electronic, magnetic, or photographic media.
- 5. A compliance plan that contains all the following:
  - a. A description of the compliance status of the source with respect to all applicable requirements;
  - b. A description as follows:
    - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
    - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis; and
    - iii. For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;
  - c. A compliance schedule as follows:
    - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
    - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement;
    - iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. The schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirement for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. The schedule of compliance shall supplement, and shall not sanction noncompliance with, the applicable requirements on which it is based.
- 6. The compliance plan content requirements specified in subsection (5) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, and incorporated under R18-2-333 with regard to the schedule and each method the source will use to achieve compliance with the acid rain emissions limitations.
- 7. If there is a Federal Implementation Plan (FIP) applicable to the source, a provision that compliance with the FIP is required.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amendment filed September 18, 1979, effective following the adoption of Article 7. Nonferrous Smelter Orders. Amended effective October 2, 1979 (Supp. 79-5). Article 7. Nonferrous Smelter Orders adopted effective January 8, 1980. Amendment filed September 18, 1979 effective January 8, 1980 (Supp. 80-2). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-309 renumbered without change as R18-2-309 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2833, effective June 17, 2004 (Supp. 04-2).

**R18-2-310. Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown**

- A. Applicability.** This rule establishes affirmative defenses for certain emissions in excess of an emission standard or limitation and applies to all emission standards or limitations except for standards or limitations:
  - 1. Promulgated pursuant to Sections 111 or 112 of the Act,
  - 2. Promulgated pursuant to Titles IV or VI of the Clean Air Act,
  - 3. Contained in any Prevention of Significant Deterioration (PSD) or New Source Review (NSR) permit issued by the U.S. E.P.A.,

4. Contained in R18-2-715(F), or
  5. Included in a permit to meet the requirements of R18-2-406(A)(5).
- B. Affirmative Defense for Malfunctions.**  
Emissions in excess of an applicable emission limitation due to malfunction shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:
1. The excess emissions resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment beyond the reasonable control of the operator;
  2. The air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
  3. If repairs were required, the repairs were made in an expeditious fashion when the applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized where practicable to ensure that the repairs were made as expeditiously as possible. If off-shift labor and overtime were not utilized, the owner or operator satisfactorily demonstrated that the measures were impracticable;
  4. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
  5. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
  6. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
  7. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
  8. The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned, and could not have been avoided by better operations and maintenance practices;
  9. All emissions monitoring systems were kept in operation if at all practicable; and
  10. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.
- C. Affirmative Defense for Startup and Shutdown.**
1. Except as provided in subsection (C)(2), and unless otherwise provided for in the applicable requirement, emissions in excess of an applicable emission limitation due to startup and shutdown shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to startup and shutdown has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:
    - a. The excess emissions could not have been prevented through careful and prudent planning and design;
    - b. If the excess emissions were the result of a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe damage to air pollution control equipment, production equipment, or other property;
    - c. The source's air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
    - d. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
    - e. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
    - f. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
    - g. All emissions monitoring systems were kept in operation if at all practicable; and
    - h. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.
  2. If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to subsection (B).
- D. Affirmative Defense for Malfunctions During Scheduled Maintenance.**  
If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to subsection (B).
- E. Demonstration of Reasonable and Practicable Measures.**  
For an affirmative defense under subsection (B) or (C), the owner or operator of the source shall demonstrate, through submission of the data and information required by this Section and R18-2-310.01, that all reasonable and practicable measures within the owner or operator's control were implemented to prevent the occurrence of the excess emissions.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective June 19, 1981 (Supp. 81-3). Amended Arizona Testing Manual for Air Pollutant Emissions, effective September 22, 1983 (Supp. 83-5). Amended Arizona Testing Manual for Air Pollutant Emissions, as of September 15, 1984, effective August 9, 1985 (Supp. 85-4). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-310 renumbered without change as R18-2-310 (Supp. 87-3). Amended effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).

**R18-2-310.01. Reporting Requirements**

- A.** The owner or operator of any source shall report to the Director any emissions in excess of the limits established by this Chapter or the applicable permit. The owner or operator of any registered source may report excess emissions in accordance with this Section in order to qualify for the affirmative defense established in R18-2-310. The report shall be in two parts as specified below:
1. Notification by telephone or facsimile within 24 hours of the time the owner or operator first learned of the occur-