

***PROPOSED REVISIONS to the
ARIZONA STATE IMPLEMENTATION PLAN
to INCORPORATE CHANGES to
ARIZONA ADMINISTRATIVE CODE
R18-2-702, R18-2-101(41), and R18-2-101(111)***



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August 8, 2003

1.0 INTRODUCTION

1.1 Purpose and Scope.

This document describes proposed revisions to the Arizona State Implementation Plan (SIP) consisting of proposed changes to Arizona Administrative Code (A.A.C.) R18-2-702, “General Provisions.” The current R18-2-702 contains a 40% opacity limit for existing stationary point sources of particulate matter (PM), not subject to opacity limits defined elsewhere in A.A.C. Article 7.¹ (Attachment 1 is the current R18-2-702) On September 23, 2002, EPA’s final, full disapproval of the current R18-2-702 noted three deficiencies: (1) a change in the scope of applicability from the previously approved rule resulting in a SIP relaxation, in violation of the 1990 Clean Air Act Amendments (CAA) §§ 110(l) and 193; (2) failure to fulfill the Reasonably Available Control Measure/Technology (RACM/RACT) requirements of CAA § 189(a); and (3) a procedure for an alternative opacity that “allows for the potential relaxation of opacity standards below levels that are considered RACM/RACT and does not provide an opportunity for EPA to review such changes and ensure enforceability”. (See 67 FR 59456) This document contains demonstrations and proposed revisions to A.A.C. R18-2-702, correcting the deficiencies that EPA described in its disapproval. (Attachment 2 is the Notice of Proposed Rulemaking for R18-2-702) This document requests approval of the revised R18-2-702 as part of the Arizona SIP.

The second purpose of this document is to request approval of two existing definitions directly referenced in the proposed R18-2-702: R18-2-101(41), “existing source”; and R18-2-101(111), “stationary source.”

1.2 Regulatory History - A.A.C. R9-3-501, the previously approved opacity rule

On April 1, 1980, the Arizona Department of Health Services (ADHS) submitted A.A.C. R9-3-501, “Visible Emissions: General,” to EPA for approval and inclusion in the Arizona SIP. The rule established a visible emissions standard of 40 percent opacity for existing stationary point sources unregulated by source-specific opacity provisions in other Arizona regulations (Attachment 3 is R9-3-501as submitted)

¹ Article 7 is titled “Existing Stationary Source Performance Standards.”

EPA finalized approval of Arizona's general opacity rule on April 23, 1982 (47 FR 17483). Arizona made several changes to the rule subsequent to EPA approval:

- 1) The rule was renumbered to R18-2-501 in 1987 to transfer the rule from the Arizona Department of Health Services to the newly formed Arizona Department of Environmental Quality.
- 2) The language was changed to its current version on September 26, 1990, as part of a general rule revision process.
- 3) Arizona renumbered the general opacity provision to A.A.C. R18-2-702, effective November 13, 1993, to accommodate new provisions that implemented the Clean Air Act (CAA) Title V program and other statutory requirements.

On July 15, 1998, ADEQ submitted A.A.C. R18-2-702 to EPA for approval into the Arizona SIP. On December 18, 2002, EPA proposed disapproval of R18-2-702 (65 FR 79037). On September 23, 2002, at 67 FR 59456, EPA issued full, final disapproval of R18-2-702. The disapproval imposes obligations on both ADEQ and EPA. If ADEQ does not submit a SIP revision that resolves these deficiencies and is approved by EPA by April 23, 2004, EPA must impose sanctions on Arizona under § 179 of the CAA (See 59 FR 39832, August 4, 1994), if ADEQ fails to obtain EPA approval of a revised rule by April 23, 2004. In addition, if EPA does not approve an appropriate Arizona rule revision by September 23, 2004, EPA must promulgate a Federal Implementation Plan (FIP) under CAA § 110(c).

1.3 Regulatory History - A.A.C. R18-2-101(41), R18-2-101(111).

ADEQ is also proposing to submit two existing definitions as part of this SIP revision: "existing source" and "stationary source". (The current definitions are Attachment 4) The current versions of these definitions are referenced in proposed R18-2-702(A) and have not been previously submitted to EPA for approval. The versions of these definitions as they existed in the old ADHS rules were approved by EPA in 1982; both definitions, however, were revised in September 1990. (The ADHS definitions are Attachment 5)

2.0 ADDRESSING RULE DEFICIENCIES

2.1 Deficiency #1 - SIP Relaxation. R18-2-702 is not a SIP relaxation because it applies to more sources than R9-3-501.

EPA's final disapproval of A.A.C. R18-2-702 stated that the ADEQ rule did not comply with CAA SIP relaxation requirements in §§ 110(l) and 193, which restrict the ability of states to relax SIP requirements². EPA determined that ADEQ's modifications to A.A.C. R18-2-702 had narrowed the scope of applicability compared to the prior SIP-approved rule.

R9-3-501 was the first section of Article 5, "Existing Stationary Point Source Performance Standards" and contained a 40% opacity standard for any plume or effluent "(e)xcept as otherwise provided in these Regulations." Although the text of the rule does not specify applicability to existing sources, existing source was defined in the SIP-approved rule R9-3-101(60) as: "any source which commenced replacement, erection, installation or making a major alteration of the type described in R9-3-301(installation permit) prior to May 14, 1979." Compared to the current definition of "existing source," a source for which there is no applicable New Source Performance Standard in Article 9, this means that R9-3-501 applied to NSPS sources as well as non-NSPS sources, as long as they were constructed prior to May 14, 1979.

In contrast, R18-2-702, as submitted with the changed definition of "existing sources" applies to non-NSPS sources only, but applies without regard to any construction date. That is, it applies to sources constructed before and after May 14, 1979. Table 1 below compares the number of current permitted Arizona sources covered by R9-3-501 with proposed R18-2-702.

²CAA § 110(l) forbids EPA from approving a SIP revision if the revision "...would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in § 171)..." CAA § 193, "General Savings Clause," requires that "No control requirement in effect . . . before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant."

Table 1. Applicability Table Comparing R9-3-501 and R18-2-702

Sources	Constructed before 5/14/79	Constructed after 5/14/79
NSPS sources	R9-3-501 only; (0 AZ sources in category)	neither R9-3-501 nor R18-2-702; but NSPS applies (unknown # of AZ sources)
non-NSPS sources	R9-3-501 and R18-2-702; (unknown # of AZ sources)	R18-2-702 only; (estimated to be more than 100 AZ sources in category)

It is evident from Table 1 that there are no known Arizona sources that were covered under R9-3-501 and not covered by proposed R18-2-702. Because there are many sources that will be covered by proposed R18-2-702 that would not be covered by R9-3-501, it applies to a significantly larger number of Arizona sources than R9-3-501 and there is no relaxation of the SIP. The only class of sources that R9-3-501 covered that R18-2-702 does not is NSPS sources that were constructed prior to May 14, 1979. ADEQ has determined that no such sources exist in Arizona.

2.2 Deficiency #2 - Proposed Revisions to R18-2-702 Will Correct RACM/RACT Deficiency.

ADEQ has proposed revisions to R18-2-702 that will change the opacity limit for sources in nonattainment areas from 40% to 20% on the effective date of the rule. Although EPA has clarified that it is only requiring A.A.C. R18-2-702 to meet RACM/RACT in PM₁₀ nonattainment areas, the proposed rule and SIP revisions would apply the general opacity limit of 20 percent to sources in attainment and unclassifiable areas as well after April 23, 2006, for reasons outlined in the preamble to the proposed rulemaking.

2.3 Deficiency #3 - Proposed Revisions to R18-2-702 Will Correct Deficiencies in the Alternative Opacity Procedure

In its final rule, EPA stated that the alternative opacity standard procedure “allows for the potential relaxation of opacity standards below levels that are considered RACM/RACT and does not provide an opportunity for EPA to review such changes and ensure enforceability”.

ADEQ has proposed revisions to R18-2-702 to ensure that the applicable opacity limit for any source in a nonattainment area will not fall below RACM/RACT and that also allows EPA to review such changes to ensure achievement of the RACT standard and enforceability. A.A.C. R18-2-702(G) of the proposed rule, requires that the ADEQ Director, upon approving a source's request for an alternative opacity standard in a nonattainment area, include the alternative opacity limit in a proposed revision to the applicable implementation plan, and submit the proposed revision to EPA for review and approval. Subsection (F) requires that the alternative opacity limit fulfill the CAA requirement for RACT. The additional EPA involvement in the approval of Arizona alternative opacity standards for sources in nonattainment areas will ensure protection of the national primary and secondary NAAQS for PM₁₀ in nonattainment areas.

3.0 REQUEST FOR ACTION

Arizona requests approval of the revised A.A.C. R18-2-702 and the current definitions of "existing source," and, "stationary source," as submitted, as part of the Arizona State Implementation Plan.