(This ADEQ document matches the official rulemaking published at 4 A.A.R. 1469)

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY -

AIR POLLUTION CONTROL

PREAMBLE

1.	**Sections Affected:**	**Rulemaking Action:**
	R18-2-101	Amend
	R18-2-302	Amend
	R18-2-306	Amend
	R18-2-320	Amend
	R18-2-331	Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule are implementing (specific):

Authorizing statute: A.R.S. § 49-104

Implementing statutes: A.R.S. §§ 49-404, 49-425, 49-426, 49-426.01 and 49-426.03

3. The effective date of the rules:

(Date filed with the Secretary of State)

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening:

3 A.A.R. 3367, November 28, 1997

Notice of Proposed Rulemaking:

3 A.A.R. 3342, November 28, 1997

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mark Lewandowski or Martha Seaman, Rule Development Section

Address: ADEQ, 3033 N. Central, Phoenix, AZ 85012-2809

Telephone: (602) 207-2230 or (602) 207-2222 (Any extension may be reached in-state by dialing 1-

800-234-5677, and asking for that extension.)

Fax: (602) 207-2251

6. An explanation of the rule, including the agency's reasons for initiating the rule:

This rule contains minor changes to the Arizona Department of Environmental Quality's (ADEQ) air quality rules in four specific areas of stationary source permitting:

1. Correction of deficiencies in the state's Title V program as listed in EPA's October 30, 1996 Federal Register notice.

2. Changes to more effectively implement EPA's hazardous air pollutants (HAP) 112(g) rule, as published by EPA in the December 27, 1996 Federal Register.

3. A correction to a permitting threshold for fuel burning equipment to conform to a recent statutory change.

4. The addition of a pollutant and an emission rate to the definition of "significant" in R18-2-101(97). This pollutant and emission rate match federal law and were inadvertently omitted from ADEQ's recent landfill rule effective April 4, 1997.

ADEQ placed these four groups of permit related changes together for purposes of efficiency and because ADEQ determined that these four groups of changes were noncontroversial for reasons explained below. In addition, similar deadlines exist for the first two. The submittal deadline for correction of Arizona's Title V program deficiencies is currently listed as May 30, 1998, (61 FR 55519), while 40 CFR 63.42(a) requires a state 112(g) program to be effective no later than June 29, 1998.

Title V Deficiencies

ADEQ applied for approval of a state-run federal operating permits program on November 15, 1993. The general requirements for approval are listed in 40 CFR 70, which was promulgated in July, 1992. On October 30, 1996, EPA issued interim approval to ADEQ's title V permit program, with full approval conditioned on 6 corrections to be made before June of 1998 (61 FR 55910). Various sanctions, as well as EPA administration and enforcement of a federal permits program, are delineated by EPA as consequences for a state's failure to submit a timely corrective program. The following discussion follows EPA's order of items to be corrected at 61 FR 55919.

The first Title V correction occurs at R18-2-101(61)(b)(i). EPA found existing language in this provision regarding fugitive emissions to be potentially misleading and conditioned full approval upon clarification.

The second Title V correction occurs in the final rule at R18-2-320(D). In its final Federal Register notice, EPA interpreted ADEQ rules as allowing parts of a source's permit to avoid full review requirements if the source changes from a Class II to a Class I source. ADEQ proposed new R18-2-320(E) to cover these revisions (subsequently renumbered to R18-2-320(D)), specifically requiring the entire permit for such source to undergo full Title V review during this revision. In a comment on the proposed rule, EPA expressed concern that the ADEQ approach "does not clearly require that the source submit a full, current application when it becomes a title V source." ADEQ therefore has added EPA suggested language in R18-2-320, requiring that the application for such a revision be a Class I permit application.

The third Title V correction is at R18-2-306(A)(10). Of the two choices for correction required by EPA, ADEQ has chosen to eliminate a confusing second sentence.

The fourth Title V correction is in R18-2-306(A)(14), which provides for trading of emissions increases and decreases within a permitted facility. EPA has required a clarification that such "non-revision" trades cannot trigger revisions under two provisions. This is not a substantive change because the two provisions are already similarly listed in R18-2-317(A)(1) and (2).

The fifth Title V correction required in the EPA notice is in regard to R18-2-310, a rule that provides affirmative defenses for excess emissions under certain circumstances. This item, unlike the others, is quite controversial, and is currently in litigation. ADEQ therefore decided not to act on this item in this rule making, pending the outcome of the litigation. ADEQ currently expects to propose another rule on this subject in the near future.

The sixth Title V correction is in R18-2-331. It makes a slight modification to the ADEQ rule in subsection (A)(1) so that "material permit conditions" can exist in county permits as well. This was the intent when the section was created in November, 1993. In addition, since the term "control officer" is not currently defined

in rule, the definitions from A.R.S. § 49-471, which include "control officer", have been added to the opening language of R18-2-101. "Control officer" is also used in R18-2-324, 402 and 602.

Hazardous Air Pollutants 112 (g) rule

The Clean Air Act Amendments of 1990 included a federal hazardous air pollutant program that required EPA to issue emission standards for all major sources of 188 listed HAP. The emission standards were divided by EPA into various industrial source categories, and by November 15, 2000, EPA is required to have issued all of them. In the meantime, Congress also authorized, and EPA has now implemented, a transition rule known as "112(g)" to assure that effective pollution controls will be required for new major or reconstructed sources of HAP during the period before EPA is required to establish a national standard for a particular industry. (61 FR 68384, December 27, 1996) The rationale is that it is more cost-effective to design and add new air pollution controls at the time when facilities are being built or significantly rebuilt. Since local permitting authorities would be establishing these standards for individual sources before EPA would issue them nationally, these standards are known as "case-by-case MACT"(maximum achievable control technology).

ADEQ recognized that implementation of section 112(g) was possible with just the current rule infrastructure and an update of the incorporation by reference of the federal subpart in R18-2-1101(B)(2). However, for clarification, this rule making further changes existing rules in two places. First, language very similar to section 112(g) itself has been inserted at the end of R18-2-302. Second, in R18-2-320, the requirement for a significant revision now explicitly includes situations covered under 112(g). Note that updates of the incorporation by reference from "1996" to "1997", proposed in this rule making in R18-2-1101(A) and (B), were also proposed by ADEQ in an earlier rule making. That earlier rule was approved by GRRC and effective December 4, 1997. (See 3 A.A.R. 3600) Those changes have therefore been dropped from this rule making. The updates were originally proposed in this rule making so that this rule making was independent of the other.

40 CFR 63.42(b) spells out various degrees of federal involvement in case by case MACT determinations should a state fail to adopt a program to implement section 112(g). The bottom line is that 40 CFR 63.40 through 63.44 would be applied to a 112(g) source whether or not the state adopts a 112(g) program as state law.

The 112(g) rule provisions would be applied if a major source of HAP in one of the "seven year" or "ten year" MACT categories were to be built or reconstructed, (including new major processes or production units at existing sites, as those terms are used in the rule) before the applicable EPA deadline. Since the initial deadline for seven year MACTs was November 15, 1997, this rule change will primarily affect 112(g) sources in the 60 or so ten year MACT categories. 112(j) regulations, already incorporated by reference by ADEQ in a 1995 rulemaking, apply after the applicable deadline.

ADEQ is not currently aware of any situations that may require its application of the 112(g) rule before November 15, 2000.

Fossil fuel equipment permitting threshold

Laws 1997, Ch. 175, made several changes to Arizona air permitting statutes. One of the changes was to increase the permitting threshold for fossil fuel burning equipment at A.R.S. § 49-426(B) from an aggregate of 500,000 BTUs per hour to a single piece of equipment with one million BTUs per hour. When the statute became effective on July 21, 1997, and an ADEQ rule requiring a permit for equipment over 500,000 BTUs became inconsistent with the new statute. ADEQ believes that this rule package is an appropriate place for this noncontroversial and deregulatory change. The 500,000 BTU threshold has been corrected to one million in the final R18-2-302(B)(2)(a) and other language consistent with the statute has been included. The language regarding incinerators was deleted because it was redundant. "Fuel burning equipment" as defined at R18-2-101(45) includes incinerators.

Significant emission rate for Municipal Solid Waste Landfill Emissions

In its March 12, 1996, MSW landfill rule, EPA amended 40 CFR 51.166 and 51.21 to include a "significant" emission rate of 50 tons per year for municipal solid waste landfill emissions. (See 61 FR at 9918) ADEQ inadvertently omitted this item from its own landfill rule, effective April 4, 1997, (3 A.A.R. 967) which it submitted to EPA for § 111(d) plan approval in June of 1997. By including this significant emission rate in R18-2-101(97), ADEQ will ensure that NSR/PSD rules will apply to all subject facilities which have increases in landfill gas emissions above the significance level.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

Identification of Adopted Rulemaking

Title 18, Chapter 2, Articles 1 and 3; sections R18-2-101, R18-2-302, R18-2-306, R18-2-320, R18-2-331

(Please note that the entire Economic, Small Business, and Consumer Impact Statement is included here. No further materials are included in the rulemaking docket.)

ADEQ has determined that it is not required to prepare an economic, small business and consumer impact statement (EIS) for the BTU portion of this rule because the rule qualifies as "deregulatory" under A.R.S. § 41-1055(D)(3). In the proposed rule, ADEQ sought comment on whether the BTU portion of this rule would increase or decrease any monitoring, record keeping or reporting burdens on agencies, political subdivisions, businesses or persons. No comment on this section was submitted. Since this portion of the rule increases a permitting threshold, ADEQ has concluded that it is deregulatory under A.R.S. § 41-1055(D)(3).

The changes in this rule related to Title V corrections, 112(g) implementation and the landfill emissions significance rate are changes that would be implemented by the federal government if not enacted into state law. (See discussion in part 6 of this preamble.) Therefore, ADEQ has determined that there is no economic impact attributable to the changes in state rule.

Rule impact reduction on small businesses. A.R.S. § 41-1035 requires ADEQ to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives for the rule making. The five listed methods are:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.

4. Establish performance standards for small businesses to replace design or operational standards in the rule.

5. Exempt small businesses from any or all requirements of the rule.

The statutory objectives which are the basis of the rulemaking. The general statutory objectives that are the basis of this rulemaking are contained in the statutory authority cited in part 2 of this preamble. The specific objectives are as follows:

1. Implement rules necessary for full EPA approval of ADEQ's Title V operating permits program.
2. Implement rules necessary to implement EPA's § 112(g) rules.
3. Implement rules necessary for approval of Arizona's § 111(d) MSW landfill plan.
4. Make a permitting rule change to be consistent with a new statutory provision.

ADEQ has determined that there is a beneficial impact on small businesses in transferring implementation of federal programs to ADEQ. In addition, for the first three of these objectives, ADEQ is required to adopt the federal rules without change. ADEQ therefor finds that it is not legal or feasible to adopt any of the five listed methods to reduce the impact of these rules on small businesses. Finally, where federal rules impact small businesses, EPA is required by both the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act to make certain adjustments in its own rulemakings.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

ADEQ made the following changes to the proposed R18-2-320(E) based on a comment received from EPA:

E. When an existing source applies for a significant permit revision to revise its permit from a Class II permit to a Class I permit, ~~the~~ it shall submit a Class I permit application in accordance with R18-2-304. The director shall issue the entire permit, and not just the portion being revised, in accordance with Class I permit ~~application,~~ content~~;~~ and issuance requirements, including requirements for public, affected state, and EPA review, contained in R18-2-307 and R18-2-330.

ADEQ also made the following change to the proposed rule at R18-2-302(B)(2)(b)(v):

v. Fuel burning equipment which, at a location or property other than a one or two family residence, ~~is rated at 1 million BTU per hour or greater,~~ are fired at a sustained rate of more than one million Btu per hour for more than an eight-hour period.

The section still implements the statutory requirement that no permit be required for equipment rated at less than one million BTU. In addition, it allows ADEQ to avoid requiring permits for boilers that may be rated higher than one million but that aren't used as continuously as industrial process boilers, such as swimming pools, apartment complex heaters, etc.

Finally, ADEQ did not adopt the proposed changes to R18-2-1101. These changes, which were updates to federal regulations incorporated by reference necessary for the 112(g) portion of this rule, were adopted by a previous rule making. (3 A.A.R. 3600, December 26, 1997) Since both rule makings were to be pending simultaneously, ADEQ proposed the same changes in this rule making to ensure that it could move forward independently of the other.

Clarity, conciseness and understandability

In addition to the changes described above, numerous changes were made in each section of the proposed rule to improve the rule's clarity, conciseness and understandability, and to conform to current drafting conventions. A complete description of these changes is contained in the Concise Explanatory Statement (CES) for this rule. The CES is available from ADEQ.

10. A summary of the principal comments and the agency response to them:

ADEQ received only one comment on this rule. EPA expressed concern "that this approach [ADEQ's proposed rule] does not clearly require that the source submit a full, current application when it becomes a title V source." EPA suggested changes to R18-2-320, and in addition, to R18-2-304. ADEQ has made the changes to R18-2-320 in this rule, but did not make the changes to R18-2-304. ADEQ views the requirement to submit a Class I permit application in the final R18-2-320(D) (proposed as (E)) as sufficient and unambiguous. Consistent with R18-2-304, the change from a Class II to a Class I source dramatically increases the information related to the proposed change. The changes are shown in part 9 of this preamble.

In addition, EPA urged ADEQ to reconsider its approach of not addressing the interim approval issue relating to R18-2-310 in the current rule making. ADEQ remains committed to this approach and will not address this issue in this rule making. ADEQ plans to amend R18-2-310 in the near future.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their locations in the rules:

None. Incorporations by reference in the proposed rule at R18-2-1101(A) and (B) were already accomplished by a separate rule making. See 3 A.A.R. 360, December 26, 1997.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY -AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

R18-2-101. Definitions

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-302. Applicability; Classes of Permits

R18-2-306. Permit Contents

R18-2-320. Significant Permit Revisions

R18-2-331. Material Permit Conditions

ARTICLE 1. GENERAL

R18-2-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-401.01, 49-421, 49-471, and 49-541, in this Chapter, unless otherwise specified:

1. *No change.*

2. *No change.*

3. *No change.*

4. *No change.*

5. *No change.*

6. *No change.*

7. *No change.*

8. *No change.*

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10. *No change.*

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58. No change.

59. No change.

60. No change.

61. "Major source" means:

a. A major source as defined in R18-2-401.

b. A major source under Section 112 of the Act:

i. For pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, <u>including fugitive emissions,</u> 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, ~~including any major source of fugitive emissions of any such pollutants,~~ or such lesser quantity as described in Article 11 of this Chapter. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

ii. For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

c. A major stationary source, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to ~~one~~ <u>1</u> of the following categories of stationary source:

i. Coal cleaning plants (with thermal dryers).

ii. Kraft pulp mills.

iii. Portland cement plants.

iv. Primary zinc smelters.

v. Iron and steel mills.

vi. Primary aluminum ore reduction plants.

vii. Primary copper smelters.

viii. Municipal incinerators capable of charging more than 50 tons of refuse per day.

ix. Hydrofluoric, sulfuric, or nitric acid plants.

x. Petroleum refineries

xi. Lime plants.

xii. Phosphate rock processing plants.

xiii. Coke oven batteries.

xiv. Sulfur recovery plants.

xv. Carbon black plants (furnace process).

xvi. Primary lead smelters.

xvii. Fuel conversion plants.

xviii. Sintering plants.

xix. Secondary metal production plants.

xx. Chemical process plants.

xxi. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

xxii. Petroleumstorage and transfer units with a total storage capacity exceeding 300,000 barrels.

xxiii. Taconite ore processing plants.

xxiv. Glass fiber processing plants.

xxv. Charcoal production plants.

xxvi. Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

xxvii. All other stationary source categories regulated by a standard promulgated as of

August 7, 1980, under Section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.

62. *No change.*

63. *No change.*

64. *No change.*

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94. No change.

95. No change.

96. No change.

97. "Significant" means:

a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	**Emissions Rate**
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
PM10	15 tpy
VOC	40 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6} tpy

Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds):	50 tpy

b. In ozone nonattainment areas classified as serious or severe, significant emissions of VOC shall be determined under R18-2-405.

c. ~~In reference to~~ For a regulated air pollutant that is not listed in subsection (a), is not a Class I or II substance listed in Section 602 of the Act, and is not a hazardous air pollutant according to A.R.S. § 49-401.01(11), any emission rate.

d. Notwithstanding the emission amount listed in subsection (a), any emissions rate or any net emissions increase associated with a major source or major modification, which would be constructed within 10 kilometers of a Class I area and have an impact on the ambient air quality of such area equal to or greater than 1 $\mu g/m^3$ (24-hour average).

98. No change.

99. No change.

100. No change.

101. No change.

102. No change.

103. No change.

104. No change.

105. No change.

106. No change.

107. No change.

108. No change.

109. No change.

111. No change.

112. No change.

113. No change.

114. No change.

115. No change.

116. No change.

117. No change.

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-302. Applicability; Classes of Permits

A. Except as otherwise provided in this Article, no person shall commence construction of, operate, or make a modification to any source subject to regulation under this Article, without ~~first~~ obtaining a permit or permit revision from the Director.

B. There shall be two classes of permits as follows:

1. A Class I permit shall be required for a person to commence construction of or operate any of the following:
   a. Any major source~~:~~.,
   b. Any solid waste incineration ~~units~~ unit required to obtain a permit pursuant to section 129(e) of the Act~~:~~.,
   c. ~~An~~ Any affected source~~:~~., or
   d. Any source in a source category designated by the Administrator pursuant to 40 CFR 70.3 and adopted by the Director by rule.
2. Unless a Class I permit is required, a Class II permit shall be required for:
   ~~a. A person to commence construction of or modify either of the following after rules adopted pursuant to A.R.S. § 49-426.06 are effective:~~
      ~~i. A source that emits, with controls, or has the potential to emit with controls, ten (10) tons per year or more of any hazardous air pollutant listed under A.R.S. § 49-426.04(A)(1) or twenty-five (25) tons per year of any combination of hazardous air pollutants.~~
      ~~ii. A source that is within a category designated pursuant to A.R.S. § 49-426.05 and~~

~~that emits, or has the potential to emit, with controls one (1) ton per year or more of a hazardous air pollutant or two and one-half (2½) tons per year of any combination of hazardous air pollutants.~~

~~b~~a. A person to commence construction of or operate any of the following:

i. Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act~~.~~;

ii. Any source, including an area source, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112 (r) of the Act~~.~~;

iii. Any source that emits or has the potential to emit, without controls, significant quantities of regulated air pollutants~~.~~;

iv. Stationary rotating machinery of greater than 325 brake horsepower~~.~~; or

v. Fuel burning equipment ~~or incinerators that are~~ which, at a location or property other than a 1 or 2 family residence, is fired at a sustained rate of more than ~~500,000~~ 1 million Btu per hour for more than an ~~eight-hour~~ 8-hour period.

~~c~~b. A person to ~~make a modification to~~ modify a source which would cause it to emit, or have the potential to emit, quantities of regulated air pollutants greater than or equal to those specified in ~~subdivision (a)(i), (a)(ii) or (b)(iii) of this paragraph~~ subsection (B)(2)(a)(iii).

C. Notwithstanding subsections (A) and (B) ~~of this Section~~, the following sources ~~shall~~ do not require a permit unless the source is a major source, or unless operation without a permit would result in a violation of the Act:

1. Sources subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters~~.~~;

2. Sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 61.145~~.~~; and

3. Agricultural equipment used in normal farm operations. "Agricultural equipment used in normal farm operations" does not include equipment ~~that would be~~ classified as a source that ~~would require~~ requires a permit under Title V of the Act, or ~~would be~~ that is subject to a standard under 40 CFR 60 or 61.

D. No person may construct or reconstruct any major source of hazardous air pollutants, unless the director

determines that maximum achievable control technology emission limitation (MACT) for new sources under section 112 of the Act will be met. If MACT has not been established by the Administrator, such determination shall be made on a case-by-case basis pursuant to 40 CFR 63.40 through 63.44, as incorporated by reference in R18-2-1101(B). For purposes of this subsection, constructing and reconstructing a major source shall have the meanings prescribed in 40 CFR 63.41.

R18-2-306. Permit Contents

A. Each permit issued by the Director shall include the following elements:

1. The date of issuance and the permit term.

2. Enforceable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of issuance and ~~those~~ operational requirements and limitations that have been voluntarily accepted pursuant to R18-2-306.01.

   a. The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

   b. The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

   c. Any permit containing an equivalency demonstration for an alternative emission limit submitted pursuant to R18-2-304(D) shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

   d. The permit shall specify applicable requirements for fugitive emission limitations, regardless of whether the source category in question is included in the list of sources contained in the definition of major source in R18-2-101.

3. Each permit shall contain the following requirements with respect to monitoring:

   a. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to

sections 114(a)(3) or 504(b) of the Act, and including any monitoring and analysis procedures or test methods required pursuant to R18-2-306.01;

b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit as reported pursuant to subsection (A)(4) ~~of this Section~~. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement, and as otherwise required ~~pursuant to~~ under R18-2-306.01. Recordkeeping provisions may be sufficient to meet the requirements of this ~~subparagraph~~ subsection 3(b); and

c. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

4. ~~With respect to recordkeeping, the~~ The permit shall incorporate all applicable recordkeeping requirements including recordkeeping requirements established ~~pursuant to~~ under R18-2-306.01, where applicable, for the following:

a. Records of required monitoring information that include the following:

i. The date, place as defined in the permit, and time of sampling or measurements;

ii. The date(s) analyses were performed;

iii. The name of the company or entity that performed the analyses;

iv. A description of the analytical techniques or methods used;

v. The results of such analyses; and

vi. The operating conditions ~~as~~ existing at the time of sampling or measurement;

b. Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

5. ~~With respect to reporting, the~~The permit shall incorporate all applicable reporting requirements

including reporting requirements established ~~pursuant to~~ under R18-2-306.01 and require the following:

a. Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements shall be clearly identified in such reports. All required reports shall be certified by a responsible official consistent with R18-2-304(H) and R18-2-309(A)(5).

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Notice in accordance with ~~subparagraph~~ subsection (E)(3)(d) ~~of this Section~~ shall be considered prompt for the purposes of this ~~subparagraph~~ subsection 5(b).

6. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Act or the regulations promulgated thereunder.

a. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

b. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

c. Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Act.

d. Any permit issued pursuant to the requirements of this Chapter and title V of the Act to a unit subject to the provisions of title IV of the Act shall include conditions prohibiting all of the following:

i. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators~~.~~,

ii. Exceedances of applicable emission rates~~.~~,

iii. ~~The use~~Use of any allowance prior to the year for which it ~~was~~ is allocated~~.~~, and

iv. Contravention of any other provision of the permit.

7. A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

8. Provisions stating the following:

a. The permittee shall comply with all conditions of the permit including all applicable requirements of Arizona air quality statutes, Title 49, Chapter 3, and the air quality rules, Title 18, Chapter 2. Any permit noncompliance is grounds for enforcement action; for a permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application. Noncompliance with any federally enforceable requirement in a permit constitutes a violation of the Act.

b. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

c. The permit may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

d. The permit does not convey any property rights of any sort, or any exclusive privilege.

e. The permittee shall furnish to the Director, within a reasonable time, any information that the Director may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon the Director's request, the permittee shall also furnish to the Director copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish a copy of such records directly to the Administrator along with a claim of confidentiality.

f. For any major source operating in a nonattainment area for any pollutant(s) for which the source is classified as a major source, the source shall comply with reasonably available control technology.

9. A provision to ensure that the source pays fees to the Director ~~pursuant to~~ under A.R.S. § 49-426(E)

~~and the rules adopted thereunder~~ , R18-2-326 and R18-2-511.

10. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes ~~that are~~ provided for in the permit. ~~This provision shall not apply to emissions trading between sources as provided in the applicable implementation plan.~~

11. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. Such terms and conditions:

    a. Shall require the source, contemporaneously with making a change from ~~one~~ 1 operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

    b. Shall extend the permit shield described in R18-2-325 to all terms and conditions under each such operating scenario; and

    c. Shall ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this Chapter.

12. Terms and conditions, if the permit applicant requests them, as approved by the Director, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

    a. Shall include all terms required under subsections (A) and (C) ~~of this Section~~ to determine compliance;

    b. Shall not extend the permit shield described in subsection (D) ~~of this Section~~ to all terms and conditions that allow such increases and decreases in emissions;

    c. Shall not include trading ~~involving~~ which involves emission units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades; and

    d. Shall meet all applicable requirements and requirements of this Chapter.

13. Terms and conditions, if the permit applicant requests them and they are approved by the Director, setting forth intermittent operating scenarios including potential periods of downtime. If such terms and conditions are included, the state's emissions inventory shall not reflect the zero emissions

associated with the periods of downtime.

14. If a permit applicant requests it, the Director shall issue permits that contain terms and conditions allowing for the trading of emission increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Director shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. Changes made under this subsection (14) shall not include modifications under any provision of title I of the Act and shall not exceed emissions allowable under the permit. The terms and conditions shall provide for notice that conforms to R18-2-317(D) and (E) and that describes how the increases and decreases in emissions will comply with the terms and conditions of the permit.

15. Such other terms and conditions as are required by the Act, A.R.S. Title 49, Chapter 3, Articles 1 and 2 and the rules ~~adopted pursuant thereto~~ in Title 18, Chapter 2.

B. Federally-enforceable Requirements

1. The following permit conditions shall be enforceable by the Administrator and citizens under the Act:

   a. Except as provided in subsection (B)(2) ~~of this Section~~, all terms and conditions in a Class I permit, including any provisions designed to limit a source's potential to emit ~~.~~;

   b. Terms or conditions in a Class II permit setting forth federal applicable requirements ~~.~~; and

   c. Terms and conditions in any permit ~~which are~~ entered into voluntarily ~~pursuant to~~ under R18-2-306.01, as follows:

      i. Emissions limitations, controls or other requirements ~~.~~; and

      ii. Monitoring, recordkeeping and reporting requirements associated with the emissions limitations, controls or other requirements in subsection B(1)(c)(i).

2. Notwithstanding subsection (B)(1)(a), the Director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in a Class I permit that are not required under the Act or under any of its applicable requirements.

C. ~~All permits~~ Each permit shall contain a compliance plan ~~that meets the requirements of~~ as specified in R18-2-

309.

D. Each permit shall include the applicable permit shield provisions ~~set forth in~~ under R18-2-325.

E. Emergency provision

1. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

2. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of ~~paragraph (3) of this~~ subsection (3) are met.

3. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a. An emergency occurred and that the permittee can identify the cause(s) of the emergency;

   b. The permitted facility was at the time being properly operated;

   c. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements in the permit; and

   d. The permittee submitted notice of the emergency to the Director by certified mail, facsimile or hand delivery within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective action taken.

4. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

5. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

F. A ~~class~~ Class I permit issued to a major source shall require that revisions be made pursuant to R18-2-321 to incorporate additional applicable requirements adopted by the Administrator pursuant to the Act that become applicable to a source with a permit with a remaining permit term of ~~three~~ 3 or more years. No revision shall be required if the effective date of the applicable requirement is after the expiration of the permit. The revisions

shall be made as expeditiously as practicable, but not later than ~~eighteen~~ 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subsection shall comply with ~~provisions in~~ R18-2-322 for permit renewal and shall reset the ~~five~~ 5 year permit term.

R18-2-320. Significant Permit Revisions

A. Significant revision procedures shall be used for applications requesting permit revisions that do not qualify as minor revisions or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall follow significant revision procedures.

B. ~~All modifications~~Any modification to a major ~~sources~~ source of federally listed hazardous air pollutants, and any reconstruction of a source, or a process or production unit, under section 112(g) of the Act and regulations promulgated thereunder, shall follow significantpermit revision procedures and any rules adopted pursuant to A.R.S. § 49-426.03.

~~**C.** All modifications to sources subject to rules promulgated pursuant to A.R.S. § 49-426.06 shall follow the revision procedures provided in those rules.~~

~~**D**~~**C.** Significant permit revisions shall meet all requirements of this Article for applications, public participation, review by affected States, and review by the Administrator as they apply to permit issuance and renewal.

D. When an existing source applies for a significant permit revision to revise its permit from a Class II permit to a Class I permit, it shall submit a Class I permit application in accordance with R18-2-304. The Director shall issue the entire permit, and not just the portion being revised, in accordance with Class I permit content and issuance requirements, including requirements for public, affected state, and EPA review, contained in R18-2-307 and R18-2-330.

E. The Director shall process the majority of significant permit revision applications received each calendar year within 9 months of receipt of a complete permit application but in no case longer than 18 months. Applications for which the Director undertakes accelerated processing pursuant to R18-2-326(N) shall not be included for this requirement.

R18-2-331. Material Permit Conditions

A. For the purposes of A.R.S. §§ 49-464(G) and 49-514(G), a "material permit condition" shall mean a condition

which satisfies all of the following:

1. The condition is in a permit or permit revision issued by the Director or a control officer after ~~the effective date of this Section~~ November 15, 1993.
2. The condition is identified within the permit as a material permit condition.
3. The condition is ~~one~~ 1 of the following:
    a. An enforceable emission standard imposed to avoid classification as a major modification or major source or to avoid triggering any other applicable requirement.
    b. A requirement to install, operate or maintain a maximum achievable control technology or hazardous air pollutant reasonably available control technology required pursuant to ~~the requirements of~~ A.R.S. § 49-426.06.
    c. A requirement for the installation or certification of a monitoring device.
    d. A requirement for the installation of air pollution control equipment.
    e. A requirement for the operation of air pollution control equipment.
    f. An opacity standard required by section 111 or title I, part C or D, of the Act.
4. Violation of the condition is not covered by ~~subsections (A) through (F), or (H) through (J) of~~ A.R.S. § 49-464(A) through (F), or (H) through (J) or A.R.S. § 49-514(A) through (F), or (H) through (J).

B. For the purposes of ~~subparagraphs~~ subsections (A)(3)(c), (d) and (e) ~~of this Section~~, a permit condition shall not be material where the failure to comply resulted from circumstances which were outside the control of the source. As used in this Section, "circumstances outside the control of the source" shall mean circumstances where the violation resulted from a sudden and unavoidable breakdown of the process or the control equipment, resulted from unavoidable conditions during a start up or shut down or resulted from upset of operations.

C. For purposes of this Section, the term "emission standard" shall have the meaning ~~set forth at~~ specified in A.R.S. §§ 49-464(U) and 49-514(T).